

LOCALISM BILL

WELSH ASSEMBLY GOVERNMENT MEMORANDUM ON FRAMEWORK PROVISIONS FOR THE NATIONAL ASSEMBLY FOR WALES

Introduction

1. This memorandum sets out the background and context relevant to clauses 57, 119 and 152 of the Localism Bill (“the Bill”), which contains provisions conferring legislative competence on the National Assembly for Wales (“the Assembly”) in relation to local referendums on proposed increases in council tax, development management functions and Housing Revenue Account (HRA) and HRA subsidy reform.

Referendum in Wales

2. Part 4 of the Government of Wales Act 2006 (“the 2006 Act”) includes provisions (the “Assembly Act provisions”) which would enable the Assembly to pass legislation known as Acts of the Assembly if the majority of those voting in a referendum in Wales vote in favour (and the Assembly approves an order commencing the provisions). Part 1 of Schedule 7 to the 2006 Act sets out the subjects in relation to which the Assembly may pass Acts, and exceptions to those subjects which would remain non-devolved.
3. The matters listed in the framework powers in this Bill are not set out in the same detail in Schedule 7, but they already fall within the broader subjects in the Schedule. Specifically:
 - matters 11.9 to 11.11, relating to local authority accounts, borrowing and subsidy in respect of their housing functions, would come within the subject “Housing and housing finance” in paragraph 11 in Part 1 of Schedule 7;
 - matter 12.19, relating to referendums on Council Tax increases, would come within the subject “Local government finance” in paragraph 12; and
 - matters 18.4 to 18.7, relating to planning applications and enforcement action would come within the subject “Town and country planning” in paragraph 18.
4. This means that in the event of an affirmative vote in the referendum (due to be held on 3 March 2011), the Assembly would be able to legislate in relation to these matters. But in the event of a “no” vote the current process will continue, whereby the Welsh Assembly Government will be able to seek legislative competence for the Assembly on a case by case basis through framework powers in Acts of Parliament and Legislative Competence Orders (LCOs) under section 95 of the 2006 Act. Under this scenario, the framework powers in this Bill would confer

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legislative competence on the Assembly in the specific areas of referendums on council tax increases, development management and the Housing Revenue Account (HRA) and HRA subsidy.

Background

5. The UK coalition Government published its programme for government in May. It proposed to shift power downwards from Westminster to people, promoting decentralisation and democratic engagement, and ending the era of top-down government.
6. Part 3 of the 2006 Act gives the Assembly the power to pass legislation known as Assembly Measures. Assembly Measures are able to make any provision that could be made by an Act of Parliament, subject to the restrictions contained in the 2006 Act.
7. The Assembly may pass Measures in relation to the “matters” which are listed in the “fields” (currently 20) in Part 1 of Schedule 5 to the 2006 Act. Additions to the Assembly’s legislative competence may be made by adding new matters to the fields in Part 1 of Schedule 5. The 2006 Act includes a power to add new matters by Order in Council. Acts of the UK Parliament can also insert matters into Part 1 of Schedule 5 and such provisions are referred to as “framework powers”.

LOCAL REFERENDUMS ON PROPOSED INCREASES IN COUNCIL TAX.

8. Clause 57 in the Bill would extend the Assembly’s legislative competence by inserting a new matter, Matter 12.9, in Field 12: Local Government, in respect of local referendums on proposed increases in council tax.

Context

9. In accordance with chapter 3 of Part 1 of the Local Government Finance Act 1992 (“the 1992 Act”), each financial year billing authorities (the 22 county and county borough councils in Wales) and major precepting authorities (the police authorities in Wales) are required to calculate their budget requirement and council tax for that year. An authority’s budget requirement is in effect the difference between its expected income and expenditure, and the calculation of an authority’s council tax is based upon its budget requirement. Police authorities in Wales cover several billing authority areas, and their precept is the amount of council tax a police authority has instructed each billing authority to collect and pay over in order to finance its predicted net expenditure.
10. From April 2012, in accordance with the provisions of the Police Reform and Social Responsibility Bill, police authorities will be replaced by police and crime commissioners. The framework power therefore refers to police and crime commissioners as opposed to police authorities. It also

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refers to fire and rescue authorities; whilst these authorities are not currently precepting authorities in Wales, the Welsh Ministers have the power under section 83(2) of the Local Government Act 2003 to order that they should be major precepting authorities in Wales.

11. Chapter 4A of Part 1 of the 1992 Act provides the capping powers in relation to the setting of council tax in England and Wales. Proposed amendments in the Bill to Chapter 4A will limit the application of this chapter to Wales only in future (see clause 56 and Schedule 6).
12. In providing for council tax capping, Chapter 4A does not refer directly to an authority's level of council tax, but to the authority's budget requirement. As an authority's council tax is based upon its budget requirement, limiting an authority's budget requirement limits the amount an authority can raise by way of council tax. The purpose of the provisions within Chapter 4A is to limit an authority's budget requirement.
13. Currently if a local authority sets an excessive budget requirement, the Secretary of State/Welsh Ministers may either:
 - designate it in relation to the year in question, which would require the authority to re-bill council taxpayers; or
 - nominate the authority, and either:
 - (a) designate it in advance in respect of the following financial year, which effectively means that Government sets the following year's budget requirement for the authority, or
 - (b) set a notional budget requirement for the year in question, against which increases in the budget requirement in subsequent years can be measured in deciding whether or not these are excessive.
14. Under the designation process, the Secretary of State/Welsh Ministers inform the authority of the maximum amount that it can calculate as its budget requirement for the year, thereby capping any increase in its council tax for that year. Under the nomination process the Secretary of State/Welsh Ministers can either cap the level of an authority's budget for the financial year following the year under consideration, or set a notional budget requirement for the financial year under consideration which is to be used when judging excessiveness of council tax in future years. As such the designation process applies to the year under consideration, whereas the nomination process applies to future years.
15. Currently these capping provisions are common to England and Wales, but in practice the exercise of the functions differs between the two countries in terms of the timing and formulation of the draft principles of

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excessiveness which are used to determine whether an authority's budget requirement is excessive. In Wales, the principles of excessiveness are published in advance of authorities determining their budget requirement and setting their council tax whereas, in England, they are not published until after authorities have determined their budget requirement and set their council tax.

16. Proposals for changing the process of capping council tax in England were set out in a consultation document, 'Local referendums to veto excessive council tax increases', which was published by the Department for Communities and Local Government in July 2010. The main objectives of the proposals for England were to provide the local electorate with the power of veto over an excessive council tax increase, and to require the authority to set a predefined budget with a lower council tax.
17. The Welsh Assembly Government agrees that local people should have a stronger role in the determination of annual council tax, and legislative competence is being sought to enable the Assembly to legislate, via a Measure, for the most appropriate form of referendum procedure to be adopted for Wales.

The Requirements for Wales

18. The Welsh Assembly Government wishes to give further consideration to what is the best option for Wales in terms of controlling the setting of excessive council tax increases and the holding of referendums in connection with proposed excessive council tax increases. Legislative competence is therefore sought to enable the Assembly to implement appropriate changes to the council tax capping provisions as they apply in relation to Wales. The framework power would enable the Assembly to legislate about referendums on council tax increases, by inserting a matter into Field 12 (local government) of Schedule 5 to the 2006 Act. These powers would enable the Welsh Assembly Government to design an approach to defining the principles of excessiveness, the timing of the process and the resulting sanctions that is appropriate for Wales and which reflects the particular partnership agenda in Wales.
19. Currently, in terms of council tax, the Assembly has the competence to legislate only on the council tax payable in respect of dwellings that are not the main residence of an individual. However, all of the executive powers of the Secretary of State within the 1992 Act relating to council tax have been transferred to the Welsh Ministers and are exercisable in relation to Wales by them.

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Scope of the proposed powers

20. Matter 12.19 will confer legislative competence on the Assembly in respect of referendums on council tax increases.
21. The powers would enable the Assembly to legislate for the circumstances in which referendums must be held on proposed council tax increases and the process to be followed. This would include defining the principles of excessiveness that would trigger the need for a referendum, the timing of any referendum process, the procedure and format of the referendums that are to be held and the resulting sanctions that authorities would face in the event that they fail to follow the statutory process. The Assembly could make provision about:
 - The publication of draft principles of excessiveness as a matter of routine at the time of the provisional local government settlement announcement in mid to late October. The draft principles could be subject to consultation along with the draft local government settlement proposals, with a view to the principles being confirmed at the time that the local government finance report detailing the total amount of grant that the Welsh Ministers have determined to pay to the authorities in the following financial year, is laid for debate and approval by the Assembly in December.
 - Allowing authorities to conduct referendums with different options for increasing the council tax in their area, at least one of which must not be deemed excessive.
 - A requirement that in the event of the majority of electors voting against an “excessive” increase, an authority would be required to set a budget requirement that was consistent with the final excessiveness principles. There would however be no explicit requirement to prepare a “shadow budget” reflecting the principles of excessiveness.
 - Powers to specify arrangements for a referendum. This would include the framing of any referendum question and balloting arrangements.
 - Provision that the costs of any referendum would be borne by the triggering authority.
22. The legislative competence includes making arrangements for the holding of referendums in relation to increases in council tax proposed by county and county borough councils, police authorities (which will become police and crime commissioners in April 2012), and fire and rescue authorities (should the Welsh Ministers determine that they are to be major precepting authorities) in Wales. The Assembly will not be able to legislate in respect of town and community councils in connection with

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the setting of the level of council tax. Current arrangements would continue in respect of council tax capping in Wales until the Assembly legislates.

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DEVELOPMENT MANAGEMENT FUNCTIONS

Background

23. Executive powers in relation to town and country planning have been devolved to the Welsh Ministers. Framework powers were included in the Planning Act 2008 which allow the Assembly to pass Measures in relation to development plans and plans of the Welsh Ministers. Clause 119 of the Bill confers legislative competence on the Assembly in relation to development management functions exercised by the Welsh Ministers and local planning authorities in Wales by adding four matters to Field 18 (town and country planning) in Part 1 of Schedule 5 to the 2006 Act. This means that the Assembly will have powers to pass Measures in relation to the Matters specified. The Welsh Assembly Government would consult on detailed proposals for legislative change ahead of any proposed Assembly Measure.

Policy background

24. The statutory framework for much of the planning system in England and Wales is consolidated in the Town and Country Planning Act 1990. But the planning system in Wales also has distinct characteristics compared to England, reflecting the devolution of executive powers on planning to the Welsh Ministers. In general terms, the policy aim of the Welsh Assembly Government for development management is similar to that of the UK coalition Government in relation to England. There are, however, certain differences which warrant discrete provision for Wales.

Planning applications

25. Twenty two single tier authorities, - county and county borough councils - ranging in population from 57,000 to 340,000, are responsible for the delivery of development management functions under the Town and Country Planning Acts, plus three National Park Authorities with a combined population of 81,000. These twenty five local planning authorities are close to their communities. All are currently expected to provide the full range of planning functions, including the provision of specialist technical advice. Cross authority collaboration is encouraged under the aegis of the Wales Spatial Plan.
26. Within the context of tightening fiscal policy, the Welsh Assembly Government wants to achieve:
- more effective and resilient services for the people of Wales;
 - reduced costs for the public purse; and
 - more integrated services driven by collaboration.
- These general service objectives should be reflected in planning services provided by the public sector.

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27. Informed by the recently published report by GVA Grimley (Study to Examine the Planning Application Process in Wales, June 2010), the Welsh Ministers want the planning application process to be more efficient. The report identified concerns about the significant variation between local planning authorities in terms of their workload, and the way they operate the application process, from the pre-application and validation stages to decision-making. Key themes emerged which highlighted where change is needed, including reducing uncertainty and delays, increasing consistency between local planning authorities by ensuring the weakest improve to match the best, the need for planning decisions to be made at the appropriate level and the need for local planning authorities to be more responsive by increasing the use of shared resources and expertise through better cross boundary working.

Enforcement

28. Part VII of the Town and Country Planning Act 1990 provides the statutory basis for enforcement in Wales. Enforcement of breaches of planning is a discretionary function under UK legislation.
29. A review of current enforcement procedures in Wales by the Welsh Assembly Government, the results of which were published on 11 December 2009 (Planning Enforcement System Review - Conclusions of the Welsh Assembly Government), revealed areas of concern that merit further research, including the time limits for taking enforcement action. The further research may necessitate changes beyond the scope of the Assembly Government's current powers. Framework powers would enable the Welsh Assembly Government to propose legislation, informed by independent research and consultations within Wales.

Scope of the proposed powers

30. The Assembly Government's recent reviews of the operation of the planning application process and the enforcement regime in Wales (referred to above) have highlighted the need for further research and public consultation in certain areas. Legislative competence for the Assembly is sought so that it can propose legislation to take forward its policies at the appropriate time. Powers are not sought in relation to the appeal system.
31. Matter 18.4 will allow the Assembly to pass Measures in relation to the preparation, processing, consideration and determination of planning applications seeking planning permission for development or for amendment of existing planning permissions. This includes requirements for publicising and consulting on applications for planning permission, taking into account the opinions of local people and others and offering pre-application advice to prospective developers.

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32. The Assembly's current competence is not sufficient to allow, for example, the Assembly to pass a Measure which may make provision in connection with:
- A statutory hierarchy of development to determine how planning applications for specified categories of development are handled. For example, the Assembly may wish to confer powers on the Welsh Ministers to:
 - (i) prescribe the type of development to be included within each category and the procedures for making and handling planning applications for each category; and
 - (ii) specify the body to determine applications for planning permission for specified categories of development with the aim of ensuring a proportionate and efficient approach for dealing with planning applications depending upon their scale and complexity. Provisions of this nature would enable the Welsh Ministers to identify the relevant body and procedures for determining major types of developments, including, for example renewable energy or waste planning applications.
 - A national scheme of delegation requiring all local planning authorities to delegate to an appointed officer the determination of applications for planning permission for specified classes of development. This would ensure clarity and consistency for the determination of planning applications across Wales, clearly setting out which developments are to be determined by elected members, and which delegated to officers and the process for doing so.
 - A requirement for pre-application discussions to be undertaken for prescribed classes of development and a provision to prescribe a fee as required.
33. Matter 18.5 will allow the Assembly to pass Measures in relation to the exercise or discharge of local planning authority functions otherwise than by the authority whose functions they are.
34. The Assembly's current competence is not sufficient to allow, for example, the Assembly to pass a Measure which may make provision in connection with:
- The definition of a local planning authority. The Assembly may, for example, wish to provide that the exercise of a local planning authority's functions for a particular area be undertaken by 2 or more local authorities; a joint board or committee, a Welsh Planning Commission or the Welsh Ministers. It may wish to remove the requirement for all unitary authorities and national park authorities to be a local planning authority.

The provision of shared planning services, including the provision of specialist planning services. For example, the Assembly may wish to require certain local planning authorities to share a planning service provided by a lead authority so that the shared planning

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service makes recommendations to the local planning authority to which an application for planning permission has been made with that local planning authority determining the application. This could include giving the Welsh Ministers powers to take appropriate action in relation to failing authorities and to deal with cases where voluntary collaboration has not been considered.

35. Matter 18.6 will allow the Assembly to pass Measures in relation to planning permission ceasing to have effect where the development to which it relates has begun but not completed.
36. Matter 18.7 will allow the Assembly to pass Measures in relation to the consideration of, and taking of, enforcement action to prevent, restrict or remove development which is or would be in breach of planning legislation or to determine the lawfulness of development.
37. The Assembly's current competence is not sufficient to allow, the Assembly to pass a Measure which may make provision in connection with the enforcement of breaches of planning control, for example:
 - The removal of the ability to apply for planning permission for development the subject of ongoing prosecution for non-compliance with an enforcement notice.
 - The removal of the requirement for Welsh Ministers to confirm unopposed completion notices.
 - The introduction of additional powers for local planning authorities to remove works, and recover the costs incurred by them in doing so, where a completion notice has been confirmed.
 - The determination of appeals under s217 of the 1990 Act (proper maintenance of land) by the Welsh Ministers rather than by the Magistrates' Courts.
 - The removal of the time limits for taking enforcement action to discourage deliberate evasion.

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HOUSING REVENUE ACCOUNT SUBSIDY (HRAS) REFORM

Background

38. Housing is one of the fields listed in Part 1 of Schedule 5 to the 2006 Act (Field 11). Legislative competence has already been conferred on the Assembly in the field of housing, through the National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010 and the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010. These matters include:

Matter 11.2

Social Housing Providers

Matter 11.3

Relevant Social Housing Bodies

39. The Bill provides for the Housing Revenue Account (HRA) Subsidy system to be abolished in respect of local authorities in England, on the basis of a redistribution of the overall debt (see Chapter 3 of Part 6). In Wales, the Welsh Assembly Government is undertaking a review of the HRA system. That review is not yet concluded and so firm proposals for primary legislation affecting Wales are yet to be determined. Clause 152 confers competence on the Assembly to legislate in respect of local authority HRA, the HRA Subsidy System and necessary consequential legislation in relation to capital finance. This is done by adding Matters 11.9; 11.10 and 11.11 to Field 11 in Schedule 5 to the 2006 Act, giving the Assembly powers to pass Measures in relation to the matters specified. The Welsh Assembly Government would consult on detailed proposals for legislative change ahead of any proposed Assembly Measure.

Policy background

Description of the Housing Revenue Account Subsidy System

40. For many years legislation has sought to ensure that income and expenditure relating to local authority housing is ring fenced, so that in broad terms, income from, and expenditure on housing is accounted for separately from other items of local authority expenditure. This ring-fenced account is known as the "Housing Revenue Account". The relevant primary legislation is currently contained in Part VI of the Local Government and Housing Act 1989 ("the 1989 Act").
41. There are currently complex rules in both primary and secondary legislation for the administration of the account. In addition to ring-fencing local authority revenue expenditure on housing, these rules include provisions for subsidy to be paid by central government to local housing authorities, in respect of the provision of their housing stock. The rules in some cases result in a so-called 'negative' subsidy which is payable by the local housing authorities to central government. These

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arrangements for subsidy are known as the “Housing Revenue Account Subsidy”. In Wales, the central government functions in connection with Housing Revenue Accounts and Subsidies have been devolved to the Welsh Ministers. Thus all of the powers of the Secretary of State contained in Part VI of the 1989 Act are, in Wales, powers of the Welsh Ministers.

42. The Housing Revenue Account Subsidy (HRAS) is classified as Annually Managed Expenditure (AME) by HM Treasury. This means that the funds are accounted for outside the main budget expenditure of the Welsh Assembly Government. Annual forecasts of HRAS in Wales are provided to HM Treasury.
43. HRAS is based on “notional income and expenditure” derived from information provided by local authorities. The key components making up HRAS are:
 - notional income from rents;
 - other reckonable income;
 - management and maintenance costs;
 - charges for capital; and
 - other items of reckonable expenditure.
44. The HRAS system is administered, and subsidy either paid, or negative subsidy collected, under provisions set out in sections 79 to 86 of the 1989 Act and in related subordinate legislation. Under Section 80 of the 1989 Act, Welsh Ministers annually determine the basis for the calculation of HRAS by making secondary legislation.
45. Under section 87A of the 1989 Act, the Welsh Ministers also have powers to make secondary legislation to change the some aspects of the law relating to Housing Revenue Accounts. This includes providing for exemptions from the requirement to keep a Housing Revenue Account. This exemption can relate (for example) to specified cases, or to all of an authority’s HRA property. This would mean that this property is also outside the HRAS system for exempted dwellings.
46. Section 80B of the 1989 Act empowers the Welsh Ministers to agree with a local housing authority in Wales that the provisions of the Act relating to HRAS do not apply to the authority or to specified property.
47. When a local authority transfers its housing stock, following a positive tenant's ballot, the stock that was held in the HRA is transferred to a newly established Registered Social Landlord. In such cases the local authority is subsequently required to close its Housing Revenue Account and is therefore no longer part of the HRAS system. Of the 22 Local Authorities in Wales, 10 have transferred their stock to Registered Social Landlords and 12 Local Authorities are currently included within the HRAS system. Of the 12 remaining, one of these is proceeding to transfer and a further three authorities have resolved to ballot their tenants on proposals for transfer.

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48. All of the current 12 authorities are in a negative HRAS position which means that at present approximately £78M per annum is paid by Welsh Local Housing Authorities to the Welsh Assembly Government. The sum collected is notified to HM Treasury and that sum is set against the total grant paid to the Assembly by HM Treasury

National Housing Strategy

49. The Welsh Ministers' National Housing Strategy, "Improving Lives and Communities – Homes in Wales", published in April 2010, sets out the challenges in meeting Wales' housing requirements, the priorities and the actions that will be taken. It sets out as policy priorities the need to increase the number of affordable homes for purchase or rent, and to improve the standard of homes to make them more energy efficient and sustainable. In this context, paragraph 3.9 (vii) sets out the Assembly Government's commitment to complete the reviews of the HRAS system and social rents policies, in order to create an environment for local authority housing that meets the policy priorities.

Policy review of the HRAS system in Wales

50. In October 2007, the Deputy Minister for Housing established a task and finish group, led by former Welsh Minister Sue Essex, to carry out a review in the context of the "One Wales" agenda, to explore the barriers and opportunities presented by the Assembly Government's priority to deliver more affordable homes in Wales by 2011. In June 2008, the Group published its report titled "Affordable Housing in Wales". Amongst its conclusions were:

Recommendation 36

Wales needs to be represented on the Working Party on the future of Housing Revenue Accounts set up by the UK Government. Early discussions need to be held with the WLGA on the preferred direction for Wales.

51. All the recommendations from this review were considered through an implementation programme in which the Assembly Government worked collaboratively with representatives of local authorities, social landlords and others. In consequence of discussion of recommendation 36, a review of the HRA and HRAS regimes (the HRA Review) began in December 2009 supported by external analysis and advice. A steering group including representatives of local government is overseeing the review.
52. To date, the HRA review has considered an assessment of the current features of the HRAS and a comparison has been made of the differing arrangements for England and Scotland. Whilst Welsh Ministers have the legal powers to make some changes to the existing HRAS system, Treasury rules on the handling of Annually Managed Expenditure

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mitigate against this, as any reduction to AME budgets would have to be met from Welsh budgets. Consequently, there is a need for Welsh Ministers to negotiate a revised and comprehensive financial settlement with Treasury before options for reform can be fully developed and implemented. Besides the steering group, no public consultation has taken place in Wales regarding a change in policy on HRAS.

Comparison with the UK Government policy for England

53. The Bill provides for the HRAS system to be abolished in respect of local authorities in England, on the basis of a redistribution of the overall debt. This follows a public consultation on the principles and detailed discussion with local government in England.
54. In Wales, the policy objective of offering local government greater autonomy and flexibility for local government is shared, but while the review of HRAS continues and a financial settlement with the Treasury remains to be concluded, the Welsh Ministers consider it would be premature commit to legislation along the same lines as that proposed for England.

Rationale for framework powers

55. While the Welsh Ministers have significant devolved powers in the administration of the HRAS system, neither they nor the Assembly have the power to repeal or alter much of the underlying primary legislation. The primary legislation as it stands would not permit some the possible outcomes of the HRAS review taking place in Wales. For example, it would not be possible to abolish the HRAS system in Wales unilaterally, nor would it be possible to impose a financial settlement that was not agreed with all local authorities in Wales. The existing legislation does not permit a financial settlement to be imposed on local authorities, which might be required as part of abolition of the HRA system.
56. It is not clear at present the nature of the legislation that will be required in future. For this reason the option of providing similar clauses in the Bill in respect of Wales to those relating to England has been rejected. If the Bill took this approach, it is premature to suppose that the legislation would be used or the powers provided would be the correct ones while the review is continuing, while discussions with HM Treasury regarding a financial settlement are taking place and in advance of public consultation.
57. The preferred approach is therefore to make provision in the Bill for the devolution of powers to the Assembly. Not taking advantage of this opportunity would risk considerable delay in making changes once the review in Wales is complete, while any alternative provisions in the Bill would pre-empt the outcome of the review.

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Scope of the proposed powers

58. The scope of the framework power encompasses the HRA and the HRAS system, including all that currently relates to these systems. Clause 152 amends Part 1 of Schedule 5 to the 2006 Act by inserting three new matters into Field 11 (Housing):

- *Matter 11.9* relates to local authority accounts which relate to their housing functions. It would include competence over Housing Revenue Accounts as currently provided for by Part VI of, and schedule 4 to, the Local Government and Housing Act 1996.
- *Matter 11.10* relates to borrowing by local authorities for the purposes of their housing functions.
- *Matter 11.11* relates to subsidies and related payments relating to local authorities housing functions. These subsidies or payments may be paid either by the Welsh Ministers or by a local authority.

General Restrictions On Competence

Geographical limits

59. Section 94 of the 2006 Act provides that a provision of an Assembly Measure is outside the Assembly's legislative competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation. The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the Welsh Ministers, Welsh local authorities or any other public authority functions which did not relate to Wales. In practice, any measure would only apply to local authorities in Wales.

Minister of the Crown Functions

60. By virtue of Part 2 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter or remove the functions of a Minister of the Crown without the consent of the relevant Secretary of State (and may not create new Minister of the Crown functions at all, except in relation to the Welsh language). In relation to any future proposals for Assembly Measures that may impact on Minister of the Crown functions, the appropriate UK Government Departments would first be consulted and agreement sought before any change to, or modification of, those functions could be made.

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61. The Statement of Funding Policy issued by HM Treasury states that any increases in Annually Managed Expenditure programme spending, which arise from policy decisions taken by the respective devolved administrations will be met from their respective budgets and not AME.