

WALES BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Wales Bill as brought from the House of Lords on the 18 January 2017.
- 2 These Explanatory Notes have been prepared by the Wales Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 63, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 177 were tabled in the name of the Minister.

Commentary on Lords amendments

Lords Amendments to Clause 1: Permanence of the National Assembly for Wales and Welsh Government

Lords Amendment 1

- 6 Lords Amendment 1 would amend the new section A2 that is to be inserted into the Government of Wales Act 2006 by clause 1, to clarify that the law that applies in Wales includes a body of Welsh law made by the National Assembly for Wales ("the Assembly") and Welsh Ministers. This would make it clear that the law that applies in Wales is not limited to just that body of Welsh law, given the other bodies of law that also apply in Wales, such as the common law, legislation made by Parliament etc.

Lords Amendments to Clause 3: Legislative competence

Lords Amendment 2

- 7 Lords Amendment 2 would clarify that, when considering whether an Act of Parliament provision is "devolved" or not, the parts of the legislative competence test dealing with consent and consultation in paragraphs 8, 10 and 11 of Schedule 7B (or anywhere else) are to be ignored. This is a minor amendment that would ensure consistency of wording with an equivalent provision in paragraph 12(1)(a) of Schedule 7B.

Lords Amendments to Clause 4: Wales public authorities

Lords Amendments 3, 4, 8, 43, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 102, 106, 112, 115, 118, 136, 148, 149, 153, 154, 155, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167 and 168

- 8 Lords Amendment 3 would give “Wales public authorities” a different name: “devolved Welsh Authorities”. Lords Amendment 4 would set out what devolved Welsh authority means. Universities are classified as a devolved Welsh authority by virtue of specific provision in Lords Amendment 4. This wording would avoid identification of universities as public authorities. This and the provision in the Bill regarding public authorities continue to apply only for the purposes of the resulting Act. Lords Amendments 8, 43, 76 to 79, 81 to 90, 102, 106, 112, 115, 118, 136, 148, 149, 153, 154, 155, 158, and 159 to 168 would make consequential amendments to clauses and schedules in this Bill.

Lords Amendments to Clause 5: Power to make provision about elections

Lords Amendment 5

- 9 Lords Amendment 5 would insert into clause 5 an amendment to section 7 of the Political Parties, Elections and Referendums Act 2000 (PPERA 2000), which provides for the Electoral Commission to be consulted on certain changes to electoral law. This amendment would require the Secretary of State to consult the Electoral Commission before exercising the power to make regulations about the combination of polls under new section 13A of the Government of Wales Act 2006, inserted by clause 5, by adding a reference to new section 13A in section 7(2)(f) of PERA 2000.

Lords Amendments to Clause 9: Super-majority requirement for certain legislation

Lords Amendments 6 and 99

- 10 Lords Amendments 6 and 99 to clause 9 and Schedule 2 concern the limit placed by section 51 of GoWA on the number of people who may hold the office of Welsh Minister or Deputy Welsh Minister (this limit does not include the First Minister). Lords Amendment 99 would confer on the Assembly legislative competence to modify (or repeal) the relevant provision. Lords Amendment 99 would provide that any Assembly Bill which seeks to change the number of people who may hold the office of Welsh Minister or Deputy Minister is subject to a super-majority vote in the Assembly.

Lords Amendments to Clause 13: Financial control, accounts and audit

Lords Amendments 7

- 11 Lords Amendment 7 would ensure that the accountability framework which is being devolved to the Assembly in this Bill provides effectively for the Assembly’s oversight of devolved Welsh authorities. The Assembly would be able to legislate to make any devolved Welsh authority accountable for funding it receives that is derived from the Welsh Consolidated Fund.

Lords Amendments after Clause 17: Welsh rates of income tax: removal of referendum requirement

Lords Amendment 9

- 12 Lords Amendment 9 would insert a new clause on lending for capital expenditure. This amendment would make a change which was recently announced as part of the new agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework.
- 13 It would set in primary legislation changes to the Welsh Government's capital borrowing cap, which will be increased from £500m to £1bn. The UK Government would still be able to make further changes to this cap through secondary legislation, but would not be able to reduce this below £1bn. There would remain no restrictions about how the Welsh Government could use its borrowing powers to deliver its devolved responsibilities.

Lords Amendments to Clause 21: Transferred Ministerial functions

Lords Amendment 10

- 14 Lords Amendment 10 would remove clause 21 from the Bill. The Delegated Powers and Regulatory Reform Committee in their Fifth Report of Session 2016-17 criticised the scope of clause 21, considering that the breadth of the power to modify previously conferred or transferred functions was too great, particularly as it enabled the modification of provisions in primary legislation. As provision would be needed to reorganise the executive functions of ministers as a consequence of Lords Amendments 28 to 32 to the devolution boundary for water and sewerage services, Lords Amendment 10 would remove this clause from its original place in the Bill and replace with Lords Amendment 29 (see below) so as to qualify so that the power could only be exercised in relation to "water-related functions".

Lords Amendments to Clause 27: Bus service registration and traffic commissioners

Lords Amendments 11 and 12

- 15 Lords Amendments 11 and 12 would transfer additional executive functions to Welsh Ministers in relation to bus route registration on the face of the bill. This would mean that these functions would not have to be transferred separately via a transfer of functions order.

Lords Amendments to Clause 29: Transfer of executive functions in relation to Welsh harbours

Lords Amendments 13, 14, 15 and 16

- 16 Lords Amendment 13 would remove from clause 29 a transfer to the Welsh Ministers of functions under section 43(1) of the Harbours Act 1964, which relates to the repayment of loans made to harbour authorities. The transfer of functions under section 43(1) would instead be included in clause 30 by Lords Amendment 17.
- 17 Lords Amendment 14 would transfer to the Welsh Ministers the power in the Harbours (Loans) Act 1972 to make loans to harbour authorities to pay off capital debts, temporary loans and overdrafts in respect of harbours wholly in Wales, other than reserved trust ports

(as defined in clause 32).

- 18 Lords Amendments 15 and 16 would make consequential and drafting amendments to clause 29 (6) which provides a signpost to other clauses related to clause 29. Lords Amendment 16 would add a reference to the new clause which would be inserted by Lords Amendment 19 which requires consultation between the Secretary of State and the Welsh Ministers before the Secretary of State exercises functions in relation to two or more harbours, one of which is in wholly Wales and is not a reserved trust port.
- 19 Lords Amendment 15 would align the wording in clause 29(6)(a) with the wording in Lords Amendment 16.

Lords Amendments to Clause 30: Transfer of executive functions: amendments of the Harbours Act 1964

Lords Amendment 17

- 20 Lords Amendment 17 would amend section 43 of the Harbours Act 1964 so as to transfer to the Welsh Ministers functions concerning the payment and repayment of loans to harbour authorities in respect of harbours wholly in Wales, other than reserved trust ports (as defined in clause 32). The functions transferred include the power to set the repayment terms and interest payable and Lords Amendment 17 also enables loans to be made from the Welsh Consolidated fund and imposes accounting and reporting obligations on the Welsh Ministers and the Auditor General for Wales in respect of loans and repayments.

Lords Amendments to Clause 35: Cross-border exercise of pilotage functions

Lords Amendment 18

- 21 Lords Amendment 18 would apply the duties of the Secretary of State and the Welsh Ministers under clause 35 to consult or obtain consent from the other before making a harbour revision order that gives a harbour cross-border pilotage jurisdiction functions, to any person to whom the power to make harbour revision orders has been delegated under section 42A of the Harbours Act 1964.

Lords Amendments after Clause 35: Cross-border exercise of pilotage functions

Lords Amendment 19

- 22 Lords Amendment 19 would insert a new clause into the Bill. The new clause would require 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 clause 34, in relation to two or more harbours one, but not all, of which is wholly within Wales and is not a reserved trust port (as defined in clause 32).

Lords Amendments after Clause 35: Cross-border exercise of pilotage functions

Lords Amendment 20

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- 23 Lords Amendment 20 would insert a new clause into the Bill which would remove 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. Lords Amendment 20 would also remove reciprocal provisions imposing obligations on the Welsh Ministers to obtain the consent of the Secretary of State. Where and as appropriate, other provisions of the Bill would impose an obligation to consult or to obtain consent in cases covered by Lords Amendment 20.

Lords Amendments to Clause 36: Sections 34 and 35: supplementary

Lords Amendments 21, 22, 23, 24, 25 and 26

- 24 Lords Amendments 21 and 23 to 26 would extend the provisions in clause 36 disapplying duties to consult under clauses 34 and 35 where consultation is not reasonably practicable so that they apply to the duty of a Minister of the Crown (or a delegate of a Minister of the Crown) to consult under Lords Amendment 19. Lords Amendment 22 is a drafting amendment to remove unnecessary wording from clause 36(1).

Lords Amendments to Clause 37: Development consent for generating stations with 350MW capacity or less

Lords Amendment 27

- 25 Lords Amendment 27 would, by expanding the definition of “statutory provision” in section 36C of the Electricity Act 1989 (“the 1989 Act”) provide that future Acts of the Assembly which might be applicable to the consenting of electricity generating stations in Wales pursuant to the 1989 Act might also be applied to the variation of existing section 36 consents.

Lords Amendments after Clause 45: Marine conservation zones

Lords Amendments 28 and 137

- 26 Lords Amendment 28 would insert a new clause into this Bill which would amend Schedule 1. This would remove reservations relating to the appointment and regulation of water and sewerage undertakers as applied by Schedule 1. Similarly it would remove a reservation on the regulation of water supply licensees and sewerage licensees. These changes would devolve legislative competence for water and sewerage policy over all water and sewerage operators in Wales.
- 27 This amendment also would amend the Water Industry Act 1991 to require the Water Services Regulation Authority to make its annual report to the Welsh Ministers. The Welsh Ministers would be required to lay the annual reports before the Assembly and to publish them as appropriate. Lords Amendment 137 is a consequential amendment to Schedule 5.

Lords Amendments after Clause 45: Marine conservation zones

Lords Amendment 29

- 28 Lords Amendment 29 would insert a new clause which would provide a power to modify water-related functions. These include those that were previously 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 jurisdictions with the border between England and Wales, etc. This amendment also would allow such functions to be carried out concurrently or jointly between those ministers, or with the consent or in consultation with each other.

Lords Amendments to Clause 46: Intervention in case of serious adverse impact on sewerage services etc.

Lords Amendment 30

- 29 Lords Amendment 30 would replace clause 46 (intervention in case of serious adverse impact on sewerage services etc) with a new clause enabling 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, would have to be laid before the Assembly and Parliament. The existing powers of intervention over water would be repealed once a protocol was agreed and laid in the Assembly and Parliament (see note on Lords Amendment 32 below)

Lords Amendments after Clause 46: Intervention in case of serious adverse impact on sewerage services etc.

Lords Amendment 31

- 30 Lords Amendment 31 would insert a new which would introduce a new 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. The Secretary of State (in practice the Secretary of State for the Environment, Food and Rural Affairs) would have a reciprocal duty in relation to consumers of water services in Wales.

Lords Amendments after Clause 46: Intervention in case of serious adverse impact on sewerage services etc.

Lords Amendment 32

- 31 Lords Amendment 32 would insert a new clause which would repeal 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 (see above, note on Lords Amendment 30). This repeal would not come into force until a water protocol had been agreed and laid before, and approved by, the Assembly and Parliament.

Lords Amendments before Clause 47: Transfer of functions in relation to excepted energy buildings

Lords Amendment 33

- 32 Lords Amendment 33 would insert a new clause into the Bill. Lords Amendment 33 would transfer to the Welsh Ministers certain fisheries functions exercisable in connection with Welsh boats which are currently exercised by Ministers of the Crown in relation to waters beyond the seaward limits of the Welsh zone.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendments 34 and 131

- 33 Lords Amendment 34 would insert a new clause into the Bill on financial assistance for inland waterway and sea freight. This would amend 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. Lords Amendment 131 is consequential, and would add the powers to give financial assistance under Lords Amendment 34 to a list of functions of Ministers of the Crown which are exercisable concurrently or jointly with the Welsh Ministers listed in Schedule 4.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 35

- 34 Lords Amendment 35 would insert a new clause into the Bill regarding the Maritime and Coastguard Agency. Lords Amendment 35 would amend 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 for ships in Wales and the health and safety of persons on ships in Wales.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 36 and 52

- 35 Lords Amendment 36 would insert a new clause on gaming machines on licensed betting premises to devolve 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. These powers are consistent with those devolved to the Scottish Parliament and Scottish Government in the Scotland Act 2016. The power permits variation of the number of such machines 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. Lords Amendment 52 to Schedule 1 is consequential on Lords Amendment 36. This would add the relevant exception to the reservation in Section B18 - Betting, gaming and lotteries in Schedule 1.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 37

- 36 Lords Amendment 37 is part of a series of amendments which would insert new clauses which have been developed in liaison with the Welsh Government and the senior judiciary, to make the workload of the devolved Welsh Tribunals easier to manage. Lords Amendment 37 would introduce a new clause on the Welsh Tribunals. Subsection 1 lists the Welsh Tribunals which would fall under the President of Welsh Tribunal's remit. Subsections 2 - 4 would provide that the list could be updated or amended (for example, if a new Tribunal were created to deal with a specific issue) through an Order in Council, subject to the affirmative procedure unless the amendment were needed because a particular tribunal had ceased to exist, or was purely consequential.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 38, 146, 147, 150, 152, 156, 157 and 177

- 37 Lords Amendment 38 would insert a new clause into the Bill on the President of Welsh Tribunals. The amendment would create a new statutory office of President of Welsh Tribunals to be appointed by the Lord Chief Justice. It would set out the key responsibilities of the President of Welsh Tribunals and what he or she must have regard to in carrying out the functions of that office, including the need to ensure that Welsh Tribunals were accessible and that proceedings were conducted fairly and efficiently. It would also make it clear that the President of Welsh Tribunals would be responsible for appropriate arrangements for training, guidance and welfare of members of the Welsh Tribunals. Lords Amendment 132 would introduce a new Schedule (see explanation below), which would make further provision about the appointment of the President of Welsh Tribunals and connected matters. Lords Amendments 146, 147, 150, 152, 156 and 157 would amend Schedule 5 and make consequential changes to other primary legislation. Lords Amendment 177 is a consequential change that would change the long title of the Bill to include Welsh tribunals.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 39

- 38 Lords Amendment 39 would insert a new clause into the Bill which would allow the President of Welsh Tribunals to issue practice and procedural directions for the Welsh Tribunals and would provide a similar power for the president or chair of an individual Welsh tribunal to issue directions for his or her tribunal.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 40

- 39 Lords Amendment 40 would insert a new clause into the Bill on cross-deployment of members of the Welsh tribunals. This would amend existing legislation where necessary to allow members of the Welsh tribunals to be deployed between the different tribunals listed in subsections 1 to 7 and which fall within the President of Welsh Tribunals' remit.

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Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 41

- 40 Lords Amendment 41 would insert a new clause into the Bill on cross-deployment of tribunal members and judges. Lords Amendment 41 relates to deployment between the Welsh Tribunals and England and Wales courts and tribunals. It sets out the circumstances and process for this cross-deployment.

Lords Amendments after Clause 48: Renewable energy incentive schemes

Lords Amendment 42

- 41 Lords Amendment 42 would insert a new clause to give the Lord Chancellor power to amend the list of tribunals' judges who could be deployed to the Welsh Tribunals. This power would be limited to judges who sit in the reserved tribunals.

Lords Amendments to Clause 55: Commencement

Lords Amendments 44, 45 and 46

- 42 Lords Amendment 44 would provide for the commencement of the provisions in Lords Amendment 9. The effect would be that these provisions would be commenced at the same time as those in clause 17, two months after Royal Assent.
- 43 Lords Amendment 45 would facilitate the early commencement (at a point two months after Royal Assent) of the provisions of clause 41 of the Bill which would allow the Secretary of State, simultaneously with the consenting of Nationally Significant Infrastructure projects in the fields of energy generation and transmission, also to consent certain other works necessarily associated with or ancillary to the principal project.
- 44 Lords Amendment 46 would bring subsection 2 of Lords Amendments 28, Lords Amendment 30 and Lords Amendment 31 into force at the end of the period of two months following Royal Assent. The other amendments would come into force by order.

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

Lords Amendments 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 80, 91, 92, 93, 95, 105, 108, 134 and 135

- 45 Lords Amendment 47 would amend the General Restrictions in Part 1 of Schedule 1 in respect of The Constitution. Lords Amendment 47 would have the effect of ensuring that the Assembly, when legislating in relation to a devolved subject area, can provide for such legislation to apply to Crown property. The general reservation of the Crown is maintained, but the amendment would create a "carve out" from that reservation in relation to Crown property. The amendment would also create some specific exceptions to this carve out, so that certain areas remain reserved, such as the hereditary revenues of the Crown, the royal arms and standard and the compulsory acquisition of Crown property.

- 46 Lords Amendment 48 would amend the General Restrictions in Part 1 of Schedule 1 in respect of the single legal jurisdiction of England and Wales by removing sub-paragraphs (2) and (3) of paragraph 6 to provide clarity to the purpose test. Sub paragraphs 6(2) and (3) set out explicitly that the Assembly would be able to provide for devolved decisions or orders to be appealable to a court or to require a court order or be made by a court on application, in order for them to be procedurally effective (e.g. to ensure compliance with Article 6 of the European Convention on Human Rights). In doing so, they enable the Assembly to legislate when establishing a new type of order made by an executive body in a devolved area, and to have an appeal against the order to a court or to require a court to approve the order, where this is ancillary to the legislation establishing the order. However, the purpose test provided under the new section 108A to GOWA inserted by clause 3 of the Bill encompasses the legislative provision allied to, or part of, a devolved purpose, that would necessitate the establishment of new types of order, provide for appeals against the order to a court or to require a court to approve the order. Accordingly, the explicit exceptions in paragraphs 6(2) and (3) cast doubt on the proper breadth of the purpose test and Lord Amendment 48 would remove them.
- 47 Lords Amendment 49 would amend the General Restrictions in Part 1 of Schedule 1 in respect of the single legal jurisdiction of England and Wales by clarifying exceptions to matters reserved by paragraph 6(1) in relation to the courts and civil and criminal proceedings. "Civil proceedings" includes proceedings in the family court. This exception is intended to reflect the existing exception for what may be described as the functions of Cafcass Cymru. Lords Amendment 49 would clarify the exception by listing the individual elements i.e. welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and Welsh family proceedings officers.
- 48 Lords Amendment 50 would amend the defence section of Schedule 1 by removing sub-paragraph 2. The purpose of its removal would be to forestall confusion about the conferral of sea fishing enforcement powers. Removal of sub-paragraph 2 would have no effect either on the powers afforded to Welsh Ministers by existing legislation to confer enforcement powers in relation to sea fishing or on the automatic conferral of such powers on certain members of the Armed Forces.
- 49 Lords Amendment 51 would amend Section B6 - Anti-social behaviour in Schedule 1 which reserves the subject-matter of Parts 1 to 6 of the Anti-social Behaviour Crime and Policing Act 2014 ("the 2014 Act"). The amendment would remove the reservation of part 5 of the 2014 Act. The provisions of Part 5 of the 2014 Act relate to the recovery of possession of secure and assured tenancies on the grounds of anti-social behaviour which is a housing matter and consequently within the Assembly's legislative competence under the current settlement. The amendment would maintain the Assembly's existing competence in relation to housing as provided in Part 1 of Schedule 5 to the Government of Wales Act 2006, and ensure that the Assembly continues to be able to amend all aspects of the evictions provisions for housing related anti-social behaviour provided in Part 5 of the 2014 Act, should they choose to do so.
- 50 Lords Amendment 53 would amend Section C2 - Insolvency and winding up in Schedule 1. Lords Amendment 53 is a technical amendment which would make it clear that the term "business association" in the insolvency reservation in Section C2 has the same meaning as in the business associations and business names reservation in Section C1.
- 51 Lords Amendment 54 would amend Section C6 - Consumer protection in Schedule 1 so as to include an exception, to extend the competence of the Welsh Government to legislate on

consumer protection, in relation to agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (in addition to the existing exceptions). The amendment would ensure that devolved legislative competence under this Bill is consistent with the existing wording used in paragraph 4 of Schedule 7 to the Government of Wales Act 2006, as amended by the National Assembly of Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010 S.I. 2010/2968.

- 52 Lords Amendment 55 would amend Section C7 - Product standard, safety and liability in Schedule 1, to replace the exception “fish and fish products” with “animal and animal products”. The amendment would ensure that devolved legislative competence under this Bill is consistent with the existing wording used in paragraph 4 of Schedule 7 of the Government of Wales Act 2006, as amended by the National Assembly of Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010 S.I. 2010/2968.
- 53 Lords Amendment 56 would amend Section C14 - Assistance in connection with exports of goods and services in Schedule 1. The amendment would make the Export Credits Guarantee Department (ECGD), which operates under the name UK Export Finance, a particular authority in the Bill. The current subject-matter reservation, which this amendment would replace, creates some uncertainty around the Assembly’s ability to legislate in the area of “economic development” including export-related matters. This amendment would set the devolution boundary more accurately by allowing the Assembly to legislate in relation to “economic development” and other export-related matters and also preventing the Assembly from legislating in any way in relation to the functions and powers of ECGD, thus ensuring inter alia ECGD’s continued ability to support Welsh exporters.
- 54 Lords Amendments 57 and 58 would amend Section D2 - Oil and gas in Schedule 1. Lords Amendment 57 would clarify that Reservation D2’s reservation of oil and gas includes the reservation of the regulation of works which may obstruct or endanger navigation where these works relate to oil and gas exploration and exploitation. Lords Amendment 58 would extend the exceptions to Section D2 that devolve petroleum licencing in the Welsh onshore area (which includes Welsh internal waters) to include marine licencing and the regulation of works which may obstruct or endanger navigation in relation to devolved petroleum licences, enabling these matters to be incorporated into any Welsh onshore area petroleum licencing regime.
- 55 Lords Amendments 59 to 61 would amend Section D5 - Heat and cooling in Schedule 1. They would narrow the reservation of heating and cooling, which reserves the production, distribution and supply of heat and cooling. The amendments would mean that the UK Government would continue to have overall policy responsibility for heat policy and the Renewable Heat Incentive made under the powers in schedule 7B of the Energy Act 2008, but would devolve heat and cooling networks (other than their regulation), and low carbon heating initiatives. Lords Amendment 95 is a consequential amendment to Schedule 2.
- 56 Lords Amendment 62 and 63 would amend Section E3 - Marine and waterway transport etc in Schedule 1. The amendments would replace the exception for the subject-matter of the Fire and Rescue Services Act 2004 with an exception from the reservation of maritime search and rescue covering the participation by Welsh fire and rescue authorities in maritime search and rescue responses.
- 57 Lords Amendment 64 would amend Section F1 - Social security schemes in Schedule 1. Lords Amendment 64 would except the matter of deferred payment agreements from the reservation in respect of Social Security schemes. This would make explicit that such

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agreements, which are agreements to defer payments due from individuals to local authorities in respect of the costs of meeting needs for care or support, are within the legislative competence of the Assembly.

- 58 Lords Amendment 65 would amend Section F1 - Social security schemes in Schedule 1. The amendment would remove the words "or liabilities for local taxes" from limb (c) of the "Social security schemes" definition under Section F1, thereby clarifying that any financial assistance in relation to local taxation is no longer part of the reserved social security system and has been devolved. This would make clear that the Assembly can legislate in matters relating to Council Tax Reduction schemes under the devolved subject matter of local government finance and council tax. The Assembly has legislative competence over Council Tax Reduction schemes which are an integral part of the local government finance system. Council Tax Benefit has been abolished and provisions localised so that local government can provide assistance according to local need. There are currently no plans for any similar benefit to be recreated. Any decision in the future would be a matter for the UK Government of the day.
- 59 Lords Amendment 66 would amend Section L11 - Prisons and offender management in Schedule 1. Lords Amendment 66 would make an addition to the list of matters that would be treated as exceptions to the reservations for prisons and offender management. The amendment would add the provision of libraries to the list of exceptions to the offender management and prison reservation. Welsh Ministers already have the power to make rules in relation to prison libraries, and libraries in general are a matter for Welsh Ministers. The effect of the amendment would be to make clear that the Assembly would have legislative competence over libraries in prisons in Wales.
- 60 Lords Amendment 67,68 and 69 would amend Section L12 - Family relationships and children in Schedule 1. Lords Amendment 67 would clarify the intended effect of the reservation in paragraph 176 which deals with the law governing family relationships and children. The reservation states "the subject-matter of Parts 4 and 5 of the Children Act 1989 and other proceedings related to the care, supervision or protection of children". This reservation reserves public law proceedings relating to care orders and supervision orders as well as those orders themselves. Lords Amendment 67 would amend the reservation to make clear the Assembly's competence in regard to the protection and well-being of children (other than in relation to family law and proceedings). This would also make clear that local authorities' duty to investigate under section 47 of the 1989 Act and applications for secure accommodation orders made by local authorities is devolved.
- 61 Lords Amendment 68 would amend Section L12 by making it clear that the Welsh Government are able to legislate for 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.
- 62 Lords Amendment 69 would amend Section L12 by inserting an exception for "parental discipline". Reservation L12 includes, at paragraph 175, parenthood and parental responsibility. This latter term includes all the rights and responsibilities exercisable by those exercising parental responsibility for a child (whether because of a biological relationship or by virtue of an order of the court). Such rights include the right to administer reasonable chastisement to a child, or smacking. The Assembly has existing legislative competence for social welfare including protection of children and young people and this includes the competence to ban smacking. This express exception would acknowledge that any such

provision would be within the legislative competence of the Assembly.

- 63 Lords Amendment 70 would amend Section M1 - Registration of land and land charges and Section M2 - Local land charges in Schedule 1. The amendment would replace the reservations as originally drafted in M1, which refers to the 'subject matter of' the Acts referred to in paragraphs 1a to c above and M2, which refers to local land charges. Although it would have the same scope as the existing reservations, it would provide a clearer distinction between the registration functions to be covered by this reservation and the law relating to these areas which would be covered by the law of property in the private law restriction in paragraph 3 of Schedule 2.
- 64 Lords Amendments 71, 72, 73, 74 and 75 would amend Section M4 - Development and building in Schedule 1. Lords Amendment 71 would provide for limited devolution of legislative competence in relation to the planning process to be followed for railway development in Wales through an exception to the general reservation for planning in relation to railways. The exception would only be for railways that start, end and remain in Wales. For railway lines that form part of a railway that continues across the border into England, legislative competence in relation to railway development would not be devolved in respect of any part of those lines.
- 65 Lords Amendment 72 would amend Section M4 by removing the reservation of Community Infrastructure Levy. It is a locally raised levy to secure developer contributions towards infrastructure needed to support the development of an area. This amendment would enable the Assembly and the Welsh Government to make primary and secondary legislation about development taxes in Wales.
- 66 Lords Amendment 73 would reduce the reservation for compulsory purchase from the entire system to one for land compensation only. 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. Lords Amendment 93 would add "the compulsory acquisition of property" to the description of the law of property in paragraph 3(3) of Schedule 2. This would ensure that the compulsory acquisition of property is treated as part of "the private law" for the purposes of the Bill. This would enable the Assembly to modify the law of compulsory purchase (apart from the compensation regime) for a devolved purpose. The Assembly would, however, be unable to legislate on compulsory purchase "for its own sake" or to achieve reserved ends. Lords Amendment 134 and 135 would make consequential changes to Schedule 5.
- 67 Lords Amendments 74 and 75 would amend Section M4 in relation to the regulation of building standards and is related to Lords Amendment 47 to Paragraph 1. Section M4 precludes the Assembly from legislating for the design and construction of buildings, the demolition of buildings, and services, fittings and equipment provided in or in connection with buildings in respect of all buildings in Wales, otherwise than by way of statutory instrument under a transfer of functions order. Lords Amendments 74 and 75 would significantly narrow the reservation, applying it only to buildings of the Crown and certain specified statutory undertakers. This would mean that the reservation would correspond with the more general reservations for the Crown and for those undertakers in Schedule 1, and that building regulation would be fully devolved except in relation to the buildings of entities whose functions are reserved in other respects also.
- 68 Lords Amendment 80 would amend Section N8 - School teachers' pay and conditions by removing the reservation on teachers' pay and conditions and so would transfer legislative

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competence for teachers' pay and conditions to the Assembly.

- 69 Lords Amendments 91 and 92 would amend Schedule 1 to make clear that the Schedule does not reserve council tax precepts. The intention is that policing in Wales should continue to be reserved while maintaining the competence of the Assembly with respect to the devolved matter of council tax policy. Lords Amendments 105 and 108 are consequential and would amend Schedule 2 to make clear that the paragraphs 8(1) and 10(1) of the Schedule do not apply in relation to the funding of police and crime commissioners through council tax precepts.

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

Lords Amendments 94, 96, 97, 98, 100, 101, 103, 104, 107, 109, 110 and 111

- 70 Lords Amendment 94 would ensure that the Assembly has the legislative competence to amend or repeal section 146A(1) of the Government of Wales Act 1998. Section 146A(1) would therefore be removed from the list of provisions protected from Assembly modification in the table at paragraph 5(1) of Schedule 7B.
- 71 Lords Amendment 96 would restate the existing restrictions on the Assembly's legislative competence with respect to certain sections of the Public Audit (Wales) Act 2013. This amendment would make these restrictions easier to understand. Lords Amendment 96 would also remove the exceptions to the restrictions on an Assembly Act amending sections 145, 145A and 146A(1) of the Government of Wales Act 1998. Given those sections would no longer be protected from modification by an Assembly Act, any exceptions in relation to the restriction on modifying them would be redundant.
- 72 Lords Amendment 97 would enable the Assembly to modify new section 3(1B) of the Government of Wales Act (GOWA) 2006, inserted by clause 6 of the Bill. It would achieve this by adding a reference to new section 3(1B) into paragraph 7(2)(a)(iv) of Schedule 2 to the Bill. New section 3(1B) of GOWA would empower the Welsh Ministers to make an order specifying the alternative date for an ordinary Welsh Assembly general election, where otherwise it would be held on the same date as a UK Parliamentary general election or a European Parliamentary general election, which is prevented by the Bill. The Bill provides that the Assembly will have legislative competence over the subject matter of new section 3(1B) of GOWA, and the amendment would enable the Assembly to modify the new section 3(1B), which would ensure that this transfer of legislative competence operates as intended.
- 73 Lords Amendment 98 would allow the Assembly to modify sections 14 (term of office of Assembly Members) and 15 (resignation of Members) of the Government of Wales Act 2006.
- 74 Lords Amendment 100 would clarify that paragraph 7(5) of Schedule 7B is only applicable to the provisions of Part 5 of the Government of Wales Act 2006 that are not already listed in paragraph 7(2)(d). The provisions in paragraph 7(2)(d) are entirely within the Assembly's competence, whereas those listed in paragraph 7(5) are subject to the restrictions in that sub-paragraph.
- 75 Lords Amendment 101 is related to Lords Amendment 100 and would remove the requirement that the Secretary of State must consent to an Assembly Act provision that modifies the provisions of Part 5 of the Government of Wales Act 2006 not listed in paragraph 7(2)(d) of Schedule 7B, or section 159. The only requirement for such a modification would therefore be that it is incidental to, or consequential on, an Assembly Act provision that

relates to budgetary procedures or devolved taxes.

- 76 Lords Amendments 103 and 107 would create further exceptions to the requirement for UK Ministerial consent where Assembly legislation confers or imposes functions on, or removes or modifies the functions of, a reserved authority (or confers delegated powers to do so). These exceptions relate to four authorities that have health functions and the Open University.
- 77 Lords Amendment 104 concerns Assembly legislation which confers or imposes functions on any of the reserved authorities mentioned in paragraph 9(2) of new Schedule 7B to GoWA (or which confers delegated powers to do so). The amendment would mean that requirement for UK Ministerial consent does not apply to such legislation even if the relevant provision also confers, imposes, modifies or removes functions specifically exercisable in relation to the authority (or which confers delegated powers to do so).
- 78 Lords Amendments 109 and 110 would apply the consent requirement in paragraph 11(1)(d) of Schedule 2 to specific marine management functions of the Minister of the Crown under the Marine and Coastal Access Act 2009, instead of any Minister of the Crown function under that Act and under the Marine Works (Environmental Impact Assessment) Regulations 2007. Consent of the appropriate Minister would be required before the Assembly could remove or modify the functions of a Minister of the Crown under Chapter 1 of Part 3, or section 58, of the Marine and Coastal Access Act 2009.
- 79 Lords Amendment 111 would ensure that HM Treasury's consent would need to be sought before the Assembly changes the rules about the Treasury appointing anyone other than the Assembly Clerk as its accounting officer in the event that the Clerk is unable to perform that role. Treasury consent would also need to be sought before the removal of Treasury direction over the form in which the Welsh Government submits its information for the Whole of Government Accounts.

Lords Amendments to Schedule 3: New Schedule 9A to the Government of Wales Act 2006

Lords Amendments 113, 114, 116, 117, 119 and 120

- 80 Lords Amendments 113, 114, 116, 117, 119 and 120 would make changes to the list of devolved Welsh authorities. Four bodies would be added: the Food Standards Advisory Committee for Wales, the Flood and Coastal Erosion Committee, the Independent Groundwater Complaints Administrator and the person appointed by the Welsh Ministers under section 3 of the Local Government and Housing Act 1989. A reference to a rent assessment committee would also be substituted for the reference to the Residential Property Tribunal Wales. The reference to a special health authority would be omitted.

Lords Amendments to Schedule 4: New Schedule 3A to the Government of Wales Act 2006

Lords Amendments 121, 122, 123, 124, 125, 126, 127, 128, 129 and 130

- 81 Lords Amendments 121 and 122 would clarify that licensing functions exercised by the Marine Management Organisation in relation to Welsh fishing boats are also transferred.
- 82 Lords Amendments 123 to 125 would make certain corrections to language so that it is consistent with related fisheries legislation.

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- 83 Lords Amendments 126 to 129 would provide that certain fisheries functions exercisable in connection with Welsh boats beyond the seaward limits of the Welsh zone would be exercisable concurrently by the Welsh Ministers and Ministers of the Crown.
- 84 Lords Amendment 130 would substitute paragraph 4 of Schedule 4 with a table of functions that are exercisable jointly with the Welsh Ministers. This table would include the existing reference in paragraph 4 to jointly exercisable functions under section 6 of the Crime and Disorder Act 1998. The table would also include the specified additional functions under the Marine and Coastal Access Act 2009 and the Marine Strategy Regulations 2010 (S.I. 2010/1627), which are also jointly exercisable.

Lord Amendment after Schedule 4: New Schedule 3A to the Government of Wales Act 2006

Lord Amendment 132

- 85 Lords Amendment 132 would introduce a new Schedule. Part 1 of the Schedule would contain details about the two-stage appointment process of the President of the Welsh Tribunals. It would provide that the Lord Chief Justice must consult Welsh Ministers and the Lord Chancellor before he or she could appoint the preferred candidate. If no agreement could be reached or that person was 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.
- 86 Part 2 of the Schedule would make provision about the selection process that would be followed if the Judicial Appointments Commission were requested to carry out the recruitment of President of Welsh Tribunals. It would include details about eligibility for selection, the composition of the selection panel and would require 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 would be 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 would also contain 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.
- 87 Part 3 of the Schedule would make provision about the President of Welsh Tribunals' terms of office, including arrangements for resignation, retirement, remuneration and oaths of allegiance.

Lords Amendments to Schedule 5: Minor and consequential amendments

Lord Amendments 133, 138, 139, 140, 141, 142, 143, 144, 145 and 151

- 88 Lords Amendments 133 and 151 would amend Schedule 5 in the light of the Welsh Government legislating for the establishment of the Welsh Revenue Authority ("WRA"). The Wales Act 2014 imposes a requirement upon the Welsh Government to share land transaction information with HM Revenue and Customs ("HMRC") following the devolution of Stamp Duty Land Tax and also permits HMRC to share relevant information with the Welsh Government. The WRA will administer the replacement devolved tax and so will be the body from which HMRC needs to obtain land transaction information and to which HMRC may share information. These amendments would reflect this change by replacing references to

the Welsh Ministers in information sharing provisions with references to the WRA.

- 89 Lords Amendments 138 to 141 would transfer all of the Minister of the Crown regulation making powers relating to bus registration under sections 6, 6A and 6B of the Transport Act 1985 to Welsh Ministers on the face of the Bill, rather than just those regulation making powers relating to the Traffic Commissioner (which the original clause provided for). The effect of this would be that a subsequent transfer of functions order will no longer be required to transfer these regulation making powers.
- 90 Lords Amendment 142 would remove an otiose provision in the Bill which extends to Welsh Ministers regulation making powers in relation to consenting powers (section 37 of the Electricity Act 1989, which relates to the consenting of overhead electricity lines) which are not devolved to Welsh Ministers.
- 91 Lords Amendment 143 would standardise terminology used and ensure that the new regulation making power in section 36(8A) of the Electricity Act 1989 would be restricted only to those developments for which Welsh Ministers were the consenting authority.
- 92 Lords Amendment 144 would allow Welsh Ministers to delegate to a person or body appointed by regulation, the power to determine applications in respect of electricity generation projects for which they are the consenting authority under section 36 of the Electricity Act 1989, i.e. those with a generating capacity not greater of 350MW.
- 93 Lords Amendment 145 would allow Welsh Ministers to delegate to a person or body appointed by regulation, the power to determine applications for the variation of consents for electricity generating projects which fall within the category of those for which they are the appropriate consenting authority, i.e. those where the generating capacity is and will, post-variation, remain not greater than 350MW.

Lords Amendments to Schedule 6: Transitional provisions

Lord Amendments 169, 170, 171, 172, 173, 174 and 175

- 94 Lords Amendments 169 to 171 would extend the application of the transitional provisions in paragraphs 6(1) to(3) of Schedule 6 so that they apply to anything done, or anything that is in the process of being done, by or in relation to a public authority. Lords Amendment 172 would remove the definition of “Minister of the Crown” and insert a definition of “public authority”.
- 95 Lords Amendment 173 would amend the section in Schedule 6 in relation to development consent for generating stations. Schedule 9 to the Electricity Act 1989 places certain obligations on the Secretary of State aimed at helping safeguard valuable assets such as flora, fauna and historic buildings in the context of proposals for the development of electricity generation installations. Paragraph 51 of Schedule 6 to the Bill provides that those obligations will, in future, apply to Welsh Ministers in respect of those consenting applications for which they are the appropriate authority. Lords Amendment 173 to the Bill’s transitional provisions would clarify that Welsh Ministers’ duty to fulfil those obligations would not begin until the Bill’s provisions devolving additional electricity generation consenting powers to Wales come into force. It is clearly right that whomsoever is responsible for consenting these infrastructure projects ought to have regard to their potential impact on the natural and built environment but that, in terms of timing, the obligation ought to mirror the related powers

- 96 Lords Amendments 174 and 175 would remove sub-paragraphs (1) and (5) of paragraph 9 of

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Schedule 7. Paragraph 9(1) provides for marine licences issued by the Secretary of State or the Marine Management Organisation in relation to the Welsh offshore region prior to commencement of clause 44 to continue to be valid. Paragraph 9(5) applies the powers available to Welsh Ministers under section 72 of the Marine and Coastal Access Act 2009 (variation, suspension, revocation, transfer) to such licences. In light of the general transitional provision in paragraph 6 of Schedule 7, specific provision in paragraph 9(1) and (5) is not required.

Lords Amendment to the Long Title

Lords Amendment 176

- 97 Lords Amendment 176 would amend the Long Title to cover clause 17 (Welsh rates of income tax: removal of referendum requirement).

Financial Effects of Lords Amendments

- 98 The effect of Lords Amendment 9 (lending for capital expenditure) would be to amend section 122A of GOWA, taken with sections 121(1A) and 122(1), and so would increase the amount of money that may be paid out of the National Loans Fund.

WALES BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Wales Bill as brought from the House of Lords on the 18 January 2017.

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