

# REVISED SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

## WALES BILL

This Memorandum is a revision of the Memorandum laid on 10 January. In accordance with Standing Order 29.3(v), this revised Memorandum sets out how and why the new Memorandum differs from the previous one. It is revised to include relevant amendments tabled for Lords Third Reading stage of the Bill. Annex 1 has been revised to include, at the end of the Annex, details of the relevant amendments. In addition, the description of amendment 104F has been corrected on 16 January (page 6).

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Wales Bill (the “Bill”) was introduced in the House of Commons on 7 June 2016. The Bill is now completing the House of Lords Report stage. The most recent version of the Bill [HL Bill 77 (as amended in Committee)] was published on 23 November 2016 and can be found at: [Bill documents — Wales Bill 2016-17 — UK Parliament](#)

### Policy Objective and background

3. 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.
4. The background to the Bill and a summary of its main provisions are set out in the [Welsh Government’s preliminary memorandum on the Wales Bill](#), which was laid before the Assembly on 5 July 2016.
5. Following this the Government laid a [Legislative Consent Memorandum under Standing Order 29 on 21 November](#). That Memorandum sets out the provisions for which the Assembly’s consent is required including a table (Annex A) of amendments tabled, or supported by, the UK Government at Lords Committee stage. Those amendments have since been incorporated into the latest version of the Bill published following Lords Committee stage.

### Provisions in the Bill for which consent is required

6. In addition to the provisions set out within the first Legislative Consent Memorandum laid on 21 November, this Supplementary Legislative Consent Memorandum sets out at **Annex 1**, the amendments tabled at Report stage which also require consent. Therefore both the first and Supplementary Memorandums must be considered together when deciding on consent.
7. Consent is required for the provisions in the first Memorandum (and its Annex A), and in addition, for the provisions in Annex 1 to this Supplementary Memorandum, either because they modify the Assembly's legislative competence or because they fall within the Assembly's legislative competence.

**Whether it is considered appropriate for these provisions to be made in the Wales Bill**

8. It is appropriate for these provisions to be included in the Wales Bill in the sense that it would not be possible for the Assembly to pass an Assembly Act to achieve the same effect.
9. The amendments for Report stage have now been tabled. The Welsh Government is considering whether to recommend that consent should be granted to the relevant provisions in the Wales Bill, and will confirm its position in the debate on the Legislative Consent Motion which has been scheduled for 17 January.

**Conclusion**

10. This Supplementary Memorandum including Annex 1, taken together with the first Memorandum laid on 21 November, summarises the provisions which require the consent of the Assembly under Standing Order 29. This Memorandum has been published to comply with Standing Order 29 and to provide further information to inform the Assembly prior to consideration of consent.

**Rt Hon Carwyn Jones AM**  
**First Minister**  
**January 2017**

**LEGISLATIVE CONSENT MEMORANDUM : WALES BILL:  
UK GOVERNMENT AMENDMENTS TABLED FOR LORDS REPORT  
STAGE**

<b>Clause / Schedule No</b>	<b>Amendment No</b>	<b>Subject of Amendment</b>
Clause 4	4	Changes the descriptor of devolved authorities, does not change the definition.
Clause 4	5	The governing bodies of higher education institutions were previously listed in Schedule 9A. This amendment does not affect the Assembly's competence over those bodies – they remain “devolved Welsh authorities”, but are made so by virtue of this provision, rather than by inclusion in the list of devolved Welsh authorities at Schedule 9A.
Clause 9	10	Provides that an Assembly Bill may change the number of Welsh Ministers or Deputy Welsh Ministers, subject to the super-majority requirement, i.e. it would require the support of two-thirds of the total number of Assembly members in order to be passed
Clause 13	11	Allows Welsh legislation to make further provision about the financial accountability of devolved Welsh authorities, including those who receive sums derived from the Welsh Consolidated Fund.
After Clause 45	39, 40	<p>This series of amendments (39, 40, 45, 50 and 53) forms part of a package of measures on water and sewerage.</p> <p>It includes the removal from Schedule 7A of restrictions on the Assembly's competence to appoint and regulate water or sewerage undertakers.</p>
Clause 46	45	<p>Clause 46, which gave the Secretary of State powers of intervention (a) to prevent the submission of an Assembly Bill for Royal Assent, and (b) to restrain Welsh Ministers' executive action, on the grounds of serious adverse impact on sewerage services or systems in England, is removed from the Bill.</p> <p>A new clause is inserted to provide a power for (but not a duty upon) the Secretary of State and Welsh Ministers to agree a water protocol, containing a dispute resolution procedure, with a view to avoiding serious adverse cross-border</p>

Clause / Schedule No	Amendment No	Subject of Amendment
		impact on water resources. Once agreed, the protocol must be laid before both Houses of Parliament and the Assembly, and both the Welsh Ministers and the Secretary of State are required to act in accordance with it.
After Clause 46	50, 53	<p>There is a further, reciprocal cross-border duty on the Welsh Ministers and Secretary of State to have regard to the interests of consumers in England and Wales respectively.</p> <p>Once the water protocol has been agreed and laid before Parliament and the Assembly, there is provision for regulations to effect the repeal of the Secretary of State's current powers to intervene:</p> <p>(a) under section 114(1)(b) of GOWA 2006 to prevent an Assembly Bill being submitted for Royal Assent; or</p> <p>(b) under section 152 of GOWA 2006 to prevent the exercise of an executive function on the grounds that it might have a serious adverse impact on water resources, water supply or the quality of water in England.</p>
Clause 56	62	Provides that the general right of the Office of Budget Responsibility to access information held by a devolved Welsh Authority does not apply to the governing bodies of higher education institutions in Wales.
Schedule 1	83	Gives the Assembly competence over the regulation of the number of gaming machines for which the maximum charge for use is over £10 authorised under a betting premises licences (other than a licence in respect of a track).
Schedule 1, R1	78A	The Constitution – clarifies the scope of Reservation 1
Schedule 1, R6	78B	Paragraphs 6(2) and (3) are unnecessary as the Assembly will be able to make ancillary provision by operation of the new section 108A GOWA 2006.
Schedule 1, R41	81A	Removes the reservation of part 5 of the Anti-social Behaviour, Crime and Policing Act 2014, which covers 'recovery of possession of dwelling houses on anti-social behaviour grounds'.
Schedule 1, R95	85A	Oil & Gas: expands the scope of the reservation to include the regulation of works that may obstruct or endanger navigation.

<b>Clause / Schedule No</b>	<b>Amendment No</b>	<b>Subject of Amendment</b>
Schedule 1, R95	85B	Oil & gas: introduces exception to the reservation, in so far as: (a) marine licensing, and (b) the regulation of works that may obstruct or endanger navigation relate to searching, boring for or getting petroleum under a Welsh onshore licence, those matters are within the Assembly's competence.
Schedule 1, R99	85D	Introduces exceptions to the reservation of heat and cooling to devolve powers over heat and cooling networks and incentive schemes for heat and cooling from energy sources other than fossil and nuclear fuel.
Schedule 1, R99	85E	Removes the interpretation of 'Renewable heat incentive scheme' from the face of the bill. Consequential on the insertion of the exception to the reservation (see above).
Schedule 1, E3	87A	Marine & Waterway transport. Amends the exception to clarify that the participation by Welsh fire and rescue authorities in maritime search and rescue responses falls within the Assembly's competence.
Schedule 1, E3	87B	Marine & Waterway transport. Removes the subject-matter of the Fire and Rescue Services Act 2004 from the exception to the reservation (consequential on the amendment at page 70, line 34, above).
Schedule 1, F1	89A	Amends the exception to give the Assembly competence over the deferral of payment due to a local authority from an individual in respect of care costs.
Schedule 1, L12 exception	90A	Introduces an exception to the reservation for services and facilities relating to adoption, so that these matters will fall within the Assembly's competence.
Schedule 1, L12 exception	90B	Introduces an exception to the reservation for parental discipline, so that this falls within the Assembly's competence.
Schedule 1, R183(c)	91A	Amends the reservation of planning matters to exclude railways that are entirely in Wales.
Schedule 1, R184	91B	Removes the reservation of Community Infrastructure Levy
Schedule 1, R185	92A	Narrows reservation of compulsory purchase to reserve only powers over compensation in respect of compulsory purchase.

<b>Clause / Schedule No</b>	<b>Amendment No</b>	<b>Subject of Amendment</b>
Schedule 1, R186	93A	Narrows reservation of the regulation of building standards to land belonging to the Crown or to statutory undertakers.
Schedule 1, M4	93B	Defines the scope of Crown and statutory undertaker land to which the reservation of the regulation of building standards applies.
Schedule 1, pt 3, R198	104B	Confirms that the reservation of particular authorities does not affect the Assembly's competence over Council Tax precepts.
Schedule 2, para 3, (3)	104C	The general restriction on the Assembly modifying the private law (other than for a devolved purpose) applies to the law of compulsory purchase.
Schedule 2 para 5(1)	104D	The Assembly is prohibited from modifying section 100 of the Energy Act 2008 (which gives the Secretary of State power to introduce a financial incentive mechanism for renewable heat) and regulations made under that section.
Schedule 2, para 7(2)	104E	The Assembly is given competence to modify new section 3(1B) GOWA 2006, which gives the Welsh Ministers a power to move the date of the poll of an Assembly ordinary general election 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.
Schedule 2, para 7(2)	104F	Enables the Assembly to modify sections 4-20 of GOWA 2006, which deal with various provisions relating to Assembly elections, and the disqualification and remuneration of Assembly members.
Schedule 2, para 7(2)	105	Prohibits the Assembly from modifying Clause 51 (President of the Welsh Tribunals).
Schedule 2, para 9(4)	106A	Provides that where Ministerial consent is granted to the conferral of a function on a reserved authority, separate consent is not required if the function to which consent is granted is specifically exercisable in relation to another reserved authority.
Schedule 2, para 9(5)	106B	Provides that the restriction on modifying the functions of reserved authorities without Ministerial consent does not apply to the funding of police and crime commissioners through Council Tax precepts.
Schedule 2, para	107A	Provides that the restriction on removing the functions of reserved authorities without

<b>Clause / Schedule No</b>	<b>Amendment No</b>	<b>Subject of Amendment</b>
10(4)		Ministerial consent does not apply to the funding of police and crime commissioners through Council Tax precepts.
Sch 2, para 11(1)(d)	107B	Narrows the restriction on the Assembly modifying Minister of the Crown functions under the Marine and Coastal Access Act 2009 to functions relating to marine policy statements.
Sch 2, para 11(1)(d)	107C	Removes the restriction on the Assembly modifying Minister of the Crown functions under the Marine Works (Environmental Impact Assessment) Regulations 2007.
Schedule 3	6, 7, 8	Removes the governing bodies of higher education institutions in Wales from Schedule 9A – consequential on amendment to Clause 4. These bodies will still, by virtue of the amended Clause 4(1)(c) be devolved Welsh authorities, but will not be required to provide information to the Office of Budget Responsibility (see Clause 56).

Amendment numbers can be found in the following links:

Hyperlink [HL Bill 77-I Marshalled list for Report](#)  
[HL Bill 77-II Second marshalled list for Report](#)

### **UK GOVERNMENT AMENDMENTS TABLED FOR LORDS THIRD READING STAGE**

<b>Clause / Schedule No</b>	<b>Description of amendment</b>	<b>Subject of Amendment</b>
Schedule 2	Page 97, line 8, at end insert “() the Open University”  Page 98, line 8, at end insert “() the Open University”	The effect of the 2 amendments is that (subject to the reservations in new Schedule 7A to GOWA 2006, and to the other restrictions on the Assembly’s competence) an Act of the Assembly can confer or impose functions on, or remove or modify functions of, the Open University without UK Ministerial consent.

Hyperlink [Amendments to be moved on Third Reading](#)