



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Wales Bill**

DATE **21 November 2016**

BY **Rt Hon Carwyn Jones AM, First Minister**

1. This written statement is laid under Standing Order 30 – Notification in relation to UK Parliament Bills. Standing Order 30 requires a written statement to set out provisions in a relevant UK Bill which modify the functions of the Welsh Ministers, the Counsel General, the Assembly or Assembly Commission, and which do not require a Legislative Consent Motion under Standing Order 29.

2. The Wales Bill (the Bill) was introduced in the House of Commons on 7 June 2016, and moved to the House of Lords on 13 September. It is currently at House of Lords Committee stage. Further detail about each individual clause in the Bill can be found in the Explanatory Notes which are available on the Bill documents page on the Parliament website at the link below:

[Bill documents — Wales Bill 2016-17 — UK Parliament](#)

3. This statement includes relevant modifications to functions both which were included in the Bill at introduction and which have already been added to the Bill by amendment. The latest version of the Bill was published on the Parliament website when the Bill entered the Lords (Reference HL Bill 63) on 13 September 2016 and is available at the Bill documents link above. For ease of reference and consistency, all references to clause numbers are to that version of the Bill.

4. A list of the relevant amendments tabled by the UK Government during Lords Committee stage is at Annex A.

Policy objectives

5. The UK Government's objectives for the Bill are to implement those elements of the St David's day Command Paper that require legislative changes. The Bill amends the Government of Wales Act 2006 in order to move to a reserved powers model of devolution, and devolves certain further powers recommended by the Silk Commission.

Relevant provisions in the Bill

6. The following list of clauses summarises where there are modifications to functions as required by Standing Order 30. The headings below are those of the Bill itself for ease of reference. Further details of each clause can be found in the Explanatory Notes in the Bill documents link above.

Part 1 Constitutional Arrangements

Elections

7. Clause 5 provides the Welsh Ministers with 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. Any regulations the Secretary of State wishes to make to combine Assembly elections with certain UK or EU Parliamentary elections are subject to the agreement of the Welsh Ministers.

Clause 6 transfers the Secretary of State's power to vary the date of an Assembly ordinary general election to Her Majesty, who may vary the date by proclamation following a proposal by the Presiding Officer. It also prevents such an Assembly election being held on the same day as an ordinary general election to the UK Parliament or European Parliament. Where such a clash occurs, then unless Her Majesty has by proclamation set an alternative date, the Welsh Ministers may do so by order¹.

Clause 7 provides for certain functions of the Secretary of State relating to the UK Digital Service for applications to the register of electors to be exercised by the Welsh Ministers concurrently with a Minister of the Crown in respect of Assembly elections or Welsh local government elections.

Welsh rates of income tax: removal of referendum requirement

8. Clause 17 removes the power for the First Minister or a Welsh Minister to trigger a proposed referendum, and the Assembly's function of approving such a proposal.

Executive competence etc

9. Clause 18 creates powers for the Welsh Ministers, "executive ministerial powers". These are "common law type powers", modelled on functions carried out by Ministers of the Crown. Clause 19 gives Welsh Ministers an automatic right to make regulations under section 2(2) of the European Communities Act 1972 to implement EU law in Wales where matters are within legislative competence.

Functions of the Assembly in relation to making or modifying standing orders

10. Part 1 contains clauses that either place duties on the Assembly, or provide it with a power, to make procedural or other changes in standing orders. Also included in Part 1 are

¹ Note: Clause 6 also, at subsections (15)-(20), amends the Representation of the People Act 1983 so that an ordinary local government election in Wales cannot take place on the same day as the poll for an Assembly ordinary general election, and give 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. Those amendments fall within the Assembly's current legislative competence in relation to electoral arrangements for local authorities, and so they are included in the Legislative Consent Memorandum for this Bill.

clauses that remove mandatory and discretionary provisions about standing orders set out in the Government of Wales Act 2006. These modifications are set out in the following clauses:

Clause 10 – Super-majority requirement: amendments relating to procedure etc

Clause.11 – Introduction of Bills: justice impact assessment

Clause 14 – Composition of Assembly committees

Clause 15 – Assembly proceedings: participation by UK Ministers etc

Modifications of the functions of the Presiding Officer in Part 1.

11. Whilst Standing Order 30 does not expressly require modifications to the Presiding Officer's functions to be included, those clauses where there is a modification are listed below.

Clause 6 – Timing of elections

Clause 10 – Super-majority requirement: amendments relating to procedure etc

Clause 12 – Submission of Bills for Royal Assent: role of Presiding Officer. Clause 12 also modifies the functions of the Clerk.

Part 2

Legislative and Executive Competence: Further Provision

Onshore petroleum

12. Clause 23 transfers to the Welsh Ministers the power to award onshore petroleum licenses.

Clause 25 provides for further powers of the Secretary of State to be transferred to Welsh Ministers, who may make schemes for operators with deep-level access permission to drill for petroleum or geothermal energy to give notice, and to provide payments, to communities and landowners.

Paragraph 28 of Schedule 5 empowers Welsh Ministers to make regulations setting out the definition of “landward area” 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.

Road transport

13. Clause 26 devolves a number of roads-related powers to Welsh Ministers, specifically to;

- make regulations about special roads;
- set speed limits;
- make regulations about pedestrian crossings;
- prescribe signs and approve school crossing patrol uniforms; and
- make regulations about traffic signs.

Clause 27 devolves bus route registration to Welsh Ministers and limits the ability of the Senior Traffic Commissioner to issue guidance in Wales-only matters.

Clause 28 makes Welsh Ministers the relevant licensing authority in relation to the immediate hiring of taxis at separate fares.

Harbours

14. Clauses 29²-32, insofar as they relate to the transfer of functions to Welsh Ministers, transfer a number of functions relating to harbours that are wholly in Wales, other than reserved trust ports. The functions transferred are functions of a Minister of the Crown under legislation concerning harbours, harbour authorities and pilotage.

15. Clause 34 requires a Minister of the Crown to consult Welsh Ministers before exercising a function likely to have a material effect in Wales in relation to a cross-border harbour, and before creating a new cross-border harbour. Clause 35 requires the Secretary of State to consult Welsh Ministers before exercising a relevant pilotage function in relation to Wales. It also requires Welsh Ministers to obtain the Secretary of State's consent to the exercise of relevant pilotage functions in relation to waters in England, unless it is not reasonably practicable to do so (Clause 36).

Planning for electricity generating stations

16. Clause 37 devolves energy planning development consent for projects up to 350MW onshore and in Welsh territorial waters. It devolves responsibility for development consent for onshore wind powered generating stations with no upper limit. The effect of the provisions is to dis-apply the Secretary of State's power under the Planning Act 2008 Act to grant development consent in relation to electricity generating stations, up to those of 350MW. The Bill in effect transfers such projects into the town and country planning system in Wales if they are onshore. Energy generation development above 350MW will continue to be determined by the Secretary of State under the Planning Act 2008 development consent regime.

17. Clause 38 transfers executive functions from the Secretary of State to the Welsh Ministers to enable them to restrict navigation rights in relevant Welsh waters where a generating station comprising a renewable energy installation is installed. Clause 39 transfers executive functions from the Secretary of State to the Welsh Ministers to enable them to restrict the movement of vessels, and the activities that may be carried out in areas of water around a renewable energy installation. Clause 40 allows Welsh Ministers or local planning authorities to grant development in relation to overhead electric lines associated with generating stations to which they can consent.

18. Clause 41 provides for the responsibility for granting consent for associated development for energy projects to be aligned with the responsibility for granting consent for the main project. Its effect is to move associated development for energy projects above 350MW in Wales into the Planning Act 2008 regime, so that the Secretary of State can grant consent for associated development linked to those projects. In so doing, it indirectly removes or modifies Welsh Ministers' functions of calling in and hearing appeals in relation to such development under sections 77 and 78 of the Town and Country Planning Act 1990.

² Clause 29 is also included in the Legislative Consent Memorandum, to the extent that it requires the Assembly's consent in relation to those harbours (e.g. fishery harbours) within the Assembly's current legislation competence.

Equal opportunities

19. Clause 42 provides that Welsh Ministers are no longer required to obtain the consent of a Minister of the Crown in order to modify the list of Welsh authorities subject to the public sector equality duty. They now only have to inform the Minister of the Crown that they have done so. Clause 43 enables Welsh Ministers to impose the “public sector duty regarding socio-economic inequalities” on public authorities that exercise devolved or mainly devolved functions. This power, already part of the Equality Act 2010, was never brought into force and Welsh Ministers will now be able to commence it by order.

Marine licensing and conservation

20. Certain marine activities, such as dredging and scuttling of vessels, require a license to be conducted. Currently those seeking a license have to apply to either:

- Natural Resources Wales for activities in the Welsh inshore region, under the authority of the Welsh Ministers, or;
- The Marine Management Organisation (MMO) for activities in the Welsh offshore region, under the authority of the Secretary of State.

21. Clause 44 will provide Welsh Ministers with marine licensing powers in the Welsh offshore region, while some activities will remain reserved to the Secretary of State. Clause 45 will allow Welsh Ministers, with the agreement of the Secretary of State, to create Marine Conservation Zones in the offshore region. They can already do so in inshore waters. These zones can be designated to protect, for example, nationally important marine wildlife and habitats. Paragraph 2 of new Schedule 3A GOWA 2006 (as inserted by Schedule 4 to the Bill) extends Welsh Ministers’ functions in relation to fishing boats beyond the seaward limit of the Welsh zone (those functions are exercisable concurrently with the Minister of the Crown).

Building regulations

22. Clause 47 removes an exception to the previous transfer of building regulations powers which would allow Welsh Ministers to cover buildings that are part of energy infrastructure in future building regulations.

Part 3

Miscellaneous

23. Clause 50 gives the Assembly the power to call the Gas and Electricity Markets Authority to give written or oral evidence in relation to Wales. It also requires Welsh Ministers to lay that Authority’s annual report, and certified accounts and audit report, in the Assembly. Clause 51 requires applications for coal mining licenses in Wales to be approved by Welsh Ministers.

24. Clause 52 allows Welsh Ministers to appoint one member of the board of Ofcom after first consulting the Secretary of State. It also requires Welsh Ministers to lay Ofcom’s annual report, and statement of accounts and audit report, before the Assembly.

Powers of the Assembly to approve orders by resolution

25. The following clauses are not confined to a single Part of the Bill but cover Schedule 5 also.

26. Where there are new order-making powers (or the repeal of existing order-making powers) which would require the approval of the Assembly by resolution, or which give the Assembly the power to annul the order, these could be considered to be a modification of the Assembly's functions and are included here in accordance with Standing Order 30. Other new statutory instruments, the making of which depends on agreement via resolution of the Assembly, are also included here. Such Assembly resolutions are set out in the following clauses:

Clause 4 – Wales public authorities

Clause 5 – Power to make provisions about elections

Clause 6 – Timing of elections

Clause 7 – Electoral registration: the digital service

Clause 19 – Implementation of EU law

Schedule 5, Part 1, para 3(3) in relation to legislative competence: supplementary

Schedule 5, Part 2, para 12(3), 14(4) and 14(13) in relation to onshore petroleum.

Schedule 5, Part 2, para 21 in relation to the Energy Act 2004

Schedule 5, Part 2, para 29(3) relating to the Infrastructure Act 2015

Schedule 5, Part 3, para 36(2) in relation to general speed limit for restricted roads.

Schedule 5, Part 3, para 39(2) and 39(3) in relation to temporary speed limits.

Schedule 5, Part 3, para 40(3) relating to the Road Traffic Regulation Act 1984

Schedule 5, Part 3, para 42 in relation to the Transport Act 1985

Schedule 5, Part 3, para 45 in relation to the Electricity Act 1989

Schedule 5, Part 3, para 54(4) in relation to the Energy Act 2004

Reasons for making these provisions in the Wales Bill

27. The Welsh Government considers that the powers contained in this statement should be viewed in the context of the Wales Bill as a whole in order to appreciate the full extent of the powers covered in the Bill. The Legislative Consent Memorandum, laid at the same time as this statement, covers those provisions in the Bill which require the consent of the Assembly via a Legislative Consent Motion (LCM). The laying of this statement should not be taken as making any comment on whether the Welsh Government would ask the Assembly to consent to the LCM or not to do so, in due course.

28. It is considered appropriate for the provisions listed in this statement to be included in the Wales Bill because the provisions either could not be made by an Assembly Act, or could be made by an Assembly Act only with UK Ministerial consent.

**STANDING ORDER 30 WRITTEN STATEMENT : WALES BILL:
UK GOVERNMENT AMENDMENTS TABLED FOR LORDS COMMITTEE STAGE**

Clause / Schedule No.	Amendment No	Subject of Amendment
Sch 4	30-35	To provide Welsh Ministers with powers to regulate Welsh fishing boats wherever they may be, including outside of Wales and the 'Welsh Zone'
Sch 4	35A	Provides that functions of the Secretary of State under section 272 of the Transport Act 2000 relating to financial assistance for the carriage of goods by (a) inland waterways partly in Wales and (b) the sea adjacent to Wales are exercisable concurrently or jointly with Welsh Ministers (see also Amendment 107B).
Cl. 27	83A	Gives powers to Welsh Ministers to make regulations under section 6(2), (3) and (9) of the Transport Act 1985 (amending the original provision in the bill to amend only section 6(9)(g), (i) and (j)).
Cl. 27	83B	Gives Welsh Ministers the power to make regulations on registering quality contract bus services
Cl. 29	83D	Transfers functions exercisable by a Minister of the Crown under section 1 of the Harbours (Loans) Act 1972 to the Welsh Ministers
Cl. 48 After NC	107B	Amends section 272 of the Transport Act 2000 so that powers to provide financial assistance for the carriage of goods by (a) Welsh inland waterways and (b) the sea adjacent to Wales are transferred to the Welsh Ministers. Those powers are exercisable concurrently with UK Ministers, other than where the relevant inland waterway is wholly in Wales, in which case the power sits exclusively with the Welsh Ministers.
Cl. 55	121	This means that the sections listed, which deal with associated development consent in respect of generating stations with 350MW capacity or less, will come into force two months after the day on which the Act is passed

Note

Amendment numbers can be found in the following links:

- Marshalled List HL Bill-63II: Amendment numbers 23-51.
Hyperlink [Publication: HL Bill 63-II Second Marshalled list of amendments for Committee](#)
- Marshalled List HL Bill-63III: Amendment numbers 52-122.
Hyperlink [Publication: HL Bill 63-III Third marshalled list of amendments for Committee](#)