



Assembly Members

30 October 2015

UK Government's draft Wales Bill

Following my oral statement on Tuesday 20 October, I undertook to send you a table of the Acts of the Assembly introduced by the Welsh Government which have received Royal Assent but which would be outside competence under the draft Wales Bill. This is attached.

This material is a summary of the detailed analysis I provided to the Secretary of State under cover of my letter of 7 September (and is contained in the correspondence I placed in the Library for the benefit of Members on Tuesday (specifically Table 1, pp 62-67)), but updated to take account of the published draft Bill.

The Domestic Violence and School Standards Acts engaged reservations which have changed between receipt of the initial draft Bill from the UK Government at the end of July and the Bill published on 20th October. Further consideration will need to be given as to whether these Acts could have been passed under the published Wales Bill in light of the amended reservations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES

Table of Assembly Act provisions introduced by the Welsh Government which have received Royal Assent but which could not be enacted under the Wales Bill published 20 October 2015

Assembly Act	Relevant provision(s)	Reasons why the same provision could not be enacted under the new Wales Bill settlement
Local Government Byelaws (Wales) Act 2012	Generally	<p>Paragraphs 3 and 4 of Schedule 7B (criminal law and civil penalties) as a result of the powers to create offences and fixed penalties.</p> <p>Paragraph 8 of Schedule 7B. Minister of the Crown consent would have been required.</p> <p>The Act imposes functions on local authorities. It is not clear whether local authorities are “Welsh public authorities” for the purposes of reservation 218 of Schedule 7A and paragraph 8 of Schedule 7B due to their non-devolved functions and powers exercisable outside Wales.</p>
Food Hygiene Rating (Wales) Act 2013	Section 14	<p>The imposition of functions on the Food Standards Agency would have breached the restriction on imposing functions on reserved authorities (paragraph 8 of Schedule 7B).</p> <p>Minister of the Crown consent would have been required.</p>
Public Audit (Wales) Act 2013	<p>Generally</p> <p>Specifically: Schedule 4, paragraph 24</p>	<p>It is questionable whether the Wales Audit Office and/or the Auditor General for Wales would meet the definition of a “Welsh public authority” in reservation 218 of Schedule 7A and paragraph 8 of Schedule 7B as a result of the need for their functions to be “exercisable only in relation to Wales” and “wholly or mainly functions that do not relate to reserved matters”.</p> <p>Minister of the Crown consent could have been required.</p>

Assembly Act	Relevant provision(s)	Reasons why the same provision could not be enacted under the new Wales Bill settlement
Local Government (Democracy) (Wales) Act 2013	Section 49(7) and Part 5	<p>Minister of the Crown consent would have been required.</p> <p>Engagement of reservation 154 (employment and industrial relations) due to the conferral of functions on the Independent Remuneration Panel for Wales to make recommendations to relevant authorities about proposed changes to salaries of heads of paid service and any policies about such pay.</p>
Human Transplantation (Wales) Act 2013	Section 15	<p>The imposition of functions on the Human Tissue Authority would have breached the restriction on imposing functions on reserved authorities (paragraph 8 of Schedule 7B).</p> <p>Minister of the Crown consent would have been required.</p>
Further and Higher Education (Governance and Information) (Wales) Act 2014	Section 4	<p>The definition of 'business association' in section C1 (reservations 63 and 64) may catch designated institutions (a type of further education institution which are usually companies limited by guarantee) which may not satisfy the exception relating to public bodies.</p>
Control of Horses (Wales) Act 2014	Section 7	<p>This section concerns the dispute resolution procedure for disagreements between horse owners and the local authority.</p> <p>Engagement of reservation 184 (arbitration).</p>
Social Services and Well-being (Wales) Act 2014	Sections 78, 85, 127, 134, 138, 139 and Part 4.	<p>Section 127 (which concerns adult protection orders) and section 78 (which involves protecting members of the public from serious injury) may relate to reservation 42 (the subject-matter of Parts 1 to 6 of the Anti-social Behaviour Crime and Policing Act 2014).</p>

Assembly Act	Relevant provision(s)	Reasons why the same provision could not be enacted under the new Wales Bill settlement
		<p>Section 85 and Schedule 1 (which concern payments in respect of care from those with parental responsibility) may relate to reservations 141 and 142 (child support).</p> <p>Section 134 designates the chief officer of police for specified police areas as a partner on safeguarding boards.</p> <p>This would be outside competence as a result of one or more of reservations 38-40.</p> <p>Sections 138 and 139 (which concern safeguarding board and their partners) would have required Secretary of State consent under paragraph 8 of Schedule 7B.</p> <p>Part 4 - elements of duties relating to those detained in secure estate may relate to reservation 192 (offender management).</p>
Agricultural Sector (Wales) Act 2014	Section 5 in its interaction with section 24 of the National Minimum Wage Act 1998	Minister of the Crown consent would have been required.
Housing (Wales) Act 2014	Section 95	Paragraph 8 of Schedule 7B would have meant that Minister of the Crown consent would have been required for the conferral of the function of co-operation of local authorities and other public bodies in England.
Higher Education (Wales) Act 2015	Entire Act	It is questionable whether the Higher Education Funding Council for Wales is a 'Welsh public authority' for the purposes of paragraph 8 of Schedule 7B, as it exercises some functions in England.

Assembly Act	Relevant provision(s)	Reasons why the same provision could not be enacted under the new Wales Bill settlement
		Minister of the Crown consent may therefore have been required.
Well- being of Future Generations (Wales) Act 2015	Section 30 and generally.	<p>Section 30 authorises a public services board to invite the participation of the relevant Police and Crime Commissioner and chief constable. This could be outside competence as a result of one or more of reservations 38-41.</p> <p>It is highly likely that provisions of the Act would constitute ‘regulation’ therefore falling outside the competence of the Assembly in respect of the first exception in reservation 206.</p> <p>The definition of ‘Welsh Public Authority’ in reservation 218 of Schedule 7A and paragraph 8 of Schedule 7B would also have restricted the Assembly’s competence.</p> <p>Minister of the Crown consent would have been required</p>
Planning (Wales) Act 2015	<p>Section 50 and paragraph 27 of Schedule 5</p> <p>Paragraphs 15 and 16 of Schedule 4.</p>	<p>Engagement of reservation 183 (the subject-matter of the Inquiries Act 2005).</p> <p>Engagement of reservation 6 (single legal jurisdiction of England and Wales and tribunals).</p>
Qualifications (Wales) Act 2015	Section 35	This provision may amount to a modification of Ofqual’s functions and therefore would have required Minister of the Crown consent under paragraph 8 of Schedule 7B.