

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:	For further information contact:
Committee Room 2 – Senedd	Gareth Williams
Meeting date: Monday, 3 October 2016	Committee Clerk
Meeting time: 14.30	0300 200 6565
	<a href="mailto:SeneddCLA@assembly.wales">SeneddCLA@assembly.wales</a>

**1 Introduction, apologies, substitutions and declarations of interest**  
(14.30)

**2 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill: Evidence session with the Cabinet Secretary for Finance and Local Government**  
(14.30 – 15.30) (Pages 1 – 12)

Mark Drakeford AM, Cabinet Secretary for Finance and Local Government,  
Andrew Hewitt, Welsh Government  
Gareth Mc Mahon, Welsh Government

**CLA(5)–07–16** – Research Service and Legal Service Briefing

[Land Transaction Tax and Anti-avoidance of Devolved Taxes \(Wales\) Bill, as introduced](#) (PDF, 831KB)

[Explanatory Memorandum](#) (PDF, 1.2MB)

[Statement of policy intent](#), (PDF 251KB)

**3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**  
(15.30 – 15.35)

Negative Resolution Instruments



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

**SL(5)016 – The Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2016**

(Pages 13 – 39)

**CLA(5)–07–16 – Paper 1 – Report**

**CLA(5)–07–16 – Paper 2 – Order**

**CLA(5)–07–16 – Paper 3 – Explanatory Memorandum**

#### **4 Paper(s) to note**

(15.35 – 15.40)

**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill:**

**Correspondence from the Llywydd (Presiding Officer)**

(Pages 40 – 43)

**CLA(5)–07–16 – Paper 4 – Correspondence from the Llywydd, 16 September 2016**

**Wales Bill: Additional information from the First Minister following the Committee meeting on 4 July 2016**

(Pages 44 – 46)

**CLA(5)–07–16 – Paper 5 – Additional information from the First Minister, 27 September 2016**

**Wales Bill: Correspondence from National Assembly for Wales Committees**

(Pages 47 – 85)

**CLA(5)–07–16 – Paper 6 – Correspondence from the Finance Committee**

**CLA(5)–07–16 – Paper 7 – Correspondence from the Equality, Local Government and Communities Committee**

**CLA(5)–07–16 – Paper 8 – Correspondence from the Economy, Infrastructure and Skills Committee**

**CLA(5)–07–16 – Paper 9 – Correspondence from the Culture, Welsh Language and Communications Committee**

**CLA(5)–07–16 – Paper 10 – Correspondence from the Children, Young People and Education Committee**

**CLA(5)–07–16 – Paper 11 – Correspondence from the Climate Change,  
Environment and Rural Affairs Committee**

**CLA(5)–07–16 – Paper 12 – Correspondence from the Health, Social Care and  
Sport Committee**

**SL(5)008 – The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2016**

(Page 86)

**CLA(5)–07–16 – Paper 13 – Government Response**

**SL(5)009 – The Smoke Control Areas (Exempted Classes of Fireplace) (Wales)  
Order 2016**

(Page 87)

**CLA(5)–07–16 – Paper 14 – Government Response**

**5 Motion under Standing Order 17.42 to resolve to exclude the  
public from the meeting for the following business:**

(15.40)

(vi) the committee is deliberating on the content, conclusions or  
recommendations of a report it proposes to publish; or is preparing itself to take  
evidence from any person.

**6 Land Transaction Tax and Anti–avoidance of Devolved Taxes  
(Wales) Bill: Consideration of Evidence**

(15.40 – 15.50)

**7 Wales Bill: Draft report**

(15.50 – 16.50)

(Pages 88 – 146)

**CLA(5)–07–16 – Paper 15 – Draft Report**

**Date of the next meeting**

**Monday 17 October 2016**

Document is Restricted

# SL(5)016 – The Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2016

## Agenda Item 3.1

### Background and Purpose

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This Order is made under section 29(1) of the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”). This Order modifies the Specification of Apprenticeship Standards for Wales (the ‘SASW’) which was brought into effect in May 2013 by the Apprenticeships (Specification of Apprenticeship Standards for Wales) Order 2013.

All apprentice frameworks must meet the requirements specified in the modified SASW to be a recognised Welsh framework issued under section 19(1) of the 2009 Act. The modified SASW comes into effect on 14 October 2016.

### Procedure

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Negative

### Technical Scrutiny

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No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### Merits Scrutiny

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The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

- This Order modifies the SASW. This document is in English only. This document applies to a wide audience. SASW is a document aimed at the Sector Skills Council, standards setting organisations, employers, trade unions, learning providers and awarding organisations. The Committee believe that this document should be made available bilingually. (S.O. 21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.)



Legal Advisers

Constitutional and Legislative Affairs Committee

3 October 2016



**National Assembly for Wales**

Constitutional and Legislative Affairs Committee

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2016 No. 930 (W. 229)**

**EMPLOYMENT AND  
TRAINING, WALES**

**The Apprenticeships (Specification  
of Apprenticeship Standards for  
Wales) (Modification) Order 2016**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under section 29(1) of the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”). This Order modifies the Specification of Apprenticeship Standards for Wales (the ‘SASW’) which was originally brought into effect in May 2013 by the Apprenticeships (Specification of Apprenticeship Standards for Wales) Order 2013.

The SASW specifies the requirements that must be met for recognised Welsh apprenticeship frameworks to be issued under section 19(1) of the 2009 Act.

The effect of this Order is to modify the SASW in the manner set out in the Schedule to this order.

To assist the reader the Welsh Ministers have published a consolidated version of SASW which incorporates the modifications shown in the Schedule to this Order.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2016 No. 930 (W. 229)**

**EMPLOYMENT AND  
TRAINING, WALES**

**The Apprenticeships (Specification  
of Apprenticeship Standards for  
Wales) (Modification) Order 2016**

*Made* 13 September 2016

*Laid before the National Assembly for Wales*  
15 September 2016

*Coming into force* 14 October 2016

The Welsh Ministers make the following Order in exercise of the power conferred by section 29(1) of the Apprenticeships, Skills, Children and Learning Act 2009(1).

In accordance with section 29(2) of that Act the Welsh Ministers are satisfied that the Specification of Apprenticeship Standards for Wales as modified by this Order complies with section 31.

**Title, commencement and application**

**1.**—(1) The title of this Order is the Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2016 and it comes into force on 14 October 2016.

(2) This Order applies in relation to Wales.

**Interpretation**

**2.** In this Order “the Specification of Apprenticeship Standards for Wales” (“*Manyleb Safonau Prentisiaethau Cymru*”) means the document given effect to by article 2 of the Apprenticeships

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(1) 2009 c. 22.



(Specification of Apprenticeship Standards for Wales)  
Order 2013<sup>(1)</sup>.

**Modification**

**3.** The Specification of Apprenticeship Standards for Wales has effect subject to the modifications specified in the Schedule to this Order.

*Julie James*

Minister for Skills and Science under authority of the  
Cabinet Secretary for Education, one of the Welsh  
Ministers

13 September 2016

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<sup>(1)</sup> S.I. 2013/1192 (W. 128).

## SCHEDULE

Article 3

### Modifications to the Specification of Apprenticeships Standards for Wales

1. For the introduction to the Specification of Apprenticeship Standards for Wales substitute the following text:

“1. The Specification of Apprenticeship Standards for Wales (SASW) sets out the minimum requirements to be included in a recognised Welsh apprenticeship framework. Compliance with the SASW is a statutory requirement of the Apprenticeships, Skills, Children and Learning Act 2009, this version incorporates modifications made to the original SASW published in May 2013.

It incorporates modifications to allow “proxy” qualifications as a recognised alternative to Essential Skills as detailed under each apprenticeship framework level. SASW has also been modified to allow a greater flexibility in obtaining occupational competence by allowing learning to be underpinned by National Occupational Standards (NOS) where they exist, or industry-wide standards or professional standards where they do not. The final modification to SASW is to Employer Rights and Responsibilities (ERR) which are no longer compulsory in SASW frameworks. Other consequential changes have also been made as well as some reordering.

Updated guidance for Welsh issuing authorities is also being issued in a separate document. Welsh issuing authorities must have regard to this updated guidance in reaching a decision on whether a framework submission complies with SASW.

The modifications to SASW have been made by order by the Welsh Ministers.”

2. For paragraphs 2 to 42 of the Specification of Apprenticeship Standards for Wales substitute the following text:

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*“All apprenticeship Section reference frameworks*

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- |   |                         |
|---|-------------------------|
| <p>2. An apprenticeship framework must specify its level using the national level descriptors described in the Credit and Qualifications Framework for Wales ('CQFW'). A framework must be at Level 2 to qualify as a Foundation Apprenticeship, be at Level 3 to qualify as an Apprenticeship and be at a Level between 4 and 7 to qualify as a Higher Apprenticeship.</p> | <p>Section 31(2)(a)</p> |
| <p>3. An apprenticeship framework must include a two digit Standard Occupational Code (SOC) to identify the sector to which it relates. Frameworks identified by the same two digit SOC code ('duplicate frameworks') are not permitted.</p>  | <p>Section 31(2)(a)</p> |
| <p>4. A framework level must specify as a Welsh certificate requirement the total volume of learning in the form of CQFW credits. The number of credits must reflect the learning required to achieve full competency in the skill, trade or occupation to which it relates.</p>  | <p>Section 31(2)(a)</p> |
| <p>5. The calculation of credit should be derived from the definition contained in the CQFW and be consistent with the sum of published learning hours given for each qualification by the relevant</p>   | <p>Section 31(2)(a)</p> |

awarding bodies or organisation(s).

6. A framework must be at a minimum of 37 credits but may where appropriate exceed this; in many cases frameworks will significantly exceed 37 credits. A framework must not be so narrow that it is only relevant to a specific workplace where the apprenticeship was attained.

Section 31(2)(a)

<i>Qualifications competence and knowledge</i>	<i>– and</i>	<i>Section reference</i>
7. The framework must identify the qualification(s) that demonstrate(s) the relevant occupational competencies as the ‘occupational competencies qualification’ and the occupational knowledge as the ‘technical knowledge qualification’ in relation to the framework.		Section 31(2)(c)(ii) and (iii)
8. The occupational competencies and technical knowledge qualification(s) must be either:		Section 31(2)(a) Section 31(2)(c)(ii)
a. one offered by an awarding body or awarding organisation that is recognised by a UK qualifications regulator or by a Further Education Institution or Higher Education Institution regulated by QAA (or any successor); or		
b. one offered by a recognised		

professional body  
provided its  
achievement confers  
eligibility for  
professional  
recognition.

Both the occupational  
competencies and  
technical knowledge  
qualification must be  
achieved by the  
apprentice to qualify  
for a Welsh  
apprenticeship  
certificate.

9. An apprenticeship framework must include: Section 31(2)(c)(ii)

a. an  
integrated  
competencies  
qualification  
that also  
contains the  
relevant  
technical  
knowledge  
within it; or

b. an occupational  
competencies  
qualification and  
relevant technical  
knowledge  
qualifications which  
taken together,  
demonstrate the  
relevant occupational  
competencies and the  
relevant technical  
knowledge.

10. The framework developer will decide the balance of credits between occupational competencies and relevant technical knowledge qualifications. However the framework must specify: Section 31(2)(a)

a. a minimum of ten  
credits achieved from  
an occupational

competence based  
qualification or the  
competence element  
of an integrated  
qualification, which  
specifically relates to  
the skill, trade or  
occupation and is  
based on the National  
Occupational  
Standards (NOS)  
where they exist, or  
industry-wide  
standards or  
professional standards  
where they do not for  
the employment sector  
for which the  
framework is designed  
and be at a level which  
reflects the job role;  
and

b. a minimum of ten  
credits from a  
technical knowledge  
qualification or  
knowledge element of  
an integrated  
qualification, which  
provides the technical  
knowledge and  
understanding of the  
theoretical concepts  
specifically relating to  
the skill, trade or  
occupation to  
underpin occupational  
competence. The  
knowledge  
qualification element  
must equip the  
apprentice with the  
knowledge and  
understanding of the  
industry  
and its market; or

c. a minimum of ten  
credits from an  
equivalent  
competencies  
qualification (non-  
CQFW) recognised by  
a professional body  
for a Higher  
Apprenticeship at

Levels 4 -7 where the successful completion of such an apprenticeship is a recognised pathway to professional registration.

11. The majority of the content of the occupational competencies qualification must be capable of being assessed from evidence gained through on-the job training in a workplace. This requirement applies at all framework levels, including any Higher Education qualifications specified either as the occupational competencies qualification or the integrated competencies qualification;

Section 31(2)(b)  
Section 31(2)(c)(ii)

the learning content must be achieved through:

a. an occupational competence based qualification or competence element of an integrated qualification, must be based on the National Occupational Standards (NOS) where they exist, or industry-wide standards or professional standards where they do not, for the employment sector to which the framework relates, specifically relating to the skill, trade or occupation of the framework and be at a level which reflects

the job role; and

a technical knowledge qualification or the knowledge element of an integrated qualification, must provide the technical knowledge and understanding of the theoretical concepts specifically relating to the skill, trade or occupation to underpin occupational competence. The knowledge qualification/element must equip the apprentice with the knowledge and understanding of the industry and its market; or,

b. the learning content from an equivalent competencies qualification recognised by a professional body for a Higher Apprenticeship where the successful completion of such an apprenticeship is a recognised pathway to professional registration.

12. Where the knowledge and competence elements are combined and recognised as a single integrated qualification, the two elements must be separately identified and separately assessed.

Section 31(2)(a)  
Section 31(2)(c) (ii)  
and (iii)

13. Where a qualification contained in an apprenticeship framework refers to a national framework (such as the CQFW, RQF or SCQF), it

Section 31(2)(a)



must be identified by  
Title, Level and where  
applicable the  
Qualification  
Reference Code.

14. A framework must  
be reviewed  
periodically to ensure  
it is current and  
continues to meet the  
needs of the sector.

Section 31(2)(a)

15. A framework must  
carry both the date of  
its issue and the date  
by which it will be  
formally reviewed.

Section 31(2)(a)

16. A qualification for  
occupational  
competence must test  
the ability to carry out  
activities to the  
standards required for  
that occupation.

Section 31(2)(a)

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*Additional  
occupational  
requirements*

*Section reference*

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17. A framework may  
specify additional  
programmes of  
learning to meet  
specific occupational  
requirements. The  
framework developer  
must consult with the  
issuing authority for  
that sector before any  
additional  
occupational  
requirement is  
included in a  
framework.

Section 31(2)(a)

18. Where additional  
occupational standards  
are included in a  
framework the  
framework must  
specify the learning  
outcomes to be  
attained. The learning  
outcomes may be  
specified as a formal  
qualification or be  
capable of

Section 31(2)(a)

independent  
assessment where  
attainment is not  
measured by means of  
a qualification.

19. A higher apprenticeship framework at Levels 4 - 7 may specify additional professional qualification(s) as recognised by the sector if they confer eligibility for professional status.

Section 31(2)(a)

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<i>Foundation apprenticeship frameworks (Level 2) - qualifications related to the sector</i>	<i>Section reference</i>
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20. A foundation apprenticeship framework must identify the occupational competencies qualification which must be achieved by the apprentice to qualify for a Welsh apprenticeship certificate, and which is the qualification required to demonstrate competence in performing the skill, trade or occupation to which the framework relates. The competencies qualification must be at Level 2 and be underpinned by National Occupational Standards (NOS) where they exist, or industry-wide standards or professional standards where they do not.

Section 31(2)(c)(iii)

21. A foundation apprenticeship must identify a technical

Section 31(2)(c)(ii)

knowledge  
 qualification which  
 must be achieved by  
 the apprentice to  
 qualify for a Welsh  
 apprenticeship  
 certificate. A technical  
 knowledge  
 qualification is the  
 qualification required  
 to demonstrate  
 achievement of the  
 technical skills,  
 knowledge and  
 understanding of the  
 theoretical concepts  
 and knowledge and  
 understanding of the  
 industry and its market  
 relevant to the skill,  
 trade or occupation to  
 which the framework  
 relates.

22. A foundation  
 apprenticeship  
 framework must  
 identify either:

Section 31(2)(a)  
 Section 31(2)(c)(iii)

a. an  
 occupational  
 competencies  
 qualification  
 at Level 2 and  
 a separate  
 technical  
 knowledge  
 qualification:  
 or

b. an integrated  
 qualification at Level  
 2 which combines  
 occupational  
 competencies and  
 technical knowledge  
 elements in which  
 each element is  
 separately assessed.

<i>Essential Skills</i>	<i>Section reference</i>
23. A foundation apprenticeship framework must specify as a Welsh certificate requirement the expected achievement levels of	Section 31(2)(c)(i)

Essential  
Communications  
Skills and the  
Essential Application  
of Number Skills,  
these qualifications  
will be at least Level 1  
or the relevant level  
determined by the  
industry.

24. Where Essential Skills qualifications are specified in a foundation apprenticeship framework, the apprenticeship framework must specify as a Welsh certificate requirement, the acceptance of one of the following recognised proxy qualifications for Communication: Section 31(2)(c)(i)

- a. GCSE or iGCSE qualification in English language or literature to at least grade G (Level 1 equivalent); or
- b. O Level qualification in English language or literature to at least grade E; or
- c. A/AS Level qualification in English language or literature to at least grade E; or
- d. SCQF Level 4 – Communication Core Skills (oral communication and written communication); or
- e. SQA National 4 English; or
- f. Functional Skills or Key Skills literacy qualifications in English provided the proxy qualification(s) attained are at Level 1

or above.

And for Application of  
Number:

- a. GCSE or iGCSE qualification in Mathematics to at least grade G (Level 1 equivalent); or
- b. O Level qualification in Mathematics to at least grade E; or
- c. A/AS Level qualification in Mathematics to at least grade E; or
- d. SCQF Level 4 – Numeracy Core Skill (Graphical Information and Using Number); or
- e. SQA National 4 Mathematics; or
- f. Functional Skills or Key Skills numeracy qualifications in Mathematics provided the proxy qualification(s) attained are at Level 1 or above.

25. A foundation apprenticeship framework may specify as a Welsh certificate requirement a qualification in Essential Digital Literacy Skills to at least Level 1, unless Digital Literacy is not relevant to effective performance in the skill, trade or occupation to which the framework relates.

Section 31(2)(c)(i)

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*On-the-job and off-the-job training*      *Section reference*

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26. A foundation apprenticeship framework must specify the total

Section 31(2)(b)

number of learning hours that an apprentice must receive to complete the framework. Learning hours relates to training which is designed to achieve clear and specific outcomes which contribute directly to the successful achievement of the apprenticeship framework.

27. A foundation apprenticeship framework must specify the total number of off-the-job learning hours that an apprentice must receive to complete the framework. Section 31(2)(b)

28. A foundation apprenticeship framework must specify the total number of on-the-job learning hours that an apprentice must receive to complete the framework. Section 31(2)(b)

29. The balance of hours between on-the-job and off-the job training must relate to the proportion of workplace-based assessment required for the achievement of the competencies qualification. Section 31(2)(b)

30. A foundation apprenticeship framework must specify that on-and off-the-job training must either have been received: Section 31(2)(b)

a. whilst working under an apprenticeship agreement; or

b. during a qualifying

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period prior to working under an apprenticeship agreement ending on the date of application for an apprenticeship certificate.  
A qualifying period of five years is recommended, but to meet the needs of their sector, frameworks may set a shorter or longer timescale than five years as the qualifying period.

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<i>Apprenticeship frameworks (Level 3) – qualifications related to the sector</i>	<i>Section reference</i>
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|---|-----------------------|
| 31. An apprenticeship framework at Level 3 must identify the occupational competencies qualification which must be achieved by the apprentice to qualify for a Welsh apprenticeship certificate, and which is the qualification required to demonstrate competence in performing the skill, trade or occupation to which the framework relates. The competencies qualification must be at Level 3; underpinned by National Occupational Standards (NOS) where they exist, or industry-wide standards or professional standards where they do not. | Section 31(2)(c)(iii) |
| 32. An apprenticeship framework at Level 3 must identify a technical knowledge qualification which must be achieved by  | Section 31(2)(c)(ii)  |

the apprentice to qualify for a Welsh apprenticeship certificate. A technical knowledge qualification is the qualification required to demonstrate achievement of the technical skills, knowledge and understanding of the theoretical concepts and knowledge and understanding of the industry and its market relevant to the skill, trade or occupation to which the framework relates.

33. An apprenticeship framework must identify either:

Section 31(2)(a)  
Section 31(2)(c)(iii)

- a. an occupational competencies qualification at Level 3 and a separate technical knowledge qualification; or
- b. an integrated qualification at Level 3 which combines occupational competencies and technical knowledge elements in which each element is separately assessed.

<i>Essential Skills</i>	<i>Section reference</i>
34. An apprenticeship framework must specify as a Welsh certificate requirement the expected achievement levels of Essential Communications Skills and the Essential Application of Number Skills, these qualifications will be at least Level 2 or the relevant level determined by the	Section 31(2)(c)(i)



industry.

35. Where Essential Skills qualifications are specified in an apprenticeship framework, the apprenticeship framework must specify as a Welsh certificate requirement, the acceptance of one of the following recognised proxy qualifications for Communication:

Section 31(2)(c)(i)

- a. GCSE or iGCSE qualification in English language or literature to at least grade C (Level 2 equivalent); or
- b. O Level qualification in English language or literature to at least grade C; or
- c. A/AS Level qualification in English language or literature to at least grade E; or
- d. SCQF Level 5 – Communication Core Skills (Oral Communication and Written Communication); or
- e. SQA National 5 English; or
- f. Functional Skills or Key Skills literacy qualifications in English provided the proxy qualification(s) attained are at Level 2 or above.

And for Application of Number:

- a. GCSE or iGCSE qualification in Mathematics to at least grade C (Level 2

equivalent); or  
 b. O Level  
 qualification in  
 Mathematics to at  
 least grade C; or  
 c. A/AS Level  
 qualification in  
 Mathematics to at  
 least grade E; or  
 d. SCQF Level 5-  
 Numeracy Core Skill  
 (Graphical  
 Information and Using  
 Number); or  
 e. SQA National 5  
 Mathematics; or  
 f. Functional Skills or  
 Key Skills numeracy  
 qualifications in  
 Mathematics provided  
 the proxy  
 qualification(s)  
 attained are at Level 2  
 or above.

36. An apprenticeship framework may specify as a Welsh certificate requirement a qualification in Essential Digital Literacy Skills to at least Level 2, unless Digital Literacy is not relevant to effective performance in the skill, trade or occupation to which the framework relates.

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<i>On-the-job training and off-the-job training</i>	<i>Section reference</i>
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37. Requirements are as for a foundation apprenticeship framework at Level 2.	Section 31(2)(b)
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<i>Higher apprenticeship frameworks (Levels 4 – 7) - qualifications related to the sector</i>	<i>Section reference</i>
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38. A higher apprenticeship framework must identify the	Section 31(2)(c)(iii)
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occupational  
competencies  
qualification which  
must be achieved by  
the apprentice to  
qualify for a Welsh  
apprenticeship  
certificate, and which  
is the qualification  
required to  
demonstrate  
competence in  
performing the skill,  
trade or occupation to  
which the framework  
relates. The  
competencies  
qualification must be  
at the level of the  
framework specified  
and be underpinned by  
National Occupational  
Standards (NOS)  
where they exist, or  
industry-wide  
standards or  
professional standards  
where they do not.

Section 31(2)(c)(ii)

39. A higher  
apprenticeship  
framework must  
identify a technical  
knowledge  
qualification which  
must be achieved by  
the apprentice to  
qualify for a Welsh  
apprenticeship  
certificate. A technical  
knowledge  
qualification is the  
qualification required  
to demonstrate  
achievement of the  
technical skills,  
knowledge and  
understanding of the  
theoretical concepts  
and knowledge and  
understanding of the  
industry and its market  
relevant to the skill,  
trade or occupation to  
which the framework  
relates.

40. A higher apprenticeship framework must identify either:

Section 31(2)(a)

Section 31(2)(c)(iii)

a. an occupational competencies qualification and a separate technical knowledge qualification at a minimum of Level 4; or

b. an integrated qualification at a minimum of Level 4 which combines occupational competencies and technical knowledge elements in which each element is separately assessed; or

c. specify an HNC, HND, Foundation Degree or Degree as the relevant technical knowledge qualification; or

d. specify a relevant technical knowledge qualification recognised by a professional body that represents the occupational area.

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<i>Essential Skills</i>	<i>Section reference</i>
41. Requirements are as for an apprenticeship framework at Level 3.	Section 31(2)(c)(i)

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<i>On-the-job training and off-the-job training</i>	<i>Section reference</i>
42. Requirements are as for a foundation apprenticeship framework at Level 2.	Section 31(2)(b)

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## **Explanatory Memorandum to the Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2016**

This Explanatory Memorandum has been prepared by the department of Economy, Skills and Natural Resources of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2016.

Julie James, Minister for Skills and Science

15 September 2016

## **1. Description**

This order is made under section 29(1) of the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”). This order modifies the Specification of Apprenticeship Standards for Wales (the ‘SASW’) which was brought into effect in May 2013 by the Apprenticeships (Specification of Apprenticeship Standards for Wales) Order 2013.

All apprentice frameworks must meet the requirements specified in the modified SASW to be a recognised Welsh framework issued under section 19(1) of the 2009 Act. The modified SASW comes into effect on 14 October 2016.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

There are no matters of special interest.

## **3. Legislative background**

The Order is made using the power conferred on the Welsh Ministers by section 29(1) of the 2009 Act.

In accordance with section 29(2) of the 2009 Act the Welsh Ministers are satisfied that the SASW as modified, by this Order complies with section 31 of the 2009 Act. This Order is subject to annulment (the negative procedure).

## **4. Purpose & intended effect of the legislation**

This Order brings into effect modifications to the SASW.

The SASW sets out the minimum requirements to be included in a recognised Welsh apprenticeship framework. Compliance with the SASW by Welsh issuing authorities is a statutory requirement of the 2009 Act when they consider whether to issue an apprenticeship framework.

This Order gives effect to modifications to allow “proxy” qualifications as a recognised alternative to Essential Skills as detailed under each apprenticeship framework level. The SASW has also been modified to allow a greater flexibility in obtaining occupational competence by allowing National Occupational Standards (‘NOS’) where they exist, or industry-wide standards or professional standards where they do not, to underpin the learning. The final modification to SASW is to Employer Rights and Responsibilities (ERR) which are no longer compulsory in SASW frameworks. Other consequential changes have also been made as well as some reordering.

Guidance for Welsh issuing authorities will now be issued in a separate document. Welsh issuing authorities must have regard to this updated guidance in reaching a decision on whether a framework submission complies with SASW.

A version of SASW incorporating the modifications contained in this Order entitled “the Specification of Apprenticeship Standards for Wales” will be published by the Welsh Ministers on the Welsh Government website.

## **5. Consultation**

The Welsh Government conducted a technical consultation between 06 June and 27 June 2016. A large number of stakeholders were contacted to obtain their views on the modifications being made to SASW.

There were 23 responses from a wide range of sources including FE colleges, awarding organisations, training providers and Sector Skills Councils. The majority of respondents were in favour of all the proposed modifications to SASW.

## **6. Regulatory Impact Assessment (RIA)**

The Welsh Ministers Code of Practice on carrying out regulatory impact assessments was considered in relation to this Order. A Regulatory Impact Assessment is not required as there is no impact.

# Agenda Item 4.1

National Assembly for Wales  
Elin Jones AM, Presiding Officer

Simon Thomas AM  
Chair  
Finance Committee  
National Assembly for Wales

16 September 2016

Dear Simon

## Land Transaction Tax and Anti-Avoidance (Wales) Bill

Further to my statement on the legislative competence in respect of the Land Transaction Tax and Anti-Avoidance (Wales) Bill, published on 12 September, I am writing to draw your attention to the human rights and consent issues I took into account in reaching my view.

In accordance with section 110(3) of the Government of Wales Act 2006 (GoWA) and Standing Orders 26.4, I have stated my view that the Land Transaction Tax and Anti-Avoidance (Wales) Bill is within the legislative competence of the Assembly.

However, the Bill raises an issue relevant to competence which I consider it appropriate to bring to the attention of your Committee, so that its members can decide whether or not to probe this issue further as part of the scrutiny process.

## Human Rights

In order to be within the Assembly's legislative competence, each provision of a Bill must satisfy the criteria set out in section 108 of the Government of Wales Act 2006 (GoWA). One of the criteria set out in section 108 is that the provisions of a Bill must be compliant with rights set out in the Human Rights Act 1998 and taken from the European Convention on Human Rights ("the ECHR/the Convention"). Article 1 of Protocol 1 to the Convention is one such right. In my view, the general anti-avoidance provisions (GAAR) of the Bill (set out in section 65) merit in-depth scrutiny in the light of the requirements of Article 1 of Protocol 1.

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



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### Article 1 of Protocol 1

Article 1 of Protocol 1 (A1P1) to the Convention protects the enjoyment of possessions. Taxation deprives a person of a possession: the amount of money due by way of tax. However, A1P1 expressly provides that it does not -

*“in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.*

The tax must be lawful for the exception to apply. The fact that the tax is provided for in legislation – such as the Bill - will not be enough. To be lawful, in Convention terms, the legislation must be drafted with sufficient precision to allow the citizen to assess, with reasonable certainty (taking advice if necessary), what s/he has to do to comply with it; what the consequences of non-compliance will be; and whether his or her rights have been breached. The Supreme Court has recently ruled that certain provisions of an Act of the Scottish Parliament were outside the legislative competence of that Parliament on the basis that they were not drafted with this requisite precision (*The Christian Institute and others v The Lord Advocate (Scotland)*, Trinity Term [2016] UKSC 51).

### The General Anti-Abuse Rule (GAAR)

The GAAR contained in section 65 of the Bill seeks to address tax avoidance in devolved taxes.

The GAAR will apply to artificial tax avoidance arrangements. These are arrangements where:

- the main purpose (or one of the main purposes) is to obtain a tax advantage, and
- entering into or carrying out the arrangement was not “a reasonable course of action”, having regard to the relevant tax legislation.

The Bill lays down the following guidelines for assessing whether a course of action was “reasonable”, and therefore whether a tax arrangement was “artificial”. They are:

- whether there is a genuine economic or commercial substance to the arrangement, and
- whether it is reasonable to assume that the arrangement results in an amount of tax chargeable that was less than would have been anticipated by the relevant legislation.

These guidelines provide some clarity to taxpayers as to how the GAAR will be applied. They are not, however, mandatory or exhaustive.

The Bill also provides that an arrangement will not count as artificial if it is in accordance with ‘generally prevailing practice’ accepted by the Welsh Revenue Authority (WRA). This, clearly, seeks to be fair to taxpayers.



In any proceedings relating to the GAAR, the onus of proving that an arrangement is artificial will lie on the WRA.

The Finance Act 2003 currently provides for a General Anti-Abuse Rule (the UK GAAR), which became law in 2013. It covers, among other taxes, Stamp Duty Land Tax, which Land Transaction Tax (LTT) will replace in Wales. The UK GAAR applies to tax arrangements which are considered to be 'abusive'. It does not apply to transactions involving UK Landfill Tax.

The Revenue Scotland and Tax Powers Act 2014 makes provision for a Scottish GAAR (which became law in 2015). It applies to transactions involving land and buildings in Scotland, and to transactions involving Scottish Landfill Tax. The Scottish GAAR applies to tax arrangements which are considered to be 'artificial'.

Both the UK GAAR and the Scottish GAAR are intended to provide tax authorities with the means to challenge taxpayers' attempts to arrange their affairs so as to pay less tax than the relevant legislation intended. They seek to provide a level of protection for State finances across the taxes to which the relevant GAAR applies.

The GAAR introduced by the Bill is similar to the Scottish GAAR, in that both apply to arrangements which lead to a tax advantage which is considered to be 'artificial'. In contrast, the UK GAAR uses the concept of 'abusive' arrangements.

Neither the UK GAAR nor the Scottish GAAR has been challenged in the courts.

#### A1P1 and the GAAR

The Committee may wish to probe whether the concept of a 'reasonable' course of action is sufficiently precise for a taxpayer to regulate his or her conduct. The Committee may wish to explore how easy it will be to assess what is 'genuine', and what it is 'reasonable to assume' about the level of tax anticipated to be paid.

The Convention requirement for clarity of legal drafting is also relevant to new sections 81E-81H, which the Bill inserts into the Tax Collection and Management (Wales) Act 2016, and which relate to what the WRA may do in taking counteraction against artificial tax avoidance. The WRA's power to make 'such adjustments as it considers just and reasonable to counteract a tax advantage' appears to allow the WRA considerable discretion and to lack precision. Although complete precision would, in practice, be difficult to achieve in this context.

A strong argument in favour of the GAAR's compatibility with the Convention is that the taxpayer can challenge, in an independent and impartial tribunal, any WRA ruling of artificiality, and the validity of any counteraction taken. It is also extremely important in Human Rights terms, and positive, that the burden of proof of artificiality will lie on the WRA in such proceedings.



## Queen's/Duke of Cornwall's Consent

Section 104 of GoWA provides that no Bill may be passed without the consent of Her Majesty or the Duke of Cornwall where that consent is required by virtue of Standing Order 26.67.

Consent is required where a Bill affects prerogative, private or hereditary revenue of the Queen or the Duke of Cornwall. (This is a separate matter from the question of whether a Bill affects the Crown as an institution). The need for consent from Her Majesty or the Duke of Cornwall is not a matter of legislative competence, and so a Bill could not be referred to the Supreme Court for lack of that consent; however, the Bill cannot be passed until any required consent has been signified.

Whether consent is needed for this Bill depends on whether Her Majesty's or the Duke of Cornwall's private, prerogative or hereditary revenue could be affected by a land transaction as defined in the Bill. The committee may wish to explore with the Cabinet Secretary whether the Welsh Government will be seeking such consents.

This is a short summary of the issues. If you would like further information and advice on these, or any of the other competence tests I applied to the Bill, the officials supporting your work will be pleased to assist.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee, the First Minister and the Member in Charge of the Bill.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Elin', is positioned above the printed name.

Elin Jones AM  
Presiding Officer





Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales

27<sup>th</sup> September 2016

Dear Huw,

### **Inquiry into the UK Government Wales Bill**

I am writing following my evidence to the Committee on 4 July, regarding the UK Government Wales Bill. During the evidence session I said that I would draw to the Committee's attention at least some of those reservations in the new Schedule 7A which remain a cause for concern.

While it is disappointing that at this stage the list of reservations has not been significantly curtailed from the initial draft Bill position, I am confident that there is scope for more progress to be made as the Bill moves through the House of Lords. Welsh Government officials are continuing to have detailed discussions with their Wales Office counterparts, and I expect to see UK Government amendments brought forward during Lords consideration as a result of those discussions.

I should also stress that this is not simply a matter of reducing the number of reservations on the list in Schedule 7A. It will also be important that some of the reservations are redrafted, or Exceptions added, so that the breadth of particular reservations is effectively limited, and more legislative space for the Assembly correspondingly created.

### **Water and Sewerage (Reservations 90 and 91)**

The Welsh Government is looking for implementation of the Silk Commission recommendations to devolve powers on water and sewerage, aligning competence with the national border; conferring powers on sewerage and licencing of water and sewerage suppliers; establishing intergovernmental protocol in relation to cross-border issues; and removing the Secretary of State's powers of intervention in relation to water. These recommendations were the subject of consensus in principle in the St David's Day Command paper published in February 2015, subject to further work on practical implications. This work has been undertaken as part of the Joint Governments Water and Sewerage Devolution Programme Board, and consultation with the water industry and

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

regulators, and I can no reason why this set of changes should not be should not now be implemented in the Bill.

Given the importance of water within the settlement, I think it is vital that we should achieve this package in full through the Bill, and the continued inclusion of reservations in relation to water and sewerage seems both perverse and short sighted. I believe the UK Government should take the opportunity afforded by the Wales Bill to honour its commitments by advancing these changes, instead of leaving them to some future legislative opportunity.

There are a number of reservations on which I proposed amendment during the Commons stages. It was disappointing that these were not carried, but I hope to see their reintroduction in the Lords.

### **Betting, Gaming and Lotteries (Reservation 57)**

An amendment was tabled to confer competence to regulate the number of Fixed Odds Betting Terminals. This was as a result of the adoption by the Assembly last year of a backbench motion, supported by Members of all four parties then represented in the Assembly, calling attention to the social problems arising from the increase in gambling, and calling for consideration to be given to devolving responsibility on this matter to enable the Assembly to address this effectively. This provision would be equivalent to section 52 of the Scotland Act 2016, which confers competence on the Scottish Parliament in respect of Fixed Odds Betting Terminals, and therefore represents a reasonable amendment to deliver an equitable settlement in this area for Wales.

### **Community Infrastructure Levy (CIL) (Reservation 184)**

The Welsh Government maintain the position that we put to the Silk Commission, and one which they agreed with, that CIL would be a beneficial addition to the Assembly's powers. It is inextricably linked with the delivery of our existing responsibilities for planning, and no case has been made for reserving this in the Wales Bill.

### **Licensing of the sale and supply of alcohol, and late night refreshment (Reservations 55 and 56)**

Competence in relation to the licensing of alcohol would be consistent with the Assembly's responsibilities for health, and would allow it to more effectively address one of the major causes of preventable death and illness here in Wales. Policies that control the way in which alcohol is sold and supplied are widely acknowledged to be amongst the most effective mechanisms for tackling alcohol related harms. These reservations place unnecessary and inappropriate constraints on action to tackle alcohol availability in Wales. Having the necessary powers would enable the Assembly and Welsh Government to take effective action to tackle alcohol related harms in Wales. These powers are devolved in Scotland and Northern Ireland and should equally be devolved in the case of Wales.

At official level discussions are continuing on a number of other areas where I believe the reservations should be removed or curtailed by improved drafting, for example Tribunals (reservation 7), Emergency Powers (reservation 45) Heat and Cooling (reservation 99), Energy Conservation (reservation 100), Compulsory Purchase (reservation 185) and Building Regulations (reservation 186).

There are other areas, such as the reservation of employment and industrial relations (Reservation 139) where I have proposed an exception in relation to devolved public

services and this again is a matter to which the Lords may return. It is worth noting in this context that while I have pressed for avoiding the 'subject matter of' drafting technique as a way of describing the matters to be reserved, and replacing it with more precise and specific subject definitions, the UK Government has in many areas held fast to the 'subject matter' approach, and reservation 139 is a particularly egregious example of this. The rushed timetable for scrutiny of the Bill in the Commons, and in prospect in the Lords, has not helped us in this respect.

I continue to press on all these issues and will review progress at official level in advance of Lords consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', with a stylized, flowing script.

**CARWYN JONES**

Huw Irranca-Davies  
Chair, Constitutional and Legislative Affairs  
Committee

14 July 2016

Dear Huw,

## Consideration of the Financial Implications of the Wales Bill

At our meeting on 6 July 2016, the Finance Committee considered the financial implications of the Wales Bill and the Presiding Officer's letter of 5 July 2016 to all Welsh Members of Parliament proposing a series of amendments to the Bill.

There are a number of provisions in the Bill that were of interest to the Committee, in particular *Clause 12 Financial control, accounts and audit*. The Committee considers there are eight main issues in relation to the financial provisions, and for your information I attach these as Annex A.

We discussed the removal of a referendum requirement to devolve Welsh rates of income tax. The Presiding Officer's proposed amendment would make the Treasury power conditional on consent by way of a resolution of the Assembly. The Committee discussed whether this resolution should be subject to a supermajority and we believe this is an important area that your Committee should give consideration to as well as the use of the supermajority for other matters of significant importance.

The Committee were also interested in the borrowing powers provisions available to the Welsh Government. The Wales Act 2014 gives the Welsh Government borrowing powers to invest in capital projects. From 2018, Welsh Ministers will be able to borrow up to £500m to invest in devolved areas of responsibility. The 2014 Act also provides for up to £500m of borrowing to support revenue spending to help manage budgetary fluctuations that may occur as a result of tax devolution.



Our predecessor Committee had raised the issue of borrowing powers and how the Government has less borrowing ability than local authorities in Wales. We would hope this would be revisited in this Bill.

Unfortunately due to the timetable for consideration of the Bill by the House of Commons, the Committee felt its scrutiny has been curtailed and our ability to influence the passage of the Bill has been limited, but we hope our consideration will be useful to the Constitutional and Legislative Affairs Committee.

I am copying this letter to Alun Cairns MP, Secretary of State for Wales and we look forward to the outcome of your Committee's inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Thomas'.

**Simon Thomas AM**  
**Chair**





## ***Clause 12 Financial control, accounts and audit***

### **Additional protection regarding authorisation and use of resources**

Although the Wales Bill provides safeguards covering preparation of appropriate accounts and audit arrangements, it does not provide:

- that funds can only be issued from the Welsh Consolidated Fund (WCF) in accordance with legislation or authorisation by the Assembly
- for the use of such resources are limited to the purpose for which they are authorised.

### **Provision for bodies indirectly funded from WCF to be held accountable**

There is no provision for:

- subsequent Welsh legislation being able to make provision for persons, whose funding is derived from the WCF but not drawn down directly from it (e.g. grants), being made accountable for these funds.

Although current Westminster and Welsh legislation provides for bodies such as Commissioners, Welsh Government Sponsored Bodies (WGSB), NHS bodies, Local Government bodies, lack of provision could cause some difficulties if the Assembly wished to legislate on such matters and should be included to strengthen the Assembly's position.

## **Schedule 7B General Restrictions**

### **Secretary of State for Wales consent**

Schedule 7B Paragraph 7(5)(b) means the Assembly will require consent from the Secretary of State for Wales for provisions in Welsh legislation which are incidental to or consequential on provisions which relate to budgetary procedures or devolved taxes. It is unclear as to why consent is necessary given this will have no impact beyond the Assembly's financial procedures and should be removed.

Schedule 7B Paragraph 7(6) defines budgetary procedures. The inclusion of this paragraph needs to be clarified.

### **Composition of Committee with oversight of Auditor General**

Schedule 7B Paragraph 5(6) allows for the conferral of functions of oversight of the Auditor General on an Assembly Committee (currently Finance Committee). Such a Committee would be subject to the same restrictions on composition as are currently set for the Audit Committee (PAC) in section 30 of GOWA 2006.



Given that the Bill will allow the Assembly to modify section 30 these provisions of Schedule 7B are unnecessarily restrictive and should be removed.

### **Competence to add to list of ‘relevant persons’ – payments into and out of the WCF**

Schedule 7 Paragraph 7(7) includes a list of “relevant persons” which are directly funded from the WCF. The Assembly should be able to add but not remove from this list so it could enable a body independent of Welsh Government to also be financially independent where appropriate. This would need to be amended in GOWA 2006 via the Wales Bill. Similarly the Assembly should be able to legislate in respect of persons liable to make payment into the Fund.

### **Suggested amendments to GOWA 2006 clauses via Wales Bill**

#### **Legislative budget**

The Wales Act 2014 allows the Assembly to move to a legislative budget. Section 124 of GOWA 2006 enables the Assembly to change its future budget arrangements without the need for further amendments by Act of Parliament. Consequently, a legislative budget will not require a budget resolution and so ‘resolution’ should be removed from Section 124 and appropriate consequential amendments made to sections 125 to 128.

#### **Examinations by Comptroller and Auditor General**

GOWA 2006 Section 136 gives the Comptroller and Auditor General access to devolved Welsh public bodies for auditing purposes by the UK Parliament. This has not been used to date and such a provision is not required in Scotland or Northern Ireland.

Given that the Welsh Government and Assembly are separate entities it could be argued this provision is no longer required for Wales and should be omitted with appropriate consequential amendments made to the National Audit Act 1983.

#### **GOWA 1998 - clauses outstanding**

Although Clause 12 of the Wales Bill makes provision for the Assembly to legislate on audit arrangements, the Assembly would still not be able to legislate on the Auditor General’s powers to conduct value for money audits. Sections 145 and 145A in GOWA 1998, which make provisions for the Auditor General’s powers to conduct value for money audits, cannot be amended because they are currently protected under Schedule 7 of GOWA 2006.



This restricts the Assembly from creating a standardised set of value for money audit provisions across all devolved public bodies. To ensure the possibility of consistent provisions for value for money audits, there should be the ability to amend Sections 145 and 145A in GOWA 1998.



Huw Irranca-Davies AM  
Chair- Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

21 September 2016

Dear Huw,

### **Scrutiny of the UK Government's Wales Bill**

Thank you for your letter, dated 18 July 2016 inviting the Equality, Local Government and Communities Committee's views on the Wales Bill. The Committee considered the Bill, in particular the impact of the reservations on its remit, at our meeting on 15 September 2016, and agreed that I should write to you to report back its views.

#### **General**

Like our predecessor committee (the Fourth Assembly's Communities, Equality and Local Government Committee), we support the principle of a move to a reserved powers model. However, we are concerned that the approach taken by the UK Government, both in respect of the tests on competence, including the introduction of new tests, and the number and extent of reservations, does little to address the complexities associated with the current model or to improve Wales' overall settlement.

This will be the fourth time that Parliament has legislated for significant changes in Wales' devolution settlement in less than 20 years. We had expected that the constitutional changes provided for in the Bill would deliver a durable and lasting settlement for Wales. However, if the Bill is passed in its current form, we are concerned that such a settlement will not be realised and that further legislation on this matter will be necessary before long.

#### **Reservations**

We recognise that, one of the biggest criticisms of the draft Wales Bill was the number of reservations and the lack of a clear rationale for the inclusion of those reservations. As such, we are disappointed that the reservations set out in the Bill with particular relevance to the Committee's remit remain largely unchanged following the scrutiny of the draft Bill. Like our predecessor, we are concerned that, in some cases, these reservations may reduce the Assembly's competence and prevent the Assembly from legislating freely in areas that it can already legislate in. It is wholly unacceptable that the Assembly could find itself in the position, under the new settlement, where it is unable to pass an Act that could have been passed under the conferred powers model, or to amend such an Act.



Turning to the specific reservations, we have serious concerns about the impact of reservation 37 (*The prevention, detection and investigation of crime*) on the Assembly's future ability to legislate in key policy areas, such as the prevention of violence against women, domestic abuse and sexual violence. When the Gender Based Violence, Domestic Abuse and Sexual Violence Bill (subsequently enacted and renamed the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (the Act)) was introduced to the Assembly, it was widely reported that Wales was leading the way in the UK in this area. It is therefore entirely regrettable that, under the new settlement, such legislation will likely be outside competence. You may be aware that the Committee is currently undertaking post-legislative scrutiny work on the Act. Should the Committee wish to recommend legislative changes to the Welsh Government, these would have to take account of any changes made to the Assembly's legislative competence by the Wales Bill.

Further to the above, we are concerned about the impact of reservation 37 on local government functions, and note that this may affect the ability of the Assembly to confer new duties and powers of investigation of regulatory offences on local authorities. In similar terms, we are concerned that reservation 41 (*anti-social behaviour*) could prevent the Assembly from empowering authorities to tackle anti-social behaviour, for example in the housing context.

The majority of the Committee believe that the Bill should provide for the devolution of policing to the Assembly, which would bring Wales in line with other devolved administrations who have had powers over policing for some time. We note the recent decision by the UK Government to merge the role of the Police and Crime Commissioner for Greater Manchester with the newly elected mayor for the region. In effect, this will provide the Mayor with powers beyond that of Wales in this area of policy. It is therefore all the more surprising that the UK Government feels the need to retain powers over policing in Wales.

The previous draft Bill contained what was then reservation 171 (fire safety), which included an exception for "provision of automatic fire suppression systems in newly constructed and newly converted residential premises". This reservation and exception has been removed in the Wales Bill. Although this would appear to be a positive step, it is unclear whether domestic fire sprinklers would fall within reservation 186 (building regulations). You will be aware that the Assembly has already passed legislation in this area (Domestic Fire Safety (Wales) Measure 2011). This is another example of a potential roll back, which we would oppose.

We are concerned that, reservation 206 (*equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010*), as drafted, would be a reduction in the Assembly's competence, which we are disappointed with. We consider that this reservation could impinge on the Assembly's ability to legislate in this area in future in any meaningful way.

We welcome the increase in the Assembly's competence in relation to local government elections under the proposed new settlement (and note that this increase was also provided for in the draft Bill). This would enable the Assembly to legislate for almost all aspects of local government elections, including who is able to vote. It also erases any doubt about the Assembly's ability to legislate for the voting system, should it wish, which again, is to be welcomed.



## Tests on competence

We acknowledge that some concessions have been made in relation to the restrictions on modifying private law, criminal law, and on modifying functions of reserved authorities and Minister of the Crown functions. While this is a step in the right direction, it does not detract from the key issue that the imposition of these, and other tests on competence, will do little to improve clarity or to address the complexity of existing arrangements.

I hope that you find the above useful in informing your report.

Kind regards

A handwritten signature in black ink, appearing to read 'John', with a stylized flourish above the 'h'.

John Griffiths AC / AM  
Cadeirydd / Chair



Secretary of State for Wales  
Wales Office  
Gwydr House  
Whitehall

23 September 2016

Dear Alun

**The Wales Bill – Economy Infrastructure & Skills Remit**

The Economy, Infrastructure and Skills Committee discussed the Wales Bill at our meeting on 21 September 2016.

We would be grateful if you could clarify certain areas of the Bill highlighted in the Annex to this letter. Specifically, where we have identified areas in which we are concerned that the Assembly's competence is reduced, I would appreciate it if you could confirm this assessment and offer an explanation as to how the scope reservations was decided. Indeed, it may be helpful to insert in to the Bill a clause confirming that the new settlement is not intended to reduce the range or scope of powers devolved to Wales.

I would be grateful for a response in order to inform the considerations of the Assembly's Constitutional and Legislative Affairs Committee.

Yours sincerely,



Russell George

Chair



## Annex

In November 2015, the former Enterprise and Business Committee of the National Assembly for Wales sought clarification on the reservations and specific areas of the draft Wales Bill that applied to the subjects remit of the Committee.

Like the former 4<sup>th</sup> Assembly Committee, this Committee also welcomes the additional increase of powers for transport both in terms of the Assembly's ability to legislate and the increase of executive powers of the Welsh Ministers in specific fields. Also, previous reservations listed in the draft Wales Bill that have been removed in the Bill, as laid concerning:

- in relation to advertising, regulation specifically in relation to tobacco and tobacco products
- traffic signs in general
- marine and waterway transport

Also, that an exception to a reservation has been added (i.e. an area which the Assembly can legislate) in respect of the subject-matter of the Fire and Rescue Services Act 2004 that mirrors competence in the current settlement.

However, in large proportion, the same issues that were identified as areas of concern with particular reservations in the draft Wales Bills and set out below in the work of this Committee, continue to apply in the Wales Bill, as introduced. The Economy Infrastructure and Skills Committee therefore, continue to fully endorse the previous concerns of the former Enterprise and Business Committee in relation to the following reservations of the Bill that fall within the remit of the work of this Committee and that could impact on the Assembly's competence if the Bill comes into force, as currently drafted.

Reference to '*Schedule 7 GOWA*' below is reference to the current settlement under Schedule 7 of the Government of Wales Act 2006.

Reference to '*new settlement*' is reference to the Schedule 7A to the Government of Wales Act in the Wales Bill.





1.0 The following set out the Committee's view concerning specific reservations under **Schedule 7A – Head C – Trade and Industry**.

### 1.1 Section C6 Consumer protection

1.2 The current exception in Schedule 7' GOWA prevents the Assembly from legislating about *'consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indication.....'*

1.3 The new settlement includes a more detailed description of what the reservation 'consumer protection' includes. For example, in **reservation 70** the additional words 'supply of services to consumers' are included in the new settlement which do not appear in the current exception in relation to consumer protection Schedule 7, GOWA. The wording of this reservation is therefore, narrower.

The Committee is concerned that it is still not clear whether the supply of services to consumers applies only within the context of the Sale of Goods Act 1979 or is it intended to apply further across different types of services to consumers more generally, e.g. bus services etc.

1.4 Further, the new settlement includes the wording *'safety of, and liability for, services supplied to consumers'* in reservation 71. This wording is also not currently contained in Schedule 7, GOWA and is therefore, a **reduction** of the Assembly's competence.

The Committee is concerned that the Assembly's competence is reduced in relation to reservation 71.

1.5 In relation to reservation 72 and reference to 'estate agents', as the Assembly is currently able to legislate on the 'promotion of business and competitiveness' and 'estate agents' are not specifically referred to as an exception in Schedule 7 this reservation therefore, **potentially reduces** the Assembly's competence in relation to 'estate agents'.



The Committee appreciates the clarity provided in the Explanatory Notes that confirms that letting agents are a devolved responsibility but is concerned that the regulation of estate agents listed in reservation 72 is a potential reduction of competence.

- 1.6 The following wording in reservation 76 is not clear and the Explanatory Notes to the Bill do not provide any further detail – *‘the national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems.’*

The Committee’s view is that it is unclear as to whether reservation 76 represents a reduction in competence.

## 2.0 Section C12 Assisted areas and limits on financial assistance to industry

- 2.1 Reservation 87 limits the Assembly’s competence in relation to:

*Section 1 and Section 8(5) (7) of the Industrial Development Act 1982 (‘the 1982’ Act)*

- 2.2 Section 1 allows the Secretary of State by Order to specify any areas of Great Britain as a development area or intermediate area. Further, Section 8 allows the Welsh Ministers to provide financial assistance for industry. Para 195 of the Explanatory notes says that, ‘the reservation on the financial limits means that financial assistance to the industry under section 8 of the Industrial Development Act 1982 by Welsh Ministers, Scottish Ministers and UK Ministers combined cannot exceed total expenditure thresholds which are set by UK Ministers’.
- 2.3 While executive powers are retained for the Welsh Ministers under Section 8 of the 1982 Act, the inclusion of the subject matter of the 1982 Act potentially **narrows the Assembly’s ability to legislate under** the current wording of Schedule 7 of GOWA and general heading ‘economic regeneration and development’.



The Committee is concerned that the Assembly's competence is reduced in relation to reservation 87.

3.0 The following sets out the Committee's view concerning specific reservations under Schedule 7A – Head E– Transport.

### 3.1 Section E1 Road transport

3.2 Reservation 104, concerns driver licensing and includes (training, testing and certification) whereas under Schedule 7, GOWA '06 it is only referred to as 'driver licensing'.

3.3 The wording therefore, is narrower under the new settlement and the inclusion of the word 'training' could impact on the Assembly's ability to legislate in relation to the promotion of road safety.

The Committee is concerned that reservation 104 represents a reduction in the Assembly's competence given that the Assembly in the current settlement is able to legislate in relation to the promotion of road safety.

### 4.0 Section E2 Rail transport

4.1 The current exception under Schedule 7 GOWA, refers to 'provision and regulation of railway services' whereas under the new settlement, reservation 123 only states '*railway services*'.

4.2 The interpretation provision under E2 defines 'railway services' more specifically by reference to section 82 of the Railways Act 1993. This includes:

- *services in relation to the carriage of passengers, luggage, parcels mail and goods and services in relation to stations,*
- *maintenance facilities and*
- *the provision and operation of the rail network itself*

The definition of 'railway services' is more restrictive than the current settlement and the Committee is concerned by the potential reduction in competence in relation to reservation 115.



### 4.3 Section E6: other matters

- 4.4 The current exception in Schedule 7 refers to ‘technical specification for fuel in use of internal combustion engines’ whereas the new settlement under reservation 126 refers to the same issue:

*‘technical specifications for fuel or other energy sources or processes for use in road, rail, marine waterway or air transport’*

- 4.5 The wording under the new settlement is more restrictive and encapsulates other wider forms of transport, and means of propulsion other than internal combustion engines, so is therefore, a **reduction** in competence.

**The Committee is concerned that reservation 126 reduces the Assembly’s competence.**

### 5.0 Bus Regulation

The potential for the regulation of buses in Wales is an area which the previous Committee and the Welsh Government has said it requires further powers. The following example was also provided to this Committee illustrating how Bus Regulation might be viewed in terms of Assembly competence in the new settlement.

- 5.1 Example: *Under the new settlement, there is now scope for the Assembly to legislate concerning local bus registration. Aside from these, Department for Transport told the E&B Committee in September 2015 that it believed that the Assembly / Welsh Ministers already had powers to regulate buses.*
- 5.2 *There are also currently limited executive powers for the Welsh Ministers/ local authorities to co-ordinate bus operations under current legislation, these are set out in the Transport Act and Local Transport Act 2008, and include Voluntary and Statutory Partnerships and Statutory Quality Contracts.*
- 5.3 *Both the above-mentioned levers in theory should allow for the regulation of buses in Wales. However, there is a caveat to this. This because some of*



*the associated benefits of regulation include the possibility of capping and regulating fares and integrated ticketing. It is not clear whether issues such as these would be caught by the following reservations:*

***C3: Competition: reservation 67 ‘Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers’.***

***C6: Consumer protection: reservation 70 ‘Regulation of the sale and supply of..... services to consumers’***

The Committee is concerned that issues such as fares and integrated ticketing would be caught by the above mentioned reservations should, such an option be pursued in Wales.

6.0 The following sets out the Committee’s view concerning specific reservations under Schedule 7A – Head H – Employment.

6.1 Section H1 – Employment and industrial relations

6.2 Currently, the Assembly can legislate on ‘silent subjects’ i.e. (it is neither a devolved subject, nor an exception under Schedule 7) provided it is related to a ‘conferred subject’ under Schedule 7 of GOWA and the current settlement.

6.3 This was confirmed in the Supreme Court decision in light of the Agricultural Sector (Wales) Act 2014 where the Act was within competence despite it both relating to a devolved subject ‘agriculture’ and a silent subject ‘employment’.

6.4 In the new settlement a silent subject ‘employment’ has become a specific reservation under Head H *‘Employment rights and duties and industrial relations including the subject of.....’* [and reference to a list of specific Employment legislation].



- 6.5 Further, a specific exception has been made to this Reservation which excludes *‘the subject-matter of the Agricultural Sector (Wales) Act 2014’* and protects the subject-matter of this Act.
- 6.6 Including ‘employment’ as a reservation in the current settlement in combination with the new legislative tests is a **significant reduction** in the Assembly’s competence in the context of employment.
- 6.7 There is also another Head under the new settlement – ‘the professions’ that includes not legislating on health professionals which seems a broader reservation than the current exception in Schedule 7, GOWA.
- 6.8 The Committee was provided with the following example of how might a proposed Bill in the new settlement be considered:
- *Proposed future Bill that is seeking to legislate on wages, conditions and training in social care sector – similar to Agricultural Sector (Wales) Act 2014.*
  - *Under present settlement in light of Supreme Court decision on 2014 Act – Bill concerning social care sector would be within competence.*
  - *Proposed reservation of ‘employment rights and duties and industrial relations’ under Head H, Section H1 of Schedule 7A – likely to take to same Bill **outside competence**.*
  - *The single exception for the subject matter of the 2014 Act makes this more likely – implying that whilst agricultural wages, holidays and training are within competence, these will be reserved in other sectors.*

The Committee is greatly concerned as to why competence is being reduced in relation to legislating on ‘silent subjects’ such as Employment provided they ‘relate to’ a ‘conferred subject’ under Schedule 7 of GOWA.

## 7.0 Section H3 – Job search and support

7.1 Reservation 141 ‘Arrangements for assisting persons to select, train for, obtain and retain employment and to obtain suitable employees’ potentially narrows the Assembly competence on economic development under Schedule 7



GOWA. The Explanatory notes of the Bill explains 'that the intention behind the reservation is to reserve legislative competence in relation to all work-related programmes for disabled persons'. Despite the explanation the wording potentially narrows the assembly competence under 'economic regeneration and development' under Schedule 7 GOWA.

**The Committee is concerned with the potential reduction in competence in relation to reservation 141.**

#### **8.0 Particular areas of uncertainty in relation to Welsh Minister executive powers**

8.1 Devolution of the Wales and Borders Franchise and transfer of the executive functions of the Welsh Ministers is not dealt with in the Bill.

8.2 The St David's Day announcement and paragraph 2.5.10 of Powers for a Purpose document stated:

8.3 *'The UK Government is devolving executive franchising functions to the Welsh Government, to enable them to lead on the procurement and management of the next Wales and Borders franchise.'*

8.4 In a written statement on 12 July 2016, the Cabinet Secretary announced, 'that from early 2017, responsibility for rail franchising will be transferred from the Secretary of State to the Welsh Ministers'.

**The Committee would also welcome clarification from the UK Government on the timescales it is working towards, in devolving executive functions to the Welsh Ministers in respect of the Wales and Borders Franchise, given that this is not provided for within the Bill.**

8.5 Further, the Welsh Government has previously requested that a change be made to the Railways Act 1993 that would allow public sector bodies to bid for franchise contracts. This would mirror the position for Scotland where provision is provided for in relation clause 49 of the Scotland Bill 'Rail:



franchising of passenger services'. Similarly, provision has not been made in the Bill.

- 8.6 In discussing the implications of the Smith Commission for Wales, the St David's Day announcement said analysis of "relevant Smith recommendations in the Welsh context" would be undertaken "to enable decisions to be taken early in the next Parliament on which might be implemented for Wales".
- 8.7 Department for Transport officials told the former E&B Committee in September 2015 that the issue was being actively considered: *"the UK Government agreed to consider which non-fiscal parts of the Smith Commission agreement, including that commitment, might be implemented for Wales. That consideration is on-going, and further discussions with the Welsh Government will take place shortly in the context of preparing the Wales Bill"*.

The Committee is concerned that in relation to the St David's Day announcement and the discussion of the implications of the Smith Commission for Wales, particularly in relation to the amending of the Railways Act 1993 (that would allow public sector bodies to bid for franchise contracts) is not a feature of the Wales Bill.

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Huw Irranca Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Tŷ Hywel,  
Cardiff Bay CF99 1NA

28 September 2016

Dear Huw

## **Wales Bill**

Thank you for your letter of 18 July seeking the Culture, Welsh Language and Communications Committee's views on the Wales Bill.

The Committee received a briefing from the Assembly's Legal Advisers on the implications of the Bill and the specific reservations that are of relevance to the work of the Committee. Annexed to this letter for your information is a list of those reservations and a description of the impact they may have on the Assembly's legislative competence.

The Committee was also aware of concerns that the Welsh Language Commissioner conveyed to the Secretary of State for Wales about the Bill's impact on the Assembly's ability to legislate on the Welsh language. On 14 September, we took oral evidence from the Commissioner's senior staff about the Commissioner's concerns. I attach the Commissioner's letter of 14 July to Alun Cairns, the response she received from the Parliamentary Under Secretary of State, Guto Bebb MP, and subsequent correspondence between them. The transcript of our session with the Commissioner's staff has been published online.

The Committee considered the Bill again at our meeting on 22 September. Members expressed a number of concerns about the Bill as it currently stands.



On the issues raised by the Welsh Language Commissioner, the Committee was content that the Bill would not retrospectively affect the working of the Welsh Language (Wales) Measure 2011. However, the Committee was concerned that the Bill may constrain the Assembly's ability to legislate in these areas in future and that the effect of the Bill in this area is to remove a degree of the competence that the Assembly currently has. Our understanding is that if the Welsh Language Measure is amended in any way in the future, after the Wales Bill is enacted, the powers of the Assembly to legislate in this area may be limited. This is very concerning indeed.

In relation, to the requirement to seek consent from the UK Government for in relation to imposing Welsh language duties on UK public bodies, a Member of the Committee suggested that some sort of 'de minimis' exception might usefully be included in the Bill.


Members also expressed concern about the broadcasting reservation. The Committee accepts that broadcasting is currently an exception in the Government of Wales Act 2006. However, the new reservation seems to also include the BBC as a specific additional reservation, the reasons are not entirely clear. This seems to go further than the current exception and does not take account of wider moves toward the BBC, and other public service broadcasters, being publicly accountable to the National Assembly. It also suggests that the new reservation would include all BBC activity not just that related to broadcasting. We were also concerned at the inclusion of 'other media' in the reservation. Again, this appears to have the effect of narrowing our current competence beyond broadcasting.

On a broader point, Committee Members were very concerned that the effect of any reservation should be to reduce the Assembly's current legislative competence. It may be timely to point out that the 2011 referendum provided the Assembly with its current powers and that the Bill should not, as a matter of principle, provide fewer or diminished powers than were voted for by the people of Wales in the referendum. Indeed, it may be helpful to insert in to the Bill a clause confirming that the new settlement is not intended to reduce the range or scope of powers devolved to Wales.



I hope this is helpful. I am copying this to the Secretary of State for Wales and to the Welsh Language Commissioner for information.

Yours sincerely

A handwritten signature in blue ink that reads "Bethan Jenkins". The signature is written in a cursive style with a large initial 'B'.

**Bethan Jenkins AM**  
**Chair**



## ANNEXE - TABLE OF RESERVATIONS WHICH ARE OF MOST RELEVANCE TO THE COMMITTEE

Reservation – Section and number	Description	Impact of the reservation on the Assembly’s legislative competence
B16, 54 and 55	54 Classification of films and video recordings (including video games)  55 Licensing of– the provision of entertainment, and late night refreshment.	Wording slightly different from current exception; <b>slight reduction</b> in competence. “Video games” is not currently included as an exception.
B17, 56	The sale and supply of alcohol	Wording slightly wider than current exception but effect likely to be equivalent.
B18, 57	Betting, gaming and lotteries	Unchanged.
B22, 61–62	Charities and fund–raising	Not currently an exception from competence so appears to produce a <b>reduction</b> in competence.
J6, 153–155	Reservations concerning Health and safety – including fire safety (save for the promotion of fire safety otherwise than by prohibition or regulation).	Wording wider than current exception; effect in practice <b>unclear</b> , especially when combined with another restriction on competence.
K1, 156 and	Broadcasting and other media;	Wording wider than current exception; effect



157	the BBC.	in practice <b>unclear</b> .
K2, 158	Public lending right	Unchanged.
K3, 159	Government indemnity scheme for objects on loan	Unchanged.
K4, 160	Property accepted in satisfaction of tax and the disposal of such property	Wording wider than current exception – <b>reduction</b> in competence.
K5, 161	Safety of sports grounds	Not currently an exception from competence – <b>reduction</b> in competence.



Huw Irranca-Davies AM  
Chair, Constitutional and Legislative Affairs  
Committee

29 September 2016

Dear Huw

## **Wales Bill**

Thank you for your letter of 18 July 2016, regarding the Constitutional and Legislative Affairs Committee's current scrutiny of the Wales Bill. We very much appreciate the opportunity to feed into that process.

As you are aware, our predecessor committee considered the draft Wales Bill with three specific things in mind:

- Was the draft Wales Bill clear?
- Did it affect the Assembly's competence in relation to children, young people and education; and
- What did the draft Bill mean for the Assembly's ability to legislate in the future.

In considering the Wales Bill now, the Committee believes that these three areas are still very relevant, and looked at the impact of the Wales Bill along these same broad lines. In general terms, the views of the Children, Young People and Education Committee (CYPE) remain as set out in our letter to the Secretary of State in November 2015. Of particular concern are (a) the roll back of competence in specific areas, and (b) the clarity of the reservations.

These two areas are likely to cause concern across Assembly Committees. This response sets out the specific concerns of CYPE Committee, in relation to the effect of the Bill on matters within its remit, together with general observations of Committee members.



## **Is the Wales Bill clear and are there ways it can be made clearer?**

The Bill contains over 200 specific reservations, wide-ranging general reservations, new “necessity” tests and broadened requirements for consents. The combination of these tests and reservations has made it difficult to assess with confidence the impact of the Bill on those areas that fall within the Committee’s remit.

Unfortunately the Explanatory Notes that accompany the Bill do not explain or rationalise why certain reservations have been included or expressed as they have been. There is also no overarching principle that enables a clear understanding of why certain reservations have been included and how wide reaching they will be. This has made scrutiny more difficult, and in relation to many reservations listed below, further clarification as to the extent of their effect is required.

## **Does the Wales Bill affect the Assembly’s current competence in relation to children, young people and education?**

During our discussions (both on the draft Bill and the Wales Bill) the Committee identified specific reservations which appear to reduce the Assembly’s competence in relation to children, young people and education and the matters that affect them:

### **Reservation 37 – The prevention, detection and investigation of crime**

This reservation is potentially very wide and could have significant implications if the Assembly wished to legislate in areas concerning child protection, for example.

The exception to this reservation (areas where the Assembly will have competence) would allow the Assembly to legislate in relation to “powers of entry, search and seizure relating to the investigation of an offence of a kind provision for the creation of which is within the Assembly’s legislative competence.” However, despite the inclusion of this exception, this reservation is potentially wide-ranging and it is not clear without further clarification what this particular restriction could cover. The Committee is concerned that this reservation could limit the Assembly’s power to legislate, and believes that further clarification on the intention of reservation 37 is required.

### **Reservation 61 – Charities**

As drafted, this reservation could impinge on the Assembly’s ability to legislate in relation to private schools with charitable status as well as, for example, institutions in the Higher and Further Education sectors.

The explanatory notes state that the “reservation will not affect the ability of the Assembly or Welsh Government to confer, impose, or modify functions of public



bodies operating within devolved areas who also happen to be charities”. While explanatory notes can be a useful interpretative tool for the courts, they have no legal effect and could be changed prior to Royal Assent. Therefore, for the sake of clarity, the Committee believes that the explanation provided in the explanatory notes should be placed on the face of the Bill.

### **Reservation 174 to 177 – Family relationships and children**

Under GOWA, specific elements of family law were devolved. These are listed under GOWA as being:-

*“(a)Welfare advice to Courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and  
(b)Welsh family proceedings officers.”*

However, these areas are no longer listed as exceptions in the Bill and it is unclear whether the reservations as drafted would remove this limited competence that the Assembly currently possesses. The Committee believes that the position must be made clear.

Reservation 175 includes “Parenthood, parental responsibility, child arrangements and adoption.”

In the interpretation section “child arrangements” is defined as including the subject matter of Part 2 of the Children Act 1989. Part 2 covers Court Orders with respect to children in family proceedings and would have been regarded in any event as coming within the “family law and proceedings” exception in heading 15 of Schedule 7 to GOWA. The inclusion of Part 2 in the reservation makes no change in the Assembly’s legislative competence. However, the reservation does not limit itself to only Part 2 of the Children Act as it merely “includes” it under “child arrangements”. The explanatory notes are unhelpful and give no further detail. The Committee believes that further clarification is needed before a clear conclusion can be reached that this does not represent a change in the legislative competence of the Assembly.

More significant, and of greater concern to the Committee, is that reservation 175 includes adoption. Apart from inter-country adoption, adoption services (such as the recruitment of adopters, training, matching and post-adoption support) is currently devolved in its entirety. This change would only leave the Assembly competence in relation to adoption agencies and their functions. This is clearly a reduction in the Assembly’s current legislative competence, and the Committee cannot support this.





Reservation 176 includes 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. However, it is not clear whether “subject matter of Parts 4 and 5” means the contents of Parts 4 and 5. If so, for clarity, the Committee believes this should be confirmed by the UK Government or preferably a definition inserted into the interpretations section of the Bill.

Part 5 of the Children Act 1989 for example is headed “protection of children.” Although technically a title in legislation has no legal effect, the Committee believes that there needs to be an assurance that the “protection of children” is not being reserved, especially as the Assembly currently has full legislative competence in relation to “protection and well-being of children.”

### **Reservation 187 – Equal Opportunities**

Under the current arrangements the Assembly can amend equality legislation insofar as its legislation relates to equal opportunities for public authorities. While some limited competence would exist by virtue of some exceptions in the Bill, the Committee is extremely concerned that this reservation includes the subject matter of the Equality Act 2006 and the Equality Act 2010 and would therefore reduce the Assembly’s legislative competence significantly.

The Committee cannot support this reduction in legislative competence, and seeks urgent clarification as to why legislative competence is being rolled back in this respect.

### **Reservation 194 – School teachers’ pay and conditions**

School teachers’ pay and conditions are expressly reserved in the Bill. Teachers’ pay and conditions was not a devolved area under the current settlement and was protected by the current provisions on Minister of the Crown consents.

The Welsh Government have asked that this should not be a reservation and should be reconsidered especially in light of the fact that it was the UK Government that requested the Silk Commission to consider the devolution of Teachers’ Pay and Conditions. The Secretary of State for Wales gave a commitment in his letter dated 3<sup>rd</sup> September 2015 to the First Minister to give further consideration to the devolution of teachers’ pay and conditions. The Committee therefore seeks urgent clarification as to why teachers’ pay and conditions has been listed as a reservation.

### **Restrictions on Criminal law**

The Committee notes that one of the new restrictions under the Bill is that an Assembly Act must not modify or create a criminal offence in a “listed category.” Sexual offences (including offences relating to indecent or pornographic images) is included in the listed category of offences. The example below demonstrates



how the proposed settlement would reduce the Assembly's competence in relation to the criminal law and specifically affect the remit of this Committee.

#### Example - Sexual exploitation of children

In the context of sexual exploitation of a child, the definition of "sexual exploitation" in the Sexual Offences Act 2003 includes "recording" indecent images of a child. The Policing and Crime Bill amends that definition to clarify that "streaming" and "transmitting" indecent images of a child are included in the definition.

This is within the legislative competence of the Assembly because it relates to the following Schedule 7 subject:

- the protection and well-being of children.

There are no relevant exceptions (for example, sexual offences is not an exception). Therefore, this part of the Policing and Crime Bill is currently within the legislative competence of the Assembly and the Assembly's consent is needed before the UK Parliament can legislate in this area.

Under the Wales Bill, Assembly legislation will not be able to modify or create a sexual offence. The Policing and Crime Bill's amendment to the definition is modifying (or possibly creating) a sexual offence, therefore under the Wales Bill it would be outside the Assembly's competence and no LCM would be needed.

#### **How will the draft Bill affect the Assembly's ability to legislate effectively in future?**

The Committee remains concerned that the reservations, necessity tests and other restrictions in the Bill will unnecessarily constrain the Assembly's ability to legislate effectively in areas where it already has powers or functions. I refer the Committee to the example set out in our letter to the Secretary of State for Wales with regard to the designation of the Chief Officer of police as a partner on safeguarding boards.

The Committee did, however, welcome the removal of the reservation relating to the Children's Commissioner in England. This means that while the UK Children's Commissioner will remain a reserved authority, the Assembly in future could legislate to extend the remit of the Office of the Children's Commissioner for Wales subject to the consent of the relevant Secretary of State.

This represents a step forward from the current position. However, the Committee notes that any future proposals for the extension of powers for the Commissioner could still be vetoed by a UK Minister.



The Committee believes that, given the lack of clarity in the reservations and general restrictions, there must be scope to amend these in the future. The Committee acknowledges that GOWA Section 109 Orders are likely to remain in place, but that this can be a lengthy, and complicated, process. In order to secure a more streamlined process, there should be a more flexible system whereby a reservation or general restriction could be amended, possibly with the consent of a Minister of the Crown.

## **Conclusion**

The Committee has grave concerns about the proposed reduction in the Assembly's competence in areas that fall within the Committee's remit.

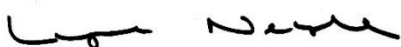
The Committee is extremely concerned about the lack of clarity in the Bill, and believes that:

- reservations should be underpinned by principles, which can be explained clearly and simply; and
- the full extent of the specific reservations should be explained in the explanatory notes accompanying the draft Bill.

The Committee believes there should be a more flexible system whereby a reservation or general restriction could be amended, possibly with the consent of a Minister of the Crown.

The Committee acknowledges that the legislative timetable for the Bill makes consideration of these matters difficult, but believes that these matters must be addressed before the passage of the Bill is complete.

Yours Sincerely



**Lynne Neagle AC / AM**  
Cadeirydd / Chair



Huw Irranca-Davies

Chair, Constitutional and Legislative Affairs Committee

26 September 2016

Dear Huw,

**Wales Bill: Reservations within the remit of the Climate Change, Environment and Rural Affairs Committee**

On 14 September 2016, we considered the reservations included in the Wales Bill that relate to the remit of the Climate Change, Environment and Rural Affairs Committee.

To support this discussion, the Assembly Commission's Legal Service provided a written briefing summarising the issues associated with these reservations. This briefing is enclosed and we ask that you consider it when drawing your conclusions in relation to the Wales Bill ('the Bill').

In addition to the issues raised in this briefing, we have three further concerns that we would like to draw to your attention.

**Adjustment to legislative competence of the Assembly following the UK's exit from the European Union**

Many of the policy areas which fall to be scrutinised by the Committee are strongly influenced by EU policy and legislation. In particular the areas of agriculture, fisheries and the environment.

Under the existing settlement these are areas where the Assembly has a wide scope to legislate. This also (subject to any concerns raised in the enclosed legal briefing) remains the position under the Wales Bill.

The Committee wishes to maintain the Assembly's legislative competence in these areas after the United Kingdom leaves the European Union. We would welcome confirmation from the UK government as to whether it accepts this position.



## Energy consenting

Our predecessor committee, the Environment and Sustainability Committee, wrote to the Secretary of State for Wales to express concerns around narrow devolution of energy consenting powers.

We share some of these concerns.

The Bill proposes that the Assembly will gain competence over:

- all onshore wind electricity generating projects in Wales; and
- All other electricity generating projects in Wales and in Welsh territorial waters up to 350MW.

Our predecessor committee called for the full devolution of energy consenting when following-up on its 2012 report on *Energy policy and planning in Wales*.

Our predecessor also called for devolution of the financial incentives related to renewable energy and for consenting of grid infrastructure improvements.

We offer two further causes for concern in relation to this aspect of the proposals.

Firstly, we are concerned that the 350MW ceiling is arbitrary. The Silk Commission provided a justification for this limit, but it can be questioned, particularly as the situation in Wales has moved on considerably since the Silk Commission looked at this issue.

We have seen projects such as the Swansea Bay tidal lagoon progress, and proposals for larger tidal lagoons are now on the table.

Under the Bill's proposals, Welsh Ministers could have consented the Swansea project. But they could not consent the larger projects that are being planned elsewhere in the Severn Estuary near Cardiff and Newport and off the north Wales coast. There has been no explanation of the rationale behind this decision.

Our second concern is that the development of energy policy in Wales is increasingly diverging from the UK position.

Simply increasing the ceiling for the types of development that can be consented in Wales will not enable Wales to do much more than take some limited decisions within the UK policy framework. It cannot develop and implement a truly devolved energy policy for Wales without far broader powers in areas such as electricity supply, grid regulation and the incentives regime.



## Heat and Cooling

This is a new reservation which did not appear in the Draft Bill.

Paragraph 217 of the Explanatory Notes states that the section reserves production, distribution and supply of heat and cooling. It defines combined heat and power systems (also known as co-generation) as installations which simultaneously produce electrical power and also capture heat for use.

Combined heat and power developments are usually seen in the context of local developments. We would like further clarity around the rationale for including this reservation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Reckless', is centered within a light gray rectangular box.

Mark Reckless AM

Chair of the Climate Change, Environment and Rural Affairs Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



**Huw Irranca-Davies AM**

Chair, Constitutional and Legislative Affairs Committee

29 September 2016

Dear Huw

### **The UK Government's Wales Bill**

Thank you for your letter of 18 July about the work currently being undertaken by your Committee on the Wales Bill. In that letter, you invited us to write to you with our views on the Bill, particularly the impact of the reservations on our remit and any changes to the views expressed by our predecessor committee on the draft Wales Bill.

### **General observations**

The Committee considered the Bill on 15 September. We remain supportive of the move to a reserved powers model, which we believe has the potential to clarify the devolution settlement in Wales. However, we maintain that such a model must be specifically tailored to Wales, taking full account of the developments in devolution thus far, including the outcome of the 2011 referendum to increase the powers of the National Assembly.

Regrettably, this does not seem to have been achieved in the Bill before us which, as with the draft Bill, provides for a considerable number of complex tests of competence. It is our view that the cumulative effect of these tests amounts to a significant constraint on the Assembly's ability to legislate, rolling back competence in a number of policy areas.

Croesewir gohebiaeth yn Gymraeg neu Saesneg | We welcome correspondence in Welsh or English



In addition to the competence tests, our predecessor Committee expressed concerns about the sheer number and breadth of the reserved matters listed in the draft Bill and the impact this would have on the Assembly's ability to legislate effectively. Unfortunately, this situation does not seem to have improved in the Bill currently before Parliament, and many of the concerns we raise in this letter mirror those already expressed by that Committee about the draft Bill.

Taken together, the competence tests and the extensive list of reserved matters under the Bill are likely to mean that the Assembly has fewer powers to legislate than at present. We find this unacceptable.

In the remainder of this letter, we expand on the concerns expressed above about the competence tests and the reserved matters, providing practical examples where possible.

### **The 'relates to' test**

Under the reserved powers model, Assembly legislation must not 'relate to' a reserved matter. As such, any Assembly legislation which has more than a 'loose or consequential connection' with any reservation in the Bill will be judged to be outside competence. Our predecessor noted with concern that there were more than 200 reservations listed in the draft Bill. We are dismayed to see that this is still the case in this Bill. Within the remit of this Committee alone, these new arrangements could be deeply detrimental to the Assembly's ability to pass (or modify) legislation in significant policy areas where it is currently able to do so. The following examples illustrate this point.

#### *Reservations relevant to the Committee's remit*

##### Employment

Our concern here relates to employment rights and duties. Under the current conferred powers model, employment is not listed as a devolved subject in Schedule 7 – as such, it is a 'silent subject' and the Assembly is able to legislate in





this area, provided that the legislation relates to a devolved matter and does not relate to an exception.

The Wales Bill, however, turns employment from a silent subject into a reservation, thus preventing the Assembly from legislating in any significant way on matters like employee rights and the minimum wage. Therefore, under the Wales Bill, the Assembly would not be able to pass legislation which related to employee rights and the minimum wage even if that legislation also related to a devolved matter such as ‘social welfare’. This represents a significant and unacceptable reduction in the Assembly’s current legislative competence.

#### Licensing of sale and supply of alcohol

We share the concerns of our predecessor about the reservation of the sale and supply of alcohol. The consumption of alcohol is a serious health issue and is an area where the previous Committee has undertaken a significant amount of work. We were concerned to hear recently<sup>1</sup> from the Minister for Social Services and Public Health that, although keen to introduce minimum unit pricing because of the associated public health benefits, the Welsh Government believed that the Wales Bill might be a “stumbling block” to this if it were to remove the Assembly’s competence to legislate in this area.

#### Police powers under the Mental Health Act 1983

The Committee has recently considered and reported on an LCM for the Policing and Crime Bill. Amongst other things, the Bill extends the powers of the police under the Mental Health Act 1983 to enter premises in order to remove people who suffer from a mental disorder and to take them to a place of safety. It also provides certain safeguards as a check on those extended powers, including greater controls over what kind of place can be used as a ‘place of safety’. These provisions are currently within the legislative competence of the Assembly

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<sup>1</sup> RoP, Health, Social Care and Sport Committee, 15 September 2016, para 178



because they relate to subjects listed in Schedule 7, and ‘policing’ is not an exception. As such, the Assembly’s consent is needed before the UK Parliament can legislate in this area.

Under the Wales Bill, however, ‘policing’ is a reservation. Therefore, the parts of the Bill that were the subject of the recent LCM would be outside the Assembly’s competence if they were judged to relate to policing in more than a loose or consequential way. This would be the case even if those parts of the Bill could also be judged to relate to the prevention of mental disorders or care of vulnerable persons, which are not reserved matters under the Bill. In this event, an LCM would not be needed and Parliament would be able to legislate freely in an area where previously the consent of the Assembly would have been sought.

### **Modifying the law on reserved matters**

In addition to not ‘relating to’ a reserved matter, Assembly legislation under the Wales Bill must not ‘modify the law’ on reserved matters. As noted by our predecessor, this is a very fine distinction and one which captures a vast amount of law, as it encompasses all of the law on all of the reservations provided for in the Bill.

It serves to further restrict the Assembly’s ability to legislate in a way that we consider to be unacceptable, as it means that Assembly legislation will only be able to modify that vast amount of law if it is doing so in an ancillary way and there is no greater effect than necessary to give effect to the purpose of the Assembly legislation. Further, the question of whether something is ‘necessary’ is likely to be something that will have to be decided by the Supreme Court.

### **The criminal law**

In addition to the above, we share the concerns of our predecessor about the limiting effect of the provisions in the Wales Bill relating to the use of the criminal law.



We agree with the previous Committee that it is the legitimate role of a democratically elected legislature to decide how to enforce its legislation and to do so in a way that it considers appropriate. In our view, the provisions in the Wales Bill relating to modifications to the criminal law place an unacceptable limitation on the Assembly's ability to enforce obligations and secure rights via its legislation.

The following example is a clear roll-back of Assembly competence in the criminal law.

#### Sexual exploitation of children

As referred to above, the Committee recently considered a Legislative Consent Memorandum for the Policing and Crime Bill. In addition to extending certain police powers, the LCM seeks consent for Parliament to legislate to amend the definition of "sexual exploitation" in the Sexual Offences Act 2003, so that the definition of "recording" indecent images of a child includes "streaming" and "transmitting" indecent images of a child.

Under the current settlement, this matter is within the Assembly's competence as it relates to a subject within Schedule 7 and 'sexual offences' is not a specific exception. However, under the Wales Bill, Assembly legislation will not be able to modify or create any sexual offence. The Policing and Crime Bill's amendment to the definition does modify/create a sexual offence, and therefore this would be outside the Assembly's competence. As such, no LCM would be needed.

#### **Minister of the Crown (UK Government) consent**

Our predecessor expressed concerns about the requirements in the draft Bill for the UK Government to give consent to Assembly legislation that affect the functions of Ministers of the Crown, government departments and reserved authorities. We agree that these requirements present a significant risk to the Assembly's ability to legislate in a comprehensive and consistent way, and we are therefore disappointed to see them reflected in the Bill before us.



Again, we have sought to illustrate this point with the following practical example.

#### E-cigarette duties on reserved authorities with workplaces in Wales

The Public Health (Wales) Bill was originally intended to prohibit the use of e-cigarettes generally across workplaces in Wales. As part of that prohibition, it imposed certain duties on managers of workplaces, including requiring managers to put up signs in the workplace. Currently this is within the Assembly's competence, there are no relevant exceptions, and UK Government consent is not needed.

However, under the Wales Bill, UK Government consent would be needed to impose such duties on reserved authorities with workplaces in Wales (such as the DVLA, Crown Prosecution Service, Land Registry), as those duties would amount to imposing functions on reserved authorities.

If UK Government consent was not given, the duty to take steps to stop persons using e-cigarettes and the duty to put up signs would not apply to buildings occupied by reserved authorities. This would result in an inconsistent application of those duties across Wales.

#### **Closing remarks**

Overall, we share the view of our predecessor Committee that the Bill will not deliver a clearer and stronger settlement in Wales which is durable and long lasting. Instead, we are concerned that there will be a rolling back of competence, and that there will continue to be considerable room for interpretation, with the inevitable need for early and even repeated recourse to the Supreme Court. On this last point, we believe there is some merit in exploring the options for making available a mechanism to work through any exceptions to reservations that have been inadvertently missed out of the Bill, where there is good will on both sides to do this. This may help to reduce the need for the Court's involvement, certainly in the early days of implementation should the Bill be enacted. While there is a special legislative process that can be used to change **some** aspects of the



devolution settlement, that process can be cumbersome and slow and is unlikely to be flexible enough to deal with the uncertainties that will arise under the new settlement.

Yours sincerely,

A handwritten signature in black ink, reading "Dai Lloyd". The signature is written in a cursive, flowing style.

Dr Dai Lloyd AM  
Chair, Health, Social Care and Sport Committee



# Agenda Item 4.4 The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2016

## Government Response

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The Welsh Government notes the Committee's report and accepts the point as raised. It pertains to a drafting error which is purely typographical, and we will correct the error at the next available opportunity.



# SL(5)009 – The Smoke Control Areas (Exempted Class of Fireplace) (Wales) Order 2016

## Agenda Item 4.5

### Government Response

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The Welsh Government notes the Committee's report and accepts the points as raised. They pertain to drafting errors which are purely typographical, and we will correct these errors at the next available opportunity.



# Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

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