

The Rt Hon Alun Cairns MP
Secretary of State for Wales
1 Caspian Point
Caspian Way
Cardiff Bay
CF10 4DQ

30 June 2016

Dear Alun

Wales Bill – first day of Committee Stage - proposed amendments

I am writing to inform you of the draft amendments to the Wales Bill I have published today which seek to address the issues I raised in my letter of 21 June which are to be debated on the first day of committee stage next week.

In the wake of last week's Leave vote in the EU Referendum, it is crucial that Wales has a strong constitutional framework and that the Bill continues its passage through Parliament. I recognise however, that the shortened timetable for scrutiny of this important Bill will constrain the ability of the National Assembly and its Committees to engage in the process.

As I have said I welcome the progress that has been made in improving the Bill. The amendments I have published are intended to provide further clarity and to address important points of principle where I believe it is more appropriate for the Assembly to determine its own procedures and, most particularly, ensuring that the statutory legislative consent arrangements between the Assembly and Parliament are no narrower than the scope of the inter-governmental convention currently in place.

It would be a welcome step if you were able to bring these amendments before the House for debate on behalf of the UK Government. In any case, I will follow the debate with great interest. I look forward to meeting with you in the near future to discuss these matters and that we continue to work constructively

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together. I welcome the continued work between our officials and the further insight that these discussions have brought.

In the interests of transparency I enclose a copy of the letter I have sent to all Welsh MPs today, together with the detail of these amendments.

Copies of this letter have been provided to the First Minister; leaders of the political groups in the Assembly and the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

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

Elin Jones AM
Presiding Officer

Enc



House of Commons
LONDON
SW1A 0AA

30 June 2016

To: All Welsh Members of Parliament

Dear Colleague

Wales Bill –proposed amendments for 5 July

Following the introduction of the Wales Bill earlier this month I wish to draw your attention to draft amendments that I have published today relating to clauses to be debated on Tuesday, 5 July. I have written to the Secretary of State and all Welsh MPs and hope that these will be put forward for debate so that we can work together to deliver a constitutional settlement that is workable, clear and provides a firm foundation for the Assembly's future.

In the wake of last week's Leave vote in the EU Referendum, it is crucial that Wales has a strong constitutional framework and that the Bill continues its passage through Parliament. As Llywydd, it is my role to represent the interest of the Assembly to ensure it serves effectively the people of Wales. It is an innovative step for the Llywydd to publish amendments. I am taking that step because I wish to be open about improvements to the Bill that are important for the institution. The amendments are informed by the evidence presented during pre-legislative scrutiny of the draft Bill and the conclusions of the Assembly's previous Constitutional and Legislative Affairs Committee (CLA) as well as the institution's experience of working with the current settlement. I am continuing to discuss these with the Secretary of State for Wales and welcome the progress made so far.

These amendments are intended to reflect two key principles.

The first is an important constitutional principle: the Assembly should consent to any change in its powers. Therefore the statutory legislative

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consent arrangements between the Assembly and Parliament should be no narrower than the scope of the inter-governmental convention currently in place. Likewise, the Assembly should give its consent before the power to vary the income tax rate is devolved.

The second principle addressed by the amendments is that, after 16 years of devolution, the Assembly should have both the power and the flexibility to determine its own internal affairs. This principle finds its expression in the following areas of amendment:

- The Bill devolves power to the Assembly in respect of its electoral arrangements, which is welcome, but there are some outstanding issues. The 7-day timeframe within which the Assembly is required to hold its first meeting and elect a Presiding Officer causes practical difficulties and does not allow the Assembly the same flexibility as Scotland, where the requirement is to elect the Presiding Officer within 14 days. Similarly, I wish to see the power to vary the date of Assembly general elections, and to fix the date of extraordinary Assembly elections, transferred to the Presiding Officer, as is the case in Scotland. Currently, the Bill would transfer the first of these powers to the Welsh Ministers, and leave the second with the Secretary of State.
- I believe that the Bill should therefore also be amended to remove new and unnecessary prescriptions in respect of its operational arrangements, which occur in the provisions requiring a super-majority and justice impact assessments.
- I am pleased to see that the Bill gives the Assembly control over financial, accountability and audit affairs for Welsh bodies. I would like the Bill to include a small number of additional important provisions on this matter.

The attached documents contain a detailed description of the changes I am suggesting, as well as the draft amendments themselves.

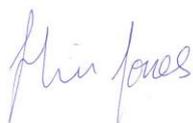
The amendments that I have proposed address issues to be debated during the first day of Commons Committee scrutiny only (Part 1 of the Wales Bill, excluding clause 3 and related schedules) on 5 July. I hope to provide further suggestions in respect of matters to be discussed on the second day of Committee stage in the Commons on 11 July. I have also written to the Secretary of State setting out my initial views on the Wales Bill more generally, including on the Reserved Powers model. [[Letter 21 June](#)]



I hope therefore that these amendments help inform and support robust, early scrutiny of the Bill both in Parliament and here in the Assembly, led by a new CLA Committee. I look forward to following the debate next week.

I would be pleased to discuss any aspect with you further if you wish to contact my office.

Yours sincerely

A handwritten signature in blue ink that reads "Elin Jones". The signature is written in a cursive, flowing style.

Elin Jones AM
Llywydd

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Briefing on Presiding Officer's proposed Amendments for Day 1 Consideration of the Wales Bill

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Summary table of amendments

Clause	Purpose and effect of proposed amendments
Clause 1	<p>The amendments give the declaration of the permanence of the Assembly appropriate prominence in the Bill, by inserting the references to the permanence of the Assembly at the start of Part 1 of Government of Wales Act 2006, rather than in Part 2 of Government of Wales Act 2006.</p> <p>The amendments also separate out the provisions relating to the permanence of the Assembly and the Welsh Government to reflect the constitutional separation between the legislature and the executive.</p>
Clause 2	<p>The amendments include provision for Parliament to legislate in “exceptional circumstances” and specifies what those circumstances are. They include matters relating to public safety or national security, or urgent economic issues where there is not sufficient time to seek the Assembly’s consent.</p> <p>The amendments also define “devolved purposes”, to provide that the statutory expression of the convention applies at least as broadly to Wales as is currently the case in Scotland’s Standing Orders.</p>
Claus 4	<p>The amendment adds the National Assembly for Wales Commissioner for Standards and the National Assembly for Wales Remuneration Board to the list of Wales Public Authorities.</p>
Clause 6	<p>The amendments transfer the power to vary the date of Assembly ordinary general elections and the duty to set the date of an Assembly extraordinary general election to the Presiding Officer.</p>
Clause 8	<p>The amendments remove the provisions for Standing Orders to include requirements for a statement to be published in English and Welsh.</p>

Clause 10	The amendment removes the requirement for a Justice Impact Assessment.
Clause 12	The amendment provides that funds issued from the Welsh Consolidated Fund can only be used for the purposes for which they were issued.
	To amend Schedule 2 in relation to clause 12: <ul style="list-style-type: none"> • to allow the Assembly competence to add to the list of ‘relevant persons’ in sections 120(1) and 124(3) of the Government of Wales Act 2006. • to remove the requirement for SoS consent to amendments to provisions in Part 5 and section 159 of Government of Wales Act 2006, • to remove requirements relating to the composition of the Committee with oversight of the Auditor General and the exercise of his functions.
Clause 15	The amendments insert references to Cynulliad Cenedlaethol Cymru, Comisiwn Cynulliad Cenedlaethol Cymru and Deddfau Cynulliad Cenedlaethol Cymru.
Clause 16	The amendment introduces a requirement that income tax varying powers can be commenced only with the consent of the Assembly.

Clause 1 - Permanence of the National Assembly for Wales and Welsh Government

1. Clause 1 amends the Government of Wales Act 2006 by inserting two new sections: 92A and 92B.
2. As drafted, the clauses referring to the permanence of the Assembly and Welsh Government will appear after Part 2 of Government of Wales Act 2006.
3. The purpose of the amendments are, first, to give the declaration of the permanence of the Assembly appropriate prominence in the Bill, by including it in section 1 of the Government of Wales Act 2006, instead of it being inserted in a new clause 92A of that Act.
4. Secondly, the amendments reflect the constitutional separation between the legislature – the National Assembly for Wales – and the executive – the Welsh Government, by dealing with them in separate, new, provisions to be inserted into the Government of Wales Act 2006; and by inserting those provisions into different parts of the 2006 Act – the Parts dealing, respectively, with the Assembly and the Government.
5. In this sense, it reverts to the approach adopted in the Draft Wales Bill published in October 2015.

Text of the clause as amended

1 Permanence of the National Assembly for Wales and Welsh Government

- (1) In section 1 of the Government of Wales Act 2006 (“the Assembly”), after ~~Part 2~~subsection (1) ~~(the Welsh Government)~~ insert—

~~“PART 2A~~

~~PERMANENCE OF THE ASSEMBLY AND WELSH GOVERNMENT~~

~~92A~~ **Permanence of the Assembly and Welsh Government**

“(1A) The Assembly is a permanent part of the United Kingdom’s constitutional arrangements.

(1B) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Assembly ~~and the Welsh Government~~.

~~(1C)~~ In view of that commitment it is declared that the Assembly ~~and the Welsh Government~~ ~~are~~ is not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.

- (2) In section 45 of the Government of Wales Act 2006 (the Welsh Government), for the words in subsection (1) before paragraph (a) substitute—

“(1) There is to be a Welsh Government or Llywodraeth Cymru.

(1A) The Welsh Government is a permanent part of the United Kingdom’s constitutional arrangements.

(1B) The purpose of subsection (1A) is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Welsh Government.

(1C) In view of that commitment it is declared that the Welsh Government is not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.

(1D) The members of the Welsh Government are—”.

(3) In the Government of Wales Act 2006, after Part 2 (the Welsh Government) insert—

92B Recognition of Welsh law

(1) There is a body of Welsh law made by the Assembly and the Welsh Ministers.

(2) The purpose of this section is, with due regard to the other provisions of this Act, to recognise the ability of the Assembly and the Welsh Ministers to make law forming part of the law of England and Wales.”

Text of amendments and explanatory statements

Amendment 1

Clause 1, page 1, leave out lines 5 to 9 and insert -

“In section 1 of the Government of Wales Act 2006 (the Assembly), after subsection (1), insert –“

Explanatory statement –

The amendment changes the place in the Government of Wales Act 2006 in which the text inserted by clause 1 appears. Rather than in Section 92A, references to the permanence of the Assembly would appear in Section 1 of the Government of Wales Act 2006.

Amendment 2

Clause 1, page 1, line 10, leave out “and the Welsh Government are” and replace with “is”

Explanatory statement –

The amendment gives effect to separate provisions relating to the National Assembly for Wales, as the Legislature, and the Welsh Government, as the Executive.

Amendment 3

Clause 1, page 1, line 14, leave out “and the Welsh Government.”

Explanatory statement –

The amendment gives effect to separate provisions relating to the National Assembly for Wales, as the Legislature, and the Welsh Government, as the Executive.

Amendment 4

Clause 1, page 1, line 16, leave out “and the Welsh Government are” and replace with “is”

Explanatory statement –

The amendment gives effect to separate provisions relating to the National Assembly for Wales, as the Legislature, and the Welsh Government, as the Executive.

Amendment 5

Clause 1, page 1, line 18, at end insert –

(2) In section 45 of the Government of Wales Act 2006 (the Welsh Government), for the words in subsection (1) before paragraph (a) substitute–

“(1) There is to be a Welsh Government or Llywodraeth Cymru.

(1A) The Welsh Government is a permanent part of the United Kingdom’s constitutional arrangements.

(1B) The purpose of subsection (1A) is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Welsh Government.

(1C) In view of that commitment it is declared that the Welsh Government is not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.

(1D) The members of the Welsh Government are—”.

Explanatory statement –

The amendment gives effect to separate provisions relating to the National Assembly for Wales, as the Legislature, and the Welsh Government, as the Executive. The amendment changes the place in the Government of Wales Act 2006 in which the text relating to the permanence of the Welsh Government would appear.

Amendment 6

Clause 1, page 1, line 18, at end insert –

“(3) In the Government of Wales Act 2006, after Part 2 (the Welsh Government) insert—”

Explanatory statement –

The amendment is required as a consequence of changing the location of the provision relating to the permanence of the Assembly.

Clause 2 - Convention about Parliament legislating on devolved matters

Circumstances in which the Assembly's consent is not required

6. This clause as written will not achieve a robust statutory basis for the legislative consent convention. Clause 2 contains a provision that Parliament will not “normally” legislate with regard to devolved matters without the consent of the Assembly. The use of the word “normally” is unsatisfactory as it is potentially open to a broad interpretation.

7. The proposed amendments provide that Parliament should only legislate on the Assembly's behalf without its consent in exceptional circumstances and those circumstances are specified. The word “normally” is deleted because it is unclear – there is no definition of what is a “normal” situation.

8. The UK Parliament should only legislate on devolved matters when: (a) there is an imminent risk of serious harm to national security, public safety, the health of the public, plants and animals and economic stability in the UK, (b) the UK Parliament legislation specifically addresses the risk, (c) the imminence of the risk in relation to Wales means that it is not practical to seek consent, and (d) the Assembly has not already introduced legislation to specifically address the risk.

9. Combined, these amendments provide greater clarity as to when the UK Parliament should seek consent from the Assembly, by establishing a proper statutory recognition of how consent should work. They also recognise the maturity of the Assembly as a legislature and that its consent should be obtained before UK Parliament legislates on devolved matters.

10. Finally, it is worth noting that there is no attempt to interfere with Parliamentary sovereignty here, as section 107(5) of the Government of Wales Act 2006 makes clear.

Provisions which require consent

11. Secondly, in relation to the scope of the clause, the purpose of this amendment is to provide that the statutory expression of the convention

applies at least as broadly to Wales as is currently the case in Scotland's Standing Orders.¹

12. The clause as currently drafted deals only with the UK Parliament's ability to legislate on matters within devolved competence. It should also deal with the situation where a UK Bill seeks to amend that competence.

13. The amendments also reflect the conclusions of the previous Assembly's Constitutional and Legislative Affairs Committee,² that consent should go beyond the current Scottish convention, so as to require Assembly consent for UK Bills which alter the functions of the Assembly, without altering its legislative competence.

14. Devolved matters are therefore defined to include matters that:

- (a) are within the legislative competence of the Assembly,
- (b) modify the legislative competence of the Assembly,
- (c) modify functions of the Assembly, and
- (d) modify functions of members of the Welsh Government (mainly the Welsh Ministers) where such functions are within devolved areas.

Text of the clause as amended

2 Convention about Parliament legislating on devolved matters

In section 107 of the Government of Wales Act 2006 (Acts of the National Assembly for Wales), after subsection (5) insert—

“(6) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly unless all of the following conditions apply—

- (a) there is an imminent risk of serious adverse impact on—
 - (i) the national security of the United Kingdom, or
 - (ii) public safety, public, animal or plant health or economic stability in any part of the United Kingdom,
- (b) the legislation specifically addresses that risk,
- (c) the imminence of the risk in relation to Wales makes it impractical to seek the consent of the Assembly,

¹ As set out in Standing Orders of the Scottish Parliament, Chapter 98

² National Assembly for Wales, Constitutional and Legislative Affairs Committee, [Report on the Legislative Consent Memorandum, Wales Bill](#), June 2014

(d) no Bill has been passed under section 110(1)(a) specifically to address the risk, and
(e) no subordinate legislation specifically to address the risk has been laid before the
Assembly and has come into force.”

(7) In this section, “devolved matters” means matters that—

(a) are within the legislative competence of the Assembly;

(b) modify the legislative competence of the Assembly;

(c) modify a function of the Assembly;

(d) modify any functions of any member of the Welsh Government exercisable within
devolved competence (and “within devolved competence” is to be read in accordance with section
58A).”

Text of amendments and explanatory statements

Amendment 1

Clause 2, page 2, line 12, leave out “normally”.

Explanatory statement

This amendment removes the word “normally”.

Amendment 2

Clause 2, Page 2, line 13, after “Assembly” insert –

“unless all of the following conditions apply—

(a) there is an imminent risk of serious adverse impact on—

(i) the national security of the United Kingdom, or

(ii) public safety, public, animal or plant health or economic stability in any part of the United Kingdom,

(b) the legislation specifically addresses that risk,

(c) the imminence of the risk in relation to Wales makes it impractical to seek the consent of the Assembly,

(d) no Bill has been passed under section 110(1)(a) specifically to address the risk, and

(e) no subordinate legislation specifically to address the risk has been laid before the Assembly and has come into force.”

Explanatory statement –

The amendment specifies the circumstances in which Parliament can legislate on devolved matters on behalf of the National Assembly for Wales without its consent.

Amendment 3

Clause 2, Page 2, line 13, at end add –

“(7) In this section, “devolved matters” means matters that—

- (a) are within the legislative competence of the Assembly;
- (b) modify the legislative competence of the Assembly;
- (c) modify a function of the Assembly;
- (d) modify a function of a member of the Welsh Government exercisable within devolved competence (and “within devolved competence” is to be read in accordance with section 58A).”

Explanatory statement

The amendment defines devolved matters for the purposes of Clause 2.

Clause 4 – Wales Public Authorities (Schedule 4)

15. The Bill includes a list of "Wales public authorities", in relation to which the Assembly will have competence to legislate, without the need for UK Government consent.

16. There are two Wales public authorities which do not fall neatly under the definition: "The National Assembly for Wales Commissioner for Standards" and "The National Assembly for Wales Remuneration Board".

17. The proposed amendments to Schedule 4 would add those bodies to the list.

Text of proposed amendments and explanatory notes

Amendment 1

Schedule 4, page 94, at the appropriate place, insert -

"National Assembly for Wales Commissioner for Standards."

Explanatory notes

The amendment adds the National Assembly for Wales Commissioner for Standards to the list of Wales public authorities.

Amendment 2

Schedule 4, page 94, at the appropriate place, insert –

"National Assembly for Wales Remuneration Board."

Explanatory notes

The amendment adds the National Assembly for Wales Remuneration Board to the list of Wales public authorities.

Clause 6 - Timing of elections

18. The Bill transfers powers to vary the date of an ordinary general election from the Secretary of State to Welsh Ministers. The Bill makes no change in relation to the Secretary of State's power to set the date for an Assembly extraordinary general election.

19. The intention of the proposed amendments is, first, to transfer certain powers over the timing of Assembly elections to the Presiding Officer, and mirrors the provisions in the Scotland Act 1998. The timing of ordinary Assembly general elections is fixed as the first Thursday in May every 5 years (section 3(1) of the Government of Wales Act 2006). The proposal is to give the Presiding Officer the power:

- to vary the date of Assembly ordinary general elections, and
- to set the date for an Assembly extraordinary general election

20. The amendments also propose to change the deadline for the Assembly to meet for the first time, after a general election, to fourteen days, rather than seven days as at present.

21. A further seven days would allow more discussions to take place between political parties about early Assembly business such as the choice of Presiding Officer, First Minister, etc. This is particularly useful where the election does not produce an overall majority for any of them, as can frequently happen under the Assembly's electoral system.

Text of Sections 4 and 5 of the Government of Wales Act 2006 as amended

4 Power to vary date of ordinary general election

(1) Subject to section 3(1A), the Presiding Officer may propose that the poll at an ordinary general election is to be held on a day which is neither—

- (a) more than one month earlier, nor
- (b) more than one month later,

than the first Thursday in May.

(2) If the Presiding Officer makes a proposal under subsection (1), Her Majesty may by proclamation under the Welsh Seal—

- (a) ~~to be dissolve the Assembly on a day specified in the order, and~~

(b) require the poll at the election to be held on the day proposed, and

(c) require the Assembly to meet within the period of fourteen days beginning immediately after the day of the poll.

(3) In calculating any period of days for the purposes of provision made by virtue of subsection (2)(c), the following days are to be disregarded—

(a) Saturday and Sunday,

(b) Good Friday,

(c) any day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971 (c 80), and

(d) any day appointed for public thanksgiving or mourning.

(4) If the Presiding Officer makes a proposal under subsection (1), the Welsh Ministers may by order make provision for—

(a) any provision of, or made under, the Representation of the People Acts, or

(b) any other enactment relating to the election of Assembly members, to have effect with such modifications or exceptions as the Welsh Ministers considers appropriate in connection with the alteration of the day of the poll.

~~(5) No order is to be made under this section unless the Secretary of State has consulted the Welsh Ministers about it.~~

(6) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Assembly.

5 Extraordinary general elections

(1) The Presiding Officer must propose a day for the holding of a poll if subsection (2) or (3) applies.

(2) This subsection applies if-

(a) the Assembly resolves that it should be dissolved and,

(b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

(3) This subsection applies if any period during which the Assembly is required under section 47 to nominate an Assembly member for appointment as the First Minister ends without such a nomination being made.

(4) If the Presiding Officer proposes a day under subsection (1), Her Majesty may by proclamation under the [Welsh Seal]—

(a) dissolve the Assembly and require an extraordinary general election to be held,

(b) require the poll at the election to be held on the day proposed, and

(c) require the Assembly to meet within the period of fourteen days beginning immediately after the day of the poll.

(5) If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 4)), that ordinary

general election is not to be held.

(6) But subsection (5) does not affect the year in which the subsequent ordinary general election is to be held.

(7) In calculating any period of days for the purposes of subsection (4)(c), the following days are to be disregarded-

(a) Saturday and Sunday

(b) Christmas Eve, Christmas Day and Good Friday

(c) any day which is a Bank Holiday in Wales under the Banking and Financial Dealings Act 1971 (c. 80), and

(d) Any day appointed for public thanksgiving or mourning.

Text of amendments and explanatory statements

Amendment 1

Clause 6, page 7, line 2, leave out paragraph (b) and insert –

“(b) for “The Secretary of State may by order provide for the poll at an ordinary general election to be” substitute “The Presiding Officer may propose that the poll at an ordinary general election is”.

Explanatory statement -

The Bill as drafted transfers the power to vary the date of an ordinary general election from the Secretary of State to Welsh Ministers. The amendment transfers the power to the Presiding Officer of the National Assembly for Wales.

Amendment 2

Clause 6, page 7, line 2, at end insert –

“(7A) Leave out subsection (2) and insert –

“(2) If the Presiding Officer makes a proposal under subsection (1), Her Majesty may by proclamation under the Welsh Seal—

(a) dissolve the Assembly,

(b) require the poll at the election to be held on the day proposed, and

(c) require the Assembly to meet within the period of fourteen days beginning immediately after the day of the poll.”

Explanatory statement

The amendment inserts provision for the arrangements for varying the date of an ordinary general election. The amendment also extends from seven to fourteen days the period within which the Assembly is required to meet following the day of a poll.

Amendment 3

Clause 6, page 7, line 2, at end insert -

“(7B) In subsection (4) for “An order under this section may” substitute “If the Presiding Officer makes a proposal under subsection (1), the Welsh Ministers may by order”.

Explanatory statement

The amendment replicates existing provisions in the Government of Wales Act 2006 with a modification resulting from the transfer of the power to vary the date of an ordinary general election to the Presiding Officer.

Amendment 4

Clause 6, page 7, line 6, at end insert –

“(10A) Section 5 of the Government of Wales Act 2006 (Extraordinary general elections) is amended as set out in paragraphs (a) to (d).

- (a) In subsection (1) for “Secretary of State” substitute “Presiding Officer”.
- (b) In subsection (4) for “Secretary of State” substitute “Presiding Officer”.
- (c) In subsection (4) for “Order in Council” substitute “proclamation under the Welsh Seal”.
- (d) In subsection (4) for “seven” substitute “fourteen”.

Explanatory statement –

The amendment inserts a new provision, transferring the power to propose the day of an extraordinary general election from the Secretary of State to the Presiding Officer. The amendment also extends from seven to fourteen days the period within which the Assembly is required to meet following the day of a poll.

Clause 8 - Super-majority requirement for certain legislation

22. Clause 8 provides that Assembly legislation dealing with certain protected subject-matters (i.e. name of the Assembly; who is entitled to vote at Assembly elections; the voting system at Assembly elections; the number of constituencies and regions; the number of Assembly Members) will require a super-majority of the Assembly (i.e. two thirds of the total number of Assembly seats).

23. Clause 8 requires the Presiding Officer to decide whether or not an Assembly Bill relates to a protected subject-matter, and to state that decision.

24. Clause 8 then makes the following provision with regard to that statement:

- It must be in both English and Welsh. Subject to that, the form of the statement and the manner it is made are to be dealt with under Assembly Standing Orders.
- Assembly Standing Orders may provide for the statement to be published (and if there is such a requirement to publish, the statement must be published in both English and Welsh).

25. This amendment removes those two provisions. Including them is at odds with much of the rest of the Bill which recognises the Assembly as a mature legislature and allows the Assembly to determine its own internal arrangements. Also, in practice, these are not necessary because:

- Any statement which the Presiding Officer is required to make by statute will always be published by the Assembly.
- English and Welsh are both official languages of the Assembly and both must be treated equally; see the statutory duty of equality set out in section 35 of the Government of Wales Act 2006, and the statutory Official Languages Scheme adopted by the National Assembly for Wales Commission.

Text of the clause as amended

8 Super-majority requirement for certain legislation

In the Government of Wales Act 2006, after section 111 insert—

“111A Bills with protected subject-matter: super-majority requirement

(1) For the purposes of this Part a provision of a Bill relates to a protected subject-matter if it would modify, or confer power to modify, any of the matters listed in subsection (2) (but not if the provision is incidental to or consequential on another provision of the Bill).

(2) The matters are—

- (a) the name of the Assembly,
- (b) the persons entitled to vote as electors at an election for membership of the Assembly,
- (c) the system by which members of the Assembly are returned,
- (d) the specification or number of constituencies, regions or any equivalent electoral area, and
- (e) the number of members to be returned for each constituency, region or equivalent electoral area.

(3) The Presiding Officer must, after the last time when a Bill may be amended but before the decision whether to pass or reject it—

- (a) decide whether or not, in the view of the Presiding Officer, any provision of the Bill relates to a protected subject-matter, and
- (b) state that decision.

(4) If the Presiding Officer decides that any provision of the Bill relates to a protected subject-matter, the Bill is not passed unless the number of Assembly members voting in favour of it at the final stage is at least two-thirds of the total number of Assembly seats.

~~(5) A statement under subsection (3)(b) must be made in both English and Welsh; but, subject to that, the form of the statement and the manner in which it is to be made are to be determined under the Standing Orders.~~

~~(6) The Standing Orders—~~

- ~~(a) may provide for a statement under subsection (3)(b) to be published, and~~
- ~~(b) if they do so, must provide for it to be published in both English and Welsh.”~~

Text of proposed amendment and explanatory statement

Clause 8, page 10, line 3, leave out subsections (5) and (6)

Explanatory statement

The amendment removes the requirements on the face of the Bill for the National Assembly for Wales’ Standing Orders to include requirements for the publication of a statement in Welsh and English.

Clause 10 - Introduction of Bills: justice impact assessment

26. Clause 10 inserts a new Clause 110A in the Government of Wales Act 2006. Sub-clause 110A(1) will require the Assembly's Standing Orders to include provision requiring the Member in charge of an Assembly Bill to make a written statement about the impact of the Bill on the justice system. Sub clause 110A(2) says the Standing Orders can determine the form of the statement and the manner in which it is made. Sub clause 110A(3) requires the Assembly's Standing Orders to provide for such statements to be published.

27. The Assembly's Standing Orders already require the publication of an assessment of the costs of an Assembly Bill. The inclusion of a further requirement on this specific matter is unnecessary and runs contrary to the principle that that the Assembly should be able to determine its own affairs and procedures.

28. The proposed amendment removes Clause 110A.

Text of proposed amendment and explanatory notes

Page 11, line 38, leave out clause 10.

Explanatory notes

The amendment leaves out clause 10 in its entirety.

Clause 12 Financial control, accounts and audit

29. Clause 12 inserts a new section 130A into the Government of Wales Act 2006 replacing previous arrangements for financial controls and provides that Welsh legislation should make provision for the matters contained within that section. The new section in the Government of Wales Act 2006 should include basic safeguards, in the form of minimum requirements which Welsh legislation should provide for which reflect good governance. Section 124 of the Government of Wales Act 2006 currently provides for authorisation by the Assembly. The amendment sets out that funds should only be issued from the Welsh Consolidated Fund in accordance with legislation or authorisation by the Assembly, and can only be utilised for the purposes for which they were authorised. This would reflect provision for Scotland (Section 65 of the Scotland Act 1998).

Amendments to Schedule 2 (new Schedule 7B to Government of Wales Act 2006) as it applies to clause 12

30. Schedule 2 paragraph 7 sets out the sections of the Government of Wales Act 2006 which the Assembly will have competence to modify. Paragraph 7(2)(d) specifically refers to those sections of Part 5 of the 2006 Act which are amendable without restriction.

31. As it stands this does not include the ability to amend sections 120(1) or 124(3) of the Government of Wales Act 2006 which provide for 'relevant persons' – otherwise known as 'direct funded bodies' – which receive funding directly from the Welsh Consolidated Fund i.e. Welsh Government, the Assembly Commission, the Auditor General and the Public Services Ombudsman for Wales.

32. The proposed amendment to Schedule 2 paragraph 7(2)(d) would allow the Assembly competence to add to, but not remove from, the list of 'relevant persons'. This would allow the Assembly to enable a body which is independent of Welsh Government to also be financially independent, where this is deemed appropriate. Any use of such competence to add to the 'relevant persons' would require an Act of the Assembly.

33. Schedule 2 paragraph 7(5) provides that the remaining provisions of Part 5 of the 2006 Act (i.e. those not specifically referred to in paragraph 7(2)(d) and section 159) are amendable where the amendment is incidental to or consequential on, a provision of an Act of the Assembly relating to budgetary procedures and the Secretary of State consents to the amendment. It is not clear why the consent of the Secretary of State should

be required to an amendment which will have no impact beyond the Assembly's financial procedures.

34. The proposed amendment to Schedule 2 paragraph 7(5) removes the requirement for Secretary of State consent.

35. Schedule 2 paragraph 5(6) allows for the conferral of functions of oversight of the Auditor General, or exercise of his functions, on an Assembly Committee (most likely 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 the Government of Wales Act 2006. This seems unnecessarily prescriptive, particularly given that the Wales Bill now allows the Assembly to determine the membership of its own committees and can modify section 30 (in its entirety) of the Government of Wales Act 2006.

36. Given the competence devolved over the composition of the audit committee, this prescription should be removed. If a safeguard is required then it would be more appropriate for this to be provided for in the Assembly's Standing Orders than on the face of the Bill.

37. The proposed amendment removes the restriction on the composition of such a Committee and provide that this would be a matter for Standing Orders.

Text of the Bill as amended

12 Financial control, accounts and audit

- (1) The Government of Wales Act 2006 is amended as follows.
- (2) Omit section 119.
- (3) After section 130 insert—

“130A Financial control, accounts and audit

- (1) Welsh legislation must provide—

(a) for a sum paid out of the Welsh Consolidated Fund not be applied for any purpose other than that for which it was charged or (as the case may be) paid out.

Schedule 2, paragraph 5(6)

- (6) Sub-paragraph (5) does not prevent the conferral of functions relating to oversight or supervision of the Auditor General or of the Auditor General's functions on a committee of the Assembly ~~that~~ ~~(a) does not consist of or include any of the following~~ ~~persons—~~
 - (i) the First Minister or any person designated to

~~exercise the functions of the First Minister,
(ii) a Welsh Minister appointed under section 48,
(iii) the Counsel General or any person designated to
exercise the functions of the Counsel General, or
(iv) a Deputy Welsh Minister, and
(b) is not chaired by an Assembly member who is a member of
a political group with an executive role.~~

Schedule 2, Paragraph 7(2)(d):

- (d) the following provisions in Part 5 (finance)—
- (i) section 120(1) as regards a modification that adds a person or body;
 - (ii) section 120 (2);
 - (iii) section 124(3) as regards a modification that adds a person or body;
 - (iv) sections 125 to 130;
 - (v) sections 131 to 143;
 - (vi) any provision of Schedule 8;

Schedule 2, paragraph 7(5)(a)

- (5) Sub-paragraph (1), so far as it applies in relation to a provision of Part 5 or section 159, does not apply to a provision of an Act of the Assembly if—
- ~~(a) the provision is incidental to, or consequential on, a provision of an Act of the Assembly relating to budgetary procedures or devolved taxes; and~~
 - ~~(b) the Secretary of State consents to the provision.~~

Text of proposed amendments and explanatory notes

Amendment 1

Clause 12, page 12, line 24, at end insert –

“(a) for a sum paid out of the Welsh Consolidated Fund not to be applied for any purpose other than that for which it was charged or (as the case may be) paid out”

Explanatory statement

The amendment sets out that Welsh legislation must provide that the Assembly has to authorise any drawing from the Consolidated Fund and that such funds can only be utilised for the purposes for which they were authorised.

Amendment 2

Schedule 2, page 79, line 29, leave out from “Assembly” to end of line 39.

Explanatory statement

The amendment removes the requirements relating to the composition and internal arrangements of the Assembly Committee with oversight of the Auditor General and/or their functions.

Amendment 3

Schedule 2, page 80, line 41, at end insert –

“(i) section 120(1) as regards a modification that adds a person or body;”

Explanatory statement

The amendment will enable the Assembly to amend sections 120(1) of the 2006 Act which provide for ‘relevant persons’ which receive funding directly from the Welsh Consolidated Fund.

Amendment 4

Schedule 2, page 80, line 42, at end insert –

“(iii) section 124(3) as regards a modification that adds a person or body;”

Explanatory statement

The amendment will enable the Assembly to amend sections 124(3) of the 2006 Act which provide for ‘relevant persons’ which receive funding directly from the Welsh Consolidated Fund.

Amendment 5

Schedule 2, page 81, line 22, leave out from “taxes” to end of line 23.

Explanatory statement

The amendment removes the requirement for Secretary of State consent for the Assembly to amend the provisions of Part 5 of the 2006 Act which are not specifically referred to in paragraph 7(2)(d) and section 159, where the amendment is incidental to, or consequential on, a provision of an Act of the Assembly relating to budgetary procedures.

Clause 15 - Change of name of the Assembly etc: translation of references

38. Clause 15 provides that if the Assembly changes its name then any reference in legislation, instruments and documents to the “National Assembly for Wales” is to be read as a reference to the new name. This saves having to change each reference to the “National Assembly for Wales” (of which there will be thousands).

39. Assembly Acts are prepared bilingually and references to the Assembly and Commission will be in Welsh and English. However, clause 15 does not address the issue of legislation, instruments and documents that refer to “Cynulliad Cenedlaethol Cymru”. The amendment clarifies that any references in legislation, instruments and documents to “Cynulliad Cenedlaethol Cymru” is also to be read as a reference to the new name, in Welsh.

40. The same issues arises with regard to any change in the name of the “National Assembly for Wales Commission” and “Acts of the National Assembly for Wales”; they are also addressed in the amendment.

41. Further, the heading to the section inserted in the Government of Wales Act 2006 by clause 15 is “translation of references”. The amendment changes the heading to “consequential provision”, which is more appropriate given the overall effect of clause 15 and avoids confusion between legal translation (i.e. consequential provisions) and linguistic translation of references.

Text of the clause as amended

15 Change of name of the Assembly etc: translation of references

(1) After section 150 of the Government of Wales Act 2006 insert—

“150A Change of name of the Assembly etc: consequential provision ~~translation of references~~”

(1) Subsection (2) applies if an Act of the Assembly, or subordinate legislation made under an Act of the Assembly, changes the name of—

- (a) Cynulliad Cenedlaethol Cymru,
- (b) the National Assembly for Wales,
- (c) Comisiwn Cynulliad Cenedlaethol Cymru,
- (d) the National Assembly for Wales Commission,
- (e) Deddfau Cynulliad Cymru, or
- (f) Acts of the National Assembly for Wales.

(See paragraph 7(2)(a)(i) and (xii) and paragraph 7(2)(c)(i) of Schedule 7B.)

(2) Unless the context requires otherwise, a reference to Cynulliad Cenedlaethol Cymru, the National Assembly for Wales, Comisiwn Cynulliad Cenedlaethol Cymru, the National Assembly for Wales Commission, Deddfau Cynulliad Cenedlaethol Cymru or an Act of the National Assembly for Wales (as the case may be) in—

- (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
- (b) any other instrument or document, is to be read as, or as including, a reference to the new name in Welsh or English (as the case may be).

(3) In section 158 of that Act (interpretation), in subsection (2), after “116C(2)” insert “, 150A(2)”.

Text of proposed amendments and explanatory notes

Amendment 1

Clause 15, page 14, line 3, leave out “translation of references” and insert “consequential provision”.

Explanatory notes

The amendment replaces “translation of references” with “consequential provision”, to reflect the overall effect of clause 15.

Amendment 2

Clause 15, page 14, line 5, at end insert –

“Cynulliad Cenedlaethol Cymru,”

Explanatory notes

The amendment clarifies that any references in legislation, instruments and documents to “Cynulliad Cenedlaethol Cymru” is also to be read as a reference to the new name, in Welsh.

Amendment 3

Clause 15, page 14, line 6, at end insert –

“Comisiwn Cynulliad Cenedlaethol Cymru,”

Explanatory notes

The amendment clarifies that any references in legislation, instruments and documents to “Comisiwn Cynulliad Cenedlaethol Cymru” is also to be read as a reference to the new name, in Welsh.

Amendment 4

Clause 15, page 14, line 7, at end insert –

“Deddfau Cynulliad Cenedlaethol Cymru, or”

Explanatory notes

The amendment clarifies that any references in legislation, instruments and documents to “Deddfau Cynulliad Cenedlaethol Cymru” is also to be read as a reference to the new name, in Welsh.

Amendment 5

Clause 15, page 14, line 11, after “to”, insert “Cynulliad Cenedlaethol Cymru,”

Explanatory notes

The amendment provides that if the Assembly changes its name then any reference in legislation, instruments and documents to the “Cynulliad Cenedlaethol Cymru” is to be read as a reference to the new name.

Amendment 6

Clause 15, page 14, line 12, after first “Wales,” insert “Comisiwn Cynulliad Cenedlaethol Cymru,”

Explanatory notes

The amendment provides that if the Assembly changes its name then any reference in legislation, instruments and documents to the “Comisiwn Cynulliad Cenedlaethol Cymru” is to be read as a reference to the new name.

Amendment 7

Clause 15, page 14, line 12, after “Commission,” insert “, Deddfau Cynulliad Cenedlaethol Cymru”

Explanatory notes

The amendment provides that if the Assembly changes its name then any reference in legislation, instruments and documents to “Deddfau Cynulliad Cenedlaethol Cymru” is to be read as a reference to the new name.

Amendment 8

Clause 15, page 14, line 17, after “name”, insert “in Welsh or English (as the case may be).”

Explanatory notes

The amendment clarifies that the clause applies to any new names listed in the clause be they in English or Welsh.

Clause 16 - Welsh rates of income tax: removal of referendum requirement

42. The Bill provides for the transfer of income tax varying powers to the Assembly by order, without prior consultation with either Welsh Ministers or the Assembly. As a matter of principle, such a transfer should occur only with the Assembly's agreement.

43. The proposed amendment seeks to give the National Assembly for Wales an appropriate role in the commencement of its function of setting income tax rates for Welsh taxpayers.

44. Previously, the trigger for such a transfer would have been a referendum, signalling the consent of the Welsh people. Under the Wales Act 2014, this new function would subsequently come into force when the Treasury so decides. The Treasury order bringing the provisions into force would not be subject to any Parliamentary or Assembly procedure. This is normal for commencement orders but it appears inappropriate for the Assembly to have no control over when it acquires these important new functions, which are linked to other elements of the funding settlement for Wales.

45. The amendments would make the Treasury power conditional on Assembly consent. Consent would be given by way of resolution, rather than by way of a procedure for the scrutiny of subordinate legislation. A resolution procedure is more flexible and agile, and less of a departure from the normal position whereby commencement orders do not go through a scrutiny procedure.

46. Assembly consent is proposed only to the commencement of the main income-tax-related powers, contained in sections 8 and 9 of the Wales Act 2014. The Secretary of State will retain the power to bring into force provisions that would link the new income-tax rates with social security benefits, and the Treasury would retain unfettered power to bring into force certain subsidiary provisions concerning the definition of a Welsh taxpayer for the purposes of income tax. Both these sets of provisions would necessarily have to come into force at the same time, or after, main income-tax provisions for which Assembly consent would be needed as a result of the amendments.

Text of the clause as amended

16 Welsh rates of income tax: removal of referendum requirement

(1) The Wales Act 2014 is amended as follows.

(2) Omit—

(a) section 12 and Schedule 1 (referendum about commencement of income tax provisions),

(b) section 13 (proposal for referendum by Assembly), and

(c) the italic heading before section 12.

(3) In section 14 (commencement of income tax provisions etc if majority in favour)—

(a) omit subsection (1);

(b) in the heading omit “etc if majority in favour”;

(c) after subsection (3), insert —

“(3A) No order is to be made under subsection (2) unless the Assembly has signified its consent to its making by passing a resolution to that effect.”

(4) In section 23 (reports on the implementation and operation of Part 2) omit subsection (8).

(5) In section 29 (commencement)—

(a) in subsection (2)(b) for “referendum-related” substitute “income tax”;

(b) in subsection (4)—

(i) for “referendum-related” substitute “income tax”;

(ii) omit “(commencement if majority in favour at referendum)”.

Text of proposed amendment and explanatory notes

Clause 16, page 14, line 31, at end insert —

“(c) after subsection (3), insert —

“(3A) No order is to be made under subsection (2) unless the Assembly has signified its consent to its making by passing a resolution to that effect.”

Explanatory notes

The amendment introduces a requirement for the Assembly to give consent by resolution before an order to commence its functions relating to setting income tax rates can be made.