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David Jones MP
House of Commons
London
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Dear David,

31 July 2007

The National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007

I am writing in response to the queries you raised during the debate on this Order on Wednesday 11 July.

You asked whether the Assembly would have competence under Schedule 7 to pass Acts in relation to nuclear waste. It would have legislative competence in relation to the collection, management and disposal of waste, which are listed as a subject under heading 6 - Environment.

The exceptions in Schedule 7 apply across all the Subjects listed in the Schedule, regardless of the heading under which they appear. Therefore, the new exceptions of "nuclear energy and nuclear installations" under heading 4 – Economic development, apply also in relation to the Subject of collection, management and disposal of waste. "Nuclear installation" is not defined in the Government of Wales Act 2006. But the definitions in other Acts (such as the Nuclear Installations Act 1965 and the Energy Act 2004) indicate that a radioactive waste storage site would be considered to be a nuclear installation. Therefore, the Assembly would not have competence to pass Acts about radioactive waste storage sites. In addition, the transport of radioactive material, and therefore of radioactive waste, is excepted from the Assembly's primary legislative competence.



Although the Assembly could not pass Acts about the transport of nuclear waste, nor about a radioactive waste storage site, it is possible that its legislation within a devolved area of competence might have some effect on the management and disposal of radioactive waste. There are specific safeguards in the Government of Wales Act 2006, which would enable the UK Government to influence any areas where the Assembly might seek to legislate, and where there is overlap between the UK Government's responsibilities for nuclear energy and installations, and the Assembly Government's responsibilities for waste. An Assembly Act may not modify or remove any function of a UK Minister of the Crown. The Secretary of State has power to intervene in an Assembly Bill if there are reasonable grounds to believe that it would have an adverse effect on any matter which is not listed in, or excepted from, Schedule 7. In addition, an Assembly Act that breached EU requirements would not be within the Assembly's primary legislative competence.

You also had a number of queries in relation to the amendments to the Subjects listed under heading 19 – Water and flood defence.

The way in which the Subjects here are expressed has changed significantly as a result of the Order. The changes result in a more accurate description of the Assembly's legislative competence, based on its executive competence when the Government of Wales Act 2006 was enacted.

The background to these changes is the complex nature of the devolution settlement in water-related matters. Executive functions in relation to water supply and sewerage are transferred to Welsh Ministers in terms of water or sewerage companies whose areas are wholly or mainly in Wales. Executive functions in relation to water resources, on the other hand, are generally transferred to Welsh Ministers in relation to Wales. There are also certain water industry-related executive functions, in relation to matters such as competition and the licensing of water suppliers, which operate on an England and Wales basis. The amendments under Heading 19 have been made in order to reflect the current executive arrangements as accurately as possible.

You asked why the words "water industry" and "water charges" no longer feature in the Subjects here. They have been removed to avoid duplication. The water industry is engaged in the supply of water and the water charges are imposed in respect of that supply. The phrase "water supply" covers both matters

You also asked why "abstraction and impounding of water" has been deleted. All aspects of abstraction and impounding (not just those carried out by water/sewerage undertakers) are devolved, and they are covered by the "water resources management" Subject, so a separate reference is not necessary.

In relation to impoundment of tidal waters for electricity generation, the generation, transmission and supply of electricity are a specific exception from primary legislative competence under Heading 4 – Economic development in Schedule 7. The Assembly would not have primary



legislative competence in relation to "Sewerage". The Welsh Ministers do have some executive functions in this area, which will not be affected by the deletion of "Sewerage" from primary legislative competence.

Finally, you asked whether the Assembly will be responsible for regulation of water undertakers whose area, although mainly in Wales, is also in England, and for licensed water suppliers using the supply systems of those undertakers.

The National Assembly's legislative competence in relation to water companies, following a referendum which causes part 4 of the Government of Wales Act 2006 to come into force, will relate to the appointment and regulation of water undertakers whose areas are wholly or mainly in Wales, and the licensing and regulation of licensed water suppliers using the supply system of water undertakers whose areas are wholly or mainly in Wales. The Assembly's Acts may not apply otherwise than in relation to Wales (subject to section 108(5) of the Government of Wales Act 2006), so its Acts will not apply to the English parts of Dwr Cymru and Dee Valley Water plc's areas of supply.

Yours Sincerely,
Huw Irranca-Davies

Huw Irranca-Davies MP
Parliamentary Under-Secretary
Is-Ysgrifennydd Seneddol