



EXPLANATORY NOTES

Wales Act 2017

Chapter 4

£19.00

WALES ACT 2017

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What these notes do

These Explanatory Notes relate to the Wales Act 2017 (c. 4) which received Royal Assent on the 31 January 2017.

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

Table of Contents

Subject	Page of these Notes
Overview of the Act	5
Policy background	5
Legal background	6
Territorial extent and application	6
Commentary on provisions of the Act	8
Part 1: Constitutional Arrangements	8
Chapter 1: Permanence of the National Assembly for Wales and Welsh Government	8
Section 1: Permanence of the National Assembly for Wales and Welsh Government	8
Chapter 2: Convention about Parliament legislating on devolved matters	8
Section 2: Convention about Parliament legislating on devolved matters	8
Chapter 3: Legislative competence	8
Section 3: Legislative competence	8
Schedule 1: New Schedule 7A to the Government of Wales Act 2006	10
PART 1 – GENERAL RESERVATIONS	11
PART 2 – SPECIFIC RESERVATIONS	15
Schedule 2: New Schedule 7B to the Government of Wales Act 2006	57
Section 4: Devolved Welsh authorities	61
Chapter 4: Elections	62
Section 5: Power to make provision about elections	62
Section 6: Timing of elections	63
Section 7: Electoral registration: the Digital Service	65
Section 8: Elections of police and crime commissions	65
Chapter 5: Other provisions about legislation by the Assembly	66
Section 9: Super-majority requirement for certain legislation	66
Section 10: Super-majority requirement: amendments relating to procedure etc.	67
Section 11: Introduction of Bills: justice impact assessment	67
Section 12: Submission of Bills for Royal Assent: role of Presiding Officer	67
Chapter 6: Other provision about the Assembly	68
Section 13 Financial control, accounts and audit	68
Section 14: Composition of Assembly committees	69
Section 15: Assembly proceedings: participation by UK Ministers etc.	69
Section 16: Change of the name of the Assembly etc.: translation of references	69
Chapter 7: Welsh rates of income tax: removal of referendum requirement	69
Section 17: Welsh rates of income tax: removal of referendum requirement	69
Section 18: Lending for capital expenditure	70
Chapter 8: Executive competence	70
Section 19: Functions of Welsh Ministers	70
Section 20: Implementation of EU law	71
Section 21: Transfer of Ministerial Functions	71
Section 22: Consultation about cross-border bodies	72

These Explanatory Notes relate to the Wales Act 2017 (c. 4) which received Royal Assent on 31 January 2017

Part 2: Legislative and executive competence: further provision	72
Chapter 9: Onshore petroleum	72
Section 23: Onshore petroleum licensing	72
Section 24: Onshore petroleum: existing licences	72
Section 25 Onshore petroleum: right to use deep-level land in Wales	73
Chapter 10: Road transport	74
Section 26: Roads: speed limits, pedestrian crossings and traffic signs	74
Section 27: Bus service registration and Traffic Commissioners	75
Section 28: Taxis: transfer of certain functions to Welsh Ministers	75
Chapter 11: Harbours	75
Section 29: Welsh harbours	75
Section 30: Amendments of Harbours Act 1964	76
Section 31: Application of general provisions to transfer of functions in sections 29 and 30	76
Section 32: Welsh harbours: reserved trust ports	76
Section 33: Development consent	77
Chapter 12: Harbours: consultation and consent requirements	77
Section 34: Exercise of functions in relation to cross-border harbours	77
Section 35: Cross-border exercise of pilotage functions	77
Section 36: Exercise of functions in relation to two or more harbours	77
Section 37: Consequential amendments to consent requirements in Harbours Act 1964	78
Section 38: Sections 34 to37: supplementary	78
Chapter 13: Planning for electricity generating stations	78
Section 39: Development consent for generating stations with 350MW capacity or less	78
Section 40: Generating stations and public rights of navigation	79
Section 41: Safety zones around renewable energy installations	79
Section 42: Overhead lines associated with devolved Welsh generating stations	80
Section 43: Alignment of associated development consent	80
Chapter 14: Equal opportunities	81
Section 44: Equal opportunities: public sector equality duty	81
Section 45: Public sector duty regarding socio-economic inequalities	81
Chapter 15: Marine licensing and conservation	81
Section 46: Marine licensing in the Welsh offshore region	81
Section 47: Marine conservation zones	82
Chapter 16: Water	83
Section 48: Water and sewerage	83
Section 49: Modification of water-related functions	83
Section 50: Water protocol	84
Section 51: Reciprocal cross-border duties in relation to water	84
Section 52: Repeal of intervention powers relating to water	84
Chapter 17: Miscellaneous	84
Section 53: Transfer of functions in relation to fishing vessels	84
Section 54: Transfer of functions in relation to excepted energy buildings	84
Section 55: Renewable energy incentive schemes: consultation	84
Section 56: Financial assistance for inland waterway and sea freight	85
Section 57: Maritime and Coastguard Agency	85
Section 58: Gaming machines on licensed betting premises	85
Part 3: Welsh Tribunals	85
Section 59: The Welsh tribunals	85
Section 60: President of Welsh Tribunals	86
Schedule 5: President of Welsh Tribunals	86
Section 61: Directions as to practice and procedure	86
Section 62: Cross-deployment of members of the Welsh tribunals	87

Section 63: Cross-deployment of tribunal members and judges	87
Section 64: Power to amend section 63	87
Part 4: Miscellaneous	87
Section 65: Provision of information to the Office for Budget Responsibility	87
Section 66: Gas and Electricity Markets Authority	88
Section 67: Licensing of coal-mining operations: approval by Welsh Ministers	88
Section 68: Office of Communications	88
Part 5: General	89
Section 69: Consequential provision	89
Schedule 6: Minor and consequential amendments	89
Part 1: Amendments of the Government of Wales Act 2006	89
Part 2: Amendments relating to onshore petroleum	90
Part 3: Amendments of other Acts	92
Section 70: Transitional provision and savings	97
Schedule 7: Transitional provisions	97
Section 71: Commencement	99
Section 72: Short title	99
Commencement	99
Related documents	100
Annex A - Territorial extent and application	101
Annex B - The legislative competence tests	102
Defined terms in Flowcharts 1 and 2	104
Annex C - Hansard References	109
Annex D - Progress of Bill Table	110

Overview of the Act

- 1 The Wales Act 2017 implements those elements of the St David's Day agreement which required legislative changes. It is aimed at creating a clearer and stronger settlement in Wales which is durable and long-lasting.
- 2 The Act is an enabling Act and the majority of the provisions in the Act set out the powers that are transferred to the National Assembly for Wales (the Assembly) and/or the Welsh Ministers.
- 3 In particular, the Wales Act amends the Government of Wales Act 2006 (GoWA) by moving to a reserved powers model for Wales. This is the model that underpins the devolution settlement in Scotland. The reserved powers model set out in the Act provides a clearer separation of powers between what is devolved and what is reserved, enabling the Assembly to legislate on any subject except those specifically reserved to the UK Parliament.
- 4 The Act includes a declaration that the Assembly and the Welsh Ministers and the laws that they make, are considered a permanent part of the UK's constitutional arrangements and will not be abolished without a decision of the people of Wales. It is also declared that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Assembly, whilst retaining the sovereignty to do so.
- 5 The Act also devolves further powers to the Assembly and the Welsh Ministers in areas where there was political consensus in support of further devolution. These include:
 - a. Devolving greater responsibility to the Assembly to run its own affairs, including deciding its name;
 - b. Devolving responsibility to the Assembly for ports policy, speed limits, bus registration, taxi regulation, local government elections, sewerage and energy consenting up to 350MW (see below for additional detail);
 - c. Devolving responsibility to Welsh Ministers for marine licensing and conservation and energy consents in the Welsh offshore region; and extending responsibility for building regulations to include excepted energy buildings;
 - d. Devolving power over Assembly elections; and
 - e. Devolving powers over the licensing of onshore oil and gas extraction
 - f. Aligning the devolution boundary for water and sewerage services along the border between England and Wales
 - g. Establishing in statute the President of Welsh Tribunals to oversee devolved tribunals and allowing cross-deployment of judicial office holders.

Policy background

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

- 7 The command paper, *Powers for a purpose: Towards a lasting devolution settlement for Wales*, published on 27 February 2015 (Cm 9020), set out the recommendations on which there was political consensus. Those recommendations requiring legislative change were included in the draft Wales Bill which was published on the 20 October 2015 for pre-legislative scrutiny (Cm 9144). The Act includes changes that were made as a result of that scrutiny process and changes that were made as a consequence of discussions with the Welsh Government and the Assembly Commission.
- 8 The St David's Day process also examined some of the powers which are being devolved to Scotland under the Smith Commission agreement. The Act takes forward two significant commitments from this exercise around which there was strong political consensus. These are - devolving powers in relation to Assembly elections, including the electoral system, conduct, franchise and registration, and devolving the licensing of onshore oil and gas extraction (including shale gas licensing).
- 9 The St David's Day agreement also committed the Government to examine whether there was a strong case to implement for Wales any of the other recommendations from the Smith Commission. As a result of this work the Act includes :-
 - provisions giving a formal consultative role to the Welsh Government and Assembly in designing renewables incentives and OFGEM strategic priorities;
 - a duty on OFGEM to lay its annual report and accounts before the Assembly, submit reports, and appear before Assembly Committees;
 - the devolution of responsibility for mineral access rights for underground onshore extraction of oil and gas in Wales;
 - the devolution of power to prevent the proliferation of fixed odds betting terminal;
 - provisions to require the Secretary of State to consult Welsh Ministers on strategic priorities for the Maritime and Coastguard Agency with respect to its activities in Wales' and
 - the devolution of powers to the Assembly to set gender quotas in respect of public bodies in Wales, and the devolution of traffic signs.

Legal background

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

Territorial extent and application

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

basis, they do not deal with devolved matters in Wales, Scotland or Northern Ireland. However, the Act required a Legislative Consent Motion from the Assembly as it contains provisions applying to Wales which alter the legislative competence of the Assembly and the executive competence of the Welsh Ministers. A Legislative Consent Motion, sponsored by the Welsh Government, was passed by the Assembly on the 17 January 2017.

- 14 The only exceptions to this are sections 9-16 (which relate to the Assembly's internal arrangements and therefore only apply to Wales) and sections 50 and 51 (which apply to England and Wales because they relate to administrative water arrangements between the Secretary of State and Welsh Ministers).
- 15 See the table in Annex A for a more detailed summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding LCMs and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of the Act

Part 1: Constitutional Arrangements

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

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

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

Chapter 2: Convention about Parliament legislating on devolved matters

Section 2: Convention about Parliament legislating on devolved matters

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

Chapter 3: Legislative competence

Section 3: Legislative competence

- 23 Section 3(1) replaces current section 108 of GoWA with a new section 108A. The new section sets out the limits on the legislative competence of the Assembly.
- 24 Subsections (1)-(7) of new section 108A define how the legislative competence of provisions in Assembly Acts is to be assessed.
- 25 Subsection (1) of new section 108A provides that an Act of the Assembly is not law so far as any of its provisions is outside the legislative competence of the Assembly.
- 26 Subsection (2) of new section 108A sets out that a provision in an Assembly Act is outside competence if any one of the paragraphs (a)-(e) apply. There are five separate and independent tests for an Assembly Act provision to satisfy before it will be within competence. If any one of

the following five paragraphs applies to an Assembly Act provision, it will be outside competence. Flowcharts 1 and 2 at Annex B below explain further how the five tests in paragraphs (a)-(e) are to be applied.

- a. Paragraph (a) provides that an Assembly Act provision will be outside competence if it extends beyond England and Wales. In other words, an Assembly Act provision cannot form part of a legal system other than the unified jurisdiction of England and Wales.
 - b. Paragraph (b) provides that an Assembly Act provision will be outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales. However, new subsections (3), (4), (5) and (7) together make up the exception to paragraph (b), whereby an Assembly Act provision can apply otherwise than in relation to Wales. See below for further explanation of these subsections.
 - c. Paragraph (c) provides that an Assembly Act provision will be outside competence if it relates to any of the reserved matters, as set out in Schedule 7A, having regard to the exceptions listed in that Schedule. "Relates to" is to be interpreted in accordance with the purpose test (see subsection (6)).
 - d. Paragraph (d) provides that an Assembly Act provision will be outside competence if it breaches any of the restrictions set out in Part 1 of Schedule 7B, subject to the exceptions in Part 2 of Schedule 7B. It is important not to conflate this paragraph (d) test with the separate test in paragraph (c) above. For example, even though an Assembly Act provision may satisfy paragraph (c) by not relating to a reserved matter, it may nevertheless be outside competence by breaching the restrictions in Schedule 7B. Each of the five tests of legislative competence in paragraphs (a)-(e) are to be applied independently of each other.
 - e. Paragraph (e) provides that an Assembly Act provision will be outside competence if it is incompatible with the Convention rights or with EU law.
- 27 Subsection (3) of new section 108A provides an exception to new subsection (2)(b) so that an Assembly Act provisions can apply otherwise than in relation to Wales if it:
- a. is ancillary (defined in new subsection (7)) to a provision in an Assembly Act or Measure or to a "devolved provision" (defined in subsection (4) below) in an Act of Parliament; *and*
 - b. has no greater effect otherwise than in relation to Wales than is necessary to give effect to the purpose of that provision.
- 28 "Wales" is defined in section 158(3) of GoWA and does not include the Welsh zone beyond the territorial sea.. An Assembly Act provision will need to satisfy the test in section 108A(3) before it can apply beyond Wales.
- 29 Subsection (4) provides that, for the purposes of subsection (3)(a), a "devolved provision" in an Act of Parliament is one that would be within the Assembly's legislative competence. However, in applying this test, paragraphs 8, 10 and 11 of Schedule 7B are to be ignored. Paragraphs 8, 10 and 11 require Secretary of State or Treasury consent for Assembly Act provisions that alter certain reserved authorities' functions. Such consent would never be required for an Act of Parliament which is why paragraphs 8, 10 and 11 of Schedule 7B are to be ignored when assessing whether a provision in an Act of Parliament would be within the Assembly's legislative competence.

- 30 Subsection (5) of new section 108A clarifies that, in determining what is "necessary" for the purposes of subsection (3)(b), it is not relevant that the UK Parliament could itself have enacted the provision.
- 31 Subsection (6) of new section 108A includes the so-called 'purpose test', which provides that, for the purposes of subsection (2)(c), the question of whether an Assembly Act provision "relates to" a reserved matter, is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- 32 Subsection (7) of new section 108A defines "ancillary" for the purposes of GoWA. The term "ancillary" is used in section 108A(3)(a) (as inserted by section 3) and paragraphs 2(1)(a) and 5(4)(b) of Schedule 7B (as inserted by Schedule 2). The definition is based on the wording that was previously in section 108(5) of GoWA. A provision is considered ancillary to another if it:
 - a. provides for the enforcement of the other provision, or is otherwise appropriate for making that provision effective, or
 - b. is otherwise incidental to, or consequential on, that provision.
- 33 Section 3(2) replaces Schedule 7 to GoWA with new Schedules 7A and 7B. Schedules 7A and 7B are as set out in Schedules 1 and 2 to the Act respectively.

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

- 34 New Schedule 7A sets out the reserved matters for the purposes of section 108A(2)(c), as inserted by section 3(1) of the Act. Section 3(2) provides that this Schedule, together with new Schedule 7B, replaces Schedule 7 to GoWA.
- 35 The following terms are used in Schedule 7A to describe the subject matters that are reserved to the UK Parliament and those which are devolved to the Assembly:
 - a. Reservation: A reservation is a description of a subject matter, about which only the UK Parliament can pass primary legislation (and any secondary legislation enabled by provision in an Act) in relation to Wales. Any subject not reserved, is devolved to the Assembly (but, see 'carve out' below). The reservations may, because of the fairly broad terms in which they are described, include some matters that are intended to be devolved. Such matters are therefore listed as an exception.
 - b. Exception: An exception to a reservation describes a subject which would otherwise form part of the reservation but is excepted, so that it is within the Assembly's legislative competence. Exceptions are specific to the individual reservations under which they are listed; they are not of general application (see paragraph 14 of Part 2 of Schedule 7A).
 - c. Carve Out: A carve out is a specific matter which would otherwise form part of the exception, if it were not effectively 're-reserved' to the UK Parliament by being carved out of the exception.
- 36 For the purposes of Schedule 7A, the reservations, less the exceptions, plus the carve outs equals the totality of the matters reserved to the UK Parliament. Similarly, the exceptions (having regard to the carve outs) plus the subjects not mentioned anywhere in Schedule 7A equals the totality of the subject matters devolved to the Assembly. However, even where an Assembly Act provision does not relate to a reserved matter, this is only one part of the legislative competence test (section 108A(2)(c)) and an Assembly Act provision must of course also satisfy the tests in paragraphs (a), (b), (d) and (e) in section 108A(2).

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

PART 1 – GENERAL RESERVATIONS

The Constitution

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

- 48 Paragraphs 3(1) and 3(2) provide that paragraph 1 does not have the effect of reserving Crown property, namely property belonging to Her Majesty in right of the Crown, to Her Majesty in right of the Duchy of Lancaster, or to the Duchy of Cornwall. Crown property also includes property belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown. This will enable the Welsh Assembly to apply its legislation to Crown property, subject to any provisions in other reservations.
- 49 Paragraph 3(3) carves out, and therefore re-reserves, a number of matters from the exception in paragraphs 3(1) and 3(2), providing that this exception does not affect the reservation by paragraph 1 of:
- the hereditary revenues of the Crown;
 - the royal arms and standard; and
 - the compulsory acquisition of property belonging to Her Majesty in right of the Crown or to Her Majesty in right of the Duchy of Lancaster, belonging to the Duchy of Cornwall, or held or used by a Minister of the Crown or government department.
- 50 Paragraph 4 provides for an exception to the general reservation of the Crown, in paragraph 1, in respect of property held by Her Majesty in Her private capacity, but also includes a carve out, and therefore re-reserves, the subject matter of the Crown Private Estates Acts 1800 to 1873.

Public service

- 51 Paragraph 5 states that the Civil Service of the State is a reserved matter. The Civil Service includes the Home Civil Service (which includes staff of the Welsh Government, see section 52 of GoWA) and the Diplomatic Service. The effect is that the Assembly is not able to legislate about matters relating to Civil Servants in Wales, including their recruitment, selection, management, conduct, discipline, numbers, grading and terms and conditions of service. Matters relating to Civil Service pensions are reserved by Section F4 of this Schedule.
- 52 The Home Civil Service is ultimately regulated by the Royal Prerogative, and its management has been delegated to the Minister for the Civil Service. The Civil Service Management Code is issued under the authority of the Civil Service Order in Council 1995. Under the Civil Service (Management Functions) Act 1992, the Minister for the Civil Service has further delegated management functions to Ministers and office holders in charge of Departments. These include the authority to prescribe qualifications for appointment as Civil Servants, to determine the number and grading of posts (outside the Senior Civil Service) in such Departments and a wide range of other management functions.

Political parties

- 53 Paragraph 6 reserves the registration of political parties and the funding of political parties, including accounting requirements, although paragraph 7 excludes from this the making of payments to any political party for the purpose of assisting members of the Assembly to perform their Assembly duties. Section 24 of GoWA makes provision for financial assistance to groups of Assembly members.

Single legal jurisdiction of England and Wales

- 54 Paragraph 8 reserves the single legal jurisdiction of England and Wales so as to reserve the core elements of the shared legal system of England and Wales. This includes the courts, judges, civil and criminal proceedings, pardons for criminal offences, private international law and judicial review of administrative action.

- 55 This maintains the common court structure and judiciary in England and Wales as well as common rules on civil and criminal proceedings including bail, costs, custody pending trial, disclosure, enforcement, evidence (which include rules on burden and standard of proof), procedure, limitation of actions, prosecutors and remedies.
- 56 The reference to sentencing in paragraph 8(1)(c) of Schedule 7A protects the decision-making process the judge must follow in sentencing. This would involve, for example, the requirements set out in the Criminal Justice Act 2003 to consider the purposes of sentencing; to take into account the statutory aggravating factors; to follow sentencing guidelines; to decide whether the community order or custody threshold is passed; and to impose a sentence commensurate with the seriousness of the offence.
- 57 By virtue of paragraph 8(1)(d), the Assembly is not able to legislate to pardon people for criminal offences.
- 58 Paragraph 8(1)(e) reserves private international law so that the way the single jurisdiction of England and Wales deals with laws from other jurisdictions is reserved and paragraph 8(1)(f) reserves judicial review of administrative action.
- 59 “Prosecutors” in paragraph 8(1)(c) refers to anyone who commences a prosecution, including the Crown Prosecution Service and Serious Fraud Office, government departments and governmental organisations, statutory bodies such as local authorities and regulators, and private bodies and individuals. However, as clarified by paragraph 8(2), the Assembly may specify who has prosecuting responsibility for a devolved offence but the procedure of how prosecutions are conducted including provision for immunity from prosecution such as under section 71 of the Serious Organised Crime Act 2005 or the power of the CPS to take over criminal proceedings under section 6(2) of the Prosecution of Offences Act 1985, even for devolved offences, remains reserved by way of the criminal proceedings reservation. Should the Assembly wish to specify a reserved authority as being responsible for prosecuting a devolved offence or require such a reserved authority to obtain consent before prosecuting, then this is possible with the consent of the appropriate Minister: paragraphs 8(1)(a) or 10(1) of new Schedule 7B.
- 60 Paragraph 8(3) excepts from Paragraph 8(1) the constituent functions of Cafcass Cymru (the Children and Family Court Advisory and Support Service in Wales). This is a department of the Welsh Government. Therefore these functions are not reserved.

Tribunals

- 61 Paragraph 9 reserves tribunals, including membership of tribunals, appointment and remuneration of tribunal members, tribunal functions, tribunal procedure and appeals against tribunal decisions. It does not reserve any devolved tribunal (a tribunal which has exclusively devolved functions exercisable only in Wales) (paragraph 9(2)). Nor does it reserve any application or appeal which relates to a devolved matter (and is not an appeal against the decision of a tribunal other than a devolved tribunal) where the appeal or application is to a tribunal which has devolved functions and reserved functions (paragraph 9(3)). For example, an Assembly Act could make provision for a right of appeal from a devolved tribunal to the Upper Tribunal.
- 62 The Tribunals, Courts and Enforcement Act 2007 is the main statute in relation to tribunals. It establishes the First-tier Tribunal and Upper Tribunal in England and Wales and makes provision with respect to their membership and composition, functions, jurisdiction, appeals and procedure.

Foreign affairs etc.

- 63 Paragraph 10(1) reserves foreign affairs. The areas reserved include regulation of international trade, international development assistance and co-operation and international relations. International relations encompass relations with the European Union and its institutions, relations with territories outside the UK and with other international organisations. This means that the conduct of international relations, including conduct of relations with the European Union are matters reserved to the UK Parliament and UK Government.
- 64 Certain areas fall outside the scope of the reservation. Sub-paragraph (3)(a) provides that these areas include observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law. EU law and international obligations are defined in section 158(1) of the GoWA. The Human Rights Convention is defined in paragraph 10 as meaning the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. The effect of sub-paragraph (3)(a) is that the Assembly will be able to legislate for the purpose of observing and giving effect to those obligations so far as they relate to devolved matters.
- 65 In relation to executive competence in this area, no power has been conferred on Welsh Ministers to implement international obligations. Section 82 of GoWA gives the Secretary of State the power to direct Welsh Ministers both to desist from any action incompatible with international obligations or that action is required by them to give effect to such obligations. Section 114 of GoWA gives the Secretary of State the power to make an intervention order if provisions in an Assembly bill are incompatible with any international obligation. Section 81 limits the power of Welsh Ministers to make subordinate legislation that is incompatible with Convention rights.
- 66 Further, certain enactments are protected from modification by the Assembly by virtue of paragraph 5 of new Schedule 7B to GoWA. These include the European Communities Act 1972 and the Human Rights Act 1998.

Defence

- 67 Paragraph 11 reserves all matters relating to defence and the armed forces. Defence includes matters relating to the armed forces (including, for example, their equipment, resources and deployment), defence policy, strategy, planning and intelligence, and plans for the maintenance of essential supplies and services in case of war.
- 68 Paragraph 11(a) reserves the defence of the realm. The defence of the realm is a supplementary concept to that of the armed forces (which are identified separately, see below) designed to cover all the matters for which the Ministry of Defence is responsible, for defence purposes. These matters include the various defence establishments and contractors carrying out work for defence purposes the Ministry of Defence Police and the services cadet forces (which do not form part of the armed forces but serve defence purposes), and special provisions for the acquisition, use or disposal of land and property for defence purposes.
- 69 Paragraph 11(b) reserves the naval, military and air forces of the Crown, including reserve forces. This makes it clear that all matters concerned with the armed forces themselves are reserved. This includes their command, establishment, maintenance, organisation, staffing and funding and all matters connected with the enlistment, management, disciplining (including policing, prosecution and trial within the armed forces' system of justice) and pay and conditions and allowances of both the military and civilian components of the armed forces and the civilian component, such as contractors working abroad for the armed forces, of the armed forces' community). This reservation also covers the creation of offences relating particularly to the armed forces (for example, the unauthorised wearing of military uniforms),

matters concerned with the territorial, auxiliary and volunteer reserve associations, special provisions relating to the status of members of the armed forces and the disclosure of information on military activities. The reservation also covers benefits to members and former members of the armed forces and their dependants and the matter of war graves. Equipment and explosives research for the purposes of the armed forces are also covered.

- 70 Paragraph 11(c) reserves all matters relating to visiting forces. These are the armed forces of other countries visiting or based in the UK, including both their military and civilian components.
- 71 Paragraph 11(d) reserves international headquarters and defence organisations. This is simply to make clear that matters concerned with headquarters or organisations designated for the purposes of the International Headquarters and Defence Organisations Act 1964 are reserved.
- 72 Paragraph 11(e) reserves trading with the enemy and enemy property. This covers matters relating to the control of trade with the enemy and the confiscation, control or administration of enemy property. These matters are all aspects of the conduct of war and the conclusion of peace.

PART 2 – SPECIFIC RESERVATIONS

- 73 Paragraph 12 explains that the matters listed in Part 2 of Schedule 7A are, like those listed in Part 1 of Schedule 7A, reserved matters.
- 74 Paragraph 13 provides that the reservations are to be read together with their exceptions and interpretation provisions.
- 75 Paragraph 14 provides that the exceptions and interpretation provisions that are listed within reservations apply only to those reservations. In other words, exceptions and interpretations do not apply to other reserved matters.

Head A - Financial and Economic Matters

Section A1 - Fiscal, economic and monetary policy

- 76 Paragraph 15 reserves fiscal, economic and monetary policy, with the exception of devolved taxes and local taxes.
- 77 The reserved matters include the issue and circulation of money, taxes and excise duties including vehicle excise duty (and the bodies which administer them), government borrowing and lending (including the issue of Government Securities), the exchange rate, the Bank of England and control over UK public expenditure. This does not affect the Assembly's ability to allocate resources, whether part of its assigned budget or raised through its tax-varying powers. By reserving the Bank of England by name in Part 2 of Schedule 7A, paragraph 199 of Schedule 7A ('particular authorities') applies and reserves the functions and constitution of the Bank.
- 78 Devolved taxes are therefore excepted from this reservation, along with local taxes to fund local authority expenditure. In addition paragraph 199 specifically excepts council tax precepts.

Section A2 - The currency

- 79 Paragraph 16 reserves matters relating to the currency.
- 80 The matters reserved are coinage, legal tender and bank notes. This includes the denominations of money in the currency and the coins or notes which constitute legal tender and what coins and bank notes may be issued

Section A3 - Financial services

- 81 Paragraph 17 reserves financial services. The reservation expressly includes:
- a. investment business, e.g. managing investments or providing investment advice and the authorisation and regulation of those who undertake such activities, as in the Financial Services Act 1986;
 - b. banking and deposit-taking e.g. the authorisation and regulation of those carrying on banking or deposit-taking business, as in the Banking Act 1987;
 - c. collective investment schemes e.g. unit trusts and open-ended investment companies and their regulation and authorisation, as in the Financial Services Act 1986; and
 - d. insurance.
- 82 The expression “financial services” also includes financial services other than those expressly mentioned, such as the services provided by building societies or friendly societies.
- 83 This reservation contributes to the preservation of common markets for financial services, and depositor, investor and policyholder protection, across the UK.

Section A4 - Financial markets

- 84 Paragraph 18 reserves financial markets, such as investment exchanges or money markets. The reserved matters are expressly stated to include:
- a. the listing and public offers of securities and investments, such as the matters which have to be disclosed in the application for official or unofficial listing of securities by the Stock Exchange;
 - b. the transfer of securities e.g. on paper in the case of certificated securities or electronically in the case of uncertificated securities, as in the CREST system; and
 - c. insider dealing. This reserves all matters relating to what constitutes insider dealing and its consequences.

Section A5 - Dormant accounts

- 85 Paragraph 19 reserves the distribution of money from dormant bank and building society accounts.
- 86 The distribution of balances held on dormant bank and building society accounts is governed by the Dormant Bank and Building Society Accounts Act 2008 (“Dormant Accounts Act”).
- 87 Part 1 of the Dormant Accounts Act deals with the transfer of such balances to an authorised reclaim fund and, from the authorised reclaim fund, to the distributor specified in section 16(1), which is currently the Big Lottery Fund (BLF).
- 88 Part 2 of the Dormant Accounts Act deals with the distribution of dormant account money by BLF. Section 16(1) specifies that BLF shall distribute dormant account money for meeting expenditure that has a social or environmental purpose. The apportionment of dormant account money between the various UK nations is addressed by section 17 and in secondary legislation (currently, the Distribution of Dormant Account Money (Apportionment) Order 2011, SI 2011/1799). Management and control of all dormant account money distributed by BLF is subject to directions addressed by section 22(4).
- 89 This reservation does not affect the existing devolution of executive competence to Welsh Ministers, who have powers: to further restrict (by order made by statutory instrument) the

purposes for which, or the kinds of person to which, BLF may distribute dormant account money for meeting Welsh expenditure (see section 19 of the Dormant Accounts Act); to give directions to BLF in relation to Welsh expenditure (section 22); to require the BLF to pay expenses incurred by them in relation to the Act (section 26); and to instruct BLF to prepare or replace a strategic plan for its distribution of dormant accounts money for meeting Welsh expenditure (Schedule 3).

Head B - Home Affairs

Section B1 - Elections

- 90 Subsection (A) of this Section (paragraph 20) reserves all matters concerning elections for membership of the House of Commons and the European Parliament, which includes who may stand or vote in those elections, procedures under which votes are counted and candidates returned, what the constituencies and timings of those elections should be, campaign expenditure by political parties, controlled expenditure and donations to third parties.
- 91 Subsection (B) (paragraphs 21 to 27) reserves certain matters in relation to elections for membership of the Assembly and local government elections in Wales.
- 92 Paragraph 21 reserves the subject-matter of sections 3(1A) and 13A of GoWA which concern the coincidence of Assembly elections and reserved elections.
- 93 Paragraph 22 reserves the subject-matter of section 37ZA(2) of the Representation of the People Act 1983 which concerns the coincidence of local government elections in Wales and Assembly elections.
- 94 Paragraph 23 reserves:
 - a. the combination of polls at elections or referendums that are outside the legislative competence of the Assembly with polls at (i) Assembly elections, (ii) local government elections in Wales or (iii) referendums held under Part 2 of the Local Government Act 2000; and;
 - b. the combination of polls at ordinary Assembly elections with polls at ordinary local government elections in Wales.
- 95 The reservation at paragraph 24 provides that the Individual Electoral Registration Digital Service for applications for registration, or for verifying information contained in applications for registration in relation to elections for membership of the Assembly or local government elections in Wales, is reserved.
- 96 Paragraph 25 of the reservation sets out the subject-matter of those provisions in the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") which are reserved in relation to elections for the membership of the Assembly and local government elections in Wales. In particular, the subject matter of sections 1 to 4 of the 2000 Act, which relate to the establishment and constitution of the Electoral Commission are reserved (with some exceptions); however, many of the Electoral Commission's general functions and enforcement functions under Parts 1 and 10 of the 2000 Act are not reserved in relation to elections for membership of the Assembly and local government elections.
- 97 Paragraph 26 reserves campaign expenditure by political parties, controlled expenditure and donations to third parties, but only where a regulated period in respect of such expenditure for elections to the Assembly or local government elections in Wales overlaps with the regulated period for elections for membership of the House of Commons or European Parliament.

98 Sections 145 to 148 and 150 to 154 of the 2000 Act make provision for the enforcement of the regulatory framework provided by that Act. This includes various powers exercisable by the Electoral Commission to investigate matters and, where appropriate, to impose civil sanctions. These sections also create a number of criminal offences. Paragraph 27 reserves the subject matter of these sections as they apply for the purposes of any provision, so far as the subject matter of such a provision is itself reserved by either paragraph 25 or 26 of Section B1.

Section B2 - Nationality and immigration

99 This section reserves nationality and immigration.

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

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

102 Passports and other travel documents are not subject to statutory provision, but are issued under the Royal Prerogative. No prerogative powers have been conferred on Welsh Ministers.

103 The reservation includes the exercise of functions under the legislation described above; asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; and the issue of travel documents.

Section B3 - National security and official secrets

104 Paragraph 32 reserves national security. National security powers are integral to the functioning of the United Kingdom.

105 Paragraph 33 reserves special powers and other special provisions for dealing with terrorism. This reserves competence to make special provision about terrorism such as is made in the Terrorism Act 2000, the Terrorism Act 2006, the Counter-Terrorism Act 2008, the Terrorism Prevention and Investigation Measures Act 2011 or the Counter-Terrorism and Security Act 2015. The reservation does not catch general provisions of the criminal law or public order statutes which, although not directed against terrorists as such, could be used to deal with terrorists.

106 Paragraph 34 reserves the subject matter of the Official Secrets Acts 1911-1989, which contain provision protecting against certain acts of espionage and against unauthorised disclosure of certain sensitive information.

Section B4 - Interception of communications, communications data and surveillance

107 This reservation applies to the entire statutory framework which governs these activities. This includes the ability to specify that particular public authorities should be able to conduct these activities. The oversight regime and statutory safeguards which apply to these activities are

also wholly reserved. These are some of the most intrusive activities which public authorities can undertake.

Section B5 - Crime, public order and policing

108 Paragraphs 39-41 reserve the prevention, detection and investigation of crime. It also reserves the preservation of public order and policing.

109 Paragraph 42 makes Police and Crime Commissioners in general a reserved matter, including their functions and their election. Police and Crime Commissioners receive funding through council tax precepts. Paragraph 199 provides that council tax precepts are not reserved. Paragraph 199 makes clear that the Assembly has competence in relation to council tax policy.

110 Although the prevention, detection and investigation of crime and policing are reserved - such that the Assembly cannot confer, impose, modify or remove functions on/of the police - the reservations under this section do not prevent the Assembly from conferring on a devolved Welsh Authority powers relating to the detection and investigation of an offence of a kind that could be created by a provision falling within the Assembly's legislative competence.

Section B6 - Anti-social behaviour

111 Paragraph 43 reserves the subject matter of Parts 1 to 4 and 6 of the Anti-social Behaviour, Crime and Policing Act 2014, which sets out coercive and other measures to deal with anti-social behaviour, crime and disorder and behaviour having detrimental effect on the quality of life in a locality. Part 5, which makes provision for the recovery of dwelling houses on grounds of anti-social behaviour, is not reserved as such matters are within the legislative competence of the Assembly.

112 Part 1 makes provision for a civil injunction to prevent anti-social behaviour. Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. Part 3 contains a power for the police to disperse people who are causing, or likely to cause, harassment, alarm or distress or who are, or are likely to be, taking part in crime or disorder. Part 4 sets out powers to deal with community protection and makes provision for a community protection notice, a public spaces protection order and provisions to close premises associated with nuisance or disorder.. Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour.

113 Paragraph 44 reserves matters in relation to dangerous dogs and dogs dangerously out of control as matters concerning anti-social behavior also reserved. This is consistent with the reserving generally of the maintenance of public order but does not affect the devolved subject matter of animal welfare.

Section B7 - Modern slavery

114 Paragraph 45 reserves the subject-matter of the Modern Slavery Act 2015. The Act sets out the UK Government's legislative response to the problem of modern slavery. Its provisions include criminal offences, law enforcement powers and protections for victims which are crucial to ensuring an effective response to this serious crime.

Section B8 - Prostitution

115 Paragraph 46 reserves matters in relation to prostitution.

116 This covers the prevention of harm, exploitation and public nuisance related to the purchase and sale of sexual services, including the control of the sale of sexual services.

117 The legislative framework in relation to prostitution is principally covered by the Sexual Offences Act 1956 (brothel keeping), Sexual Offences Act 2003 (soliciting, controlling

prostitution for gain and causing or inciting prostitution for gain, and paying for the sexual services of a prostitute subject to force, threats or coercion), Street Offences Act 1959 (loitering or soliciting and Engagement and Support Orders).

Section B9 - Emergency powers

118 Paragraph 47 reserves emergency powers. This covers the circumstances in which such powers are exercised, what the powers are, including their limitations, and ancillary provision.

119 Emergency powers include sector-specific provisions, and the generic emergency powers set out in Part 2 of the Civil Contingencies Act 2004 (CCA). Emergency powers are not taken to include the powers which emergency service workers such as paramedics and firefighters routinely exercise in carrying out their ordinary day-to-day duties. Part 2 of the CCA provides a power to make emergency regulations in order to respond urgently to actual or imminent emergencies which threaten serious damage to human welfare, the environment, or the security of the UK through war or terrorism, and where existing legislative provision is inadequate.

120 Emergency regulations may make provision of any kind that is necessary to prevent or deal with the emergency in question; however they must be proportionate to the aspect or effect of the emergency they are directed at. Other limitations also apply.

121 Emergency regulations which relate wholly or partly to Wales may not be made unless a senior Minister of the Crown has consulted Welsh Ministers. However this requirement may be disapplied if necessary for reasons of urgency.

Section B10 - Extradition

122 Paragraph 48 reserves extradition. The Extradition Act 2003 makes legislative provision for extradition. Extradition is the process under which a person may be surrendered by one territory to another, so as to face prosecution for an alleged crime or, where a person has been convicted of a crime, to serve a sentence or other form of detention imposed by a court.

Section B11 - Rehabilitation of offenders

123 Paragraph 49 reserves the subject matter of the Rehabilitation of Offenders Act 1974 (ROA) which governs the disclosure of criminal records information for employment and for certain other purposes such as licensing, and court and tribunal proceedings. The legislation determines when cautions and convictions may become 'spent' meaning that they no longer have to be disclosed for most purposes and the individual is treated as rehabilitated for the purpose of the ROA. The Exceptions Order to the ROA lists those sensitive occupations and activities where certain spent cautions and convictions may be disclosed and taken into account and specifies which old and minor spent cautions and convictions may be protected from disclosure for these purposes.

124 The rehabilitation periods relating to convictions, and the policy on protected spent cautions and convictions, are based on the sentence imposed. The sentencing framework is a reserved matter and therefore the ROA must also be reserved as the two must be aligned as between England and Wales.

Section B12 - Criminal records

125 Paragraph 50 reserves criminal records, including the disclosure and barring regime, which is operated by the Disclosure and Barring Service (DBS).

126 The DBS was established by the Protection of Freedoms Act 2012. The DBS operates a barring service for certain sensitive areas of employment and also provides criminal records disclosures.

127 The legislative regime for criminal disclosure and barring is provided by a number of statutes:

- Rehabilitation of Offenders Act 1974
- Safeguarding Vulnerable Groups Act 2006
- Protection of Freedoms Act 2012
- The Police Act 1997

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

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

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

131 Additionally, Schedule 7 to GoWA (which is replaced by virtue of section 3) provided that the provision of social care is devolved. Given the role of safeguarding and barring in social care this means that there is inevitably a cross over with aspects of the work of the DBS.

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

Section B13 - Dangerous items

133 Paragraph 51 reserves the subject-matter of the Firearms Acts 1968 to 1997.

134 These Acts are the Firearms Act 1968, the Firearms Act 1982, the Firearms (Amendment) Act 1988, the Firearms (Amendment) Act 1992, the Firearms (Amendment) Act 1997 and the Firearms (Amendment) (No 2) Act 1997.

135 These Acts, amongst other things :

- make it a criminal offence in certain circumstances and without authority to possess, handle, purchase, acquire, sell, distribute or transfer certain firearms;
- provide for the need for, and issue of, certificates in relation to firearms, shotguns and ammunition;
- make provision for the regulation of firearms dealers; and
- provide for the licensing and regulation of target shooting clubs.

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

137 Paragraph 52 reserves the subject matter of the Poisons Act 1972 which makes provisions for the sale and supply of certain poisons and explosives precursors to members of the public and the acquisition, importation, use and possession of poisons and explosives precursors by members of the public. The Act also makes provision for reporting of suspicious transactions of poisons and explosives precursors.

138 Section B5 reserves the prevention, detection and investigation of crime. Paragraph 53 in Section B13 prevents the Assembly from legislating in respect of knives and offensive weapons that are also knives (for instance, a bayonet) in matters that are not caught by section B5. For instance, it will prevent the Assembly from implementing a licensing regime for knives and for offensive weapons that are also knives.

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

139 Paragraph 54 reserves the legal framework concerning the misuse or dealing in drugs or psychoactive substances.

140 This covers drugs or psychoactive substances as defined respectively in the Misuse of Drugs Act 1971 (“controlled drugs” which includes drugs subject to a temporary class drug order) and the Psychoactive Substances Act 2016 (any substance which is: ‘capable of producing a psychoactive effect in a person who consumes it’ subject to a list of exempted substances in Schedule 1).

141 The law on the misuse of drugs and drug trafficking is principally set out in the Misuse of Drugs Act 1971 and its subordinate legislation as well as sections 12-14 of the Criminal Justice (International Co-operation) Act 1990 (substances useful for manufacture of controlled drugs).

142 The Psychoactive Substances Act 2016 outlaws the trade (i.e. production, importation/exportation, supply and possession with intent to supply) for the purposes of human consumption of psychoactive substances (as defined in the Act). There is no possession offence except in a custodial institution. The production etc. of these substances for any other purpose is not caught. Exempt substances include controlled drugs under the Misuse of Drugs Act 1971; medicinal products as defined by the Human Medicines Regulations 2010; alcohol, nicotine/tobacco, caffeine and food (i.e. substances that are already regulated through existing legislation or because their psychoactive effect is negligible).

143 Precursor legislation is set out in Regulation (EC) No. 273/2004 and Regulation (EC) No.111/2005 enacted by Controlled Drugs (Drug Precursors) (Intra-Community Trade Regulations) 2008 (SI 2008 No.295) and Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008 (SI 2008 No.296).

Section B15 - Private security

144 Paragraph 55 reserves Private Security. This covers the regulatory regime for private security, which is currently regulated by the Security Industry Authority (SIA). The SIA was established by the Private Security Industry Act 2012. The SIA’s main functions are to provide licensing and approvals for certain areas of the security industry. It also acts in an enforcement role.

Section B16 - Entertainment and late night refreshment

145 Paragraph 56 reserves powers to make provisions for regulating the classification of film and video recordings (including video games). This includes the age rating certification of film, video recordings and video games. Paragraph 57 reserves entertainment and late night refreshment, which are regulated by the Licensing Act 2003. This includes entertainment licensing, ensuring that there is a coherent regulatory framework throughout England and Wales.

146 Late night refreshment is defined in the Licensing Act 2003 (section 1 and paragraph 1 of Schedule 2), as the sale of hot food and hot drink to the public between the hours of 23.00 and 05.00. The Licensing Act 2003 includes certain exemptions (see paragraphs 2A, 3, 4 and 5 of Schedule 2), where the premises are not used by the public, such as the provision of refreshments to guests staying at a hotel, or the provision of refreshments by an employer to an employee.

Section B17 - Alcohol

147 Paragraph 58 reserves the sale and supply of alcohol, which is regulated by the Licensing Act 2003.

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

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

Section B18 - Betting, gaming and lotteries

150 Paragraph 59 reserves lotteries, including the National Lottery, ensuring that the same framework is in place throughout the UK, and betting and gaming, ensuring that the same framework is in place throughout Great Britain. Excepted from the reservation is the power to vary the number of certain gaming machines (where the maximum charge for use is more than £10) authorised by a betting premises licence. This power is sufficiently broad as to allow the Assembly to reduce the number of such gaming machines to zero but only in relation to new betting licenses (once the powers in section 58 are commenced) and not varying existing betting premises licenses. The exception does not include betting premises licences issued in respect of a track.

Section B19 - Hunting

151 Paragraph 60 reserves hunting with dogs. The hunting of any wild mammal with a dog is prohibited in England and Wales by the Hunting Act 2004, unless the hunting qualifies as exempt hunting under that Act.

Section B20 - Scientific and educational procedures on live animals

152 Paragraph 61 reserves scientific and educational procedures on live animals. Such procedures are regulated by the Animals in Science Regulation Unit in the Home Office who are responsible for inspection and licensing of such procedures and for the policy and legislation in this area for England, Wales and Scotland.

Section B21 - Lieutenancies

153 Paragraph 62 reserves the lieutenancies, including the processes for appointments and their functions which are set out in the Lieutenancies Act 1997.

Section B22 - Charities and fund-raising

154 Paragraph 63 reserves charities. The Charities Act 2011 is the main statute making provision in relation to charities. This includes the definition of “charity” and “charitable purpose”, the requirements for most charities to register with and be regulated by the Charity Commission for England and Wales, and charities’ accounting and reporting requirements among others.

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

156 Paragraph 64 reserves fund-raising for charitable, philanthropic or benevolent purposes. Specifically, it is concerned with the collection of charitable donations by making a solicitation

to members of the public. The main statutory provisions on this are Part 2 of the Charities Act 1992 and the House to House Collections Act 1939.

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

Head C - Trade and Industry

Section C1 - Business associations and business names

158 Paragraph 65 reserves the creation, operation, regulation and dissolution of business associations. Business associations include any entity that is not a natural person which is established for undertaking any business whether or not the business is for profit. The reservation does not prevent the Assembly from establishing a business association, such as a company for devolved purposes, but any such company would be required to comply with the relevant UK legislation. What is reserved is the legislative competence to provide how a company is created, operated, regulated and dissolved.

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

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

161 Paragraph 66 reserves the regulation of the name under which an individual or a business association carries on business.

Section C2 - Insolvency and winding up

162 Paragraphs 67 and 68 reserve the subject matter of insolvency and the winding up of solvent business associations.

163 These reservations cover all matters relating to insolvency for individuals, limited companies and other business associations (as defined in Section C1). They also cover the winding up of solvent business associations, (for example members' voluntary winding up) and the regulation of insolvency practitioners.

Section C3 - Competition

164 Paragraph 69 reserves the regulation of anti-competitive practices and agreements; abuse of dominant position, and monopolies and mergers. This reservation ensures the continuation of a common UK-wide system for the regulation of competition matters. Responsibility for competition policy rests with the UK Government.

165 Competition matters are currently principally regulated by (a) the Competition Act 1998 which introduced a prohibition approach to anti-competitive agreements and abuse of a dominant position and (b) the Enterprise Act 2002 which regulates mergers and gives powers to

investigate markets. In addition, the Enterprise and Regulatory Reform Act 2013 established the Competition and Markets Authority which is responsible for competition regulation in the UK, with rights of appeal to the Competition Appeal Tribunal. The reservation includes all matters relating to that regulation.

Section C4 - Intellectual property

166 Paragraph 70 reserves all matters relating to intellectual property and the work of the Intellectual Property Office. This includes patents design right, trademarks and copyright and all other existing and future analogous rights and matters such as publication rights, rights in performances, the law on passing-off, trade secrets and database rights.

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

Section C5 – Import and export control

168 Paragraph 71 reserves import and export licensing and the implementation of the UK's EU and UN obligations in this area.

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

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

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

Section C6 - Consumer protection

172 Paragraph 72 reserves the regulation of the following matters:

- a. the sale and supply of goods and services to consumers. This covers the terms on which goods and services are sold and supplied to consumers. It is intended that the Assembly will continue to have legislative competence in relation to the regulation of, for example, tattooing and body piercing where the purpose of the provision is the protection of public health;
- b. guarantees in relation to such goods and services. Statutory implied terms in relation to the sale and supply of goods and services to consumers are covered by the reservation at (a) above;
- c. hire purchase, including the subject-matter of Part 3 of the Hire Purchase Act 1964 which deals with title to motor vehicles which are disposed of while subject to hire purchase agreements;
- d. trade descriptions. This deals with all matters related to false trade descriptions and is not limited to the protection of consumers. It includes the subject-matter of the Trade Descriptions Act 1968;
- e. advertising and price indications. This deals with all matters related to the regulation of advertising and price indications. This includes relevant provisions in the Consumer Protection Act 1987 and the EC Directive on Price Indications;

- f. auctions and mock auctions of goods and services. This relates to all matters related to sale of goods and services by auction and the prohibition of mock auctions i.e. sales which purport to be auctions, but in which the right to bid is restricted, goods are sold below the bid price or are given away, and similar trading practices intended to put undue pressure on customers. This currently includes the Auctioneers Act 1845, the Auctions (Bidding Agreements) Act 1969 and the Mock Auctions Act 1961; and
- g. hall-marking and gun barrel proofing. This covers the regulation of hallmarks applied to articles of precious metal. Gun barrel proofing is the process of testing a gun for safety in order to disclose any fault or weakness and is a statutory requirement for all small arms.

173 Paragraph 73 reserves matters relating to the safety of, and liability for, services to consumers.

174 The exceptions to this section ensure that the Assembly continues to have competence in relation to the protection of interests of consumers in relation to food, agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides

175 Paragraph 74 reserves the regulation of:

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

176 Paragraph 75 reserves the protection of people, whether consumers or others who receive unsolicited goods or services and from trading schemes (for example, pyramid selling) and is largely provided for by Part 11 of the Fair Trading Act 1973.

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

178 Paragraph 76 reserves the subject matter of Part 8 of the Enterprise Act 2002, which concerns the enforcement of various pieces of consumer legislation with civil undertakings and orders.

Section C7 - Product standards, safety and liability

179 This section covers legislation which lays down rules relating to:

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

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

- 180 Paragraph 77 reserves product technical standards and requirements imposed as a result of an obligation in EU law.
- 181 Paragraph 78 reserves the power to make provision for the appointment of national accreditation bodies, which certify or assess conformity to technical standards in relation to products or environmental management systems.
- 182 Paragraph 79 reserves product safety and product liability.
- 183 Paragraph 80 reserves product labelling.
- 184 The exception to these reservations ensure that the Assembly continues to have competence in relation to food safety (including packaging and other materials which come into contact with food) and the protection of interests of consumers in relation to food, agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides.

Section C8 - Weights and measures

- 185 Paragraph 81 reserves units and standards of weight and measurement.
- 186 Paragraph 82 reserves regulation of trade involving weighing, measuring or quantities. This includes the subject matter of the Weights and Measures Act 1985. Having a single set of rules for weights and measures makes it easier for business to trade across Great Britain and easier for consumers to make choices where products are sold by quantity

Section C9 - Telecommunications and wireless telegraphy

- 187 Paragraph 83 reserves powers governing telecommunications and wireless telegraphy (including electromagnetic disturbance such as radio interference), thus allowing a consistent approach across the UK including a common regulator (Ofcom).
- 188 Paragraph 84 reserves powers to make provisions for regulating internet services, ensuring the same framework is in place throughout the UK.
- 189 Paragraph 85 reserves powers to make provision in relation to electronic encryption ensuring a consistent approach throughout the UK.

Section C10 - Post

- 190 Paragraph 86 reserves postal services and post offices, which includes the subject matter of the Postal Services Act 2011 and remaining provisions of the Postal Services Act 2000, to support the UK's universal postal service. This includes postal regulation, competition, provision of UK postal services, designation and ownership of the company that runs the UK's post office network, and powers to provide public subsidy to that company.
- 191 The exception permits financial assistance for the provision of services to be provided from public post offices (other than postal services and services relating to money or postal orders).

Section C11 - Research Councils

- 192 Paragraph 87 reserves Research Councils, within the meaning of the Science and Technology Act 1965. This includes the funding of scientific research in accordance with section 5 of that Act, so far as it relates to Research Councils.
- 193 Paragraph 88 reserves the Arts and Humanities Research Council within the meaning of Part 1 of the Higher Education Act 2004. This includes research in arts and humanities in accordance with section 10 of that Act, so far as it relates to that Research Council.

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

Section C12 - Industrial development

195 Paragraph 89 reserves both the Secretary of State's ability to designate Assisted Areas and the financial limits specified in section 8(5) and 8(7) of the Industrial Development Act 1982. The reservation on the financial limits means that financial assistance to industry under section 8 of the Industrial Development Act 1982 by Welsh Ministers, Scottish Ministers and UK Ministers combined cannot exceed total expenditure thresholds which are set by UK Ministers. However, the reservation of section 8(5) and (7) would not prevent the Assembly from creating its own separate powers for Welsh Ministers in relation to financial assistance to industry and setting the financial limits on such powers, which would apply in relation to Wales only.

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

197 The Industrial Development Advisory Board, or IDAB as it is commonly known, has a statutory role to advise the Secretary of State on the exercise of his functions under sections 7 and 8 of the Industrial Development Act 1982 (provision of financial assistance to industry).

Section C13 - Protection of trading and economic interests

198 Paragraph 90 reserves the subject-matter of Part 2 of the Industry Act 1975.

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

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

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

201 Paragraph 91 reserves the Export Credits Guarantee Department (ECGD) which operates under the name UK Export Finance and makes provision as to the delegation of any such functions and the transfer of property, rights and liabilities attributable to the exercise of any such functions. By virtue of paragraph 197 of Schedule 7A, the ECGD is a particular authority so that its constitution is reserved. The conferring, imposing, modifying or removing of the ECGD's functions or functions specifically exercisable in relation to it is therefore also reserved.

Section C15 - Water and sewerage

202 Paragraph 92, when read with the exceptions to section C15, reserves the appointment and regulation of water and sewerage undertakers whose areas of appointment are wholly or mainly in England. Historically, competence for water supply (and now for sewerage services) is devolved on the basis of undertaker appointment areas. Water and sewerage undertakers

are statutory appointees, each appointed to a region of England and Wales, with the responsibility to supply water and/or sewerage services. Licensees are companies or persons with rights to use the supply and/or sewerage systems of undertakers to provide services to non-household customers. Appointment areas are based on river catchments, some of which straddle the England /Wales border. Where those appointment areas straddle the border, only the Welsh parts of those undertakers who operate mainly in Wales ("Welsh undertakers") is devolved. The areas of undertakers who operate wholly or mainly in England ("English undertakers"), including any parts of those areas which are in Wales, and the regulation and licensing of licensees in those undertaker areas, are reserved. The English parts of Welsh undertakers' areas, and the regulation and licensing of licensees in Welsh undertakers' areas in England, are outside the Assembly's geographic competence by virtue of section 108A(2)(b) of GoWA 2006.

203 Paragraph 93, when read with the exceptions to section C15, reserves the licensing of water supply and sewerage licensees in all of England and Wales; and the regulation of licensees in so far as they are operating in any part of an English undertaker's area. This means that, in parts of Wales, undertakers are appointed and both undertakers and licensees are regulated by the UK Parliament not the Assembly. The licensing of water supply and sewerage licensees, the regime overseen by the economic and competition regulator of the water industry (Ofwat), will remain reserved. These arrangements are, however, not intended to be permanent. Following recommendations by the Silk Commission, this Act provides for water supply and sewerage services to be aligned with the national border, instead of with the boundaries of undertakers' areas. The commencement of section 48(1) will achieve this. See paragraph 627 of these notes in relation to the effect of section 48.

Section C16 - Pubs Code Adjudicator and the Pubs Code

204 Paragraph 94 reserves the subject matter of Part 4 of the Small Business, Enterprise and Employment Act 2015 which outlines the following:

- A statutory Pubs Code, regulating the practices and procedures of pub-owning businesses (being landlords who own 500 or more tied pubs) in their dealings with their tied tenants in England and Wales.
- An independent Adjudicator (and office) to arbitrate Pubs Code disputes and to investigate systemic breaches of the Code by pub-owning businesses. The Adjudicator is conferred with certain powers, including to apply a levy to, and impose sanctions on, pub-owning businesses and to issue guidance relating to the Pubs Code.

Section C17 - Sunday trading

205 Paragraph 95 reserves Sunday trading. This includes the subject-matter of the Sunday Trading Act 1994, which limits the opening hours of large stores (those with a relevant floor area over 280 square metres / 3,000 square feet) to 6 continuous hours (between 10am and 6pm) on a Sunday in England and Wales.

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

Head D - Energy

Section D1 - Electricity

207 Paragraph 91 reserves generation, transmission, distribution and supply of electricity. This covers all aspects of regulation of the electricity industry. This includes in particular much of

the subject-matter of Part 1 of the Electricity Act 1989, which makes provision about the licensing and regulation by the Gas and Electricity Markets Authority of activities relating to electricity, and the powers of licence holders under that Act. It does not include planning for electricity generating stations and overhead electricity lines, which is dealt with in the reservation at section M3.

Section D2 - Oil and gas

208 Paragraph 97 reserves oil and gas and the regulation of the UK oil and gas industry. Subject to express exceptions, this covers all the UK Government's powers and functions in relation to the oil and gas industry prior to the coming into force of the Act, including:

- a. the ownership of, exploration for and exploitation of deposits of oil and natural gas. This covers the subject-matter of the Petroleum Act 1998 and related legislation, which vest ownership of oil and gas deposits in the Crown and provides for a system of licensing persons to explore for and exploit such deposits;
- b. pipelines and offshore installations. This covers the regulation of pipelines and offshore installations, including the construction or laying, and abandonment of offshore installations and pipelines, and the non-land use planning aspects of the regulation of pipelines on land. Offshore installations means those installations related to oil and gas located seaward of the inward baseline for the territorial sea.
- c. marine licensing and the regulation of works that may obstruct or endanger navigation so far as relating to oil and gas exploration and exploitation. This covers licensing of marine activities and regulation of works that may obstruct or endanger navigation so far as relating to oil and gas exploration and exploitation in territorial waters. The Marine and Coastal Access Act 2009 provides that the Secretary of State is the appropriate licensing authority for licensable marine activities for any anything done in the course of any activity concerning the exploration for or production of petroleum. The 2009 Act also exempts from the need to obtain a marine licence certain activities licensable under the Petroleum (Production) Act 1934 and the Petroleum Act 1998. The Energy Act 2008 provides that the consent of the Secretary of State may be required to carry out such activities where they are likely to obstruct or endanger navigation.
- d. restrictions on navigation, fishing and other activities to ensure safe operation of offshore activities. Offshore activities means those activities related to oil and gas located seaward of the inward baseline for the territorial sea. Part 3 of the Petroleum Act 1987 provides for safety zones where navigation is restricted in the immediate vicinity of installations in territorial waters or the Continental Shelf;
- e. liquefaction and regasification of gas; this includes regasification of Liquefied Natural Gas prior to storage or conveyance into the national grid and liquefaction of Natural Gas for transport or storage.
- f. the manufacture or production of gas;
- g. the conveyance, shipping and supply of gas. This covers, in particular, the subject-matter of Part 1 of the Gas Act 1986, which makes provision about the licensing and regulation by the Gas and Electricity Markets Authority of activities relating to gas.

209 There is no limitation in paragraphs (e) to (g) to natural gas only. The effect of this is that these paragraphs may apply equally to manufactured gas which is used for fuel, including biogas (made from the anaerobic digestion of plant matter or waste) or biomethane (biogas which has been processed for injection into the gas grid).

210 The exceptions to the reservation are: the granting and regulation of licences to search and bore for and get petroleum within the Welsh onshore area, except for any consideration payable for such licences ; access to land for the purpose of searching or boring for or getting petroleum under an onshore petroleum licence; and marine licensing and the regulation of works that may obstruct or endanger navigation, so far as relating to searching or boring for or getting petroleum under such a licence; and marine licensing and the regulation of works that may obstruct or endanger navigation so far as relating to searching or boring for or getting petroleum under an onshore petroleum licence.

Section D3 - Coal

211 Paragraph 98 reserves coal, including the regulation of the UK coal industry. Land restoration is excepted.

212 General legislative and executive competence is reserved in relation to the UK coal industry, including the ownership of coal reserves, regulation of deep and opencast mining, subsidence and water discharge in relation to coal mines.

213 The reservation covers all legislation relating to coal, including in particular ownership and exploitation, deep and opencast mining, subsidence and water discharge. Policy towards the UK coal industry continues to be dealt with on a UK basis, in consultation with the Welsh Ministers when appropriate. Operational matters in relation to coal reserves and the issue of mining licences are for the Coal Authority, which is a GB body and which receives grant in aid from the UK Government.

214 The exception to the reservation relates to the subject-matter of sections 53 and 54 of the Coal Industry Act 1994 which cover environmental duties in relation to planning approval and obligations to restore land affected by coal-mining operations.

Section D4 - Nuclear energy

215 Paragraph 99 reserves all matters relating to nuclear energy and nuclear installations including nuclear safety, nuclear security and safeguards, and liability for nuclear occurrences. The areas covered by the reservation include the development, production and use of nuclear energy, nuclear site licensing, nuclear safety, liability for nuclear occurrences and insurances in respect of such liability, and nuclear safeguards required by international treaties.

216 Paragraph 100 reserves the Office for Nuclear Regulation (“ONR”) which is a statutory body set up under section 77 of, and Schedule 7 to, the Energy Act 2013. By virtue of paragraph 197 of Schedule 7A, the ONR is a particular authority so that its constitution is reserved. The conferring, imposing, modifying or removing of ONR’s functions or functions specifically exercisable in relation to it is also reserved.

Section D5 - Heat and cooling

217 Paragraph 101 reserves heat and cooling policy including the regulation of the heat supply industry and the Renewable Heat Incentive, while devolving to the Assembly the power to incentivise local heat networks and renewable heat schemes.

218 This is achieved through an overarching reservation for the production, distribution and supply of heating and cooling, and two exceptions to this reservation. The first exception relates to heat and cooling networks, also known as “district heating”. It will allow the Assembly to legislate for them; but prevents it from regulating the operation of the heat industry. That responsibility will be reserved in order to ensure that there is a uniform approach between England and Wales.

219 The other exception relates to schemes for the encouragement of heat from renewable sources. This does not include the Renewable Heat Incentive Schemes which are made under the Energy Act 2008 because those schemes are already centrally funded, and are up and running on a GB-wide basis. For this reason, the Energy Act 2008 is included in Schedule 7B as one of the Acts which may not be modified by the Assembly.

220 The Assembly has competence in relation to certain aspects of heat policy by virtue of other devolved competence. For example, it has competence in relation to planning under section M4 of Schedule 7A. This covers planning in relation to heat infrastructure, including heat and cooling networks. Under the Planning Act 2008, devolved generating stations that generate electricity up to and including a capacity of 350MW will no longer require development consent from the Secretary of State. Also exempt will be combined heat and power systems which generate power up to that capacity threshold. Responsibility for the regulation of the design and construction of buildings including services and fittings is also devolved (subject to certain exceptions) and this would, for example, allow the Assembly to legislate in relation to heating appliances in buildings. The exception to the reservation in section D6 gives the Assembly competence in relation to the encouragement of energy efficiency (other than by prohibition or regulation). This exception would cover not only efficiency in relation to electrical energy but also to heat energy.

Section D6 - Energy conservation

221 Paragraph 102 reserves energy conservation. This includes energy efficiency measures implemented by prohibition or regulation. Non-regulatory measures to encourage energy efficiency are devolved. This section also includes the subject-matter of the Energy Act 1976. The 1976 Act enables the Secretary of State to make orders regulating or prohibiting the use of various fuels, or electricity, where that appears desirable for the purpose of conserving energy, and to give directions for conserving fuel stocks.

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

Head E - Transport

Section E1 - Road transport

223 Paragraph 103 reserves road freight transport services. This includes goods vehicle operator licencing and the traffic commissioners (insofar as they regulate the freight industry).

224 Paragraph 104 reserves the regulation of the construction and equipment of motor vehicles and trailers and the regulation of the use of motor vehicles and trailers on roads. It covers (amongst other things) legislation relating to the construction and use of motor vehicles and trailers as well as rules of the road applying to motor vehicles and trailers including but not limited to the highway code, wearing of seatbelts and helmets on motorcycles, vehicle and trailer loading and plated weights.

225 This reservation does not reserve the following matters:

- devolved aspects of traffic management and regulation;
- the setting of speed limits;

- traffic signs;
- pedestrian crossings.

226 Paragraph 105 reserves road traffic offences. This includes:

- the offences themselves;
- the penalties for those offences;
- the system of penalty points, disqualifications and other road traffic specific penalties; and
- the specific court and fixed penalty procedures applicable to road traffic offences

This reservation does not prevent the Assembly from setting speed limits or legislating about traffic signs on roads in Wales.

227 Paragraph 106 reserves driver licensing. This includes:

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

228 Paragraph 107 reserves driving instruction. This reserves all aspects of the regulation of driving instruction for all classes of motor vehicles.

229 Paragraph 108 reserves drivers' hours. This includes maximum driving hours, minimum rest breaks and the use of tachographs and other equipment to monitor compliance.

230 Paragraph 109 reserves traffic regulation, other than speed limits, traffic signs or pedestrian crossings, on special roads. This largely relates to traffic regulation on motorways.

231 Paragraph 110 reserves the power to exempt vehicles from any statutory provision imposing a speed limit. This reservation also reserves the power to make provision about the training of drivers of vehicles at high speed.

232 The reservation in paragraph 111 is linked with the exemption from speed limit reservation in paragraph 110 and reserves the application of traffic signs and pedestrian crossings in relation to vehicles being used for a speed exempted purpose in Wales.

233 Paragraph 112 reserves all matters connected with international road transport services for passengers and goods.

234 Paragraph 113 reserves Public Service Vehicle Operator Licensing. Public Service Vehicles (PSVs) operator licences are required by operators of PSVs (buses and coaches). This includes the related functions of the traffic commissioners.

235 Paragraph 114 reserves documents relating to vehicles and drivers for the purposes of travel abroad for both private and commercial use of vehicles. This includes for example:

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

236 Paragraph 115 reserves the regulation and the registration of new and used vehicles and motor insurance.

237 Paragraph 116 reserves the subject matter of the Severn Bridges Act 1992 in so far as it applies to the Second Severn crossing, except for the provisions of the 1992 Act which relate to the construction of the Second Severn crossing. The other crossing which is mentioned in the 1992 Act is situated wholly in England so it is reserved by virtue of section 108A(2)(b) of GoWA.

Section E2 - Rail transport

238 Paragraph 117 section reserves railway services. This includes the provision and regulation of railway services and rail safety.

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

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

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

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

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

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

243 Paragraph 118 reserves the subject-matter of the Channel Tunnel Act 1987 which makes provision for the construction and operation of the Channel Tunnel, and for the operation of the Shuttle services and other services through it, and safety and security within the tunnel system.

Section E3 - Marine and waterway transport etc.

244 Paragraph 119 reserves the navigational rights and freedoms of ships (which are vessels used in navigation, not vessels used only for recreation). Navigational rights and freedoms apply in the sea (under customary international law and the United Nations Convention on the Law of the Sea or UNCLOS) and in navigable tidal and non-tidal waters (under common law, immemorial usage, legislation or express grant or dedication). Interference with navigational rights and freedoms is covered by the reservation, save that the regulation of works which may obstruct or endanger navigation is reserved only in the case of works relating to, or for constructing, reserved trust ports or harbours not wholly in Wales.

- 245 Paragraph 120 reserves shipping, and technical and safety standards of vessels that are not ships (regardless of whether the vessel is capable of navigation) including all the subject-matter of:
- (a) section 2 of the Protection of Wrecks Act 1973, which concerns wrecks which pose a danger to shipping and divers;
 - (b) the Dangerous Vessels Act 1985, which concerns dangerous vessels in harbours; and
 - (c) the Merchant Shipping Act 1995, which covers a wide range of matters relating to shipping.
- 246 The reservation of shipping applies to ships on the sea or any other waterway. It includes all aspects of shipping, for example the regulation of ships and shipping services, including ships in harbours, the register of ships, technical and safety standards of ships, fire safety on ships, environmental harm caused by ships, carriage of goods and passengers, employment and engagement of seafarers, war risks insurance, salvage and wreck, protection of shipping and trading interests, lighthouses and navigational aids, implementation of international maritime Conventions, international maritime bodies and financial assistance. In relation to vessels that are not ships, technical and safety standards are reserved.
- 247 There is an exception for financial assistance for shipping services to, from or within Wales and an exception for the regulation of the carriage of animals on vessels for the purposes of protecting human, animal or plant health, animal welfare or the environment, reflecting matters that have been devolved.
- 248 Paragraph 121 reserves reserved trust ports, as defined in section 32 of the Act, and harbours not wholly in Wales. The reservation includes the development, operation, maintenance and management of reserved trust ports and harbours not wholly in Wales and their harbour authorities.
- 249 Paragraph 122 reserves pilotage other than devolved pilotage. Devolved pilotage is defined as pilotage that relates to a harbour wholly in Wales other than a reserved trust port and that is provided in a pilotage jurisdiction under section 2(1) of the Pilotage Act 1987 that does not extend beyond Wales. The reservation includes the subject matter of the Pilotage Act 1987 (other than in relation to devolved pilotage).
- 250 Paragraph 123 reserves coastguard services and maritime search and rescue with the exception of the participation of Welsh fire and rescue authorities in maritime search and rescue responses.
- 251 Maritime search and rescue is required by international maritime Conventions, is provided on land as well as water and is initiated and coordinated by the Maritime and Coastguard Agency (MCA), an executive agency of the Department for Transport..
- 252 Paragraph 124 reserves hovercraft. Hovercraft are not ships and can be operated over land as well as over water. The Hovercraft Act 1968 allows hovercraft to be regulated under laws relating to ships, aircraft, motor vehicles or other means of transport. Hovercraft are in practice regulated as if they were ships. Shipping legislation, for example, legislation relating to seafarer working conditions, environmental harm and safety, is generally applied to hovercraft. The reservation covers hovercraft whether operated over water or land.

Section E4 - Air transport

- 253 The reservation is in respect of aviation, air transport, airports and aerodromes. This includes the provision and regulation of aviation services and aviation safety, licensing, powers to set noise controls at airports, the arrangements for compensation and repatriation of passengers

on an operator's insolvency and the economic regulation of aviation. The reservation ensures the consistent implementation of international legislation across the United Kingdom by the designated regulator and also retains commonality for standards and specifications across GB/UK. It has three exceptions which mirror the provisions concerning air transport in Schedule 7 to GoWA (omitted by section 3).

Section E5 - Transport security

254 Paragraph 126 reserves transport security. This means that road transport security, rail transport security, maritime security (including security at ports and harbours), and aviation security are all reserved matters.

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

Section E6 - Other matters

256 Paragraph 127 reserves technical specifications for public passenger transport for disabled persons including the subject-matter of section 125(7) and (8) of the Transport Act 1985 and Part 12 of the Equality Act 2010. Section 125(7) and (8) of the Transport Act 1985 together require the Secretary of State to consult the Disabled Persons Transport Advisory Committee before issuing guidance as to measures with a view to making access to public transport services by road easier for disabled persons and making such transport better adapted to the needs of disabled people. Part 12 of the Equality Act 2010 makes provision about standards of accessibility for the transport of disabled people by taxi, bus or train and sets out measures to require the adoption of such standards by the relevant operators.

257 Paragraph 128 reserves technical specifications for fuel or other energy sources or processes used in road, rail, marine, waterway or air transport. This covers any technical specification set out in domestic, European or international law for fuel or other energy sources or processes used across all modes of transport

258 Paragraph 129 reserves the carriage of dangerous goods (including the transport of radioactive material).

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

Section F1 - Social security schemes

259 Paragraph 130 reserves schemes supported from central or local public funds which provide financial assistance for social security purposes to or in respect of individuals. This includes individuals who qualify in various ways as outlined in the non-exhaustive list in the interpretation paragraph.

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

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

262 The reservation covers all aspects of the establishment, financing and administration of such benefits and activity connected with them (such as decision-making, appeals and anti-fraud activity). The Assembly will not have competence to legislate in relation to the setting up or

financing of benefit schemes where these are for social security purposes. However, the reservation does not prevent the Assembly from legislating in relation to the provision of financial assistance for other purposes within the devolved areas of social welfare, education and local government finance. Examples might include free childcare hours or payments to meet childcare costs to or for individuals (whose eligibility is not determined on the basis of financial or social need), education maintenance grants, fostering allowances and council tax reduction schemes.

263 The exception exempts the devolved area of social welfare, social services, care and support in so far as the reservation concerns financial assistance. Accordingly, the exception is limited to the provision by a local authority of financial assistance in respect of the costs of care or support which the local authority would otherwise provide by way of services. The exception also includes deferred payment agreements; that is, the deferral of payment due to a local authority from an individual in respect of the costs of meeting needs for care or support or financial assistance for meeting such needs

264 Paragraph 131 reserves requiring persons aside from central government (including companies, employers and local or other authorities) to establish and administer schemes for social security purposes, to make payments to or in respect of those schemes, and to keep records and supply information in connection with the schemes and in connection with any payments made.

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

Section F2 - Child Support

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

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

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

Section F3 - Occupational and Personal Pensions

- 269 Paragraph 134 covers all matters and statutory provisions relating to occupational and personal pensions, including public service pensions which are a particular category of occupational pensions.
- 270 Pension schemes within these categories have the meanings given to them in section 1 of the Pension Schemes Act 1993.
- 271 The reservation includes regulation of pensions and pension schemes, which is given further definition in the interpretation paragraph; those subject to regulation form a non-exhaustive list, which includes trustees, managers, employers and members. Regulation covers both the activities of the Pensions Regulator and the Financial Conduct Authority (and/or any other regulatory body that may be set up), and the statutory framework for pensions. That framework includes requirements affecting the administration of schemes, the financial management of schemes, including rules on investments, contributions and solvency, and the rights of individual scheme members in relation to transferring and accessing benefits, indexation of rights, requirements for equal treatment of men and women, and rules on the disclosure of information to scheme members.
- 272 The exception relates to the competence of the Assembly to make provision for the payment of pensions and establishment and administration of schemes in relation to Assembly Members, the First Minister, Welsh Ministers, Deputy Welsh Ministers and the Counsel General, under sections 20 and 53 of GoWA and members of local authorities, which is given further definition in the interpretation paragraph.
- 273 In all these cases, the provision made will remain subject to the general requirements of pensions' legislation and the relevant regulatory body. Pensions are defined as including gratuities and allowances. The reference to pension protection covers arrangements to provide a measure of protection (including payments and compensation) to members in the event of schemes not being able to meet their obligations, such as the Pension Protection Fund and the Financial Assistance Scheme, and any other body or scheme that may be set up to protect members' pensions.

Section F4 - Public sector compensation

- 274 Paragraphs 135 and 136 reserves public sector compensation, whether in the form of a compensation scheme or as part of a public service pension scheme. This includes payments made to public sector workers as a result of incapacity or death as a result of injury or illness and payments made to public sector workers as a result of leaving employment or office. The reservation includes regulation of payments made as a result of leaving office or employment.
- 275 An exception is made in respect of payments to Assembly Members, the First Minister, Welsh Ministers, the Counsel General, Deputy Welsh Ministers, and members of local authorities (including members of Fire and Rescue Authorities, National Park Authorities and conservation boards for an area of outstanding natural beauty.)

Section F5 - Armed forces compensation etc.

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

- 277 Payments under the various Armed Forces' occupational pensions schemes are covered under the reservation in section F3 (occupational and personal pensions).
- 278 The reservation includes the determination of claims, the provision and administration of compensation, war pensions and ancillary benefits, and the establishment and regulation of public bodies, including tribunals and advisory and executive bodies with related functions.
- 279 Compensation payments are made in respect of illness, injury, disablement and death of service personnel, ex-service personnel and a wider range of auxiliary, reserve and other personnel, including (in certain circumstances) civilians. As regards the main scheme for the payment of compensation payments which is due to service in the armed forces before 6 April 2005, currently this is set out in the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006. Entitlement arises where disablement or death of a member of the armed forces occurred or arose during this period.
- 280 Where injury or illness is caused or made worse by, or death is caused by, service in the armed forces on or after 6 April 2005, compensation currently is payable under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011. Lump sum compensation payments and, for more serious injuries or death, additional regular payments are payable.
- 281 Other compensation benefits covered by this reservation include resettlement grants, redundancy schemes, payments such as those made under the Armed Forces Early Departure Payments Scheme Regulations 2014 and the Armed Forces Early Departure Payments Scheme Order 2005 and payments to assist service personnel or ex-service personnel undertake further training or education such as those paid under the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012.
- 282 Paragraph 138 mirrors paragraph 136 of F4 (public sector compensation) to ensure that regulation of the compensation schemes is reserved.
- 283 Paragraph 139 reserves the subject-matter of a number of particular schemes made under the following enactments which enable provision to be made other than for or in respect of members of the armed forces. These are:
- a. the Personal Injuries (Emergency Provisions) Act 1939. The 1939 Act makes provision for a scheme for making payments in respect of certain personal injuries to civil defence volunteers and civilians during the Second World War;
 - b. the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, sections 3 to 5 and 7. Section 3 makes provision for the payment of awards to or in respect of mariners in British ships who have suffered war-related injury or detention. Section 4 makes similar provision for pilots, crews of pilot boats, lighthouses etc., section 5 for certain persons serving on naval ships, and section 7 makes general provision for these schemes; and
 - c. the Polish Resettlement Act 1947. The 1947 Act makes provision for war pensions and other payments and assistance to be given to Polish naval and armed forces under British command during the Second World War and Polish resettlement forces and their dependants.

Head G - Professions

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

284 Paragraph 140 reserves the regulation of four categories of professions.

(a) Architects

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

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

(b) Auditors

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

(c) Health Professions

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

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

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

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

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

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

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

(d) Vets

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

Head H - Employment

Section H1 - Employment and industrial relations

296 Paragraph 141 reserves employment rights and duties and industrial relations, except for the setting of wages for agricultural workers insofar as this is dealt with by the Agricultural Sector (Wales) Act 2014.

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

- a. the Employers' Liability (Compulsory Insurance) Act 1969, which requires employers to insure against liability for injury or disease sustained by employees and arising out of and in the course of their employment;
- b. the Employment Agencies Act 1973, which regulates employment agencies and employment businesses;
- c. the Pneumoconiosis etc. (Workers' Compensation) Act 1979, which makes provision for lump sum payments to be paid by the State to or in respect of persons disabled by industrial lung diseases caused by various kinds of noxious dust at work;
- d. the Trade Union and Labour Relations (Consolidation) Act 1992. This Act covers a wide range of matters relating to collective labour relations including trade unions, employers' associations, industrial relations and industrial action;
- e. the Employment Tribunals Act 1996, which relates to employment tribunals and the Employment Appeal Tribunal;
- f. the Employment Rights Act 1996. This Act consolidates enactments about employment rights including protection of wages, maternity rights, unfair dismissal and redundancy;
- g. the National Minimum Wage Act 1998. This Act provides for the setting of minimum wages in almost all sectors of employment;
- h. the Working Time Regulations 1998. These regulations implement aspects of EU Directives on working time: in relation to the protection of young people at work; annual leave, breaks, and rest periods; protections for night workers; and rules for a maximum 48 hour working week including the individual right to opt-out;
- i. the Employment Relations Act 1999. This Act introduced changes to trade union and industrial action legislation including the recognition and derecognition of trade unions by employers. It also introduced new rights and changes to various employment rights including family-related employment rights and new rights for workers to be accompanied in certain hearings;
- j. the Transnational Information and Consultation of Employees Regulations 1999. These Regulations provide for UK employees' rights to be represented by a European Works Council;

- k. the Employment Act 2002. This Act introduces new and/or amends existing individual employment rights in relation to paternity, adoption leave and maternity pay, flexible working and fixed term work. It also covers employment tribunal reform and resolving disputes between employers and employees;
- l. the Gangmasters (Licensing) Act 2004 established the Gangmasters Licensing Authority, which regulates labour providers, employment agencies and businesses who supply workers ('gangmasters') to the regulated sectors anywhere in the UK, including the sea bed, shore, and any estuary or tidal river adjacent to the UK. It also created offences relating to acting as and using an unlicensed gangmaster;
- m. the Employment Relations Act 2004. This Act made further changes to industrial action and trade union recognition law. It also made changes to the enforcement procedures relating to the National Minimum Wage and the Agricultural Minimum Wage;
- n. the Work and Families Act 2006. This Act makes provision about statutory rights to leave and pay in connection with the birth or adoption of children; an extension of the right to request flexible working; changes to annual leave entitlements; and increases in the maximum amount of a week's pay for the purposes of calculating certain remedies in employment tribunals;
- o. the Transfer of Undertakings (Protection of Employment) Regulations 2006, which provide for the protection of employees' rights on the transfer of an undertaking, such as the sale or disposal of a business;
- p. the Agency Workers Regulations 2010. These Regulations ensure agency workers benefit from equal entitlement rights in terms of basic working and employment conditions; and
- q. Part 2 of the Enterprise and Regulatory Reform Act 2013 which made changes to the employment tribunal process including provision for agreement of disputes without the need for determination at tribunal and financial penalties for employer breach. It also introduced increased protections available for whistleblowers.

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

Section H2 - Industrial training boards

299 The Industrial Training Act 1982 provides for the establishment of an Industrial Training Board (ITB), and the powers of an ITB to raise a statutory levy, the terms of which are set out in secondary legislation. Paragraph 142 reserves the three ITBs that exist currently i.e. Film Industry Training Board, the Construction Industry Training Board or the Engineering Construction Industry Training Board

Section H3 - Job search and support

300 Paragraph 143 covers the provision of advice and support to assist people to select, train for, obtain and retain employment or to assist people to obtain suitable employees, including such assistance for disabled persons. The intention behind this reservation is to reserve legislative competence in relation to all work-related programmes for which the Secretary of State is

responsible under the Disabled Persons (Employment) Act 1944 and section 2 of the Employment and Training Act 1973 (e.g. Access to Work and Work Choice). Under the Disabled Persons (Employment) Act 1944, the Secretary of State makes arrangements to facilitate disabled people to obtain employment or work on their own account and to train for such employment.

301 Excepted from the reservation is legislative competence in respect of vocational, social and physical training, matters relating to careers services and education generally. New Schedule 3A to the GoWA 2006 (inserted by section 21 and Schedule 4 restates concurrent executive functions in relation to the Employment and Training Act 1973), i.e. sections 2, 4, 5 and 11. These are exercisable by the Welsh Ministers concurrently with Ministers of the Crown, as the functions transferred to the Assembly in 1999 were converted to functions exercisable by Welsh Ministers by the operation of paragraph 30 of Schedule 11 to GoWA 2006. However, the functions exercisable by Welsh Ministers under section 2 do not include the function of making arrangements for the principal purpose of helping all those (as distinct from a particular section of the population of Wales) without work to find employment and to help employers to fill vacancies, or any function ancillary to that function. Additionally, the functions under sections 2, 5(3) and 11(1) (now repealed) are exercisable by the Welsh Ministers free from the requirement for Treasury approval and the function under section 5(2)(b) is exercisable by the Welsh Ministers free from the requirement for the approval of the “Minister for the Civil Service”.

Head J - Health, Safety and Medicines

Section J1 - Abortion

302 Paragraph 144 covers the power to legislate in relation to abortion (currently the Abortion Act 1967 and regulations made under it). Welsh Ministers already have the power to approve independent sector settings to perform abortions and to make regulations concerning notification requirements. They are also responsible for the provision of abortion services within Wales.

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

Section J2 - Xenotransplantation

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

305 There is currently no legislation which specifically regulates xenotransplantation, but there are other statutory provisions which touch upon it. For example, the welfare of animals which have been genetically modified for xenotransplantation purposes is covered by the Animals (Scientific Procedures) Act 1986. The subject-matter of that Act, which regulates the use of animals for experimental or scientific purposes (including vivisection), is reserved by section B20. A non-statutory body, the UK Xenotransplantation Interim Regulatory Authority (UKXIRA) exists to monitor and regulate developments in the xenotransplantation field.

306 The whole area of xenotransplantation is reserved by paragraph 145 including the regulation of any activities connected with xenotransplantation.

Section J3 - Embryology, surrogacy and genetics

307 Certain matters in the health field, which raise major ethical issues and/or which require expertise to be pooled at a United Kingdom level for them to be satisfactorily regulated, are

reserved by paragraph 146. The reservation of surrogacy reserves surrogacy arrangements, as defined by the Surrogacy Arrangements Act 1985, including the subject-matter of the 1985 Act.

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

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

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

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

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

- the regulation of the creation, keeping or using of human embryos or gametes outside the body;
- the regulation or prohibition of any activities involving the creation, keeping or using of human embryos or gametes outside the body, including research and the provision of infertility treatment services; and
- the definition of the parents of any child being or having been carried by a woman as the result of the placing in her of an embryo or of eggs and sperm or her artificial insemination.

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

314 The Human Fertilisation and Embryology Act 2008 Act amended the 1990 Act to make provision regarding the parentage of children born as a result of surrogacy arrangements and confers a power on the Courts to make an Order providing for a child born as a result of a surrogacy arrangement to be treated in law as the child of the couple who commissioned the surrogate mother to carry the child.

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

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

- 316 This section reserves Medicinal Products. This includes the regulation of prices, profit and the control of costs.
- 317 The interpretation provision under this section states that “Medicinal Products” has the same meaning as in the Human Medicines Regulations 2012 (SI 2012/1916).
- 318 The reservation also covers medicines regulation including manufacturing, licensing, wholesale dealing, advertising and regulation of clinical trials.
- 319 This section reserves Medical Supplies, and includes the regulation of prices. “Medical Supplies” has the same meaning as in section 260 of the NHS Act 2006.
- 320 Paragraph 149 reserves biological standards including testing of biological substances.
- 321 In the context of the work of the National Institute for Biological Standards and Control/Medicines and Healthcare products Regulatory Agency, “biological substances” means specifically “biological medicines”. These are a specific class of medicinal substances which are manufactured from biological sources as a starting material. Examples would be medicines made from human blood (e.g. albumin or immunoglobulins), from microbes (e.g. vaccines), or from biotechnology processes such as engineered cells (e.g. antibodies).
- 322 Paragraph 150 reserves veterinary medicinal products, including manufacture, authorisations for use and regulation of prices.
- 323 The reservation has the effect of reserving the monitoring (pharmacovigilance) and taking action on reports of bad effects from veterinary medicines; testing for residues of veterinary medicines or illegal substances in animals and animal products; the assessment and processing of applications authorisations to sell veterinary medicinal products (including homeopathics) in the UK; controlling how veterinary medicines are made and distributed in the UK; advising ministers on developing veterinary medicines policy; and making, updating and enforcing UK legislation on veterinary medicines.
- 324 Paragraph 151 reserves specified feed additives. The reservation has the effect of reserving the approval and inspection of feed business operators wishing to manufacture and distribute certain types of animal feeding stuffs containing specified feed additives. The approval and inspection covers the production, labelling, possession supply record-keeping requirements and sampling of feeding stuffs containing specified feed additives and ensures that the requirements of EU Regulation 1831/2003 are met. It also covers the potential for enforcement action to be taken in cases where the requirements of the Veterinary Medicines Regulations are not adhered to.
- 325 Paragraph 152 reserves the approval and inspection of feed business operators wishing to manufacture and distribute certain types of animal feeding stuffs containing veterinary medicinal products. The approval and inspection covers the production, labelling, possession supply, record-keeping requirements and sampling of feeding stuffs containing veterinary medicinal products. It also ensures that prescriptions for feeding stuffs containing veterinary medicines are completed correctly and the feed produced matches the prescription. It also covers the potential for enforcement action to be taken in cases where the requirements of the Veterinary Medicines Regulations are not adhered to.
- 326 Paragraph 153 reserves the vaccine damage payment scheme (VDPS). The VDPS provides a one-off, tax-free lump sum payment (currently £120,000) for people who have become severely disabled as a result of vaccination against specific diseases listed in the Vaccine Damage Payments Act 1979. Policy responsibility for VDPS legislation resides with the Department for

Health, while the Department for Work and Pensions administers the Scheme, makes payments and takes professional medical advice on each individual case.

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

Section J5 - Welfare foods

328 Paragraph 154 reserves welfare foods. The UK Government makes provision for welfare foods schemes in regulations made under section 13 of the Social Security Act 1988 (which concerns benefits under schemes for improving nutrition for pregnant women, mothers and children). The current schemes are the Nursery Milk Scheme and the Healthy Start Scheme. The Nursery Milk Scheme provides for reimbursement of the cost of specific amounts of milk provided to children under the age of 5 who are looked after for a prescribed amount of time by approved day care providers. The Healthy Start Scheme provides food vouchers, which can be exchanged for Healthy Start food at retailers registered to receive the vouchers, and vitamins vouchers, which can be exchanged at NHS outlets. Entitlement to Healthy Start is linked to whether the recipient or, as the case may be, a member of their family, is in receipt of certain means tested social security benefits or child tax credit

Section J6 - Health and safety

329 Paragraph 156 reserves the Health and Safety Executive (“HSE”), which is a statutory body established under Part 1 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”). By virtue of the reservation in paragraph 197 of Schedule 7A for particular authorities, the constitution of HSE is reserved. The conferring, imposing, modifying or removing of HSE’s functions, or functions specifically exercisable in relation to it, is also reserved.

330 Paragraph 155 reserves the rest of the subject matter of Part 1 of the 1974 Act. That Part makes provision for the general purposes of securing the health, safety and welfare of persons at work, protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work, and controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances. The reservation of the subject matter of Part 1 of the Health and Safety at Work etc. Act 1974 includes process fire precautions, fire precautions in relation to petroleum and petroleum spirit, and fire safety on ships and hovercraft, in mines and offshore installations. All other aspects of fire safety in Wales, including regulation and prohibition, are within the legislative competence of the Assembly.

331 Paragraph 156 reserves the Employment Medical Advisory Service (EMAS), which is established by Part II of the 1974 Act. EMAS has functions of advising Ministers, HSE, employers and employees on health in relation to employment. By virtue of the reservation in paragraph 197 of Schedule 7A relating to particular authorities, the effect of this reservation is that the Assembly is not able to legislate about EMAS’s functions, or functions specifically exercisable in relation to it, but may, for example, legislate about promoting health in the work place.

332 Paragraph 157 covers the taking of steps for the purposes of protecting the public in Wales from radiation (whether ionising or not). Such steps could include the conduct of research or taking of other steps for advancing knowledge or understanding; providing technical services; providing services for the prevention, diagnosis or treatment of illness arising from exposure to radiation; providing training; providing information and advice; and making available the

services of any person or any facilities. Such functions are currently performed by the Centre for Radiation, Chemical and Environmental Hazards, Centre for Radiation which is part of Public Health England.

Head K - Media, Culture and Sport

Section K1 - Media

- 333 Paragraph 158 reserves broadcasting and other media.
- 334 All regulatory responsibilities relating to television and radio broadcasting are reserved including the functions of Ofcom (the independent communications regulator).
- 335 All media content including press and digital, and related issues such as journalistic freedom, are reserved matters.
- 336 All EU and international responsibilities relating to broadcasting and other media, including those arising under various EU directives and other international agreements are reserved.
- 337 Paragraph 159 reserves the BBC. By virtue of the reservation in paragraph 197 of Schedule 7A for particular authorities, the constitution of the BBC is reserved. The conferring, imposing, modifying or removing of the BBC's functions, or functions specifically exercisable in relation to it, is also reserved.

Section K2 - Public lending right

- 338 Paragraph 160 reserves the Public Lending Right, so that authors, illustrators and other rights holders have the right to receive payment for the loans of their books by public libraries across the UK.

Section K3 - Government Indemnity Scheme

- 339 Paragraph 161 reserves the power to legislate to issue Government indemnities for objects, such as paintings and antiquities, on loan to museums, art galleries etc.
- 340 The current "Government Indemnity Scheme" is established under powers conferred by sections 16 and 16A of the National Heritage Act 1980. It empowers the Secretary of State to issue indemnities in favour of lenders, for the loss of or damage to objects loaned to certain institutions, bodies or persons, including museums, art galleries, libraries, and the National Trust.

Section K4 - Property accepted in satisfaction of tax

- 341 Paragraph 162 reserves the power to legislate in relation to payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, and the disposal of such property.

Section K5 - Sports grounds

- 342 Paragraph 163 reserves sports grounds safety. This ensures a consistent approach to sports grounds safety across England and Wales to ensure the safety of spectators.
- 343 This includes but is not limited to:
- designation of sports grounds by the Secretary of State under the Safety of Sports Grounds Act 1975 as requiring a local authority safety certificate;
 - regulation of regulated stands under Part 3 of the Fire Safety and Safety of Places of Sports Act 1987;

- the football licensing scheme established by the Football Spectators Act 1989 to regulate the spectator viewing accommodation, including a requirement for all-seater accommodation at Premier League and Football League Championship grounds.

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

Head L - Justice

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

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

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

The Law Society (through the Solicitors Regulation Authority)

The Bar Council (through the Bar Standards Board)

The Chartered Institute of Legal Executives (through CILEX Regulation)

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

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

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

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

The Council for Licenced Conveyancers

The Master of the Faculties

Section L2 - Legal aid

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

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

Section L3 - Coroners

349 Paragraph 167 reserves the subject matter of Part 1 of the 2009 Act. This means that matters such as coroners' statutory duties, appointments and remuneration, and areas for which coroners sit are reserved matters.

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

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

Section L4 - Arbitration

352 Paragraph 168 reserves arbitration. It 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 and international treaties). The reservation is not intended to cover other forms of alternative dispute resolution such as mediation or conciliation.

Section L5 - Mental capacity

353 Paragraph 169 reserves the subject matter of the Mental Capacity Act 2005. The 2005 Act provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. It also establishes the Court of Protection, for taking decisions in cases concerning people who lack capacity, and the Office of the Public Guardian, with functions in particular in relation to Lasting Powers of Attorney and the supervision of deputies appointed to take decisions on behalf of persons who lack capacity.

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

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

Section L6 - Personal data

356 Paragraph 170 reserves the protection of personal data. The Data Protection Act 1998 is the current statutory framework which provides for the protection of personal data. The 1998 Act transposes Directive 95/46/EC into UK legislation.

Section L7 - Information rights

357 Paragraph 171 reserves public access to information held by a public authority. Information held by the Assembly, the Assembly Commission, the Welsh Government or any Welsh public authority is excepted from the reservation. However, information which has been supplied by a Minister of the Crown or government department and which is held by any of those bodies in confidence continues to be reserved. Subject to that qualification, however, the Assembly can legislate about public access to information held by any of the excepted bodies.

Section L8 - Public sector information

358 Paragraph 172 reserves the subject matter of the INSPIRE Regulations 2009 (S.I. 2009 No. 3157). These Regulations implement Directive 2007/2/EC, establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).

359 The aim of INSPIRE is to facilitate better environmental policy across the European Union by improving the joining up of and access to existing spatial data across the European Union.

Spatial data is defined in the INSPIRE Regulations as any data with a direct or indirect reference to a specific location or geographical area. The INSPIRE Regulations impose a duty on public authorities to establish and operate network services in relation to any spatial data set or spatial data service they hold or operate. This enables the spatial data sets and spatial data services to be available for use by other public authorities. The INSPIRE Regulations also provide a mechanism for public access to spatial data sets and special data services, subject to limitations.

360 This section reserves the subject matter of the Re-use of Public Sector Information Regulations 2015 (SI 2015 No. 1415). These Regulations implement Directive 2013/37/EU, which amends Directive 2003/98/EC, and govern the re-use of public sector information.

361 The legal framework for the re-use of public sector information is designed to facilitate the re-use (by members of the public and organisations) of documents that public sector bodies have collected or produced in order to fulfil public tasks, for purposes other than those public tasks.

Section L9 - Public records

362 Paragraph 173 reserves the subject matter of the Public Records Act 1958 (“the 1958 Act”). The 1958 Act makes provision for the preservation, care of, and responsibility for, public records and provides a basis for archival custody by a statutory archival institute or other body.

363 “Public records” are defined in Schedule 1 to the 1958 Act and comprise records of government departments and certain non- departmental public bodies.

364 “Welsh public records” also currently fall within the 1958 Act by virtue of section 146 of GoWA. Welsh public records are defined in section 148 of GoWA. These include the records of the Welsh Government (the Welsh Office from 1964 until 1999; the National Assembly for Wales from May 1999 to June 2007; the Welsh Assembly Government from June 2007 to May 2011) and a number of Welsh bodies and establishments.

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

365 Paragraph 174 reserves the provision of compensation for persons affected by crime. This includes, for example, the Criminal Injuries Compensation Scheme made by the Secretary of State for Justice under the Criminal Injuries Compensation Act 1995 and the Victims of Overseas Terrorism Scheme made under section 47 of the Crime and Security Act 2010. The Criminal Injuries Compensation Authority administers both schemes.

366 This section reserves the provision of compensation for miscarriages of justice. The Secretary of State for Justice will continue to administer the scheme under S.133 of the Criminal Justice Act 1988.

Section L11 - Prisons and offender management

367 Paragraph 175 reserves prisons and offender management.

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

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

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

Section L12 - Family relationships and children

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

- (1) Marriage, civil partnership and cohabitation, covering the nature of the relationship and its formation; formal and substantial validity including formal requirements such as registration and capacity to enter into the relationship; the legal incidents of the relationship (such as the duty to maintain between spouses or civil partners, and the effect on property rights); and dissolution including the grounds and process for divorce or other dissolution, and financial provision and property adjustment on divorce or other dissolution;
- (2) Parenthood, parental responsibility, child arrangements and adoption, covering who is a parent, the nature of parental responsibility and how it is acquired and may be lost or its exercise restricted; private law arrangements for children (such as the various matters which may be the subject of a child arrangements order or other Part 2 order under the Children Act 1989); and adoption (including the nature and effect of adoption, and intercountry adoption as well as domestic adoption), but not services and facilities relating to adoption and adoption agencies and their functions, which are the subject of an exception to this reservation reflecting the carving out of this aspect from the exception to the conferred matter of social welfare under current Schedule 7 to the GoWA;
- (3) Public law children orders and proceedings, such as proceedings for care or supervision orders and other proceedings related to the care, supervision or protection of children. This does not include local authorities' duty to investigate under section 47 of the Children Act 1989 and applications for secure accommodation orders made by local authorities which are devolved.;
- (4) Civil remedies in respect of domestic violence, domestic abuse and female genital mutilation, such as non-molestation orders, occupation orders, forced marriage protection orders and other protective orders assigned to the family court or Family Division of the High Court.

372 In this reservation the term 'adoption' is used to include both domestic and intercountry adoption. The functions of the Central Authority under the Hague Convention on Protection of Children and Co-operation in respect of intercountry adoption are not included in the exception for services and facilities relating to adoption and adoption agencies and their functions. This exception carves out from the reservation services and facilities which are

provided to prospective adopters and adoptive parents both during the adoption process and post adoption and which may be provided directly by the Welsh Government or by some other means than through an adoption agency.

373 The exception for "parental discipline" carves out from the reservation for parental responsibility, the right of a parent to discipline a child, this includes the right to administer reasonable chastisement to a child, or smacking. The Assembly has competence for the protection of children and young people and so would have the competence to ban smacking.

Section L13 - Gender recognition

374 Paragraph 180 reserves gender recognition. This is the process by which a person changes their legal gender and the legal implications and registration of that change.

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

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

376 Paragraph 181 reserves the registration of births (including stillbirths) and deaths and their associated functions. Death certification is an integral feature of the registration of deaths under the Births and Deaths Registration Act 1953 (which applies to England and Wales), and is therefore reserved.

377 This section reserves the recording by the Registrar General of buildings used as places of religious worship under section 2 of the Places of Worship Registration Act 1855.

Head M - Land and Agricultural Assets

Section M1 - Registration of land

378 Paragraph 182 reserves the registration functions relating to land and interests in land, commonhold land, land charges and local land charges (other than local land charges fees). More specifically, it covers the following:

- a. Registration of title of estates and interests under the Land Registration Act 2002.
- b. Registration of commonhold land and units under the Commonhold and Leasehold Reform Act 2002.
- c. Registration of land charges and pending actions, writs and orders, deeds of arrangement and annuities under the Land Charges Act 1972.
- d. Registration of local land charges under the Local Land Charges Act 1975.

379 This reservation includes all matters relating to the keeping of the registers and all associated matters such as the provision of searches and information, the payment of compensation or indemnity and the setting of fees (other than fees for local land charges, as mentioned in the paragraph below).

380 Fees for the registration of local land charges are excepted from the reservation and this maintains the current legislative position, as the power to set fees in relation to local land charges in Wales is exercisable by Welsh Ministers under the conferred powers model.

381 The registration functions referred to in paragraphs 379 a-c above are the responsibility of the Chief Land Registrar (CLR) and are carried out by the office of HM Land Registry (HMLR). The CLR and HMLR are also subject to the protections in paragraphs 8 and 10 of Schedule 2 (new Schedule 7B to the Government of Wales Act 2006) as a reserved/public authority.

382 Currently, the registers of local land charges are administered by local authorities in England and Wales and each local authority keeps a register relating to its own area. Section 34 of, and schedule 5 to, the Infrastructure Act 2015 provides for the transfer of this function to the CLR (the function being carried out by HMLR) and this transfer will take place on a phased basis. The reservation does not prevent the Assembly from exercising its powers to create a new local land charge for a devolved purpose, provided the new charge falls within the framework of the Local Land Charges Act 1975.

Section M2 - Registration of agricultural charges and debentures

383 Paragraph 183 reserves the subject matter of sections 9 and 14 of, and the schedule to, the Agricultural Credits Act 1928 (the 1928 Act) which relate to the registration of agricultural charges and debentures on farming stock. The keeping of the register of agricultural charges and debentures under the 1928 Act is the responsibility of the Chief Land Registrar and is carried out by the office of HM Land Registry.

Section M3 - Development and buildings

384 Paragraph 184 reserves planning including the subject matter of Parts 2 to 8 of the Planning Act 2008, but only in relation to certain classes of development. These classes are certain categories of nationally significant infrastructure project under the Planning Act 2008, overhead electric lines (other than devolved associated lines) and railways where the line crosses the border with England. The Government will provide guidance as to how this will affect relevant railways after consultation with the Welsh Government.

385 Paragraph 185 reserves land compensation. Land compensation includes compensation for compulsory purchase; displacement from land as a result of other statutory powers; depreciation in the value of land not acquired, but affected by public works; and mitigation works to reduce the injurious effect of public works, which is compensation in kind.

386 Paragraph 186 reserves the design and construction of buildings, the demolition of buildings, and services, fittings and equipment provided in or in connection with buildings in relation to buildings of the Crown and certain specified undertakers. The effect is that legislative competence for building standards is fully devolved except in relation to buildings on land specified in the reservation. Functions of the Secretary of State under the Building Act 1984 have largely been transferred to the Welsh Ministers. Certain further functions are transferred by section 54 (transfer of functions in relation to excepted energy buildings) of the Act.

Head N - Miscellaneous

Section N1 - Equal opportunities

387 Paragraph 187 reserves equal opportunities (as defined in the interpretation provision) and outlines the exceptions to it..

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

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

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

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

Section N2 - Control of weapons

392 Paragraph 188 reserves the control of weapons of mass destruction.

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

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

Section N3 - Ordnance Survey

395 Ordnance Survey is the national mapping agency of Great Britain and is a UK government-owned company. Mapping is not generally a reserved matter but, by reserving Ordnance Survey by name in Part 2 of Schedule 7A, this means paragraph 197 of Schedule 7A entitled 'particular authorities' applies and reserves the functions and constitution of Ordnance Survey.

Section N4 - Time

396 The reservation covers:

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

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

Section N5 - Outer space

398 Paragraph 191 reserves all matters connected with outer space. Under the Outer Space Act 1986 the Secretary of State is responsible for the granting of licenses to any UK body or person intending to engage in activities in outer space. This relates to the fact that the UK Government has potential liability under international law for damage caused through such activities. The licensing of such activities, and all other matters relating to the regulation of such activities is reserved.

399 The reservation extends to all matters related to the regulation of activities in outer space. In addition the negotiation of international agreements relating to outer space would fall within the reservation of foreign affairs under paragraph 10 of Schedule 7A to GoWA.

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

Section N6 - Antarctica

401 Paragraph 192 extends to all matters connected with Antarctica. The Antarctic Acts 1994 and 2013 give effect to obligations of the United Kingdom under the Antarctic Treaty and the Treaty's Environmental Protocol (the Protocol). Under the 1994 Act the Secretary of State is responsible for granting permits, which are required for all British expeditions to Antarctica, for British vessels and aircraft entering Antarctica and for certain activities in Antarctica by United Kingdom nationals. The 2013 Act implements Annex VI to the Protocol, and requires Antarctic operators (governmental and non-governmental) to take preventative measures to reduce the risk of environmental emergencies in Antarctica, to establish contingency plans and to take prompt and effective response action to environmental emergencies arising from their activities. The negotiation of international agreements and formation of policy relating to Antarctica falls within the reservation for foreign affairs under paragraph 10 of Schedule 7A.

Section N7 - Deep sea bed mining

402 Paragraph 193 reserves activities for the purposes of deep sea bed mining operations. Part XI of the United Nations Convention on the Law of the Sea, as modified by an Agreement on the Implementation of Part XI adopted in 1994 ("the Convention"), makes provision for the regulation of mining on the deep sea bed. In broad terms, the system involves a contractor being sponsored by a State Party, which must in turn be able to exercise effective control over that contractor under its own law. A contractor must then enter into a contract with the International Seabed Authority before it can start exploring for or exploiting the mineral resources of the deep sea bed. The Deep Sea Mining Act 1981 (as amended by the Deep Sea Mining Act 2014) gives effect to the UK's obligations under the Convention. It confers powers on the Secretary of State to grant exploration or exploitation licences allowing persons to exploit or explore mineral resources of a specified description in a specified area of the deep sea bed. The reservation extends to all matters for the purposes of deep sea mining operations. Negotiation of international agreements relating to the deep sea bed are covered by the reservation for foreign affairs under paragraph 10 of Schedule 7A.

PART 3 – GENERAL PROVISIONS

403 Part 3 of the new Schedule 7A GoWA inserted by Schedule 1 makes general provision about certain devolved Welsh authorities, the reservation of particular authorities mentioned or described in Part 2 of the Schedule, Welsh language functions and the interpretation of the Schedule.

404 The effect of paragraph 194 is that the reservation of subject matters by Schedule 7A does not reserve the constitution of a devolved Welsh authority even if that authority has some reserved functions in consequence. Nor does Schedule 7A reserve the functions specifically exercisable in relation to such an authority (such as appointments to the board) nor accounting or procurement functions of such an authority. The expression of "devolved Welsh authorities" is defined in section 4.

405 By virtue of paragraph 195 of Schedule 7A, the reservation for the Crown does not apply to a public authority with no reserved functions if it has no functions exercisable in relation to England or it is a devolved Welsh authority. A current example of such an authority is HM Chief Inspector of Education and Training in Wales (Estyn).

406 Paragraph 196 extends paragraph 194 to cover devolved tribunals.

407 Paragraph 197 reserves the constitution and functions of particular authorities. The particular authorities are those referred to in subparagraph (2). The Assembly may not legislate in relation to the authorities concerned, notwithstanding that the body may have certain functions concerning a devolved subject, for example, the educational functions of the BBC. Therefore the Ministerial consent procedure in paragraphs 8 and 10 of Schedule 7B do not apply to the particular authorities. However, this paragraph is subject to paragraph 198 and 199 of Schedule 7A.

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

409 Paragraph 199 provides that council tax precepts are not reserved. Police and Crime Commissioners receive funding through council tax precepts. Policing and Police and Crime Commissioners in Wales are reserved by virtue of Section B5 of Schedule 1. Paragraph 199 makes clear that the Assembly has competence in relation to council tax policy.

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

- a. on the principal appointed day (the date of which will be set out in regulations made under section 71),
- b. (if repealed before the principal appointed day) as it existed immediately before its repeal, or
- c. (if not yet in force on the principal appointed day) as it exists on the principal appointed day i.e. treated as if it were in force on that day.

411 The intention is that amendments to Acts after commencement of this Act will not disturb the devolution settlement as set out in this Act.

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

- 412 New section 108A(2)(d) (as inserted by section 3(1) of the Act) refers to Parts 1 and 2 of Schedule 7B in creating one of the tests of competence for Assembly legislation. Part 1 sets out the general restrictions on the Assembly's legislative competence and Part 2 sets out general exceptions to those restrictions. Section 3(2) provides that this Schedule, together with Schedule 7A, replaces Schedule 7 to GoWA.
- 413 Schedule 7B is part of a separate legislative competence test from Schedule 7A. Schedule 7A lists the reserved matters and thus is part of the section 108A(2)(c) test by detailing the subjects that an Assembly Act provision can and cannot "relate to" (when applying the section 108A(6) purpose test). However, even where an Assembly Act provision satisfies that test in section 108A(2)(c), by not relating to a reserved matter set out in Schedule 7A, it may nevertheless be outside competence because of the section 108A(2)(d) test, by breaching the restrictions in Part 1 of Schedule 7B, which are themselves qualified by the exceptions in Part 2 of Schedule 7B.
- 414 Paragraph 1 of Schedule 7B prevents an Assembly Act provision from modifying the law on reserved matters. The law on reserved matters is defined in paragraph 1(2) essentially as any UK Parliament enactment or any rule of common law, the subject matter of which is a reserved matter. The reference to enactments is not limited to the enactments listed by name in Schedule 7A; it therefore includes all the law (enactments and common law) about a reserved matter.
- 415 Whilst Schedule 7A is intended to set the parameters of future Assembly Acts in terms of reserved matters about which it cannot legislate, the restrictions in paragraphs 1 and 2 of Schedule 7B are intended to provide a separate form of protection for the existing legislation and common law which has a reserved matter as its subject matter.
- 416 Whilst the purpose of an Assembly Act provision may not be reserved (meaning such provision does not fall foul of section 108A(2)(c) and Schedule 7A), it may nevertheless modify the law on reserved matters, for example to enforce or otherwise give effect to that provision.
- 417 Paragraph 2 incorporates an exception to paragraph 1, which is in very similar terms to the exception in new section 108A(3). Paragraph 2(1) provides that an Assembly Act provision can modify the law on reserved matters where such modification:
- a. is ancillary (as defined in new section 108A(7)) to a provision which does not relate to reserved matters, and
 - b. has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.
- 418 In other words, the law on reserved matters can be modified in an ancillary way for a devolved purpose, provided such modification does not go further than it needs to, in order to achieve the devolved objective. The intention is to allow the Assembly sufficient latitude to modify the law on reserved matters for a purpose that does not relate to a reserved matter, provided the modification does not go beyond what is necessary to deliver the policy goal. The constraints created by the law on reserved matters provisions are intended to set out how far Parliament is content for the Assembly to go in modifying legislation that is the responsibility of the UK Parliament. Where modifications beyond the constraints of paragraphs 1 and 2 of Schedule 7B are required, and there is agreement between the administrations, an Order by the Secretary of State under section 150 of GoWA is the appropriate vehicle to achieve the required outcome.
- 419 To give an example, a Planning (Wales) Bill could seek to modify the Communications Act 2003 in order to give effect to a devolved planning policy. Such a provision could satisfy the section 108A(2)(c) test by applying the purpose test and concluding that it does not relate to the reserved matter of telecommunications in Section C9 of Schedule 7A. However, it could

nevertheless fall foul of section 108A(2)(d) if, for example, although the modifications to the Communications Act 2003 were ancillary (thereby satisfying paragraph 2(1)(a) of Schedule 7B), they nevertheless had a greater effect than necessary to give effect to the devolved policy (thereby failing to satisfy paragraph 2(1)(b) of Schedule 7B). In other words, the same planning policy objective could be achieved but with a lesser impact on the Communications Act 2003.

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

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

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

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

424 For instance, in respect of the compulsory acquisition of property, the Assembly could modify the law in this area (apart from the compensation regime which is reserved under section M3 of Schedule 7A) for a non-reserved purpose, such as housing. An example of this would be legislating to confer a power to acquire land in Wales for a non-reserved purpose. The Assembly is, however, prevented from modifying the law of compulsory purchase for its own sake or to achieve reserved ends. This would, for instance, prevent the Assembly from modifying the general rules on compulsory purchase in legislation such as the Acquisition of Land Act 1981 and the Compulsory Purchase Act 1965 in respect of all compulsory acquisitions in Wales.

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

- a. treason and related offences;
- b. homicide offences (including offences relating to suicide) and other offences against the person (including offences involving violence or threats of violence) that are triable only on indictment. Indictable only offences against the person include, for example, kidnapping, false imprisonment, wounding with intent to do grievous bodily harm contrary to section 18 of the Offences Against the Person Act 1861, and robbery. There is an element of overlap here as some indictable only offences are not only outside the Assembly's legislative competence under this paragraph, but are also outside competence by being reserved matters. For example, the possession of a firearm with intent to injure is an indictable only offence against the person under s.16 of the Firearms Act 1968 and is also a reserved matter under Section B13 of Schedule 7A;
- c. sexual offences (including offences relating to indecent or pornographic images);
- d. offences of a kind dealt with by the Perjury Act 1911.

426 Paragraph 4(3) prohibits the Assembly from modifying the law about:

- a. criminal responsibility and capacity,

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

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

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

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

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

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

432 Paragraph 5 includes a table of protected enactments. These are enactments that an Assembly Act provision cannot modify, textually or non-textually, under any circumstances. Protected enactments have a different status from the enactments that are listed in Schedule 7A. Reserved matters may include the “subject matter of” an enactment which, subject to the section 108A(6) purpose test, reserves generally what that enactment is about, rather than its precise terms. Paragraphs 1 and 2 of Schedule 7B, for example, allow the law on reserved matters to be modified in minor ways. Protected enactments, on the other hand *do* have their precise content entirely protected from modifications by paragraph 5. There are no exceptions to this prohibition.

433 Paragraph 6 provides that an Assembly Act provision cannot modify an Act of Parliament (other than GoWA) if it requires sums required for the repayment of amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.

434 Paragraph 7 sets out which are the protected provisions of GoWA. Although paragraph 7(1) creates a general prohibition on an Assembly Act provision modifying GoWA, paragraph 7(2)-(8) qualifies that prohibition so that the Assembly is able to modify certain provisions of GoWA.

435 Paragraph 8 creates a general rule that an Assembly Act provision cannot, without the consent of the appropriate Minister, (a) confer functions on reserved authorities, (b) modify the constitution of reserved authorities, or (c) confer, modify or remove functions specifically exercisable in relation to reserved authorities. The same rule applies to Assembly Acts conferring delegated powers to achieve these results. An example of a provision that would be caught by (c) is creating a power to appoint persons to a reserved authority. In other words, creating a function that relates to that authority; rather than creating a function *of* that authority.

436 Paragraph 8(3) defines "reserved authorities" for these purposes as:

- a Minister of the Crown or a UK government department;
- any public authority (other than a Minister of the Crown or a UK government department) that is not a devolved Welsh authority.

437 For the meaning of "devolved Welsh authority" in this context, see the note on section 4.

438 Paragraph 8(4) defines "public authority" for the purposes of paragraph 8(3), as a body, office or holder of an office that has functions of a public nature.

439 Paragraph 8(5) provides that the appropriate Minister for the purposes of paragraph 8(1) is the Secretary of State (in practice this is likely to be the Secretary of State for Wales), unless the relevant functions relate to HMRC in which case it will be the Treasury.

440 Paragraph 9 creates exceptions to the general rule stated in paragraph 8. It disapplies the Ministerial consent condition in the case of conferring functions on specified reserved authorities. An example of the type of situation addressed by paragraph 9(5) is where Welsh Ministers are given the power to issue guidance to the Electoral Commission and the Commission is required to have regard to the guidance. In such a case the Assembly is not required to seek the consent of the appropriate Minister. Paragraph 9(6) and 9(7) completely disapplies the Ministerial consent condition provided for in paragraph 8 in the case of certain reserved authorities having functions related to water and in relation to the funding of police and crime commissioners through council tax precepts.

441 Paragraph 10 imposes a further condition of UK Ministerial consent for Assembly legislation. Unlike paragraph 8(1)(a) which relates to Assembly Act provisions conferring functions on reserved authorities, paragraph 10 relates to Assembly Act provisions that remove or modify functions of reserved authorities. The authorities to which this paragraph applies are essentially the same as those to which paragraph 8 applies, however Ministers of the Crown are excepted. This is because paragraph 11 makes specific provision about the removal or modification of Minister of the Crown functions. Paragraph 10 is subject to similar exceptions as exist under paragraph 8.

442 Paragraph 11 imposes a requirement to obtain the consent of the appropriate Minister before the Assembly may remove or modify specific functions of a Minister of the Crown. These functions are those classified as "qualified devolved functions" and those relating to the Welsh

language, water in its broadest definition, certain marine management functions, financial assistance for railways and that Treasury's consent will need to be sought before the Assembly changes the rules about the Treasury appointing anyone other than the Assembly Clerk as its accounting officer. A qualified devolved function is a function that is:

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

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

444 Paragraph 12(1) provides that references to the legislative competence of the Assembly that appear throughout the statute book should be read without applying the Minister of the Crown consent mechanisms in paragraphs 8,10 or11 of Schedule 7B. This is because such consent mechanisms are only relevant to the legislative competence of Assembly Acts. They are therefore not relevant when considering the Assembly's legislative competence in the context of UK Parliament legislation because Minister of the Crown consent would never be required for such legislation.

445 Similarly, paragraph 12(2) provides that the requirement on Welsh Ministers to consult the appropriate Minister when removing or modifying Minister of the Crown functions that do not fall within paragraph 11(1) of Schedule 7B, is to be disregarded when considering a provision in an enactment other than GoWA is within the Assembly's legislative competence.

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

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

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

Section 4: Devolved Welsh authorities

449 Section 4 defines the expression "devolved Welsh authority" for the purposes of GoWA. The expression is used in various provisions of that Act, including those creating exceptions to the Ministerial consent condition for Assembly Acts relating to functions of public authorities (see

the note on Schedule 2 to the Act). "Devolved Welsh authority" includes a public authority whose functions are:-

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

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

451 Governing bodies of institutions within the higher education sector whose activities are (wholly) carried on, or principally carried on, in Wales are also classified as devolved Welsh authorities. Registered social landlords are not devolved Welsh authorities, although the Assembly has competence to make provision on the requirements to become a registered social landlord (as a devolved housing matter).

452 Authorities will also be devolved Welsh authorities by virtue of being named in new Schedule 9A inserted into GoWA by Schedule 3. It is intended that the list in Schedule 9A should perform a partly confirmatory role so as to increase legal transparency. New section 157A(1)(a) ensures that Ministerial consent is not required before the Assembly may establish a new devolved Welsh authority.

453 Provision is made for the list in new Schedule 9A to be amended by an Order in Council approved by Parliament and the Assembly. The order making power enables the list to be updated from time to time to include newly established devolved Welsh authorities and to remove references to any authorities that have been replaced or abolished.

Chapter 4: Elections

Section 5: Power to make provision about elections

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

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

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

- a. about the registration of electors,
- b. for disregarding alterations in a register of electors,
- c. about the limitation of the election expenses of candidates and the creation of criminal offences in connection with the limitation of such expenses,
- d. for the combination of polls,
- e. to modify the operation of sections 6 and 8(2) of GoWA, which provide for the return of constituency members to be determined before the process of allocating regional members can proceed, where a poll at a constituency election is abandoned (or notice of it is countermanded) so that special provision can be made enabling the regional members to be returned even though not all of the constituency members have been returned; and

- f. to modify the effect of section 9(7) of GoWA to ensure that the correct number of seats are allocated.

- 457 Subsection (3) of new section 13 makes clear that the Welsh Ministers' power to make provision about the return of an Assembly member otherwise than at an election, will include modifying sections 11(3) to (5) of GoWA, which concern the procedure to be followed when a regional Assembly seat is vacant.
- 458 Subsections (4) and (5) of new section 13 supplement and elaborate on the scope of subsection (1) and give the Welsh Ministers powers relating to the application and modification of electoral law.
- 459 Subsection (6) of new section 13 provides that the return of an Assembly member may only be questioned under Part 3 (legal proceedings) of the Representation of the People Act 1983, as applied or incorporated in an order under this section.
- 460 Subsection (7) of new section 13 provides that any order made under this section is subject to the affirmative resolution procedure of the Assembly.
- 461 Subsection (1) of section 5 also inserts a new section 13A into GoWA.
- 462 Subsections (1) to (4) of new section 13A give the Secretary of State a regulation-making power to make provision to combine the polls at certain Assembly selections with the polls at certain UK Parliamentary and European Parliamentary elections. The Secretary of State must obtain the agreement of the Welsh Ministers before making any such regulations.
- 463 Subsections (5) and (6) of new section 13A supplement and elaborate on the regulation-making power and give the Secretary of State powers relating to the application and modification of electoral law as well as a power to amend forms contained in, or in regulations or rules made under, the Representation of the People Acts. Subsection (7) of new section 13A provides that any regulations made under this section are subject to the affirmative resolution procedure in both Houses of Parliament.
- 464 Subsection (2) of the section inserts a new subsection (5D) into section 15 of the Representation of the People Act 1985, requiring the Secretary of State to consult the Welsh Ministers before making combination rules under section 15(5), where one of the elections is a local government election in Wales.
- 465 Subsection (3) of the section amends section 7 of the Political Parties, Elections and Referendums Act 2000 (PPERA) which provides for the Electoral Commission to be consulted on certain changes to electoral law. Subsection (3) requires the Secretary of State to consult the Electoral Commission before exercising the power to make regulations under new section 13A by adding a reference to new section 13A in section 7(2)(f) of PERA. This amendment mirrors the existing requirement included in section 7(2)(f) for the Electoral Commission to be consulted before the power to make orders under section 13 of GoWA is exercised.

Section 6: Timing of elections

- 466 Section 6 concerns the timing of Assembly and local government elections in Wales. Subsections (1) to (3) amend section 3 of GoWA by providing that section 3(1) is subject to a new subsection (1A). Subsection (1A) prevents the poll at an Assembly ordinary general elections being held on the same day as the poll at an ordinary general election to the UK Parliament or, a general election to the European Parliament. Subsection (2) also amends section 3(1) following the amendments to section 4 of GoWA made by subsection (7) of section 6. As a result the date of the poll at an ordinary general election to the Assembly may also be varied by a proclamation under section 4 of GoWA.

- 467 Subsection (3) also inserts a new subsection (1B) that gives the Welsh Ministers a power to move the date of the poll of an Assembly ordinary general elections if, otherwise, it would be held on the same date as the poll of a UK Parliamentary ordinary general election or a European Parliamentary general election, unless the day of the poll is determined by a proclamation under section 4 of GoWA, as amended by subsection (7). Subsection (5) provides that an order made using that power is subject to the affirmative resolution procedure of the Assembly.
- 468 Subsection (4) amends section 3(2) of GoWA in order that the Assembly will be dissolved automatically at the beginning of the “minimum period”, which ends, if the poll is to be held on the first Thursday in May, on that date and, otherwise, on the day specified by the Welsh Ministers by order under subsection (1B).
- 469 Subsections (6) to (14) make amendments to sections 4 and 5 of GoWA to transfer the powers of the Secretary of State to vary the date of a poll at an Assembly general election under that section to Her Majesty following a proposal by the Presiding Officer. The Presiding Officer can propose a new day for the poll, however, this cannot be the same date as the poll of a UK Parliamentary general election or a European Parliamentary general election.
- 470 Subsection (7) amends section 4 to provide that where the Presiding Officer proposes a day for the poll at an Assembly ordinary general election, Her Majesty may then, by proclamation under the Welsh Seal, dissolve the Assembly, require the poll at the election to be held on the day proposed, and require the Assembly to meet within the period of seven days beginning immediately after the date of the poll.
- 471 Subsection (7) also makes provision that where Welsh Ministers make an order under section 3(1B) of GoWA specifying an election date, and the Presiding Officer proposes a new date for the election under section 4(1) of that Act, the election will be held on the date proposed under section 4(1).
- 472 Subsections (9) to (11) amend section 4(4) and (6) and remove section 4(5) to provide that the Welsh Ministers may by order make provision for specified election enactments to have effect with such modifications or exceptions, as they consider appropriate in connection with the alteration of the day of the poll by the Presiding Officer. Such an order is to be made subject to the negative procedure in the Assembly.
- 473 Subsections (12) to (14) make amendments to section 5 of GoWA to transfer the power of the Secretary of State to propose the date of a poll at an Assembly extraordinary general election under that section to the Presiding Officer.
- 474 The effect of the amendments is that in the event that the Presiding Officer proposes such a date, Her Majesty may then, by proclamation under the Welsh Seal, dissolve the Assembly, require the poll at the election to be held on the day proposed, and require the Assembly to meet within the period of seven days beginning immediately after the date of the poll.
- 475 Subsections (16) to (17) amend section 37 of the Representation of the People Act 1983 and insert a new section 37ZA into the Representation of the People Act 1983. New section 37ZA provides that the poll for an ordinary local government election in Wales cannot take place on the same day as the poll for an Assembly ordinary general election and gives the Welsh Ministers a power to move the date of the poll for an ordinary local government election in Wales where that would otherwise be the case.
- 476 Subsections (18) to (20) amend section 37B of the Representation of the People Act 1983 so that the Welsh Ministers’ power to change the date of a poll for an ordinary local government election in Wales to the same date as a poll at a European Parliamentary general election, does

not apply if the date of the European Parliamentary general election is the same date as an Assembly ordinary general election.

Section 7: Electoral registration: the Digital Service

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

478 Subsections (5) to (8) amend section 10ZD of the 1983 Act, which concerns the alteration of the name or address of a person on the register, to provide for certain functions of the Secretary of State relating to the Digital Service to be exercisable by the Welsh Ministers concurrently with a Minister of the Crown. These functions are subject to the same provisions as apply to subsections (1) to (4).

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

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

Section 8: Elections of police and crime commissions

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

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

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

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

- 485 Subsection (8) inserts a new subsection (1B) that provides that the PCC franchise in Wales will instead correspond to the parliamentary franchise, with the exclusion of overseas electors. Subsection (8) also inserts a new subsection (1C) that provides that the PCC franchise in Wales will additionally include peers and EU citizens over the age of 18 who are entitled to vote in local government elections in Wales.
- 486 Subsections (9) to (11) amend section 64 of the PRSRA 2011, which concerns disqualification from election as a PCC. Section 64 provides that a person is ineligible to stand as a PCC in Wales unless they are 18 years old when nominated as a candidate, and on the date on which the person is nominated and on the date of the poll are registered in the register of local government electors in respect of an address within the police area where the person is standing as a candidate. The amendments amend the references to the electoral register which a candidate in Wales must be registered in, as a consequence of the new provisions on the entitlement to vote in elections of PCCs in Wales inserted by subsection (8).

Chapter 5: Other provisions about legislation by the Assembly

Section 9: Super-majority requirement for certain legislation

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

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

- 493 Section 10 amends sections 111 and 112 of GoWA to reflect the new processes required as a result of a reference to the Supreme Court.
- 494 Subsection (2) inserts new paragraph (za) into subsection (6) of section 111 to require the standing orders to provide for an Bill that has been passed to be reconsidered if the Supreme Court decides that any provision of it relates to a protected subject-matter (after the Presiding Officer certified that no provision relates to a protected subject-matter).
- 495 Subsection (3) inserts a new subsection (6A) into section 111 to require the standing orders to provide for an Act to be reconsidered if it has been rejected by the Assembly, and the Supreme Court has decided that no provision in the Act relates to a protected subject-matter (following a decision of the Presiding Officer that the Act does relate to a protected subject-matter).
- 496 Subsection (4) replaces subsection (7) in section 111 with a new subsection that requires the standing orders to ensure that any Act reconsidered following a protected subject-matter reference is subject to a final approval stage in the Assembly.
- 497 Subsection (5) amends section 111 to ensure subsection (8) reflects the new reconsideration processes.
- 498 Subsection (6) amends section 112 to make it clear that the section only relates to references to the Supreme Court of questions of legislative competence (thus distinguishing it from the new section on references to the Supreme Court on protected subject-matter). It also provides for a reference to be made on a question of competence after reconsideration of an Assembly Act.
- 499 Subsection (7) amends section 114 of GoWA to allow the Secretary of State to intervene after the reconsideration of an Assembly Act.
- 500 Subsection (8) amends section 115 of GoWA to prevent the Presiding Officer from submitting an Act for Royal Assent if the Supreme Court is still to make a decision on a protected subject-matter reference or if the Act has not yet been approved after reconsideration by the Assembly once the Supreme Court has decided on such a reference

Section 11: Introduction of Bills: justice impact assessment

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

Section 12: Submission of Bills for Royal Assent: role of Presiding Officer

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

Chapter 6: Other provision about the Assembly

Section 13 Financial control, accounts and audit

503 This section provides that provision shall be made by or under an Act of the Assembly (“Welsh legislation”) in relation to financial control, accounts and audit. This will replace existing arrangements for financial controls contained in GoWA.

504 Subsection (1) removes the requirement for the Secretary of State for Wales to make an annual written statement to the UK parliament and the Assembly concerning payments estimated to be made to Wales and the proposed expenditure of the Secretary of State for Wales.

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

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

- preparation of accounts by the Welsh Ministers and others to whom sums are paid out of the Welsh Consolidated Fund of their expenditure and receipts;
- preparation by the Welsh Ministers of an account of the Welsh Consolidated Fund;
- arrangements for audit and value for money studies by, or under the supervision of the Auditor General for Wales (as further described in subsection (2) of this provision)
- access by auditors to such documents as may reasonably be required for the purposes of audit;
- designated members of the staff of the Welsh Government and Assembly Commission to be answerable to the Assembly (Accounting Officers); and
- the publication of accounts and reports on them in pursuance of the rules and for the laying of such accounts and reports before the Assembly.

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

508 Subsection (4) of new section 130A ensures that the accountability framework devolved to the Assembly in this section provides effectively for the Assembly's oversight of devolved Welsh authorities. This subsection means that the Assembly is able to legislate to make any devolved Welsh authority accountable for funding it receives that is derived from the Welsh Consolidated Fund.

509 Subsection (5) of new section 130A ensures the independence of persons exercising functions under subsection (2) or other like functions.

510 Subsection (6) of new section 130A ensures that the Auditor General for Wales is not responsible for examining, certifying or reporting on his own accounts.

511 Subsection (7) provides that new section 130A does not require Welsh legislation to impose any requirement that is imposed by any other legislation (legislation which is not Welsh legislation).

512 Subsection (8) of new section 130A defines terms used in that new section.

513 Subsection (4) of section 13 removes from the Comptroller and Auditor General the power to carry out examinations regarding payments into and out of the Welsh Consolidated Fund and

the power to carry out value for money studies in relation to devolved Welsh authorities (as to which, see section 4).

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

Section 14: Composition of Assembly committees

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

Section 15: Assembly proceedings: participation by UK Ministers etc.

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

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

Section 16: Change of the name of the Assembly etc.: translation of references

518 Section 16 inserts a new section 150A into GoWA to ensure that references in other legislation to the Assembly and other bodies are automatically amended if the Assembly exercises its power to change its name (or the name of the Assembly Commission or the name of Acts of the Assembly). Such name changes are made possible by paragraph 7(2)(a)(i) and (xii) and paragraph 7(2)(c)(i) of new Schedule 7B inserted into GoWA by Schedule 2 to the Act, which mean that the restriction on the Assembly on amending GoWA itself does not include amending those names as provided for by sections 1(1), 27(1) and 107(1) respectively. Subsection (2) of new s.150A ensures that any references to the Assembly, the Assembly Commission or an Act of the Assembly in other legislation will reflect the new name if it is changed.

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

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

Section 17: Welsh rates of income tax: removal of referendum requirement

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

521 Subsection (2) removes sections 12 and 13 and Schedule 1 from the Wales Act 2014. Section 12 makes provision about the Order in Council that would cause the referendum to be held. Section 13 provides for how a proposed referendum can be triggered by the First Minister or a Welsh Minister, approved by Assembly resolution, and implemented by Order in Council. Schedule 1 provides the detail on how the referendum would be conducted. As the Welsh rate

of income tax is now to be devolved to Wales without the need for a referendum, all of these provisions can be repealed.

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

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

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

Section 18: Lending for capital expenditure

525 Section 18 increases the Welsh Government's capital borrowing cap from £500m to £1bn. Through secondary legislation the Government can change the cap but cannot reduce this below £1bn. The Welsh Government has no restrictions about how it uses its borrowing powers to deliver its devolved responsibilities.

Chapter 8: Executive competence

Section 19: Functions of Welsh Ministers

526 Section 19 (1) inserts a new section 58A into GoWA which confers common law type powers on Welsh Ministers; these powers are described as executive ministerial functions and they will be exercisable both in relation to devolved functions and ancillary to executive functions conferred on Welsh Ministers in reserved areas. Subsection (5) defines what is meant by an executive function; this does not include any prerogative functions.

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

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

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

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

- 530 Subsection (7) provides that it is outside devolved competence to make, confirm or approve subordinate legislation which would be outside legislative competence. In other words, a provision that section 108A would prohibit from appearing in an Assembly Act is similarly prohibited by this section from appearing in subordinate legislation.
- 531 Subsection (8) applies to functions other than those relating to making, confirming or approving subordinate legislation. It provides that it is outside devolved competence to exercise such functions if an Assembly Act provision conferring those functions would be outside the Assembly's legislative competence.
- 532 Subsection (5) states that executive ministerial powers includes functions involving expenditure or other financial matters and so section 70 of GoWA, which currently enables Welsh Ministers to give financial assistance to persons engaged in activities which help the Ministers attain the exercise of their functions, is amended by subsection (2) so that it applies only to the First Minister and the Counsel General. The well-being powers in section 60 of GoWA also overlap with the common law type powers conferred by section 58A and this has been added to the list of provisions in GoWA which the Assembly can modify or repeal (see paragraph 7 of Schedule 7B).
- 533 Section 19(3) also removes the Welsh Ministers' powers under section 71 of GoWA, which enables them to do anything conducive or incidental to the exercise of their powers, as such powers are no longer required; however this provision still applies to the First Minister acting in his capacity as First Minister and the Counsel General.

Section 20: Implementation of EU law

- 534 Section 20 gives Welsh Ministers an automatic right to make regulations under section 2(2) of the European Communities Act 1972 implementing EU law. This right applies to matters that are within the legislative competence of the Assembly. Such exercise of the powers by Welsh Ministers will no longer be conditional on prior designation in an Order in Council prepared by the UK Government. Designation will continue to be necessary if Welsh Ministers are to make regulations under section 2(2) in relation to matters that are outside the legislative competence of the Assembly. The reserved powers of a designated UK Minister to make regulations under section 2(2) remain unaffected, so, for example, Welsh Ministers may consent to EU legislation being implemented by the UK Government in respect of Wales.

Section 21: Transfer of Ministerial Functions

- 535 Functions conferred by UK legislation in devolved areas can be transferred to Welsh Ministers by an Order made under section 58 of GoWA. Several such orders have been made since the Assembly was established in 1999. Subsection (1) modifies section 58 by enabling an order to specify that a function may also be exercised jointly, as well as concurrently, by a Minister of the Crown and Welsh Ministers. Subsection (2) modifies provision in Schedule 3 to GoWA by removing the reference to cross-border bodies and English border areas so that transfer of functions orders can also specify that functions exercisable by Welsh Ministers may require agreement of, or consultation with, a Minister of the Crown.
- 536 Subsection (3) and (4) insert a new section 59A and Schedule 3A into GoWA. Schedule 3A lists all those powers which are exercised concurrently or jointly by Ministers of the Crown and Welsh Ministers. These powers have already been transferred by transfer of functions orders (TFOs) made under section 58 of GoWA or directly conferred on Welsh Ministers. This schedule will be added to by subsequent transfer of function orders, if they include shared powers so that a comprehensive list of such powers is easily accessible. As qualified devolved powers, these functions can only be modified with the consent of a Minister of the Crown (see paragraph 11(1)(a) and 11(3) of Schedule 7B).

Section 22: Consultation about cross-border bodies

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

Part 2: Legislative and executive competence: further provision

Chapter 9: Onshore petroleum

Section 23: Onshore petroleum licensing

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

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

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

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

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

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

Section 24: Onshore petroleum: existing licences

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

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

546 Subsection (2) specifies that the power to make amendments, conferred on the Secretary of State by subsection (1), is to be exercised only where it is deemed necessary or expedient in consequence of either the devolution of legislative competence over onshore oil and gas

licensing (as mentioned in the exceptions in section D2 of Part 2 of Schedule 7A to GoWA) or in consequence of the devolution of executive functions.

- 547 Subsection (3) provides the Secretary of State with the power to direct that, where a licence was only partially in onshore Wales at the time of granting, this licence may have effect as one licence in onshore Wales and as a separate licence in the area outside of onshore Wales. The power of the Secretary of State to make necessary amendments to existing licences and to the model clauses incorporated therein or having the effect as if incorporated therein is extended to such licences.
- 548 Subsection (4) specifies that the power to make amendments to the model clauses, provided by subsection (1)(a) is to be exercised by regulations made by statutory instrument. (The power to make amendments to other provisions of existing licences, provided by subsection (1)(b), does not need to be exercised by regulations.)
- 549 Subsection (5) specifies that any such statutory instruments, containing regulations to make amendments to existing licences, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 550 Subsection (6) defines “existing licences” as those licences granted under section 3 of the Petroleum Act 1998 or under section 2 of the Petroleum (Production) Act 1934 before the commencement of the devolution of licensing powers to Welsh Ministers for the “Welsh onshore area”, as defined by section D2 of Part 2 of Schedule 7A to GoWA.

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

551 Section 25 and paragraphs 28 to 32 of Schedule 6 amend the Infrastructure Act 2015 (“IA 2015”) consequent upon the devolution to the Assembly of legislative powers relating to access to land for the purpose of searching or boring for or getting petroleum within the “Welsh onshore area” (see the exception to the reservation in section D2 (oil and gas) of new Schedule 7A to GoWA).

(A) Right to use deep-level land

- 552 Section 43 of IA 2015 provides for a right to use deep-level land (i.e., land at depths of 300 metres and below) for the purposes of exploiting petroleum and deep geothermal energy in “landward areas” in England and Wales. Sections 45 and 46 of IA 2015 give the Secretary of State the power to make regulations containing “payment schemes” and “notice schemes” requiring “relevant energy undertakings” to make payments to landowners and others in respect of the right to use deep-level land and to give notice in respect of the exercise of the right to use deep-level land. The intention is that these regulation-making powers will be exercised only if the voluntary commitments made by the industry to notify local communities and make payments in connection with the right to use deep-level land are not satisfactory.
- 553 Subsection (2) of section 25 and paragraph 28 of Schedule 6 amend section 45 of IA 2015 to confer the power to make “payment schemes” in respect of the exercise of the right to use deep-level land in Wales for the purposes of exploiting petroleum on the Welsh Ministers in place of the Secretary of State. (The Secretary of State retains the power to make “payment schemes” in respect of the exercise of the right to use (a) deep-level land in England for the purposes of exploiting petroleum and (b) deep-level land in England and in Wales for the purposes of exploiting deep geothermal energy.) Regulations made by the Welsh Ministers may require relevant energy undertakings to provide the Welsh Ministers or any other specified person with specified information about the exercise of the right to use deep-level land and the making of payments. The Welsh Ministers must consult such persons as they consider appropriate before making any regulations.

554 Subsection (3) of section 25 and paragraph 29 of Schedule 6 amend section 46 of IA 2015 to confer the power to make “notice schemes” in respect of the exercise of the right to use deep-level land in Wales for the purposes of exploiting petroleum on the Welsh Ministers in place of the Secretary of State. (The Secretary of State retains the power to make “notice schemes” in respect of the exercise of the right to use (a) deep-level land in England for the purposes of exploiting petroleum; and (b) deep-level land in England and in Wales for the purposes of exploiting deep geothermal energy.) Regulations made by the Welsh Ministers may require relevant energy undertakings to provide the Welsh Ministers or any other specified person with specified information about the exercise of the right to use deep-level land and notifications made by the undertaking. The Welsh Ministers must consult such persons as they consider appropriate before making any regulations.

555 Paragraph 30 of Schedule 6 amends section 47 of IA 2015 to provide for regulations made by the Welsh Ministers under sections 45 or 46 of IA 2015 (i.e., payment schemes and notice schemes) to confer a function on the Welsh Ministers or on any other person, apart from a Minister of the Crown. The amendments also provide that the Secretary of State’s duties (1) to review sections 45 and 46 within 5 years of commencement (see section 47(5) of IA 2015) and (2) to repeal sections 45 and 46 if the “relevant conditions” are met (see section 47(6) and (7) of IA 2015) apply only to the Secretary of State’s regulation-making powers under those sections (and not to those of the Welsh Ministers).

556 Paragraph 31 of Schedule 6 amends section 48 of IA 2015 to confer on the Secretary of State a power to make regulations setting out the definition of “landward area” as it applies in relation to the right to use deep-level land in England for the purposes of exploiting petroleum and the right to use deep-level land in England and Wales for the purposes of exploiting deep geothermal energy. The Welsh Ministers are also given a power to make regulations setting out that definition as it applies in relation to the right to use deep-level land in Wales for the purposes of exploiting petroleum within the Welsh onshore area. The current definition of “landward area” in the Petroleum Licensing (Exploitation and Production) (Landward Areas) Regulations 2014 will remain in place until such regulations are made. The amendments also provide various definitions for the purpose of the amendments made by the Act.

557 Paragraph 32 of Schedule 6 amends section 55 of IA 2015 to provide that regulations made by the Secretary of State under section 48 of IA 2015, and by the Welsh Ministers under sections 45, 46 and 48 of IA 2015, are subject to the affirmative procedure.

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

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

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

Chapter 10: Road transport

Section 26: Roads: speed limits, pedestrian crossings and traffic signs

560 This section amends the following provisions of the Road Traffic Regulations Act 1984 (“RTRA 1984”):

- Section 17 (traffic regulation on special roads), to enable Welsh Ministers to make regulations with respect to a particular special road in Wales, and to regulate the speed of vehicles on special roads in Wales.

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

Section 27: Bus service registration and Traffic Commissioners

561 This section transfers the executive competence for the functions contained in sections 6, 6A, 6B and 7 of the Transport Act 1985 to the Welsh Ministers (in so far as those functions are exercised in relation to Wales).

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

Section 28: Taxis: transfer of certain functions to Welsh Ministers

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

Chapter 11: Harbours

Section 29: Welsh harbours

564 This section transfers to the Welsh Ministers a number of functions relating to harbours that are wholly in Wales, other than reserved trust ports as defined in section 32. The functions transferred are functions of a Minister of the Crown under legislation concerning harbours, harbour authorities and pilotage and they are specified in subsection (2). ‘Wales’ is defined in subsection (7) as having the same meaning as in GoWA; it includes the sea adjacent to Wales up to the seaward boundary of the territorial sea, with the boundary of the sea adjacent to Wales in the Dee and Severn estuaries being determined by order (see GoWA, sections 158(1)

and (3) and paragraph 27(3) of Schedule 11, and the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672, article 6 and Schedule 3).

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

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

567 A function specified is not transferred to the extent that it can be exercised to create a cross-border harbour (subsection (5)). A cross-border harbour is a harbour that is partly in England and partly in Wales (subsection (7) and section 34(5)).

Section 30: Amendments of Harbours Act 1964

568 This section amends the Harbours Act 1964 to transfer functions relating to harbours wholly in Wales (other than reserved trust ports) from a Minister of the Crown to the Welsh Ministers. The functions relate to harbour orders, harbour closure orders, orders designating harbour authorities as authorised to give directions to ships and loans to harbour authorities. Subsection (3) inserts a new paragraph (1A) into section 17E of the Harbours Act which requires the Welsh Ministers to obtain the consent of the Secretary of State before making a harbour closure order that transfers functions to the harbour authority for a harbour which is wholly or partly in England or for a reserved trust port. Subsection (5) makes amendments to section 43 of the Harbours Act to enable loans to be made by the Welsh Ministers out of, and repaid into, the Welsh Consolidated Fund, and to provide for the Welsh Ministers' loan accounts to be certified by the Auditor General for Wales and laid before the Assembly.

Section 31: Application of general provisions to transfer of functions in sections 29 and 30

569 This section applies certain provisions of Schedules 3 and 4 to GoWA to the functions transferred by sections 29 and 30, as if those functions were transferred by an Order in Council made under section 58 of that Act. The provisions relate to the exercise of transferred functions, the continued validity of things done by a Minister of the Crown before the transfer and the transfer of property, rights and liabilities.

570 The provisions are applied to the transfer of functions under the Harbours Act 1964 that are exercisable by a delegate by virtue of an order made under section 42A of that Act (subsection (2)). (The Harbours Act 1964 (Delegation of Functions) Order 2010, S.I. 2010/674, delegated certain Minister of the Crown functions under the Harbours Act to the Marine Management Organisation (MMO)).

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

Section 32: Welsh harbours: reserved trust ports

572 Reserved trust ports are defined by this section. A reserved trust port is a harbour, dock, pier or boatslip that, on the date on which section 3 comes into force, is owned or managed by a harbour authority that is a relevant port authority within the meaning of the Ports Act 1991 and that meets the annual turnover requirement set out in section 11 of that Act. The annual turnover

requirement has to be met in two of the previous three accounting years for which the harbour authority's accounts have been submitted as required by section 42 of the Harbours Act 1964 (subsection (3), which applies section 11(1) of the Ports Act with consequential modifications).

Section 33: Development consent

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

Chapter 12: Harbours: consultation and consent requirements

Section 34: Exercise of functions in relation to cross-border harbours

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

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

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

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

Section 35: Cross-border exercise of pilotage functions

578 This section contains consultation and consent requirements applicable to the Secretary of State or the Welsh Ministers when exercising relevant pilotage functions with a cross-border application. Relevant pilotage functions are set out in subsection (5). Where a relevant pilotage function has been delegated under section 42A of the Harbours Act 1964, the delegate is subject to the duties imposed by this section (subsection (3)).

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

580 Where the Welsh Ministers propose to exercise a relevant pilotage function (transferred by section 29) that is in relation to waters in England, the Welsh Ministers must first obtain the consent of the Secretary of State (subsection (2)). Section 29 transfers to the Welsh Ministers pilotage functions in relation to harbours wholly in Wales, including where the pilotage jurisdiction extends into waters adjacent to England. There is an exception to the requirement for consent where the Welsh Ministers propose to make a decision on an appeal relating to pilotage charges or to the authorisation of EEA pilots, in which case the Welsh Ministers must first consult the Secretary of State (subsection (4)).

Section 36: Exercise of functions in relation to two or more harbours

581 This section requires a Minister of the Crown or, where applicable, a delegate of the Minister, to consult the Welsh Ministers when exercising a relevant function, as listed in section 34, in

relation to two or more harbours one, but not all, of the harbours is wholly within Wales and is not a reserved trust port (as defined in section 32).

Section 37: Consequential amendments to consent requirements in Harbours Act 1964

582 This section removes provisions in the Harbours Act 1964 that require the Secretary of State to obtain the consent of the Welsh Ministers to any provision of a harbour revision order, harbour empowerment order or harbour reorganisation scheme which changed the effect of such an order or scheme previously made by the Welsh Ministers. This section also removes reciprocal provisions imposing obligations on the Welsh Ministers to obtain the consent of the Secretary of State.

583 Where and as appropriate, other provisions of this chapter impose an obligation to consult or obtain consent in cases covered by this section.

Section 38: Sections 34 to 37: supplementary

584 This section provides that the duties to consult before exercising a function that are imposed on the Secretary of State and the Welsh Ministers by sections 34 to 37 do not apply if it is not reasonably practicable to comply (subsection (1)). If compliance is not reasonably practicable, the Secretary of State or the Welsh Ministers (as the case may be) must as soon as is reasonably practicable inform the other of the exercise of the function and the reasons for exercising it (subsections (2) and (3)). Subsection (4) provides that a failure to comply with a duty to consult does not affect the validity of the exercise of the function.

585 This section also enables the Secretary of State to make regulations modifying the application of the provisions concerning cross-border harbours, cross-border pilotage and the exercise of functions in relation to two or more harbours which are contained in sections 34, 35, 36 and 38 in relation to specified harbours or descriptions of harbours (subsection (5)). Before making regulations, the Secretary of State must consult the Welsh Ministers (subsection (6)).

586 Subsection (7) provides that the regulations may in particular disapply the requirements for a Minister of the Crown to consult or the Welsh Ministers to consult or obtain consent before exercising a function, may change a requirement to consult to a requirement to obtain consent (and vice versa) and may introduce new requirements for a Minister of the Crown to consult or obtain consent before exercising a function not mentioned in section 34, 35 or 36 or for the Welsh Ministers to consult or obtain consent before exercising a function not mentioned in section 35.

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

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

Chapter 13: Planning for electricity generating stations

Section 39: Development consent for generating stations with 350MW capacity or less

589 Section 39 gives effect to the policy intention to devolve to Wales the responsibility for energy planning development consents for electricity generating station projects up to and including 350MW onshore and in Welsh territorial waters.

590 Subsections (1)-(6) - The combined effect of these subsections is to dis-apply the requirement that development consent needs to be sought from the Secretary of State under the Planning Act 2008 ("the 2008 Act") for electricity generating stations in Wales and in Welsh territorial waters provided that the projects (not including onshore wind powered generating stations) do

not exceed a generating capacity of 350MW (onshore wind powered generating stations were removed from the need for development consent under the 2008 Act by the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016/306)

591 Subsections (7)-(13) - The disapplication in subsections (1) - (6) would without further provision leave electricity generating stations above 50MW but below 350MW to be consented under section 36 of the Electricity Act 1989. The combined effect of subsections (7) - (13) is to remove the requirement for consent under section 36 of the Electricity Act 1989 provided the project does not have a generating capacity greater than 350MW. The result is that such projects will require planning permission through the devolved town and country planning regime, currently the Town and Country Planning Act 1990. As the regime under the Town and Country Planning Act 1990 does not apply offshore, functions under section 36 of the Electricity Act 1989 are devolved to the Welsh Ministers for the determination of energy projects not exceeding 350MW in Welsh territorial waters and in the Welsh Zone.

Section 40: Generating stations and public rights of navigation

592 Section 40 transfers certain functions under sections 36A and section 36B of the Electricity Act 1989 to Welsh Ministers for offshore generating station consents not exceeding 350MW. Section 39 will amend section 36A of the Electricity Act 1989, such that Welsh Ministers will in the future be able to make declarations extinguishing public rights of navigation, so as to ensure safety, out to the seaward limits of the territorial sea, in relation to generating stations up to 350MW.

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

Section 41: Safety zones around renewable energy installations

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

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

596 Paragraph 47 to 49 of Schedule 6 amends the Electricity Act 1989 to create a power for Welsh Ministers to make regulations governing the application process for consent under section 36 of the Electricity Act 1989 to construct and operate a generating station up to 350MW in waters adjacent to Wales.

597 Paragraph 50 of Schedule 6 amends Schedule 8 to the Electricity Act 1989 such that it does not apply to applications made to Welsh Ministers.

598 Paragraph 51 of Schedule 6 amends Schedule 9 to the Electricity Act 1989, on the preservation of amenity, such that it applies to Welsh Ministers where they are the consenting authority.

599 Paragraph 60 of Schedule 6 amends the Energy Act 2004 that where Welsh Ministers make regulations governing applications for safety zones that these will be subject to the negative procedure in the Assembly.

600 Paragraph 61 of Schedule 6 amends Schedule 16 to the Energy Act 2004 to provide for Welsh Ministers' role in relation to safety zones under section 95 of that Act.

601 Paragraphs 74 to 76 make provision for the deeming of marine licences under section 149A of the Planning Act 2008, to allow for changes to the authority that would otherwise grant those licences and enforce them from the Secretary of State to Welsh Ministers.

Section 42: Overhead lines associated with devolved Welsh generating stations

602 This section allows Welsh Ministers or local planning authorities to authorise, under the Town and Country Planning Act 1990, overhead electricity lines (subject to a limit of 132kV nominal voltage), the purpose of which is to facilitate the connection to the electricity national grid of generating stations consented by Welsh Ministers.

Section 43: Alignment of associated development consent

603 Section 43 implements the recommendation of the Silk Commission, taken forward in the St David's Day Agreement, that the responsibility for granting consent for associated development for energy projects should be aligned with the responsibility for granting consent for the main project.

604 Planning consents for energy generation projects above 50 MW are currently granted through a Development Consent Order made by the Secretary of State under the regime for nationally significant infrastructure set out in the Planning Act 2008 ("the 2008 Act"). The Secretary of State may grant consent under the 2008 Act for an energy generation project for which development consent is required.

605 Large energy generation projects are also likely to require consent for development which is associated with the principal project and necessary for the project to be developed ('associated development') and the Secretary of State can also grant consent for this under the 2008 Act.

606 In Wales, the power of the Secretary of State to consent associated development is restricted to surface works, boreholes or pipes that are associated with a project comprising of underground gas storage facilities. There is therefore currently no provision in the 2008 Act for the Secretary of State to grant development consent for associated development for an energy generation project in Wales.

607 The effect of this is that for an energy generation project above 50 MW in Wales, development consent can only be granted by the Secretary of State for the infrastructure project itself. Any consents for associated development must be sought from the appropriate consenting body in Wales (in the case of any planning consent for associated development, this will normally be from the relevant local planning authority).

608 In order for the recommendation on aligning associated development consents to be implemented, the 2008 Act needs to be amended so the Secretary of State can grant consent for associated development linked to these projects. This is achieved by the amendment to section 115(4) of the 2008 Act (which currently restricts the Secretary of States powers to grant consent for associated development in Wales). This amendment also extends to associated development consents linked to the consenting of electric lines in Wales to the extent that they fall within section 14(1)(b) and section 16 of the 2008 Act.

Chapter 14: Equal opportunities

Section 44: Equal opportunities: public sector equality duty

609 Section 44 amends section 152(2) of the Equality Act 2010 ("the 2010 Act"). The relevant part of this section sets out the process Welsh Ministers must follow when exercising a power to amend the list of relevant Welsh authorities, set out in Part 2 of Schedule 19 of the 2010 Act, which are subject to the public sector equality duty. Welsh Ministers will no longer have to obtain the consent of a Minister of the Crown before making an order amending the list, but instead must inform such a Minister after any amendment to Schedule 19. Section 42 also amends section 154(3) of the 2010 Act. The relevant part of this section sets out the process Welsh Ministers must follow when making regulations imposing specific duties on cross-border public bodies listed in Part 4 of Schedule 19. Welsh Ministers will no longer have to consult a Minister of the Crown before making regulations, but instead must inform such a Minister after any regulations are made.

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

Section 45: Public sector duty regarding socio-economic inequalities

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

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

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

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

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

Chapter 15: Marine licensing and conservation

Section 46: Marine licensing in the Welsh offshore region

616 This section implements the recommendation of the Silk Commission, taken forward in the St David's Day Agreement that the existing executive responsibilities for marine licensing in the Welsh inshore region should be extended to the Welsh offshore region. The amendments made by section 46 provide for Welsh Ministers to exercise functions relating to marine licensing in the Welsh offshore region. Part 4 of the Marine and Coastal Access Act 2009 ("the 2009 Act") regulates the licensing of certain activities which take place in UK waters, other than the

Scottish inshore region (defined in section 322(1) of the 2009 Act). The Welsh offshore region is defined in section 322(1) to mean so much of the Welsh zone as lies beyond the seaward limits of the territorial sea. Welsh zone takes its meaning from section 158(1) and (3) of GoWA.

- 617 Section 113 of the 2009 Act contains the rules for determining which body is the appropriate licensing authority for any area. This varies depending on both the area and the nature of the activity. Subsection (2) amends section 113(4) so that Welsh Ministers are the appropriate licensing authority for Wales, the Welsh inshore region and the Welsh offshore region, unless the activity to be licensed falls within section 113(5) of the 2009 Act. In respect of those "reserved activities" the Secretary of State is the licensing authority.
- 618 Subsection (2)(b) amends the list of those "reserved activities" in section 113(5) so as to additionally reserve, in relation to the Welsh offshore region only, any activity falling within the subject matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc.) (MSA). This type of activity is licensable by the Secretary of State in relation to the Welsh offshore region.
- 619 Marine enforcement officers (MEOs) may be appointed under section 235 of the 2009 Act to carry out enforcement functions in relation to the marine licensing regime. Section 236 of the 2009 Act sets out the areas in which and the vessels and installations in relation to which a MEO may exercise enforcement powers. Subsection (3) of section 46 amends section 236(2) of the 2009 Act so as to extend the activities in relation to which a MEO cannot exercise its enforcement powers to include: (i) an activity in the Welsh offshore region concerning or arising from the exploration for, or production of, petroleum; and (ii) any activity in the Welsh offshore region falling within the subject matter of Part 6 of the MSA.
- 620 Under section 240 of the 2009 Act, the Secretary of State is able to appoint persons to enforce the marine licensing regime in Part 4 of that Act, to the extent that it relates to the licensing of those "reserved activities". Subsection (4) amends subsection 240(1)(b) of the 2009 Act so that the Secretary of State is able to appoint persons for enforcement purposes relating to any activity in Wales, the Welsh inshore region or the Welsh offshore region concerning the exploration for, or production of, petroleum.
- 621 Subsection (5) makes consequential amendments to section 241 of the 2009 Act so that enforcement officers appointed under that section do not have any powers to enforce Part 4 of the 2009 Act so far as relating to: (i) any activity concerning petroleum production or exploration in Wales, the Welsh inshore region or the Welsh offshore region; and (ii) any activity in the Welsh offshore region falling within the subject matter of Part 6 of the MSA.
- 622 Subsections (6) to (9) of this section make consequential amendments to the Marine Licensing (Exempted Activities) (Wales) Order 2011 ("the 2011 Order"). The 2011 Order specifies activities which do not need a marine licence, or do not need a marine licence if conditions specified in the Order are satisfied. By virtue of Article 2 of the 2011 Order and subsection (2)(a) of section 46, the 2011 Order applies in relation to any licensable marine activity carried on in Wales, the Welsh inshore region and the Welsh offshore region for which the Welsh Ministers are the appropriate licensing authority.

Section 47: Marine conservation zones

- 623 This section appoints the Welsh Ministers as appropriate authority in the Welsh offshore region allowing them to designate areas as marine conservation zones (MCZ) in that region pursuant to Part 5 (Nature Conservation) of the Marine and Coastal Access Act 2009 (the 2009 Act).
- 624 The Welsh offshore region is defined in section 322(1) of the 2009 Act.

625 Subsection (2)(b) states that the Welsh Ministers may not designate an MCZ that includes any part of the Welsh offshore region without agreement from the Secretary of State. This section does not alter the Welsh Ministers' existing competence in the 2009 Act to designate MCZs in the Welsh inshore region without agreement from the Secretary of State. Therefore in practice where an MCZ extends to both the Welsh inshore and Welsh offshore regions the Secretary of State's agreement is required for those parts of that MCZ within the Welsh Offshore region only.

626 While both these sections extend the exercise of Welsh Ministerial functions from Wales (which includes the territorial sea) to the Welsh offshore region, exceptionally,, section 53 extends functions exercisable in relation to Welsh fishing boats beyond the seaward limit of the Welsh zone.

Chapter 16: Water

Section 48: Water and sewerage

627 This section provides for the replacement of reservation C15 of Schedule 1 (water and sewerage) and thereby the amendment of Schedule 7A to GoWA. This note should be read in conjunction with the note on that reservation at page 28.

628 The version of C15 which will be in force on the commencement of Schedule 7A reflects the historic arrangements for the devolution of water supply services. It therefore expresses competence (now for both water supply and sewerage services) on the basis of water and sewerage undertaker appointment areas. This is expressed in terms of "appointment and regulation" of undertakers, and "licensing and regulation" of licensees operating in those undertaker areas. Appointment areas are based on river catchments, some of which straddle the England /Wales border. Where those appointment areas straddle the border, only the Welsh parts of those undertakers who operate mainly in Wales ("Welsh undertakers") is devolved. The areas of undertakers who operate wholly or mainly in England ("English undertakers"), including any parts of those areas which are in Wales, and the regulation and licensing of licensees in those undertaker areas, are reserved. The English parts of Welsh undertakers' areas, and the regulation and licensing of licensees in Welsh undertakers' areas in England, are outside the Assembly's geographic competence.

629 Section 48 aligns legislative competence for water and sewerage undertakers with the geographical boundary between Wales and England by removing the reservation relating to the parts of English undertakers' areas in Wales. When the section is commenced, the effect will be that legislative competence to implement the majority of the policy over the supply of water and sewerage services (i.e. the appointment and regulation of undertakers and the regulation of licensees) will be devolved to the Assembly in relation to Wales (rather than in relation to appointment areas). The licensing of water supply and sewerage licensees, the regime overseen by the economic and competition regulator of the water industry (Ofwat), will remain reserved.

630 This section also amends the Water Industry Act 1991 to require the Water Services Regulation Authority (Ofwat) to make its annual report (under section 192B of that Act) to Welsh Ministers as well as the Secretary of State. The Welsh Ministers are required to lay the annual reports before the Assembly and publish them as appropriate.

Section 49: Modification of water-related functions

631 This section provides a power to modify water-related executive functions. These include those that were previously conferred on or transferred to the Welsh Ministers on the basis of areas served by water companies or river basin catchment areas and those that were retained by the

Secretary of State on a similar basis. This is primarily to enable the transfer of such functions to or from the Welsh Ministers or to and from the Secretary of State (in practice the Secretary of State for the Environment, Food and Rural Affairs) to align their respective functions with the border between England and Wales, etc. This section allows the transfer of such functions to specify that they will be carried out concurrently or jointly between those ministers, or with the consent or in consultation with each other.

Section 50: Water protocol

632 This section enables the Welsh Ministers and Secretary of State (in practice the Secretary of State for the Environment, Food and Rural Affairs) to make an agreement to ensure that the actions or inactions of those parties, and public bodies exercising functions in England or Wales, do not have a serious adverse impact on water resources, water supply or water quality on the other side of their respective borders. The water protocol, once agreed and whenever it is amended, has to be laid before the Assembly and Parliament. .

Section 51: Reciprocal cross-border duties in relation to water

633 This section puts a duty on the Welsh Ministers to have regard to the interests of consumers of water services in England when carrying out their functions relating to water resources, water supply or water quality. This section also puts a reciprocal duty on the Secretary of State (in practice the Secretary of State for the Environment, Food and Rural Affairs) in relation to consumers of water services in Wales.

Section 52: Repeal of intervention powers relating to water

634 This section repeals the powers of the Secretary of State to intervene in cases where an Assembly Bill or the actions of a public body in Wales have a serious adverse impact on water resources, water supply or water quality in England. This repeal does not come into force until a water protocol is agreed and laid before the Assembly and Parliament.

Chapter 17: Miscellaneous

Section 53: Transfer of functions in relation to fishing vessels

635 This section transfers to the Welsh Ministers certain fisheries functions exercisable in connection with Welsh fishing boats which are currently exercised by Ministers of the Crown in relation to waters beyond the seaward limits of the Welsh zone. Thus Welsh Ministers can exercise certain executive fisheries functions beyond the territorial limit of Wales and the Welsh zone but the Assembly cannot exercise legislative competence otherwise than in relation to Wales because of the restriction in section 108A(2)(b).

Section 54: Transfer of functions in relation to excepted energy buildings

636 Functions under the Building Act 1984 to make building regulations and associated matters have been transferred to the Welsh Ministers by an order in 2009 that came into force in 2011. An exclusion from the transfer was made in relation to “excepted energy buildings”; that is buildings forming part of energy infrastructure. This section removes this exclusion by making the necessary provision for the transfer of functions under the Building Act 1984 for that category of buildings.

Section 55: Renewable energy incentive schemes: consultation

637 This section creates a duty for the Secretary of State to consult Welsh Ministers before establishing or amending a renewable energy incentive scheme. A renewable energy incentive scheme is defined and includes the Renewable Heat Incentive, Renewables Obligation, Feed-in Tariff and Contracts for Difference. The duty to consult will not apply where amendments of a

minor or technical nature are being made. Nor is there a duty to consult in relation to the creation of a levy to fund an incentive scheme.

Section 56: Financial assistance for inland waterway and sea freight

638 This section amends section 272 of the Transport Act 2000 to give powers to the Welsh Ministers (acting alone or jointly with the Secretary of State) to make grants or other payments in respect of the carriage of goods on inland waterways between Wales and England and the carriage of goods by sea to, from or between places in Wales.

Section 57: Maritime and Coastguard Agency

639 This section amends the Coastguard Act 1925 and the Merchant Shipping Act 1995 so as to require the Secretary of State to consult the Welsh Ministers on the Secretary of State's strategic priorities in relation to the activities of the coastguard in Wales, and in relation to safety standards of ships in Wales and the health and safety of persons on ships in Wales.

Section 58: Gaming machines on licensed betting premises

640 This section devolves powers to the Assembly and the Welsh Ministers in respect of gaming machines with a stake of more than £10. This is currently only possible on sub-category B2 gaming machines, commonly known as fixed odds betting terminals. Under section 236 of the Gambling Act 2005, the Secretary of State must define four classes of gaming machine, to be known as categories A, B, C and D, and sub-divide category B into sub-categories. The Secretary of State established categories and sub-categories of gaming machine through the Categories of Gaming Machine Regulations 2007 (S.I. 2007/2158).

641 The power devolved in this section permits variation of the number of such machines (those where the stake is more than £10) authorised by virtue of new betting premises licences (including their reduction to zero), but does not permit the variation of the number of such gaming machines authorised by existing betting premises licences. The power does not apply to betting premises licences granted in respect of a track.

Part 3: Welsh Tribunals

Section 59: The Welsh tribunals

642 All the provisions in Part 3 and Schedule 5 to the Act are about the creation of the role of a President of Welsh Tribunals and the cross-deployment of members of Welsh Tribunals to reserved tribunals and members of both the First-Tier and Upper Tribunals to Welsh Tribunals. In this section, subsection 1 lists those Welsh Tribunals which fall within the remit of the President of Welsh Tribunals. Subsection 2 confers an order making power to either remove or modify the references to Welsh Tribunals listed in subsection (1) or to extend that list in future to capture any new tribunals created by the Assembly, which satisfy the definition of a Welsh Tribunal set out in subsection 2(b). Subsection (3) prescribes the procedure for making such an order so that it must be laid before, and approved by both the Assembly and Parliament but subsection (4) excludes certain kinds of provision from that procedure, such as consequential amendments if the Welsh Tribunal changed its name or was amalgamated with another existing tribunal.

643 Thus it is within the competence of the Assembly to create a new tribunal as an enforcement mechanism for a devolved purpose; and this is excluded from the reservation for tribunals by para 9(2) of schedule 7A (inserted by schedule 1 of the Bill). So the creation of the tribunal or the conferral of additional functions on an existing devolved tribunal is not outside Assembly competence. The President of the Welsh Tribunals can only exercise powers in relation to a specific tribunal if it is included in the list in section 59(1) and this list can be amended by Order in accordance with section 59(2) to (4).

Section 60: President of Welsh Tribunals

644 This section confers a power on the Lord Chief Justice to appoint a person to the office of President of the Welsh Tribunals (subsection 1). Subsection 2 makes it clear that the President of Welsh Tribunals is not a devolved Welsh authority (see the provision about devolved Welsh authorities in Section 4 and Schedule 4 of this Act), but as stated in paragraph 642, the Assembly still has the competence to make a statutory instrument amending the list of tribunals for which the President of Welsh Tribunals is responsible. Subsections 4 and 5 set out the key responsibilities of the President of Welsh Tribunals and the factors to which he or she must have regard in carrying out the functions of that office, including the need to ensure that Welsh Tribunals are accessible and that proceedings are conducted fairly and efficiently. The President of Welsh Tribunals is responsible for appropriate arrangements for training of members of Welsh devolved tribunals; issuing guidance and the welfare of members. Subsection 3 introduces Schedule 5, which makes further provision about the appointment of the President of Welsh Tribunals and connected matters.

Schedule 5: President of Welsh Tribunals

645 Part 1 of the Schedule contains details about the two-stage appointment process of the President of the Welsh Tribunals. It provides that the Lord Chief Justice must consult Welsh Ministers and the Lord Chancellor before he or she appoints the preferred candidate. If no agreement is reached or that person is not someone who held or had held high judicial office, the Lord Chief Justice could request the Judicial Appointments Commission to carry out a recruitment exercise.

646 Part 2 of the Schedule makes provision about the selection process that would be followed if the Judicial Appointments Commission were to carry out the recruitment of a President of Welsh Tribunals. It includes details about eligibility for selection, the composition of the selection panel and requires the Panel to determine the selection process to be applied and to consult with the Lord Chancellor and Welsh Ministers prior to recommending a candidate. The Judicial Appointments Commission are bound by their usual guiding principles, namely that selection must solely be on merit and have regard to the need to encourage judicial diversity. The Schedule also contains an order-making power to allow the Lord Chancellor to make further regulations (with the agreement of the Welsh Ministers and the Lord Chief Justice) about the precise process to be applied.

647 Part 3 of the Schedule makes provision about the President of Welsh Tribunals' terms of office, including arrangements for resignation, retirement, remuneration and oaths of allegiance.

Section 61: Directions as to practice and procedure

648 One of the key functions of the President is to issue practice and procedural directions for the Welsh Tribunals, this power is conferred by Subsection 1. This power is to be exercised concurrently with that of the president or chair of an individual Welsh tribunal (Subsection 2). Subsection 3 describes the kind of directions which may be given and Subsection 4 states that such directions can only be given with the approval of Welsh Ministers, unless any of the exceptions in subsection 5 applies. Such exceptions include directions about the application of the law or how decisions are to be made by tribunals. These cover judicial functions and so it would be inappropriate for them to be approved by the executive (Welsh Ministers). Subsection 6 provides a carve out to the exceptions so that where the directions relate to the criteria for determining which members of the tribunals may be chosen to decide particular categories of matter the Welsh Ministers should be consulted but do not need to approve them. Subsection 7 provides that the President of Welsh Tribunals must consult the president or chair of an individual tribunal before making directions which affect that tribunal. Similarly, subsection 8 creates a reciprocal duty so that the president or chair of an individual tribunal

must consult the President of Welsh Tribunals before issuing any practice or procedure directions. Subsection 9 requires the publication of directions without specifying the means.

Section 62: Cross-deployment of members of the Welsh tribunals

649 It is intended that to promote the efficient deployment of tribunal members, members of tribunals and the judiciary in England and Wales can be members of Welsh tribunals and reciprocally, members of Welsh Tribunals can act as members of First-tier Tribunals. Section 62 enables cross deployment within Welsh tribunals by amending existing legislation to allow members of the Welsh tribunals to be deployed between all the tribunals listed in subsections 1 to 7 which fall within the President of Welsh Tribunals' remit.

Section 63: Cross-deployment of tribunal members and judges

650 This section is concerned with cross deployment between the Welsh Tribunals and courts and tribunals for England and Wales. Subsection (1) allows a member of a Welsh Tribunal to sit in the First-tier Tribunal, if asked to do so by the Senior President of the Tribunals (an England and Wales office) and the President of the Welsh Tribunals agrees. Subsection (2) includes a similar provision for members of the First-tier or Upper Tribunals to be deployed in the Welsh Tribunals if requested to do so by the President of Welsh tribunals and if the Senior President of the Tribunals agrees. Subsection 4 provides that judges of other courts could also be deployed to Welsh Tribunals if the President of Welsh Tribunals asked them to do so, but in this case, the Lord Chief Justice rather than the Senior President of the Tribunals needs to agree to such deployments. The list of judges to which this refers is set out in subsection 6. Subsection 7 states that references to the President of Welsh Tribunals, the Senior President of the Tribunals and the Lord Chief Justice, in the context of decisions about cross-deployment, should be taken to include a person designated to act on his or her behalf.

Section 64: Power to amend section 63

651 This section confers a power on the Lord Chancellor to amend section 63 by regulations; such regulations are limited by subsection 1 to the addition or amendment of the list of tribunals between which deployments can occur but by subsection 2 this power is limited to specification of tribunals other than devolved Welsh tribunals. By virtue of subsections 3 and 4 regulations are subject to the affirmative resolution procedure, unless they relate to removal of a tribunal which had ceased to exist or a change of name.

Part 4: Miscellaneous

Section 65: Provision of information to the Office for Budget Responsibility

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

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

654 Inserted subsection (4) specifies that the Office will receive information in compliance with any statutory provision (such as the Data Protection Act 1998) or common law rules (such as duties of confidentiality). The Office will not have access to confidential information relating to taxpayers and any information that is received will comply with data protection principles.

The Office has not required access to such information in exercising its current forecasting functions.

Section 66: Gas and Electricity Markets Authority

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

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

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

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

Section 67: Licensing of coal-mining operations: approval by Welsh Ministers

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

Section 68: Office of Communications

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

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

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

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

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

Part 5: General

Section 69: Consequential provision

- 664 Subsection (1) incorporates Schedule 6, which makes minor and consequential amendments.
- 665 Subsections (2)-(5) create a power for the Secretary of State to make regulations amending primary or secondary legislation, which the Secretary of State consider appropriate in consequence of any provision in the Act.
- 666 Subsection (6) requires regulations made under subsection (2) to be made by affirmative resolution procedure in both Houses of Parliament, if the regulations amend primary legislation.
- 667 Subsection (7) requires regulations made under subsection (2) to be made by negative resolution procedure in Parliament, if the regulations do not amend primary legislation.
- 668 Subsection (8) clarifies that "primary legislation", for the purposes of this section, includes Measures and Acts of the Assembly, as well as Acts of Parliament.

Schedule 6: Minor and consequential amendments

- 669 This Schedule contains further amendments to existing legislation in consequence of the Act.

Part 1: Amendments of the Government of Wales Act 2006

- 670 Part 1 of Schedule 6 contains minor and consequential amendments to GoWA relating to Part 1 of the Act. The changes are primarily a consequence of the conferred powers model being replaced by a reserved powers model.
- 671 Paragraph 2 omits sections 103-106A which dealt with the commencement of the Assembly Act provisions. As the Assembly Act provisions were already commenced on 5 May 2011 and have now also been replaced by the legislative competence provisions in this Act, these sections are redundant.
- 672 Paragraph 3 updates section 109 of GoWA so that it includes the correct references to the new reserved powers model, for example Schedules 7A and 7B instead of Schedule 7.
- 673 Paragraph 3(3) omits the requirement provision in section 109(4)(b) which states that the first ever Order in Council under section 109 does not require Assembly approval. The first section 109 Order has already been made so this provision is now redundant.
- 674 Paragraph 3(4) replaces section 109(5) to ensure that future alterations to Schedules 7A or 7B do not affect the validity of Assembly Acts already passed unless the enactment making the alteration provides otherwise.
- 675 Paragraph 4 updates section 114 of GoWA so that it refers to reserved matters under Schedule 7A instead of matters not listed (or excepted) under Schedule 7.
- 676 Paragraph 5 amends section 116 of GoWA which concerns the Welsh Seal and Letters Patent. These amendments allow Her Majesty by Order in Council to make provision as to the form, content and publication of royal proclamations under sections 4(2) and 5(4) of GoWA as amended by section 6.
- 677 Paragraph 6 updates section 116B of GoWA so that it refers to the new legislative competence tests under section 108A(2)(b) and (c) instead of the old tests under section 108(4) and (5).

678 Paragraph 7 amends section 116M of GoWA so that the Welsh Revenue Authority is substituted for the Welsh Government in this information sharing provision on Welsh land transactions. The Wales Act 2014 devolved Stamp Duty Land Tax and the WRA will administer the replacement devolved tax on their behalf.

679 Paragraph 8 amends section 157 of GoWA to include references to regulations as well as orders, which may be made by Ministers of the Crown and Welsh Ministers under GoWA.

680 Paragraph 9 amends section 158 of GoWA to include a definition of "property".

681 Paragraph 10 updates section 159 of GoWA so that it includes the definitions that are relevant to the new reserved powers model.

682 Paragraph 11 omits a (now redundant) reference to the Assembly Act provisions in section 161(7) of GoWA. See the explanation above in relation to paragraph 2 of this Schedule.

683 Paragraph 12 updates paragraph 3(2) of Schedule 3 of GoWA to refer to s.58(1).

684 Paragraph 13 omits Schedule 6 to GoWA, which dealt with the 2011 referendum in Wales because these are no longer operative.

685 Paragraph 14 omits (now redundant) amendments to the National Audit Act 1983 that were made in Schedule 10 to GoWA.

Part 2: Amendments relating to onshore petroleum

686 Part 2 makes a number of consequential amendments relating to onshore petroleum licensing.

687 Paragraph 15 amends section 4 (licences: further provisions) of the Petroleum Act 1998.

688 Sub-paragraph (2) amends subsections (1A), (1B) and (1C) (which are also inserted into the Petroleum Act by the Scotland Act 2016). The amendments to these subsections have the effect of reserving, for the Secretary of State, regulatory powers to make model clauses in relation to the consideration payable for a licence granted by Welsh Ministers as well as: (a) the measurement and facilitation of measurement of petroleum obtained from the licensed areas and (b) the keeping of accounts. The powers of the Welsh Ministers do not, therefore, extend to the drafting of model clauses on the above matters or to the modification or exclusion of such clauses.

689 Sub-paragraph (3) inserts a new subsection (3B) into section 4 of the Petroleum Act 1998 to establish that any regulations under section 4 made by the Welsh Ministers shall be made as statutory instruments subject to the annulment in pursuance of a resolution of the Assembly.

690 Sub-paragraph (4) inserts a new subsection (4B) into section 4 of the Petroleum Act 1998 which requires Welsh Ministers to publish notices of licenses granted by them for the Welsh onshore area in such a manner as they think appropriate.

691 Paragraph 16 amends section 4A of the Petroleum Act 1998, to transfer functions from the Secretary of State in relation to hydraulic fracturing consents to the Welsh Ministers as regards wells in the Welsh onshore area. These functions include the conditions regulating the issuance of such consent by the Secretary of State or the Welsh Ministers.

692 Paragraph 17 amends section 4B of the Petroleum Act 1998, which contains further provision about the issue of hydraulic fracturing consents. Sub-paragraph (2) and (3) amend subsections (4)(a), (4)(b) and (7) of section 4B to limit to the English onshore area (which is defined in a new subsection (7) inserted in section 8A by section 22 (4) as England including waters inside of the "baseline" by which the extent of territorial sea is established) the Secretary of State's power to make regulations by means of statutory instrument with regard to the descriptions of areas

which are “protected groundwater source areas” and with regard to those which are “other protected areas”. The subsections, as amended, require the Secretary of State to consult the Environment Agency.

- 693 Sub-paragraph (4) inserts new subsections (7A), (7B) and (7C) into section 4B into the Petroleum Act 1998 to provide Welsh Ministers with the power to make regulations by means of statutory instrument on the descriptions of areas which are “protected groundwater source areas” and “other protected areas” insofar as these apply to the Welsh onshore area. Any draft instrument must be laid before and approved by a resolution of the Assembly before such a statutory instrument can be made. The Welsh Ministers are required to consult the Natural Resources Body for Wales before making such regulations.
- 694 Sub-paragraph (5) amends subsection (8) to specify that the Environment Agency is the relevant environmental regulator for wells in the English onshore area and that the Natural Resources Body for Wales is the relevant environmental regulator for wells in the Welsh onshore area. The subsection also aligns the definition of a well consent to reflect the devolution of such consents to “the appropriate Minister”.
- 695 Sub-paragraph (6) restricts the power of the Secretary of State in subsection (9) of section 4B to amend the definition of “onshore licence for England and Wales” in consequence of regulations made under section 4. So, if the amendment is made, the Secretary of State will only be able to amend the definition as it applies in the English onshore area, and the Secretary of State will only be able to exercise the power in consequence of his own exercise of the power in section 4 of the Petroleum Act (and not in consequence of the exercise of the same power by the Welsh Ministers).
- 696 Sub-paragraph (7) inserts subsection (9A) into section 4B to provide an equivalent power to that in subsection (9) (as amended by paragraph (e)) to the Welsh Ministers.
- 697 Sub-paragraph (8) amends subsection 4B(10) to limit to the English onshore area the power of the Secretary of State to make amendments in relation to the requirements to be fulfilled before issuing a hydraulic fracturing consent set out in Column 2 of the table in section 4A.
- 698 Sub-paragraph (9) inserts subsection (12) and (13) into section 4B. Subsection (12) provides Welsh Ministers with the power to amend by regulations the requirements set out in Column 2 of the table in section 4A so far as related to the Welsh onshore area. A draft instrument must be laid before and approved by a resolution of the National Assembly for Wales before such a statutory instrument can be made (see new subsection (13)).
- 699 Paragraph 18 amends section 14B(7)(2)(d) of the Petroleum Act 1998, which determines the effects of the Mines (Working Facilities and Support) Act 1966 when applied to licensing under the Petroleum Act 1998, by specifying that, within section 4 of that Act, “the Minister” shall refer to Welsh Ministers for licences granted in the Welsh onshore area.
- 700 Paragraph 19 amends section 12 (interpretation of Part 1) of the Oil Taxation Act 1975. To put Welsh Ministers in the same position as the Oil and Gas Authority, including that the revocation of a licence be Welsh Ministers to the list of cessation events by which a person ceases to be a licensee in relation to oil fields.
- 701 Paragraph 20 amends paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975 by inserting new paragraphs (ac) and (ad) after paragraphs (aa) and (ab) (which are inserted by the Scotland Act 2016). These new paragraphs limit the powers of the Secretary of State for determining oil fields to those areas that are such that the granting of a licence within them, under Part 1 of the Petroleum Act 1998, would fall exclusively to the Secretary of State. Where areas are such that the granting of a licence within them would fall exclusively to the Welsh

Ministers, they become the appropriate authority for determining oil fields. Where areas are such that the granting of licences partially fall to the Secretary of State and partially fall to the Welsh Ministers, these shall act jointly for the purposes of determining oil fields.

702 Paragraphs 21 to 23 amend provisions in the Taxation of Chargeable Gains Act 1992, the Finance Act 1993 and Capital Allowances Act 2001 to reflect that in future the Welsh Ministers will be the licensing authority for the Welsh Onshore Area.

703 Paragraph 24 inserts a new subsection (13) into section 188 of the Energy Act 2004 to attribute, to Welsh Ministers, powers to make provisions that require the payment of charges to them in respect of their carrying out their relevant energy functions under Part 1 of the Petroleum Act 1998. The sums received under such charges must be paid by the Welsh Ministers into the Welsh Consolidated Fund. The provisions to require payment of such charges are to be set out by means of statutory instruments, subject to annulment in pursuance of a resolution of the Assembly.

704 Paragraphs 25 to 27 amend provisions in the Corporation Tax Act 2010 to reflect that in future the Welsh Ministers will be the licensing authority for the Welsh Onshore Area.

705 Paragraphs 28 to 32 make minor and consequential amendments to the Infrastructure Act 2015 to take account of the devolution to the Assembly of powers in relation to the use of deep-level land for the purposes of exploiting petroleum and deep geothermal energy.

Part 3: Amendments of other Acts

706 Part 3 of Schedule 6 contains minor amendments to various Acts of Parliament (other than GoWA) that are required in consequence of the Act. However, this Part 3 does not include amendments in consequence of the onshore petroleum provisions in the Act (as to which, see Part 2 of Schedule 6).

707 Section 13 of this Act repeals Section 136 of GoWA, which removes from the Comptroller and Auditor General the power to audit payments into and out of the Welsh consolidated fund and devolved Welsh authorities. Consequently, paragraphs 33 to 35 amend the National Audit Act 1983 to remove the Comptroller and Auditor General's power to carry out value for money studies on Welsh public bodies.

708 Paragraphs 36-43 of Schedule 6 amend the following provisions of the Road Traffic Regulation Act 1984:

709 Paragraph 36 amends section 17 (traffic regulation on special roads), in relation to special roads in Wales to provide that the power of the Secretary of State can only be exercised after consultation with Welsh Ministers; and that before regulating, Welsh Ministers must consult the National Park authority for any National Park affected.

710 Paragraph 37 amends section 65 (Powers and duties of traffic authorities as to placing of traffic signs), to enable the relevant authority to give general directions under section 65(1). Relevant authority is defined in the same way as section 25. This section is also amended to ensure that Welsh Ministers, when exercising their power to give general directions, do so by statutory instrument.

711 Paragraph 38 amends section 72 (powers exercisable by parish or community councils) to provide that nothing in this section should prejudice the exercise of the section 69 powers by the highways authority, Welsh Ministers or Secretary of State.

712 Paragraph 39 amends section 81 (general speed limit for restricted roads) to: enable the national authority to exercise the power by order to increase or reduce the speed limit for motor vehicles on restricted roads; provide that any such order made by Welsh Ministers is

subject to the affirmative procedure; and require the Welsh Ministers or the Scottish Ministers and the Secretary of State to consult each other before making any such order.

713 Paragraph 40 amends section 83 (provisions as to directions by a traffic authority under section 82(2)), to provide that the power of Welsh Ministers to make a direction that a road should be, or cease to be, a restricted road, is exercisable by statutory instrument.

714 Paragraph 41 amends section 85 (traffic signs for indicating speed restrictions), to provide that the power of the Welsh Ministers to give general directions is to be exercisable by statutory instrument; and to require the Welsh Ministers or the Scottish Ministers and the Secretary of State to consult each other before exercising their powers to give general directions.

715 Paragraph 42 amends section 88 (temporary speed limits), to provide that the first order made by Welsh Ministers imposing a temporary speed limit should not be made until a draft has been approved by a resolution of the Assembly; and that the power of Welsh Ministers to make an Order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Assembly.

716 Paragraph 43 amends section 134 (regulations), to:

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

717 Paragraph 44 amends section 134 of the Transport Act 1985 (regulations, rules and orders) to specify the types of provisions that the Welsh Ministers can make using their new powers under that Act.

718 Paragraph 45 amends section 135 of the Transport Act 1985 (procedure for making regulations, rules and orders) to provide that the Welsh Ministers' new powers under that Act are exercisable by statutory instrument, are subject to negative resolution procedure in the Assembly, and that Welsh Ministers must consult such representative organisations as they think fit before making the regulations.

719 Paragraph 46 amends section 36 of the Road Traffic Act 1988 (offence of failing to comply with traffic sign). This amendment replaces references to "national authority" in section 36(1)(b) and (3)(a) with references to the new definition of "relevant authority". Section 36(6) is amended to require the Secretary of State to consult Welsh Ministers before making regulations under section 36(5). Similarly, section 36(7) is amended so that Welsh Ministers must consult the Secretary of State before making regulations under that subsection.

720 Paragraphs 47 to 49 amends the Electricity Act 1989 to create a power for Welsh Ministers to make regulations governing the application process for consent under section 36 of the

Electricity Act 1989 to construct and operate a generating station up to 350MW in waters adjacent to Wales.

- 721 Paragraph 50 amends Schedule 8 to the Electricity Act 1989 such that it does not apply to applications made to Welsh Ministers.
- 722 Paragraph 51 amends Schedule 9 to the Electricity Act 1989, on the preservation of amenity, such that it applies to Welsh Ministers where they are the consenting authority.
- 723 Paragraph 52 updates section 45A(4) of the Human Fertilisation and Embryology Act 1990 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.
- 724 Paragraph 53 adds the office of President of the Welsh Tribunals to the list of relevant offices for the purposes of the retirement provisions in the Judicial Pensions and Retirement Act 1993, and so ensures that the holder of the office of President of Welsh Tribunals must usually retire by the age of 70.
- 725 Paragraph 33 of this Schedule removes from the Comptroller and Auditor General the power to carry out value for money studies on Welsh public bodies. Consequently, paragraphs 54 and 55 amend the Government of Wales Act 1998 to reflect that the Comptroller and Auditor General no longer have this power in relation to certain devolved Welsh authorities; and paragraph 56 amends the Care Standards Act 2000 to make the same change in relation to the Children's Commissioner for Wales.
- 726 Paragraph 57 updates section 7(9) of the Local Government Act 2000 to replace a reference to section 108 of GoWA with a reference to section 108A. Paragraph 58 removes section 77(5) from the Local Government Act 2000. That subsection provided for the President of the Adjudication Panel of Wales to issue practice directions, but is no longer needed due to the provisions on practice and procedural directions in section 61 of the this Act
- 727 Paragraph 59 updates section 5C(4)(a) and (5) of the Female Genital Mutilation Act 2003 to refer to the new definition of devolved Welsh authority, as created by new section 157A of GoWA (inserted by section 4 of the Act).
- 728 Paragraph 60 and 61 amend the Energy Act 2004 to make provision to the effect that where Welsh Ministers make Regulations under that Act, those Regulations are subject to the negative resolution procedure.
- 729 Paragraph 62 adds the office of President of the Welsh Tribunals to the list of judicial offices which are subject to the disciplinary powers set out in section 109 of the Constitutional Reform Act 2005.
- 730 Paragraph 33 of this Schedule removes from the Comptroller and Auditor General the power to carry out value for money studies on Welsh public bodies. Consequently, paragraph 63 and 64 amends the Public Services Ombudsman (Wales) Act 2005 and the Commissioner for Older People (Wales) Act 2006 to reflect that the Comptroller and Auditor General no longer have this power in relation to the ombudsman and the commissioner.
- 731 Paragraphs 66 and 67 update sections 24 and 27 of the Legislative and Regulatory Reform Act 2006 to accurately refer to the new reserved powers model as set out in section 108A of GoWA.
- 732 Paragraph 68 adds the President of the Welsh Tribunals to section 47 of the Tribunals Courts and Enforcement Act 2007. That amendment provides that the President of Welsh Tribunals must cooperate with the Lord Chief Justices where relevant when carrying out the duties of the office.

- 733 Paragraph 69 updates section 66(3) of the Statistics and Registration Service Act 2007 to refer to the new definition of devolved Welsh authority, as created by new section 157A of GoWA (inserted by section 4 of the Act).
- 734 Paragraph 70 updates section 37(5) of the Consumers, Estate Agents and Redress Act 2007 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.
- 735 Paragraph 71 updates section 74 of the Regulatory Enforcement and Sanctions Act 2008 to replace a reference to section 108 of GoWA with a reference to section 108A.
- 736 Paragraph 72 updates section 64(6) of the Human Fertilisation and Embryology Act 2008 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.
- 737 Paragraph 73 updates section 70(4)(b) and (6)(b) of the Climate Change Act 2008 to accurately refer to the new model of devolution created by the Act.
- 738 Paragraphs 74 to 76 amend the Planning Act 2008 so that section 202 is repealed as well as making consequential amendment due to the fact that the Welsh Ministers will be able to issue marine licences in Welsh waters beyond the territorial sea.
- 739 Paragraph 77 amends section 12 of the Marine and Coastal Access Act 2009 (certain consents under section 36 of the Electricity Act 1989) (the 2009 Act) to exclude any area of the Welsh inshore region and Welsh offshore region from the waters in respect of which the Marine Management Organisation (MMO) exercises the consent functions under section 12.
- 740 Paragraph 78 amends section 13 of the 2009 Act (safety zones: functions under section 95 of the Energy Act 2004) to exclude any area of the Welsh inshore region and Welsh offshore region from the waters in respect of which the MMO exercises the consent functions under section 13.
- 741 Paragraph 79 updates section 60(4)(c) of the Marine and Coastal Access Act 2009 to accurately refer to the new model of devolution created by the Act.
- 742 Paragraph 80 amends section 78 of the 2009 Act. This section provides for a special procedure in cases where a marine licence is required and an application for a harbour order (for example in respect of certain harbour works) has been, or is likely to be, made. Paragraph 71 amends section 78 to allow Welsh Ministers to make provision in regulations about the procedure for determining applications where this section applies and where the Welsh Ministers are both the marine licence authority and the harbour order authority. By way of example, Welsh Ministers can make provision within section 78(7) for cases where they are both the marine licence authority and the harbour order authority and where they have decided (in accordance with section 78(3) or (5)) that the two applications are to be considered together and have given notice of that decision to the applicant.
- 743 Paragraph 81 amends section 79 of the 2009 Act. This section provides for a special procedure in cases where both a marine licence and consent under section 36 of the Electricity Act 1989 are required. Paragraph 72 amends section 79 to allow Welsh Ministers to make provision in regulations about the procedure for determining applications where this section applies and where the Welsh Ministers are both the marine licence authority and the generating station authority. Paragraph 72 also amends the definition of generating station authority to include Welsh Ministers where they are responsible for determining the application for consent under section 36 of the Electricity Act 1989.

- 744 Paragraph 82 updates section 45(2)(c) of the Welfare Reform Act 2009 to remove redundant references to Assembly Measures and to the transitional period from Assembly Measures to Assembly Acts.
- 745 Paragraphs 83 and 84 update sections 2 and 157 of the Equality Act 2010 to make use of the new definition of devolved Welsh authority, as created by new section 157A of GoWA (inserted by section 4 of the Act) and to accurately refer to the new model of devolution created by the Act.
- 746 Paragraph 85 updates section 28(3)(a) of the Flood and Water Management Act 2010 to accurately refer to the new model of devolution created by the Act.
- 747 Paragraphs 86 and 87 update Schedules 5 and 6 to the Budget Responsibility and National Audit Act 2011 to remove redundant references to consequential amendments that have already been made.
- 748 Paragraph 88 updates Schedule 16 to the Police Reform and Social Responsibility Act 2011 to remove a redundant reference to a consequential amendment that has already been made.
- 749 Paragraphs 89 and 90 update sections 51 and 61 of the Localism Act 2011 to replace a reference to section 108 of GoWA with a reference to section 108A.
- 750 Paragraph 91 updates Schedule 13 to the Localism Act 2011 to remove a redundant reference to a consequential amendment that has already been made.
- 751 Paragraph 92 omits section 124 from the Welsh Language (Wales) Measure 2011. That subsection related to practice directions issued by the President of the Welsh Language Tribunal, but is no longer needed due to the provisions on practice and procedural directions in section 61 of the this Act.
- 752 Paragraph 93 updates Schedule 3 to the Protection of Freedoms Act 2012 to accurately refer to the new model of devolution created by the Act.
- 753 Paragraph 94 omits regulation 28 from the Special Educational Needs Tribunal for Wales Regulations 2012. That regulation made provision for the President of the Special Educational Needs Tribunal to issue practice directions, but is no longer needed due to the provisions on practice and procedural directions in section 61 of this Act.
- 754 Paragraph 95 updates Schedule 12 to the Energy Act 2013 to remove a redundant reference to a consequential amendment that has already been made.
- 755 Paragraph 96 updates Schedule 4 to the Public Audit (Wales) Act 2013 to remove a redundant reference to a consequential amendment that has already been made.
- 756 Paragraph 97 updates Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014 to remove a redundant reference to a consequential amendment that has already been made
- 757 Paragraph 98 omits paragraph 135 from Schedule 7 to the Water Act 2014 because it makes a consequential amendment to Schedule 7 to GoWA. The paragraph 135 amendment has not yet been commenced and, as Schedule 7 to GoWA is being replaced by new Schedule 7A, paragraph 135 will become otiose following the principal appointed day and the commencement of the reserved powers model.
- 758 Paragraphs 99, 100 and 101 update the Wales Act 2014 to remove redundant references to a consequential amendments that have already been made.
- 759 Paragraphs 102, 103 and 104 update sections 29, 30 and 35 of the Counter-Terrorism and Security Act 2015 respectively to refer to the new definition of devolved Welsh authority, as

created by new section 157A of GoWA (inserted by section 4 of the Act) and to accurately refer to the new model of devolution created by the Act.

760 Paragraph 105 updates section 109 of the Deregulation Act 2015 to accurately refer to the new model of devolution created by the Act.

761 Paragraphs 106-110 update various provisions in the Small Business, Enterprise and Regulatory Reform Act 2015 to refer to the new definition of devolved Welsh authority, as created by new section 157A of GoWA (inserted by section 4 of the Act), to accurately refer to the new model of devolution created by the Act, and to refer to section 108A of GoWA instead of section 108.

762 Paragraph 111 and 112 update sections 207 and 208 of the Housing and Planning Act 2016 to refer to the new definition of devolved Welsh authority, as created by new section 157A of GoWA (inserted by section 4 of the Act).

763 Paragraph 113 updates section 78 of the Immigration Act 2016 to accurately refer to the new model of devolution created by the Act.

Section 70: Transitional provision and savings

764 Subsection (1) incorporates Schedule 7, which makes transitional and savings provisions that are required in relation to the Act's provisions.

765 Subsection (2) creates a regulation making power for the Secretary of State to make additional transitional or savings provisions which appear appropriate in relation to the Act.

766 Subsection (3) clarifies that the subsection (2) power includes the ability to make savings resulting from any amendment, repeal or revocation made by the Act.

767 Subsection (5) provides that Schedule 7 does not limit the subsection (2) power and, indeed, that Schedule can itself be modified by the subsection (2) power.

768 Subsection (6) provides that neither Schedule 7, nor regulations made under subsection (2) affect section 16 or 17 of the Interpretation Act 1978. This is necessary, in particular, to ensure that section 17(2)(a) of the 1978 Act applies. That section provides that where an Act repeals and re-enacts a previous enactment (unless the contrary intention appears) any reference to the repealed enactment elsewhere on the statute book is to be read as referring to the re-enacted provision. Similarly, secondary legislation and other things done under the repealed enactment, are to be read as if made or done under the re-enacted provision

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

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

Schedule 7: Transitional provisions

771 This Schedule contains transitional provisions.

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

773 Paragraph 2 provides that the new legislative competence tests (as inserted by section 3 and Schedules 1 and 2) only apply to an Assembly Act if the relevant Bill passed Stage 1 on or after the principal appointed day. Passing Stage 1 means the Assembly has voted in favour of the Assembly Bill's general principles. The principal appointed day is to be set out in regulations made by the Secretary of State under section 71(3).

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

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

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

777 Paragraph 6 contains transitional provisions which apply generally where functions are devolved to Welsh Ministers by other provisions of the Act. The validity of pre-commencement actions is preserved and anything that is in the process of being done on commencement may be continued by Welsh Ministers. The paragraph does not apply where alternative transitional provision is made on the face of the Act in connection with the devolution of functions to Welsh Ministers. Transitional provisions may also be made in regulations under the powers conferred by section 70(2).

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

779 Paragraph 8 makes transitional provision relating to the amendments made by sections 39 to 43. Applications accepted by the consenting authority, or authority responsible for any variation to an existing consent, before the reserved powers model is brought into force will continue to be decided by that authority to which the application was made under the Planning Act 2008 or Electricity Act 1989.

780 Paragraph 9 makes transitional provision so that:

- (a) any application for a marine licence under Part 4 of the 2009 Act which is made before the commencement date continues to be determined by the appropriate licensing authority who was responsible for the application at the date it was made (sub-paragraph (2)). For example, an application made prior to the commencement date for which the MMO is responsible (under powers delegated by the Marine Licensing (Delegation of Functions) Order 2011 as amended) will proceed to be determined by the MMO; and
- (b) any appeal against:
 - (i) a marine licence decision under section 71 of the 2009 Act; or
 - (ii) the issue of any enforcement notice, stop notice and emergency safety notice issued under sections 72, 90, 91, 102, or 104 of that Act respectively, which is made before the commencement date continues to be governed by the appeals regime which applied at the time the appeal was made (sub-paragraph (3)).

781 The commencement date is defined in sub-paragraph (4) as the date on which section 46 takes effect).

782 Paragraphs 10 and 11 provide that the amendments made by Section 41 of the Act do not apply to applications made under section 95(3)(a) of the Energy Act 2004 before that section comes into effect.

Section 71: Commencement

783 Section 71 details the commencement arrangements for the Act.

784 Subsection (1) provides that the consequential provisions in section 69(2)-(8), the transitional provisions in section 70 and Schedule 7, the commencement provisions in section 71 and the short title provision in section 72 all commence on Royal Assent.

785 Subsection (2) provides that sections 1, 2, 14, 15, 16, 17, 18, 43 (and sections 39(4) and (6) and 42(4) for the purposes of section 43), 48(2), 50 and 51 all commence two months after Royal Assent. The same provision is made for sections 9 and 10, but only so far as they relate to a provision of an Assembly Bill that would change the name of the Assembly (or confer power to do so). In other words, the super-majority provisions in sections 9 and 10 only commence two months after Royal Assent to the extent required for the commencement of section 16 on that date.

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

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

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

789 Subsection (6) requires a four month period between the regulations under subsections (3) or (4) being laid, and the “principal appointed day” under subsection (3) or other commencement day under subsection (4).

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

Section 72: Short title

791 Section 72 states that the Act may be cited as the Wales Act 2017.

Commencement

792 Commencement of the provisions of the Act is specified in Section 71.

Related documents

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

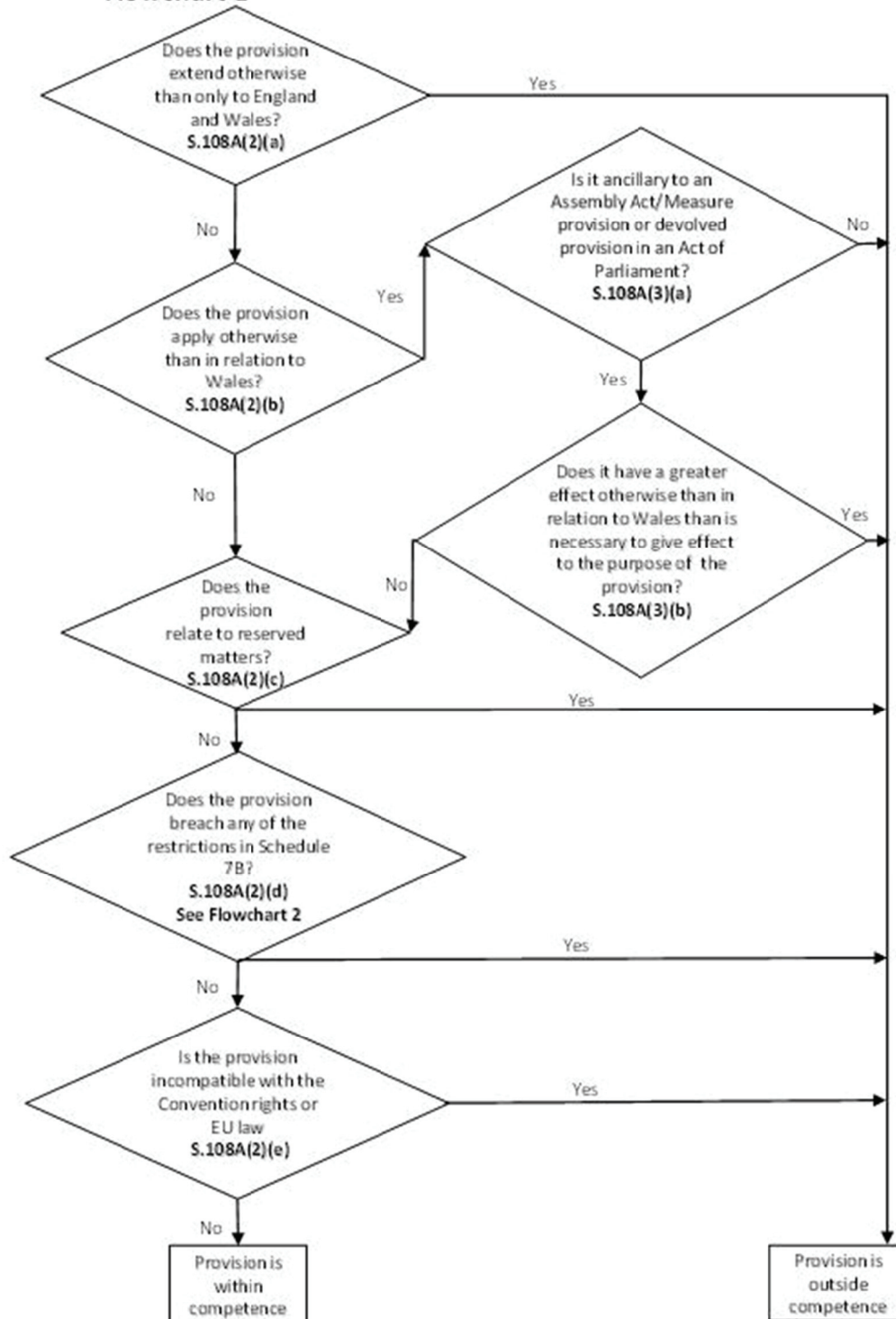
- Powers for a Purpose: Towards a lasting devolution settlement for Wales 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf
- Empowerment and Responsibility: Legislative Powers to Strengthen Wales 2014: <http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>
- Wales Act 2014: <http://www.legislation.gov.uk/ukpga/2014/29>
- Empowerment and Responsibility: Financial Powers to Strengthen Wales 2012: <http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2013/01/English-WEB-main-report1.pdf>

Annex A - Territorial extent and application

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
1 Constitutional arrangements Sections 1-8	Yes	Yes	Yes	Yes
1 Constitutional arrangements Sections 9-16	No	Yes	No	No
1 Constitutional arrangements Sections 17-22	Yes	Yes	Yes	Yes
2 Legislative and executive competence: further provision Sections 23-49	Yes	Yes	Yes	Yes
2 Legislative and executive competence: further provision Sections 50 and 51	Yes	Yes	No	No
2 Legislative and executive competence: further provision Sections 52-58	Yes	Yes	Yes	Yes
3 Welsh Tribunals Sections 59-64	Yes	Yes	Yes	Yes
4 Misc Sections 65-68	Yes	Yes	Yes	Yes
5 General Sections 69-72	Yes	Yes	Yes	Yes

Annex B - The legislative competence tests

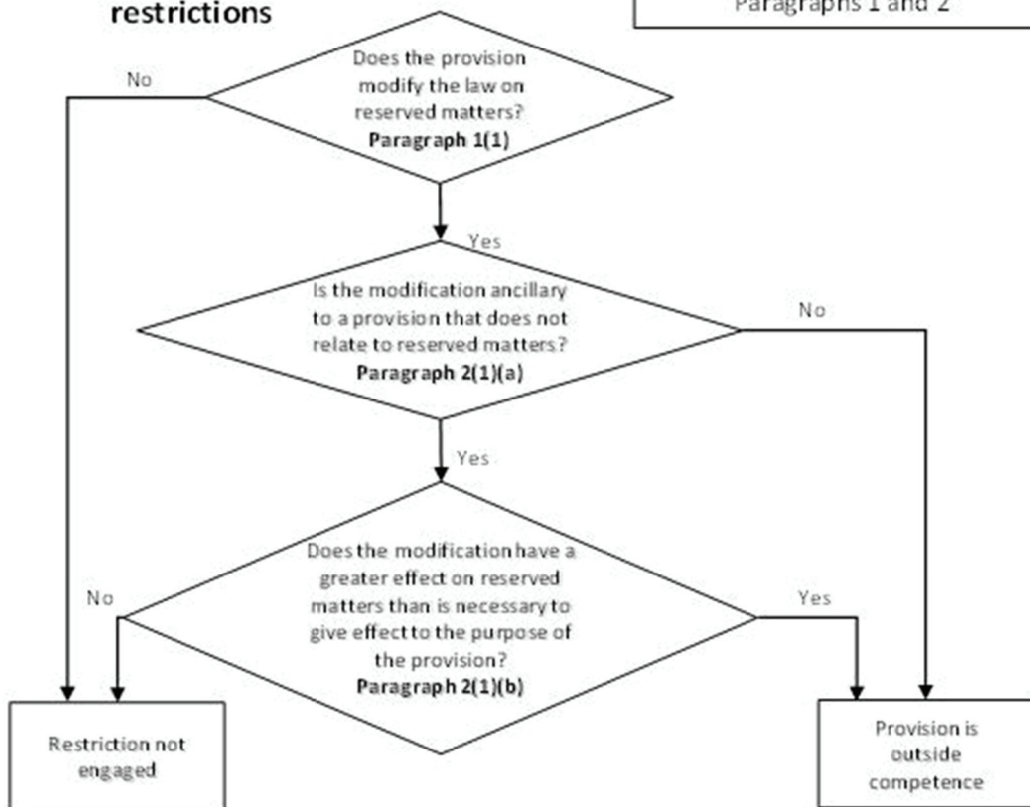
The legislative competence tests:
Flowchart 1



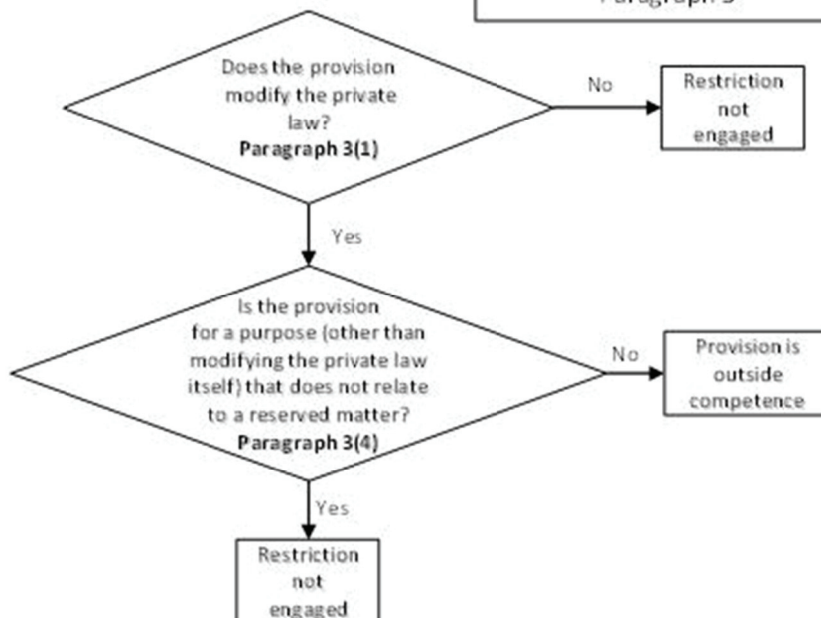
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**The legislative competence tests:
Flowchart 2 – the Schedule 7B
restrictions**

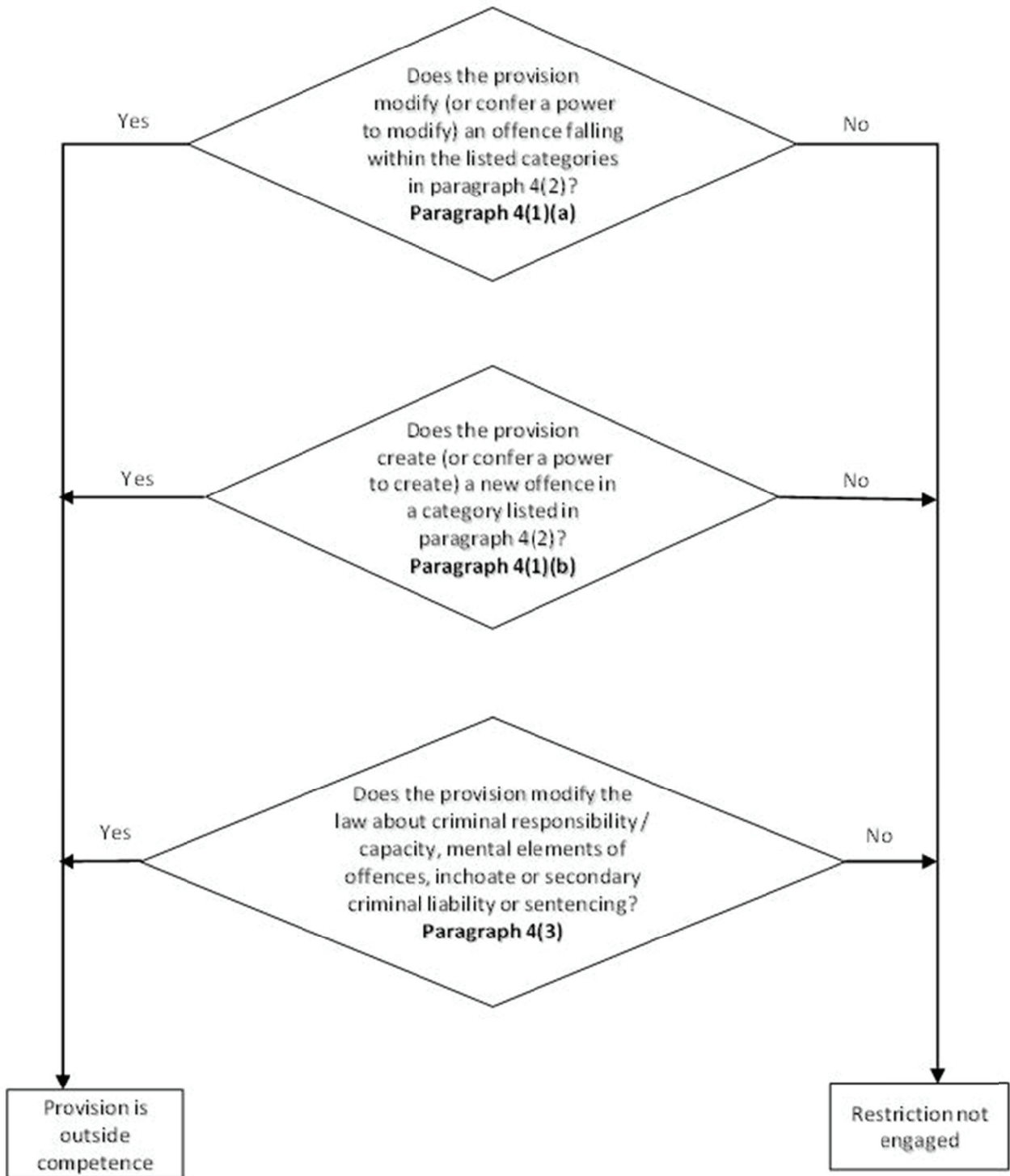
Modification of the law on reserved matters
Paragraphs 1 and 2



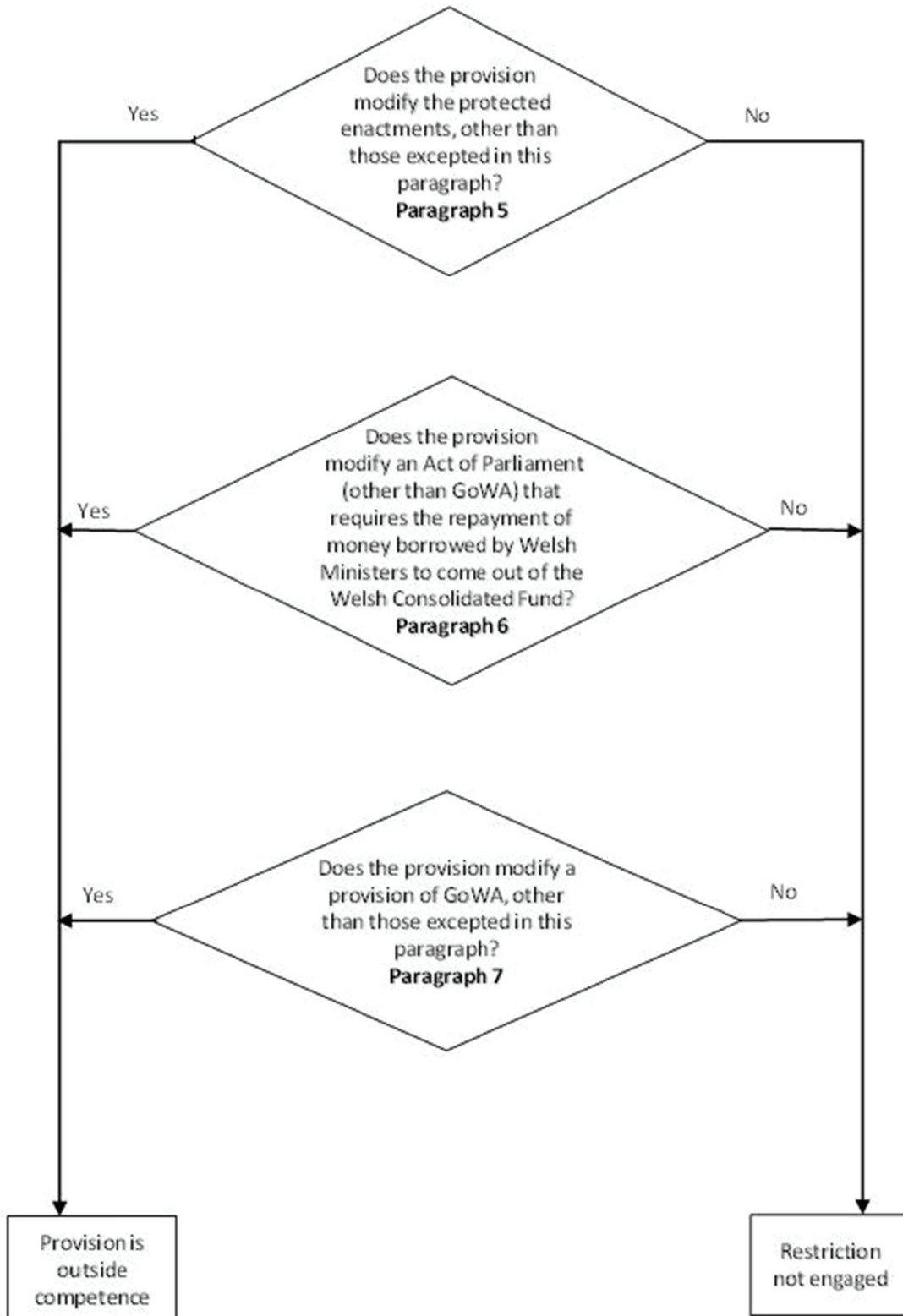
Modification of private law
Paragraph 3

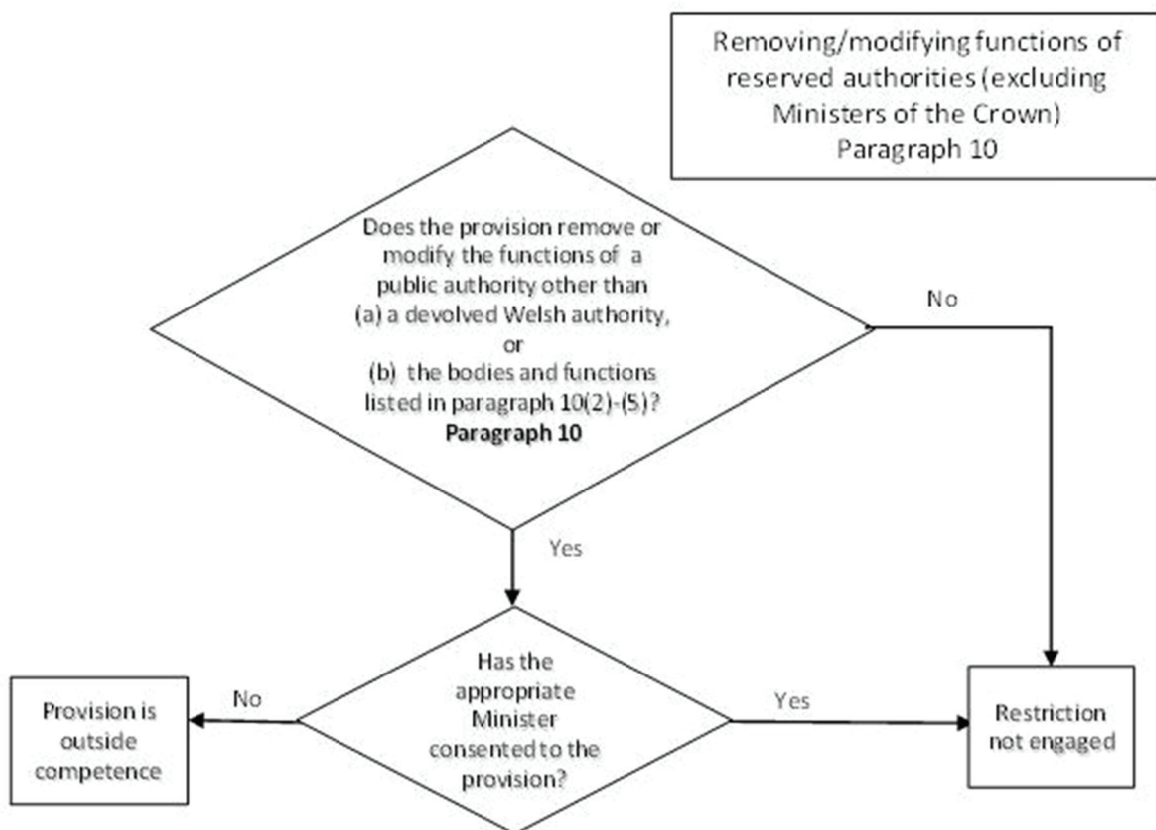
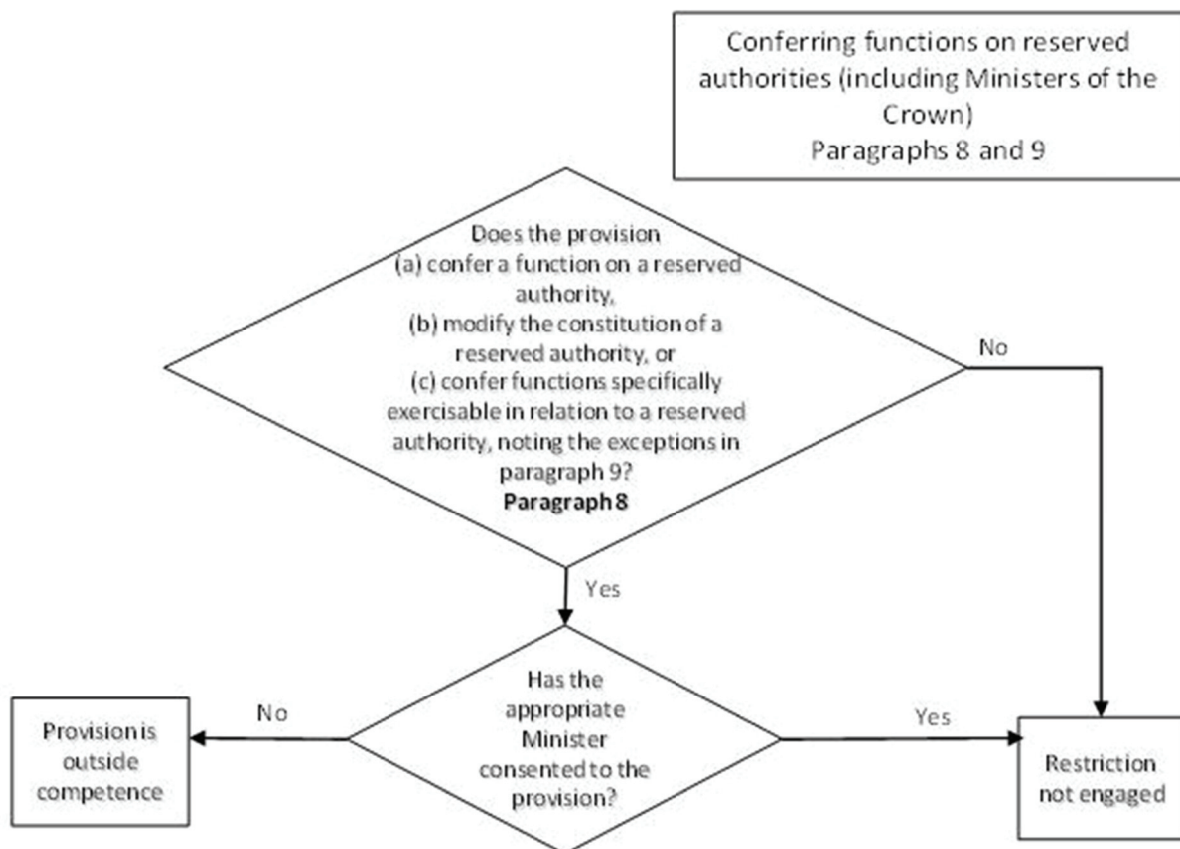


Modification of criminal law
Paragraph 4



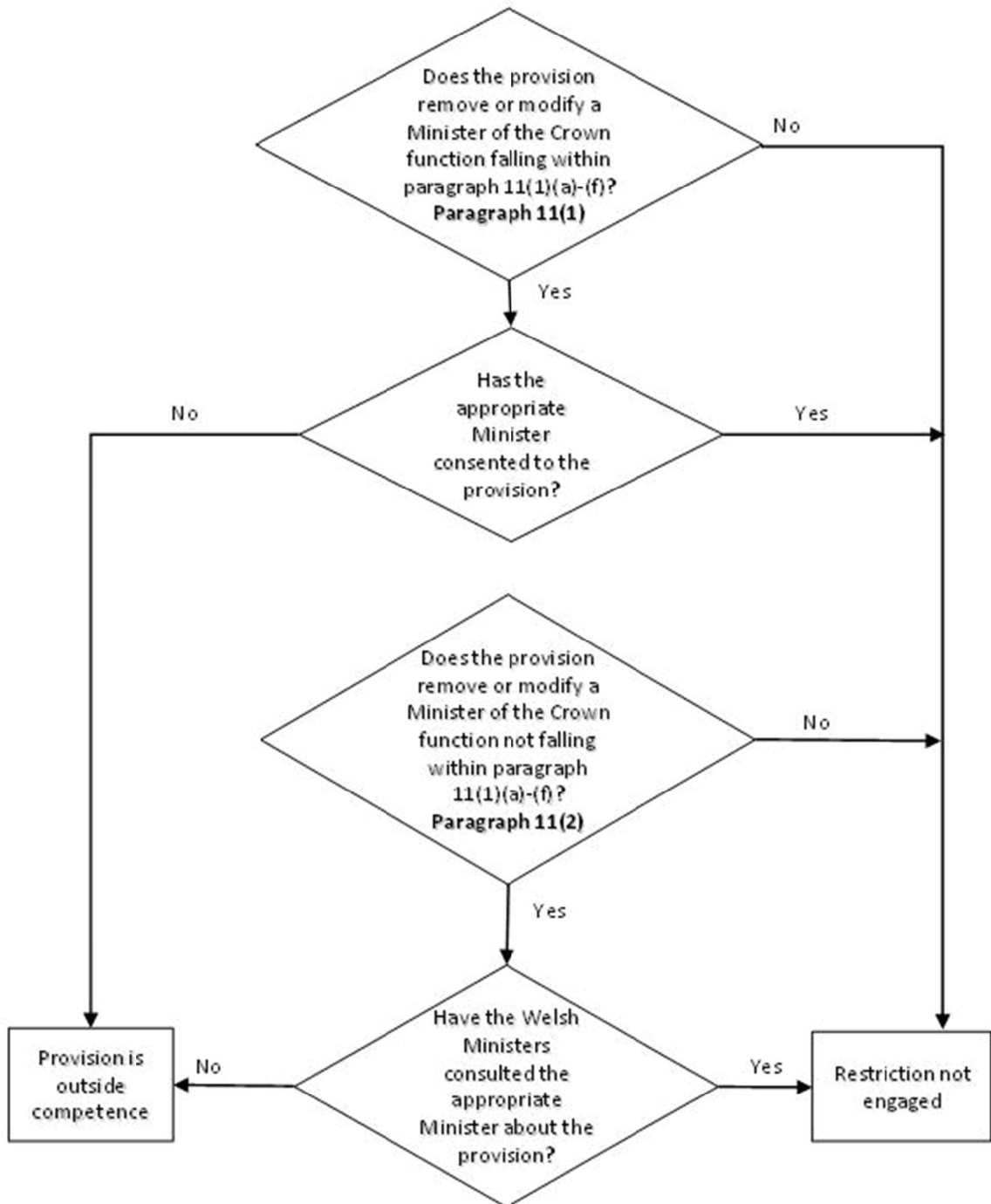
Modification of protected enactments
Paragraphs 5 - 7





These Explanatory Notes relate to the Wales Act 2017 (c. 4) which received Royal Assent on 31 January 2017

Removing/modifying functions
of Ministers of the Crown
Paragraph 11



Defined terms in Flowcharts 1 and 2

"**ancillary**" is defined in s108A(7). A provision is ancillary to another if it: "*(a) provides for the enforcement of the other provision or is otherwise appropriate for making that provision effective, or (b) is otherwise incidental to, or consequential on, that provision*",

"**appropriate Minister**" is defined in paragraph 8(5) of Schedule 7B as the Secretary of State or, in the case of HMRC, the Treasury,

"**confer**" includes "*impose*", "*modify*" and "*remove*",

"**GoWA**" means the Government of Wales Act 2006,

"**listed category**" means those categories of offences listed in paragraph 4(2) of Schedule 7B,

"**modify**" includes conferring a power to modify. "*Modifications*" is defined in s.158 of GoWA to include "*amendments, repeals and revocations*",

"**private law**" is defined in paragraph 3(2) of Schedule 7B as "*the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession*",

"**protected enactments**" are listed in paragraph 5(1) of Schedule 7B as the European Communities Act 1972, certain sections of the Government of Wales Act 1998, the Human Rights Act 1998, the Civil Contingencies Act 2004 and certain sections of the Public Audit (Wales) Act 2013,

"**public authority**" is defined in paragraph 8(4) of Schedule 7B,

"**reserved authority**" is defined in paragraph 8(3) of Schedule 7B as a Minister of the Crown, a UK Government department, and any other public authority that is not a Welsh public authority,

"**reserved matters**" are listed in Schedule 7A,

"**the law on reserved matters**" is defined in paragraph 1(2) of Schedule 7B as both legislation and the common law, the subject matter of which is a reserved matter, and

"**Wales public authority**" is defined in new section 157A of GoWA, as inserted by section 4 of the Act.

Annex C - Hansard References

794 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	7 June 2016	Vol. 611 Col. 1048
Second Reading	14 June 2016	Vol. 611 Col. 1644
Public Bill Committee Day 1	5 July 2016	Vol. 612 Col. 761
Public Bill Committee Day 2	11 July 2016	Vol. 613 Col. 54
Report and Third Reading	12 September 2016	Vol. 614 Col. 634
<i>House of Lords</i>		
Introduction	13 September 2016	Vol. 774 Col. 1395
Second Reading	10 October 2016	Vol. 774 Col. 1673 and Vol. 774 Col. 1713
Committee of the whole House Day 1	31 October 2016	Vol. 776 Col. 451 and Vol. 776 Col. 513
Committee of the whole House Day 2	7 November 2016	Vol. 776 Col. 899 , Vol. 776 Col. 952 and Vol.776 Col. 980
Committee of the whole House Day 3	15 November 2016	Vol. 776 Col. 1310 and Vol.776 Col. 1376
Committee of the whole House Day 4	23 November 2016	Vol. 776 Col. 1987
Report Day 1	14 December 2016	Vol. 777 Col. 1263 and Vol. 777 Col.1333
Report Day 2	10 January 2017	Vol. 777 Col. 1864 and Vol. 777 Col. 1931
Third Reading	18 January 2017	Vol. 778 Col. 237
Commons Consideration of Lords Amendments	24 January 2017	Vol. 620 Col. 202
Royal Assent	31 January 2017	House of Commons Vol. 620 Col. 793
		House of Lords Vol. 778 Col. 1085

These Explanatory Notes relate to the Wales Act 2017 (c. 4) which received Royal Assent on 31 January 2017

Annex D - Progress of Bill Table

795 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8			Clause 8	Clause 8	Clause 8
Section 9	Clause 8	Clause 8	Clause 9	Clause 9	Clause 9
Section 10	Clause 9	Clause 9	Clause 10	Clause 10	Clause 10
Section 11	Clause 10	Clause 10	Clause 11	Clause 11	Clause 11
Section 12	Clause 11	Clause 11	Clause 12	Clause 12	Clause 12
Section 13	Clause 12	Clause 12	Clause 13	Clause 13	Clause 13
Section 14	Clause 13	Clause 13	Clause 14	Clause 14	Clause 14
Section 15	Clause 14	Clause 14	Clause 15	Clause 15	Clause 15
Section 16	Clause 15	Clause 15	Clause 16	Clause 16	Clause 16
Section 17	Clause 16	Clause 16	Clause 17	Clause 17	Clause 17
Section 18					Clause 18
Section 19	Clause 17	Clause 17	Clause 18	Clause 18	Clause 19
Section 20	Clause 18	Clause 18	Clause 19	Clause 19	Clause 20
Section 21	Clause 19	Clause 19	Clause 20	Clause 20	Clause 21
Section 22	Clause 21	Clause 21	Clause 22	Clause 22	Clause 22
Section 23	Clause 22	Clause 22	Clause 23	Clause 23	Clause 23
Section 24	Clause 23	Clause 23	Clause 24	Clause 24	Clause 24
Section 25	Clause 24	Clause 24	Clause 25	Clause 25	Clause 25
Section 26	Clause 25	Clause 25	Clause 26	Clause 26	Clause 26
Section 27	Clause 26	Clause 26	Clause 27	Clause 27	Clause 27
Section 28	Clause 27	Clause 27	Clause 28	Clause 28	Clause 28
Section 29	Clause 28	Clause 28	Clause 29	Clause 29	Clause 29
Section 30	Clause 29	Clause 29	Clause 30	Clause 30	Clause 30
Section 31	Clause 30	Clause 30	Clause 31	Clause 31	Clause 31

These Explanatory Notes relate to the Wales Act 2017 (c. 4) which received Royal Assent on 31 January 2017

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 32	Clause 31	Clause 31	Clause 32	Clause 32	Clause 32
Section 33	Clause 32	Clause 32	Clause 33	Clause 33	Clause 33
Section 34	Clause 33	Clause 33	Clause 34	Clause 34	Clause 34
Section 35	Clause 34	Clause 34	Clause 35	Clause 35	Clause 35
Section 36					Clause 36
Section 37					Clause 37
Section 38	Clause 35	Clause 35	Clause 36	Clause 36	Clause 38
Section 39	Clause 36	Clause 36	Clause 37	Clause 37	Clause 39
Section 40	Clause 37	Clause 37	Clause 38	Clause 38	Clause 40
Section 41			Clause 39	Clause 39	Clause 41
Section 42	Clause 38	Clause 38	Clause 40	Clause 40	Clause 42
Section 43	Clause 39	Clause 39	Clause 41	Clause 41	Clause 43
Section 44	Clause 40	Clause 40	Clause 42	Clause 42	Clause 44
Section 45	Clause 41	Clause 41	Clause 43	Clause 43	Clause 45
Section 46	Clause 42	Clause 42	Clause 44	Clause 44	Clause 46
Section 47	Clause 43	Clause 43	Clause 45	Clause 45	Clause 47
Section 48					Clause 48
Section 49					Clause 49
Section 50					Clause 50
Section 51					Clause 51
Section 52					Clause 52
Section 53					Clause 53
Section 54	Clause 45	Clause 45	Clause 47	Clause 47	Clause 54
Section 55	Clause 46	Clause 46	Clause 48	Clause 48	Clause 55
Section 56				Clause 49	Clause 56
Section 57					Clause 57
Section 58					Clause 58
Section 59				Clause 50	Clause 59
Section 60				Clause 51	Clause 60
Section 61				Clause 52	Clause 61
Section 62				Clause 53	Clause 62
Section 63				Clause 54	Clause 63
Section 64				Clause 55	Clause 64
Section 65	Clause 47	Clause 47	Clause 49	Clause 56	Clause 65
Section 66	Clause 48	Clause 48	Clause 50	Clause 57	Clause 66

These Explanatory Notes relate to the Wales Act 2017 (c. 4) which received Royal Assent on 31 January 2017

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 67	Clause 49	Clause 49	Clause 51	Clause 58	Clause 67
Section 68	Clause 50	Clause 50	Clause 52	Clause 59	Clause 68
Section 69	Clause 51	Clause 51	Clause 53	Clause 60	Clause 69
Section 70	Clause 52	Clause 52	Clause 54	Clause 61	Clause 70
Section 71	Clause 53	Clause 53	Clause 55	Clause 62	Clause 71
Section 72	Clause 54	Clause 54	Clause 56	Clause 63	Clause 72
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 4	Schedule 4	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 3	Schedule 3	Schedule 4	Schedule 4	Schedule 4
Schedule 5				Schedule 5	Schedule 5
Schedule 6	Schedule 5	Schedule 5	Schedule 5	Schedule 6	Schedule 6
Schedule 7	Schedule 6	Schedule 6	Schedule 6	Schedule 7	Schedule 7

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