



Wales Office  
Swyddfa Cymru



HM Government

## **Draft Wales Bill**

October 2015

## **Bil Cymru drafft**

Hydref 2015



# Draft Wales Bill

Presented to Parliament  
by the Secretary of State for Wales  
by Command of Her Majesty

October 2015

Cm 9144



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## **FOREWORD**



This One Nation Government is committed to a stronger Wales within a strong and successful United Kingdom. We are determined to ensure the people of Wales have a clear and lasting devolution settlement.

For too long Welsh politics has been dominated by constitutional debates about what is and is not devolved. I want to ensure that both the UK and Welsh Governments are focussed on delivering a stronger economy, creating jobs and providing the highest quality public services.

This draft Bill sets out in detail how the Government plans to deliver the St David's Day commitments to create a stronger, clearer and fairer devolution settlement for Wales that will stand the test of time.

The proposals in the draft Bill create a new Welsh devolution system, moving to a reserved powers model similar to the one which currently operates in Scotland. This will deliver a devolution settlement which provides greater accountability to the Welsh people.

The draft Bill also devolves important new powers over energy, transport and local government and Assembly elections. These are powers that can make a real difference to the lives of people in Wales. As set out in the St David's Day agreement they are also proposals which attracted cross-party political consensus.

The Wales Bill is part of a wider ambitious devolution package for Wales. Alongside the forthcoming Spending Review, the Government will introduce a floor in the level of relative funding it provides to the Welsh Government. This will ensure that Wales' funding, relative to England, will not drop below a specified level. I also want to see the Assembly and the Welsh Government become more accountable for the money they spend, and to see income tax powers devolved to the Assembly to help make this happen.

I am grateful to the Welsh Affairs Committee for agreeing to undertake pre-legislative scrutiny of the draft Bill and I look forward to receiving their report on how the Bill can be modified and improved. This scrutiny will be complemented by further discussions with the Welsh Government, the Assembly's Presiding Officer and others on the detail of the draft Bill.

I am proud of the work we are doing as a Government to deliver on our commitments in the St David's Day agreement. It is vital that we get the Welsh devolution settlement right and build a settlement which keeps pace with the appetite for devolution in Wales. I will continue to listen carefully to different views about how we achieve this aim as we build a stronger Wales within a strong United Kingdom.

A handwritten signature in black ink, appearing to read "Stephen Crabb".

**RT HON STEPHEN CRABB MP  
SECRETARY OF STATE FOR WALES**

## RHAGAIR



Mae'r Llywodraeth Un Genedl hon wedi ymrwymo i greu Cymru gryfach mewn Teyrnas Unedig gref a llwyddiannus. Rydym yn benderfynol o sicrhau bod pobl Cymru'n cael setliad datganoli clir a fydd yn para'n hir.

Mae gwleidyddiaeth Cymru, ers llawer gormod o amser, wedi'i llethu gan ddadleuon cyfansoddiadol ynglŷn â beth sydd wedi cael ei ddatganoli a beth sydd ddim wedi cael ei ddatganoli. Rwyf am wneud yn siŵr bod Llywodraeth y DU a Llywodraeth Cymru yn canolbwytio ar gryfhau'r economi, creu swyddi a darparu gwasanaethau cyhoeddus o'r radd flaenaf.

Mae'r Bil drafft hwn yn nodi'n fanwl sut y mae'r Llywodraeth yn bwriadu gweithredu ymrwymiadau Dydd Gŵyl Dewi er mwyn creu setliad datganoli cryfach, cliriach a thecach i Gymru a fydd yn sefyll prawf amser.

Mae'r cynigion sydd yn y Bil drafft yn creu system ddatganoli newydd yng Nghymru, gan newid i fodel cadw pwerau tebyg i'r un sy'n cael ei weithredu ar hyn o bryd yn yr Alban. Bydd hyn yn cyflwyno setliad datganoli a fydd yn rhoi mwy o atebolrwydd i bobl Cymru.

Mae'r Bil drafft hefyd yn datganoli pwerau newydd pwysig dros ynni, trafnidiaeth ac etholiadau llywodraeth leol a'r Cynulliad. Mae'r rhain yn bwerau a all wneud gwahaniaeth go iawn i fywydau pobl yng Nghymru. Fel y nodwyd yng Nghytundeb Dydd Gŵyl Dewi maent hefyd yn gynigion yr oedd consensws gwleidyddol trawsbleidiol arnynt.

Mae Bil Cymru yn rhan o becyn datganoli uchelgeisiol ehangach i Gymru. Ochr yn ochr â'r Adolygiad o Wariant sydd i ddod, bydd y Llywodraeth yn cyflwyno terfyn isaf ar gyfer y cyllid cymharol y mae'n ei ddarparu i Lywodraeth Cymru. Bydd hyn yn sicrhau na fydd cyllid Cymru, o'i gymharu â Lloegr, yn gostwng yn is na lefel benodedig. Hoffwn hefyd weld y Cynulliad a Llywodraeth Cymru yn dod yn fwy atebol am yr arian y maent yn ei wario, a gweld pwerau treth incwm yn cael eu datganoli i'r Cynulliad i helpu i wneud i hyn ddigwydd.

Rwy'n ddiolchgar i'r Pwyllgor Materion Cymreig am gytuno i graffu ar y Bil drafft cyn y broses ddeddfu ac edrychaf ymlaen i dderbyn eu hadroddiad ynglŷn â sut y gellir addasu a gwella'r Bil. Ategir y broses graffu hon gan ragor o drafodaethau â Llywodraeth Cymru, Llywydd y Cynulliad ac eraill ynglŷn â manylion y Bil drafft.

Rwy'n falch o'r gwaith rydym yn ei wneud fel Llywodraeth er mwyn cyflawni'r ymrwymiadau a wnaethpwyd gennym yng Nghytundeb Dydd Gŵyl Dewi. Mae'n hanfodol ein bod yn cael setliad datganoli Cymru'n iawn ac yn adeiladu setliad sy'n cadw i fyny â'r awch am ddatganoli yng Nghymru. Byddaf yn dal i wrando'n ofalus ar farn gwahanol bobl ynglŷn â sut y gallwn gyflawni'r nod hon wrth i ni adeiladu Cymru gryfach mewn Teyrnas Unedig gref.

Y GWIR ANRHYDEDDUS STEPHEN CRABB AS  
YSGRIFENNYDD GWLADOL CYMRU

# Draft Wales Bill

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DRAFT  
OF A  
**B I L L**

TO

Amend the Government of Wales Act 2006 and make provision about the functions of the Welsh Ministers; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

CONSTITUTIONAL ARRANGEMENTS

*Permanence of the National Assembly for Wales and Welsh Government*

**1 The National Assembly for Wales and the Welsh Government**

- (1) In section 1 of the Government of Wales Act 2006 (the National Assembly for Wales) after subsection (1) insert—
  - “(1A) An Assembly for Wales is recognised as a permanent part of the United Kingdom’s constitutional arrangements.”
- (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) A Welsh Government is recognised as a permanent part of the United Kingdom’s constitutional arrangements.
    - (1B) The members of the Welsh Government are—”.

*Convention about Parliament legislating on devolved matters*

## 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.”

*Legislative competence*

## 3 Legislative competence

- (1) For section 108 of the Government of Wales Act 2006 (legislative competence) substitute—

### “108A Legislative competence

- (1) An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly’s legislative competence.
- (2) A provision is outside that competence so far as any of the following paragraphs apply—
  - (a) it extends otherwise than only to England and Wales,
  - (b) it applies otherwise than in relation to Wales or confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales,
  - (c) it relates to reserved matters (see Schedule 7A),
  - (d) it breaches any of the restrictions in Part 1 of Schedule 7B, having regard to any exception in Part 2 of that Schedule from those restrictions, or
  - (e) it is incompatible with the Convention rights or with EU law.
- (3) But subsection (2)(b) does not apply to a provision which—
  - (a) is ancillary to a provision which is within the Assembly’s legislative competence (or would be if it were included in an Act of the Assembly), and
  - (b) has no greater effect otherwise than in relation to Wales, or in relation to functions exercisable otherwise than in relation to Wales, than is necessary to give effect to the purpose of that provision.
- (4) In determining what is necessary to give effect to the purpose of that provision, any power to make laws other than that of the Assembly is to be disregarded.
- (5) The question whether a provision of an Act of the Assembly relates to a reserved matter is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- (6) For the purposes of this Act a provision is ancillary to another provision if it—

- (a) provides for the enforcement of the other provision or is otherwise appropriate for making that provision effective, or
  - (b) is otherwise incidental to, or consequential on, that provision.”
- (2) For Schedule 7 to the 2006 Act (Acts of the Assembly) substitute –
- (a) the Schedule 7A set out in Schedule 1 to this Act, and
  - (b) the Schedule 7B set out in Schedule 2 to this Act.

*Provision in connection with Assembly's new legislative competence*

#### **4 Power to make provision about elections**

- (1) For section 13 of the Government of Wales Act 2006 (power to make provision about elections etc.) substitute –

##### **“13 Power of the Welsh Ministers to make provision about elections etc**

- (1) The Welsh Ministers may by order make provision as to –
  - (a) the conduct of elections of Assembly members,
  - (b) the questioning of an election of Assembly members and the consequences of irregularities, and
  - (c) the return of an Assembly member otherwise than at an election.
- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision –
  - (a) about the registration of electors,
  - (b) for disregarding alterations in a register of electors,
  - (c) about the limitation of the election expenses of candidates (and the creation of criminal offences in connection with the limitation of such expenses),
  - (d) for the combination of polls but only where –
    - (i) the poll at an ordinary general election of Assembly members and the poll at a local government election in Wales to fill a casual vacancy are to be held on the same date,
    - (ii) the poll at a by-election for the return of an Assembly member and the poll at an ordinary local government election in Wales are to be held on the same date,
    - (iii) the poll at a by-election for the return of an Assembly member and the poll at a local government election in Wales to fill a casual vacancy are to be held on the same date,
    - (iv) the poll at an extraordinary general election of Assembly members and the poll at an ordinary local government election in Wales are to be held on the same date, or
    - (v) the poll at an extraordinary general election of Assembly members and the poll at a local government election in Wales to fill a casual vacancy are to be held on the same date,

- (e) for modifying the application of sections 6 and 8(2) where the poll at an election for the return of an Assembly constituency member is abandoned (or notice of it is countermanded), and
  - (f) for modifying section 9(7) to ensure the allocation of the correct number of seats for the region.
- (3) The provision that may be made under subsection (1)(c) includes, in particular, provision modifying section 11(3) to (5).
- (4) The provision that may be made under subsection (2)(a) does not include provision about the use of any digital service provided by a Minister of the Crown for the registration of electors.
- (5) An order under subsection (1) may –
- (a) apply or incorporate, with or without modifications or exceptions, any provision of or made under the election enactments, and
  - (b) so far as may be necessary in consequence of any provision made by an order under this section, make modifications of any provision made by or under any enactment relating to the registration of parliamentary electors or local government electors.
- (6) In subsection (5)(a) “the election enactments” means –
- (a) the Representation of the People Acts,
  - (b) the Political Parties, Elections and Referendums Act 2000,
  - (c) the European Parliamentary Elections Act 2002, and
  - (d) any other enactments relating to parliamentary elections, European Parliamentary elections or local government elections.
- (7) No return of an Assembly member at an election may be questioned except by an election petition under the provisions of Part 3 of the Representation of the People Act 1983 as applied or incorporated in an order under this section.
- (8) No order is to be made under this section unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Assembly.

### **13A Power of the Secretary of State to make provision about the combination of polls**

- (1) The Secretary of State may by regulations make provision for –
- (a) the combination of polls at ordinary general elections of Assembly members with polls at the elections listed in subsection (2), and
  - (b) the combination of polls at extraordinary general elections of Assembly members, and by-elections for the return of Assembly members, with polls at the elections listed in subsections (2) and (3).
- (2) The elections are –
- (a) early parliamentary general elections,
  - (b) parliamentary by-elections, and
  - (c) European parliamentary by-elections.

- (3) The elections are—
    - (a) parliamentary general elections, and
    - (b) European parliamentary general elections.
  - (4) The Secretary of State may not make regulations under this section without the agreement of the Welsh Ministers.
  - (5) Regulations under subsection (1) may—
    - (a) apply or incorporate, with or without modifications or exceptions, any provision made by or under the election enactments, and
    - (b) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections of Assembly members.
  - (6) In subsection (5)(a) “the election enactments” has the meaning given by section 13(6)."
- (2) In section 15 of the Representation of the People Act 1985 (combination of polls) after subsection (5C) insert—
- “(5D) Before making provision under subsection (5) in connection with the combination of polls where one of the elections is a local government election in Wales, the Secretary of State must consult the Welsh Ministers.”

## 5 Timing of elections

- (1) Section 3 of the Government of Wales Act 2006 (ordinary general elections) is amended as follows.
- (2) In subsection (1) for the words from “provision” to the end substitute “—
  - (a) subsection (1A) prevents the poll being held on that day, or
  - (b) provision is made for the day of the poll by an order under section 4.”
- (3) After subsection (1) insert—

“(1A) The poll is not to be held on the same date as the date of the poll at—
  - (a) a parliamentary general election (other than an early parliamentary general election), or
  - (b) a European parliamentary general election.

“(1B) Where subsection (1A) prevents the poll being held on the day specified in subsection (1), the poll is to be held on such day, subject to subsection (1A), as the Welsh Ministers may by order specify.”
- (4) In subsection (2) after “May” insert “or on the day specified by an order under subsection (1B)”.
- (5) After subsection (4) insert—

“(5) No order is to be made under subsection (1B) unless the statutory instrument containing it has been approved by a resolution of the Assembly.”

- (6) Section 4 of the Government of Wales Act 2006 (power to vary date of ordinary general election) is amended as follows.
- (7) In subsection (1)–
  - (a) at the beginning insert “Subject to section 3(1A),”;
  - (b) for “The Secretary of State” substitute “Welsh Ministers”.
- (8) In subsection (4) for “Secretary of State considers” substitute “Welsh Ministers consider”.
- (9) Omit subsection (5).
- (10) In subsection (6) for “either House of Parliament” substitute “the Assembly”.
- (11) The Representation of the People Act 1983 is amended as follows.
- (12) In section 37 (ordinary day of local elections in England and Wales)–
  - (a) in subsection (1), and in the heading, omit “and Wales”;
  - (b) in subsection (2A) for the words after “under” substitute “section 37A.”
- (13) After section 37 insert–

**“37ZA Ordinary day of local elections in Wales**

- (1) In every year the ordinary day of election of councillors is the same for all local government areas in Wales and, subject to section 37B, and unless subsection (2) applies, is–
  - (a) the first Thursday in May;
  - (b) such other day as may be fixed by the Welsh Ministers by order made not later than 1st February in the year preceding the year (or, in the case of an order affecting more than one year, the first year) in which the order is to take effect.
- (2) The ordinary day of election of councillors may not be the day fixed by or under subsection (1) if it would be the same date as the poll at an ordinary general election of members of the National Assembly for Wales.
- (3) For any year where that would be the case, the Welsh Ministers may by order specify an alternative date as the ordinary day of election of councillors.
- (4) Subsections (2) and (3) do not affect an election to fill a casual vacancy.
- (5) The power to make an order under subsection (1)(b) or (3) is exercisable by statutory instrument.
- (6) A statutory instrument containing an order under subsection (3) may not be made unless the instrument has been approved by a resolution of the National Assembly for Wales.”
- (14) Section 37B (power to change date of local elections to date of European Parliamentary general election: Wales) is amended as follows.
- (15) After subsection (1) insert–
  - “(1A) The Welsh Ministers may not make an order under this section if the date of the poll at the European Parliamentary general election is the same date as the poll at an ordinary general election of members of the National Assembly for Wales.”

- (16) In subsection (4)(b) for “37(1)(b)” substitute “37A(1)(b)”.

## **6 Electoral registration: the digital service**

- (1) The Representation of the People Act 1983 is amended as follows.
- (2) Section 53 (power to make regulations about registration etc) is amended as follows.
- (3) After subsection (10) insert—

“(10A) The power to make regulations under subsections (1) and (3) is exercisable by the Welsh Ministers concurrently with the Secretary of State for the purposes of making provision about the use, in relation to elections in Wales, of any digital service provided by a Minister of the Crown for the registration of electors.

(10B) In subsection (10A) “elections in Wales” means—
  - (a) elections for the return of Assembly members, or
  - (b) local government elections in Wales.”
- (4) In subsection (11) after “(9)” insert “, or by the Welsh Ministers by virtue of subsection (10A),”.
- (5) In subsection (13)—
  - (a) after “(9)” insert “or (10A)”;
  - (b) after “were references” insert “respectively”;
  - (c) after “Scottish Ministers” insert “or the Welsh Ministers”.

## **7 Intervention in case of serious adverse impact on sewerage services etc**

- (1) In section 114 of the Government of Wales Act 2006 (power to intervene in relation to Assembly bills) in subsection (1) after paragraph (b) insert—

“(ba) might have a serious adverse impact on sewerage services in England or sewerage systems in England.”.
- (2) In section 152 of the Government of Wales Act 2006 (intervention in case of functions relating to water etc) —
  - (a) in subsection (1) omit “or” at the end of paragraph (b) and after paragraph (c) insert—

“(d) sewerage services in England, or

“(e) sewerage systems in England.”;
  - (b) in the heading after “water” insert “or sewerage”.

## **8 Onshore petroleum licensing**

- (1) The Petroleum Act 1998 is amended as set out in subsections (2) to (7).
- (2) In section 3(5) (petroleum licences; meaning of “appropriate Minister”), after paragraph (a) insert—

“(aa) in relation to the Welsh onshore area, the Welsh Ministers;”.
- (3) In section 4 (licences: further provisions)—
  - (a) in subsections (1A) and (1B), after “Scottish Ministers” insert “or the Welsh Ministers”;

- (b) after subsection (3A) insert –
  - “(3B) Any regulations made by the Welsh Ministers shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.”;
- (c) after subsection (4A) insert –
  - “(4B) As soon as practicable after granting a licence under section 3, the Welsh Ministers shall publish notice of the fact in the London Gazette stating –
    - (a) the name of the licensee; and
    - (b) the situation of the area in respect of which the licence has been granted.”
- (4) In section 4A (onshore hydraulic fracturing: safeguards), in the following provisions, for “Secretary of State” substitute “appropriate Minister” –
  - (a) the opening words of subsection (1);
  - (b) subsection (1)(b);
  - (c) subsection (3) (in both places);
  - (d) subsection (4);
  - (e) subsection (5);
  - (f) subsection (7).
- (5) In section 4B (section 4A: supplementary provision) –
  - (a) in subsection (4)(a) and (b), after “areas” insert “in the English onshore area”;
  - (b) in subsection (7) –
    - (i) in paragraph (a), omit “in relation to England”;
    - (ii) omit paragraph (b);
  - (c) after subsection (7) insert –
    - “(7A) The Welsh Ministers may, by regulations made by statutory instrument, specify –
      - (a) the descriptions of areas in the Welsh onshore area which are “protected groundwater source areas”, and
      - (b) the descriptions of areas in the Welsh onshore area which are “other protected areas”,
 for the purposes of section 4A.
  - (7B) A statutory instrument which contains regulations under subsection (7A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.
  - (7C) Before making regulations under subsection (7A)(a), the Welsh Ministers must consult the Natural Resources Body for Wales.”;
- (d) in subsection (8) –
  - (i) in paragraph (a) of the definition of “relevant environmental regulator” for “England” substitute “the English onshore area”;
  - (ii) in paragraph (b) of that definition, for “Wales” substitute “the Welsh onshore area”;
  - (iii) in the definition of “well consent”, for “Secretary of State” substitute “appropriate Minister”;
- (e) in subsection (9) –

- (i) after “this section” insert “(as it applies to the English onshore area)”;
- (ii) after “the power” insert “by the Secretary of State”;
- (f) after subsection (9) insert –
  - “(9A) The power of the Welsh Ministers to make regulations under section 4 includes power to make such amendments of the definition of “onshore licence for England and Wales” in this section (as it applies to the Welsh onshore area) as they consider appropriate in consequence of any exercise by them of the power under section 4.”;
  - (g) in subsection (10)(a), after “appropriate” insert “as regards an application for a hydraulic fracturing consent in relation to land in the English onshore area”;
  - (h) at the end insert –
    - “(12) The Welsh Ministers may, by regulations made by statutory instrument –
      - (a) make such amendments of column 2 of the table in section 4A as the Welsh Ministers consider appropriate as regards an application for a hydraulic fracturing consent in relation to land in the Welsh onshore area, and
      - (b) make such other amendments of section 4A or this section as the Welsh Ministers consider appropriate in consequence of provision made under paragraph (a).
    - (13) A statutory instrument which contains regulations under subsection (12) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.”
- (6) In section 7 (ancillary rights), in subsection (2)(d) –
  - (a) after “included” insert “ –
    - (i) ”;
  - (b) at the end insert –
    - “(ii) the Welsh Ministers in relation to licences granted in relation to the Welsh onshore area.”
- (7) After section 8A insert –

## **“8B Welsh onshore area**

- (1) The Welsh onshore area is the area of Wales that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).
- (2) In subsection (1) “Wales” has the same meaning as in the Government of Wales Act 2006 (see section 158(1) of that Act).

## **8C English onshore area**

The English onshore area is the area of England and the sea adjacent to England that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).”

- (8) In section 188 of the Energy Act 2004 (power to impose charges to fund energy functions), at the end insert –
  - “(13) This section applies in relation to the Welsh Ministers as it applies in relation to the Secretary of State, and in its application to the Welsh Ministers it is to be read as if –
    - (a) for subsections (6) and (7) there were substituted –
      - “(6) Regulations under this section must be made by statutory instrument and are subject to annulment in pursuance of a resolution of the National Assembly for Wales.
      - (7) Section 192(4) applies in relation to the power of the Welsh Ministers to make regulations under subsection (6) as it applies in relation to an order or regulations made by the Secretary of State or the Treasury.
      - (7A) The references in this section to relevant energy functions are references to the functions of the Welsh Ministers under Part 1 of the Petroleum Act 1998.”, and
      - (b) the reference in subsection (11) to the Consolidated Fund were a reference to the Welsh Consolidated Fund.”
- (9) In the Oil Taxation Act 1975 –
  - (a) in section 12(1A)(a)(ii) (authorities that can revoke licences) after “Scottish Ministers” insert “, the Welsh Ministers”;
  - (b) in Schedule 1 (determination of oil fields), in paragraph 1(2), after paragraph (ab) insert –
    - “(ac) is the Welsh Ministers if the area is such that licences can be granted by the Welsh Ministers for all of it under Part 1 of the Petroleum Act 1998;
    - (ad) is the Secretary of State and the Welsh Ministers acting jointly if the area is such that licences can be granted for part of it by the Secretary of State and for part of it by the Welsh Ministers.”.
- (10) In the Petroleum (Production) (Landward Areas) Regulations 1995 (S.I. 1995/1436) –
  - (a) in regulation 2 (interpretation) –
    - (i) at the end of the definition of “supplementary seismic survey licence” omit “and”;
    - (ii) after that definition insert –
      - ““Welsh onshore area” has the meaning given by section 8B of the Petroleum Act 1998; and”;
  - (b) in regulation 3 (application of the regulations), in paragraph (1A) at the end insert “or the Welsh onshore area.”

## 9 Onshore petroleum: existing licences

- (1) The Secretary of State may make amendments to –
  - (a) any model clause, to the extent that, under Part 1 of the Petroleum Act 1998, it is incorporated, or has effect as if incorporated, in an existing licence, and
  - (b) any other provision of an existing licence.

- (2) The Secretary of State may exercise the power in subsection (1) only if the Secretary of State considers that it is necessary or expedient to do so in consequence of—
- (a) the exceptions mentioned in Section D2 of Part 2 of Schedule 7A to the Government of Wales Act 2006 (licensing of and access to petroleum within Welsh onshore area), or
  - (b) section 8.
- (3) In the case of an existing licence granted in respect of an area (“the licence area”) of which part only was within the Welsh onshore area at the time the licence was granted—
- (a) the Secretary of State may direct that it is to have effect as a licence in respect of an area comprising that part and a separate licence in respect of an area comprising the rest of the licence area, and
  - (b) subsection (1) applies in relation to each of those licences as it applies in relation to the existing licence.
- (4) The power to make amendments under subsection (1)(a) is exercisable by regulations made by statutory instrument.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section—
- “existing licence” means a licence, granted before the day on which section 8 comes into force, under—
- (a) section 3 of the Petroleum Act 1998, or
  - (b) section 2 of the Petroleum (Production) Act 1934,
- in respect of an area all or part of which is within the Welsh onshore area;
- “Welsh onshore area” has the meaning given by Section D2 of Part 2 of Schedule 7A to the Government of Wales Act 2006.

## 10 Speed limits

- (1) The Road Traffic Regulation Act 1984 is amended as follows.
- (2) Section 17 (traffic regulation on special roads) is amended as follows.
- (3) After subsection (3ZA) insert—
- “(3ZAA) The power to make provision of the following kinds by regulations under subsection (2) is exercisable by the Welsh Ministers—
- (a) provision with respect to a particular special road in Wales;
  - (b) provision for regulating the speed of vehicles on special roads in Wales.”
- (4) After subsection (3A) insert—
- “(3B) Before making regulations under subsection (2), the Welsh Ministers must consult the National Park authority for any National Park which would be affected by the regulations.”
- (5) Section 81 (general speed limit for restricted roads) is amended as follows.

- (6) After subsection (2) insert –
- “(2A) In this Part “national authority” –
- (a) in relation to roads in England, means the Secretary of State;
  - (b) in relation to roads in Wales, means the Welsh Ministers;
  - (c) in relation to roads in Scotland, means the Scottish Ministers.”
- (7) In subsection (3) after paragraph (a) insert –
- “(aa) if made by the Welsh Ministers, is to be made by statutory instrument and approved by a resolution of the National Assembly for Wales;”.
- (8) In subsection (4) after “with” insert “the Welsh Ministers and”.
- (9) In subsection (5) for the words from “making” to “Ministers” substitute “the Welsh Ministers or the Scottish Ministers make an order under subsection (2) they”.
- (10) In section 83 (provisions as to directions under section 82(2)) after subsection (3) insert –
- “(4) The power of the Welsh Ministers to make an order under subsection (1) is exercisable by statutory instrument.”
- (11) Section 85 (traffic signs for indicating speed restrictions) is amended as follows.
- (12) After subsection (7) insert –
- “(7A) The power of the Welsh Ministers to give general directions under subsection (2) is exercisable by statutory instrument.”
- (13) In subsection (9) after “with” insert “the Welsh Ministers and”.
- (14) In subsection (10) for the words from “giving” to “Ministers” substitute “the Welsh Ministers or the Scottish Ministers give any general directions under subsection (2) they”.
- (15) Section 88 (temporary speed limits) is amended as follows.
- (16) After subsection (8) insert –
- “(8A) The first order to be made under subsection (1)(b) by the Welsh Ministers is not to be made until a draft of the order has been laid before and approved by a resolution of the National Assembly for Wales.”
- (17) After subsection (11) insert –
- “(11A) The power of the Welsh Ministers to make an order under subsection (4) is exercisable by statutory instrument.
- (11B) A statutory instrument containing an order made by the Welsh Ministers under subsection (4) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (18) In section 134 (regulations) after subsection (8) insert –
- “(9) Any power conferred by section 17 or Part 6 on the Welsh Ministers to make regulations is exercisable by statutory instrument.

- (10) Before making regulations under section 17 or Part 6, the Welsh Ministers must consult with such representative organisations as they think fit.
- (11) A statutory instrument containing regulations made by the Welsh Ministers under section 17 or Part 6 (except section 86) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (12) Regulations made by the Welsh Ministers under section 86 are not to have effect unless approved by a resolution of the National Assembly for Wales.”
- (19) In section 142(1) (general interpretation) in the definition of “national authority” after ““national authority”” insert “, except in Part 6 (see section 81(2A))”.
- (20) In consequence of the amendments above, omit the entry relating to the Road Traffic Regulation Act 1984 in Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

## **11 Traffic Commissioners**

- (1) Section 4C of the Public Passenger Vehicles Act 1981 (power of senior traffic commissioner to give guidance and directions) is amended as follows.
- (2) In subsection (1) in the second sentence after “subsection (5) below” insert “and, in relation to Wales, to subsection (6) below”.
- (3) After subsection (5) insert—
  - “(6) The senior traffic commissioner may not give guidance or directions under this section as to the exercise of a function so far as the function could (apart from paragraph 8 of Schedule 7B to the Government of Wales Act 2006) be conferred or imposed by provision falling within the legislative competence of the National Assembly for Wales.”

## **12 Taxis: transfer of functions to Welsh Ministers**

In section 10 of the Transport Act 1985 (immediate hiring of taxis at separate fares) after subsection (9) insert—

- “(9A) In this section “prescribed” means prescribed by regulations made—
  - (a) in relation to Wales, by the Welsh Ministers;
  - (b) otherwise, by the Secretary of State.
- (9B) The power of the Welsh Ministers to make regulations under this section is exercisable by statutory instrument.
- (9C) A statutory instrument containing regulations made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (9D) The Welsh Ministers must consult such representative organisations as they think fit before making regulations under this section.

- (9E) Section 134(5) applies in relation to regulations made by the Welsh Ministers under this section as it applies in relation to regulations or an order made by the Secretary of State.”

### 13 Transfer of executive functions in relation to Welsh harbours

- (1) The functions mentioned in subsection (2) are (so far as not already transferred under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)) transferred to the Welsh Ministers.
- (2) The functions are functions conferred or imposed on a Minister of the Crown by or under—
  - (a) the following provisions of the Harbours Act 1964—
    - (i) sections 11 and 43(1) (loans for harbour works),
    - (ii) sections 14 to 17 and Schedule 3 (harbour revision orders, harbour authority appointment orders and harbour empowerment orders),
    - (iii) section 18 and Schedule 4 (harbour reorganisation schemes),
    - (iv) section 19 (compensation for loss of office etc in consequence of harbour orders and schemes),
    - (v) sections 30 and 31 (harbour charges and dues),
    - (vi) sections 41 and 42 (provision of information, accounts etc),
    - (vii) section 60 (power to amend local Acts);
  - (b) the following provisions of the Docks and Harbours Act 1966—
    - (i) section 36 (provision of inland clearance depots),
    - (ii) sections 42 and 43 (further provision about harbour reorganisation schemes);
  - (c) section 5 of the Ports (Finance) Act 1985;
  - (d) the following provisions of the Pilotage Act 1987—
    - (i) section 1 (orders about competent harbour authorities),
    - (ii) section 8 (pilotage exemption certificates),
    - (iii) section 12 (information and directions as to joint arrangements),
    - (iv) section 13 (resolution of disputes between harbour authorities),
    - (v) Schedule A1 (recognition of EEA pilotage qualifications and experience);
  - (e) Part 1 of the Ports Act 1991, other than sections 11(8), 13(5) and 18(1), so far as exercisable in relation to harbours in Wales, other than harbours that are reserved trust ports (see section 14).
- (3) Where a function mentioned in subsection (2) relates to two or more harbours, that function is transferred to the Welsh Ministers only to the extent that both (or all) of the harbours to which it relates are in Wales and are not reserved trust ports.
- (4) Part 2 of Schedule 3 to the Government of Wales Act 2006 (exercise of functions transferred under section 58) applies in relation to the transfer of functions under subsection (1) as it applies in relation to a transfer of functions by an Order in Council made under section 58 of that Act.
- (5) The Harbours Act 1964 is amended as set out in subsections (6) to (11).

- (6) In section 17 (harbour orders: procedure), in subsection (2C), for the words from “fishery” to “National Assembly for Wales” substitute “harbour in Wales, other than a reserved trust port, as references to the Welsh Ministers”.
- (7) In section 17E (harbour closure orders: devolution), in subsection (1), for “fishery harbours in Wales” substitute “harbours in Wales other than reserved trust ports”.
- (8) In section 30(4) (duty of harbour authorities etc. to keep list of charges), omit “or, if the fishery harbour is in Wales, to the Secretary of State”.
- (9) In section 40A (directions made by harbour authorities in respect of ships), in subsection (4)(a), for “fishery harbour in Wales” substitute “harbour in Wales other than a reserved trust port”.
- (10) In section 57(1) (interpretation), after the definition of “provisional order” insert—

“‘reserved trust port’ has the meaning given in section 14 of the Wales Act 2016;”.
- (11) In Schedule 3 (procedure for making harbour orders), in paragraph 25(6)(a), for sub-paragraph (ii) substitute—

“(ii) a harbour in Wales other than a reserved trust port, the Welsh Ministers;”.
- (12) In the Ports Act 1991, in sections 16(5) and 18(7) (payment of port privatisation levy etc into Consolidated Fund), at the end insert—

“This includes payments, interest and penalties paid to the Welsh Ministers: such payments are not to be paid into the Welsh Consolidated Fund.”

## 14 Welsh harbours: reserved trust ports

- (1) A harbour is a reserved trust port if, on the date on which section 3(1) comes into force, it is a harbour, dock, pier or boatslip that is owned or managed by a harbour authority that—
  - (a) is a relevant port authority within the meaning of Part 1 of the Ports Act 1991 (see section 1(3) of that Act), and
  - (b) meets the annual turnover requirement.
- (2) The annual turnover requirement is the turnover requirement set out in section 11 of the Ports Act 1991.
- (3) In applying section 11 for the purposes of this section, for subsection (1) substitute—

“(1) A relevant port authority meet the annual turnover requirement if the annual turnover of the authority’s port undertaking exceeded the turnover limit in the case of at least two of the last three accounting years of the authority for which accounts have been submitted under section 42(5) of the Harbours Act 1964.”

## 15 Welsh harbours: development consent

- (1) Section 24 of the Planning Act 2008 (development consent for construction or alteration of harbour facilities) is amended as follows.

- (2) In subsection (1), for paragraph (a) substitute—
  - “(a) will be—
    - (i) in England or in waters adjacent to England up to the seaward limits of the territorial sea, or
    - (ii) in Wales or in waters adjacent to Wales up to the seaward limits of the territorial sea and will be, or will form part of, a reserved trust port, and”.
- (3) In subsection (2), for paragraph (a) substitute—
  - “(a) the harbour facilities are—
    - (i) in England or in waters adjacent to England up to the seaward limits of the territorial sea, or
    - (ii) in Wales or in waters adjacent to Wales up to the seaward limits of the territorial sea and are, or form part of, a reserved trust port, and”.
- (4) In subsection (6), after the definition of “container ship” insert—
  - ““reserved trust port” has the meaning given by section 14 of the Wales Act 2016;”.

## **16 Cross-border harbours: power to make regulations**

- (1) The Secretary of State may make regulations about the exercise of any functions transferred by sections 13 to 15 in relation to harbours that are only partly in Wales (within the meaning of the Government of Wales Act 2006).
- (2) Regulations under subsection (1) must be made by statutory instrument.
- (3) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

## **17 Planning consent for generating stations with 350MW capacity or less**

- (1) Section 15 of the Planning Act 2008 (generating stations) is amended as follows.
- (2) In subsection (1) for “or (3)” substitute “, (3), (3A) or (3B)”.
- (3) In subsection (2)(a) omit “or Wales”.
- (4) After subsection (3) insert—
  - “(3A) A generating station is within this subsection if—
    - (a) it is in Wales,
    - (b) it does not generate electricity from wind, and
    - (c) its capacity is more than 350 megawatts.
  - “(3B) A generating station is within this subsection if—
    - (a) it is in waters adjacent to Wales up to the seaward limits of the territorial sea, and
    - (b) its capacity is more than 350 megawatts.”
- (5) In subsection (4)(a) omit “or Wales”.
- (6) Section 36 of the Electricity Act 1989 (consent required for construction etc of generating stations) is amended as follows.
- (7) In subsection (2)—

- (a) in paragraph (a)–
    - (i) at the beginning, insert “in the case of a generating station otherwise than in Wales,”, and
    - (ii) at the end, omit “and”,
  - (b) in paragraph (b) after “extended” insert “otherwise than in Wales”,
  - (c) after paragraph (b) insert–
    - (c) in the case of a generating station in Wales, does not exceed the devolved capacity, that is to say, 350 megawatts; and
    - (d) in the case of a generating station which is to be constructed or extended in Wales, will not exceed the devolved capacity when it is constructed or extended;”.
- (8) After subsection (2) insert–
- “(2A) In subsection (2) “Wales” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales.”

## 18 Alignment of associated development consent

In section 115 of the Planning Act 2008 (development for which development consent may be granted)–

- (a) in subsection (2)(c) for “or (4)” substitute “, (4) or (4A)”;
- (b) after subsection (4) insert–

“(4A) Development is within this subsection if the development within subsection (1)(a) with which it is associated is the construction or extension of a generating station which is or (when constructed or extended) is expected to be within section 15(3A) or (3B).”

## 19 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: 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) the National Assembly for Wales,
  - (b) the National Assembly for Wales Commission, or
  - (c) 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 the National Assembly for Wales, the National Assembly for Wales Commission 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.”
- (2) In section 158(2) of that Act (interpretation), in subsection (2), after “116C(2)” insert “, 150A(2)”.

*Other provision about legislation by the Assembly*

## 20 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 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.

### **111B Scrutiny of Bills by the Supreme Court (protected subject-matter)**

- (1) The Counsel General or the Attorney General may refer the question of whether any provision of a Bill relates to a protected subject-matter to the Supreme Court for decision.
- (2) Subject to subsection (3), the Counsel General or the Attorney General may make a reference in relation to a Bill –
  - (a) at any time during the period of four weeks beginning with the rejection of the Bill, if the Presiding Officer has decided under section 111A(3) that a provision of the Bill relates to a protected subject-matter,

- (b) at any time during the period of four weeks beginning with the passing of the Bill, if the Presiding Officer has decided under section 111A(3) that no provision of the Bill relates to a protected subject-matter, and
  - (c) at any time during the period of four weeks beginning with any approval of the Bill in accordance with provision included in the standing orders in compliance with section 111(7).
- (3) No reference may be made in relation to a Bill—
- (a) by the Counsel General if the Counsel General has notified the Presiding Officer that no reference is to be made in relation to it by the Counsel General, or
  - (b) by the Attorney General if the Attorney General has notified the Presiding Officer that no reference is to be made in relation to it by the Attorney General.
- (4) But subsection (3) does not apply if the Bill has, since the notification, been approved or rejected in accordance with standing orders made by virtue of section 111(7)."

## **21 Super-majority requirement: amendments relating to procedure etc**

- (1) Section 111 of the Government of Wales Act 2006 (proceedings on Bills) is amended as set out in subsections (2) to (5).
- (2) In subsection (6), before paragraph (a) insert—
  - “(za) the Supreme Court decides a reference made in relation to the Bill under section 111B(2)(b) or (c) (reference following Presiding Officer’s decision that Bill does not contain protected subject-matter).”.
- (3) After subsection (6) insert—
  - “(6A) The standing orders must provide for an opportunity for the reconsideration of a Bill after its rejection if (and only if), on a reference made in relation to the Bill under section 111B(2)(a) (reference following Presiding Officer decision that Bill contains protected subject-matter), the Supreme Court decides that no provision that is subject to the reference relates to a protected-subject matter.”
- (4) For subsection (7) substitute—
  - “(7) The standing orders must, in particular, ensure that—
    - (a) any Bill amended on reconsideration in accordance with standing orders made by virtue of subsection (6)(a), (b) or (c), and
    - (b) any Bill reconsidered in accordance with standing orders made by virtue of subsection (6)(za) or (6A),  
is subject to a final stage at which it can be approved or rejected.”
- (5) In subsection (8)—
  - (a) after “109(5)” insert “, 111A(3) and (4)”;
  - (b) for “which has been amended on reconsideration” substitute “to which subsection (7)(a) or (b) applies”.
- (6) In section 112 of the Government of Wales Act 2006—

- (a) in the heading, at the end insert “(legislative competence)”;
  - (b) in subsection (2)(b), omit “subsequent”.
- (7) In section 114 of that Act (power of Secretary of State to intervene), in subsection (4) –
- (a) in paragraph (b), omit “subsequent”;
  - (b) in paragraph (c), after “section” insert “111B or”.
- (8) In section 115 of that Act (Royal Assent) –
- (a) in subsection (2)(a), after “section” insert “111B or”;
  - (b) after subsection (3) insert –
- “(3A) The Presiding Officer may not submit a Bill for Royal Assent if the Supreme Court has decided on a reference made in relation to the Bill under section 111B (protected subject-matter reference) unless since the decision the Bill has been approved in accordance with standing orders made by virtue of section 111(7).”

## **22 Submission of Bills for Royal Assent: role of Presiding Officer**

- (1) In section 115 of the Government of Wales Act 2006, in subsections (1), (2) and (3), for “Clerk” substitute “Presiding Officer”.
- (2) In consequence of the amendments made by subsection (1) –
  - (a) in section 112(3) of that Act (scrutiny of Bills by Supreme Court for legislative competence; notification of lack of reference), in paragraphs (a) and (b), for “Clerk” substitute “Presiding Officer”;
  - (b) in section 113(2)(a) of that Act (ECJ references), for “Clerk” substitute “Presiding Officer”;
  - (c) in section 114 (power of Secretary of State to intervene), in subsections (2) and (5), for “Clerk” substitute “Presiding Officer”.

### *Other provision about the Assembly*

## **23 Composition of Assembly committees**

In the Government of Wales Act 2006 omit section 29 (composition of committees).

## **24 Assembly proceedings: participation by UK Ministers etc**

In the Government of Wales Act 2006 –

- (a) omit section 32 (participation by UK Ministers etc);
- (b) omit section 33 (consultation about UK Government’s legislative programme).

## PART 2

### EXECUTIVE COMPETENCE

#### *Executive functions of Welsh Ministers*

##### **25 Functions of Welsh Ministers**

- (1) After section 58 of the Government of Wales Act 2006 insert –

##### **“58A Executive functions of Her Majesty”**

- (1) Those of Her Majesty’s executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown are to be exercisable by the Welsh Ministers instead of by a Minister of the Crown.
- (2) But subsection (1) applies in relation to an executive function only so far as –
  - (a) it is exercisable within devolved competence, or
  - (b) it is exercisable for the purposes of the exercise of a function by the Welsh Ministers outside devolved competence.
- (3) Despite the transfer by subsection (1) of any of the functions mentioned in subsection (4), the function is to be exercisable by a Minister of the Crown as well as by the Welsh Ministers.
- (4) Those functions are –
  - (a) a function so far as it is exercisable for the purposes of the exercise by the Welsh Ministers (within or outside devolved competence) of a function which is exercisable jointly or concurrently with a Minister of the Crown,
  - (b) a function so far as it is exercisable within devolved competence for the purposes of the exercise of a function by a Minister of the Crown,
  - (c) a function so far as it is exercisable within devolved competence otherwise than for the purposes of the exercise of another function, and
  - (d) a function in relation to observing and implementing obligations under EU law.
- (5) A reference in this section to the exercise of a function within, or outside, devolved competence is to be read in accordance with subsections (6) and (7).
- (6) It is outside devolved competence –
  - (a) to make any provision by subordinate legislation which would be outside the legislative competence of the Assembly if it were included in an Act of the Assembly (see section 108A), or
  - (b) to confirm or approve any subordinate legislation containing such provision.
- (7) In the case of a function other than a function of making, confirming or approving subordinate legislation, it is outside devolved competence to exercise the function (or exercise it in any way) so far as a provision of an Act of the Assembly conferring the function (or conferring it so as

to be exercisable in that way) would be outside the legislative competence of the Assembly.

- (8) In this section—
  - (a) “executive function” does not include a function conferred or imposed by or by virtue of any legislation or the prerogative;
  - (b) a reference to a function’s being exercisable for the purposes of another function is a reference to the function’s being exercisable with a view to facilitating, or in such a way as is conducive or incidental to, the exercise of the other function.”
- (2) In section 71 of the 2006 Act (incidental etc powers of Welsh Ministers etc), in subsection (2) omit “the Welsh Ministers.”

*Marine licensing and conservation*

## 26 Marine licensing in the Welsh offshore region

- (1) The Marine and Coastal Access Act 2009 is amended as follows.
- (2) In section 113 (the appropriate licensing authority)—
  - (a) in subsection (4) for “and the Welsh inshore region” substitute “, the Welsh inshore region and the Welsh offshore region”,
  - (b) in subsection (5) after paragraph (b)—
    - “(ba) in relation to the Welsh offshore region, any activity falling within the subject matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc).”
- (3) In section 236 (enforcement of marine licensing regime) in subsection (2)—
  - (a) in paragraph (a) for “or the Welsh inshore region” substitute “, the Welsh inshore region or the Welsh offshore region”,
  - (b) after paragraph (a) insert—
    - “(aa) any activity in the Welsh offshore region falling within the subject matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc).”
- (4) In section 240 (marine licensing: oil and gas and other reserved matters) in subsection (1)—
  - (a) in paragraph (b) for “or the Welsh inshore region” substitute “, the Welsh inshore region or the Welsh offshore region”,
  - (b) after paragraph (b) insert—
    - “(ba) any activity in the Welsh offshore region falling within the subject matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc).”
- (5) The Marine Licensing (Exempted Activities) (Wales) Order 2011 (S.I. 2011/559 (w.81)) is amended as follows.
- (6) In article 4 (exemption from need for marine licence) in paragraph (1) for “or the Welsh inshore region” substitute “, the Welsh inshore region or the Welsh offshore region”.
- (7) In article 32 (bored tunnels) in paragraph (4) for “and the Welsh inshore region” substitute “, the Welsh inshore region and the Welsh offshore region”.

- (8) In article 34 (loading of a vehicle or vessel etc for incineration outside Wales and the Welsh inshore region) –
- (a) in the heading for “and the Welsh inshore region” substitute “, the Welsh inshore region and the Welsh offshore region”,
  - (b) in paragraph (1)(b) for “and the Welsh inshore region” substitute “, the Welsh inshore region and the Welsh offshore region”.

## 27 Marine conservation zones

- (1) Part 5 of the Marine and Coastal Access Act 2009 is amended as follows.
- (2) In section 116 (marine conservation zones) –
- (a) in subsection (5)(a) after “Wales” insert “or the Welsh offshore region”,
  - (b) after subsection (5) insert –

“(5A) The Welsh Ministers may not designate an area as an MCZ without the agreement of the Secretary of State if any part of the proposed MCZ lies in the Welsh offshore region.”
- (3) In section 119 (consultation before designation) –
- (a) in subsection (6) after “Wales” insert “or the Welsh offshore region”,
  - (b) omit subsection (9)(a).
- (4) In section 125 (general duties of public authorities in relation to MCZs) in subsection (11)(a) after “Wales” insert “or the Welsh offshore region”.

### *Building regulations*

## 28 Transfer of functions in relation to excepted energy buildings

- (1) The functions conferred or imposed on the Secretary of State by or under the Building Act 1984, so far as exercisable in relation to excepted energy buildings in Wales, are transferred to the Welsh Ministers.
- (2) But subsection (1) does not operate to transfer any functions that are reserved by the following provisions of the 2009 TFO –
- (a) article 3(b) (functions exercisable by Secretary of State as a Crown authority);
  - (b) article 3(c) (powers of commencement etc);
  - (c) article 4 (energy performance requirements and energy assessors for existing buildings).
- (3) The following provisions of the Government of Wales Act 2006 apply in relation to the transfer of functions under subsection (1) as they apply in relation to a transfer of functions by an Order in Council made under section 58 of that Act –
- (a) Part 2 of Schedule 3 (exercise of functions transferred under section 58);
  - (b) paragraph 1 of Schedule 4 (general transfer of property, rights and liabilities).
- (4) In this section –
- “excepted energy building” has the meaning given in the Schedule to the 2009 TFO;

“the 2009 TFO” means the Welsh Ministers (Transfer of Functions) (No 2) Order 2009 (S.I. 2009/3019).

*Office of Communications*

## **29 Office of Communications**

- (1) Section 1 of the Office of Communications Act 2002 (the Office of Communications) is amended as follows.
- (2) In subsection (3) after paragraph (aa) insert –
  - (ab) a member appointed by the Welsh Ministers;”.
- (3) After subsection (3A) insert –
  - “(3B) Before appointing a member under subsection (3)(ab) the Welsh Ministers must consult the Secretary of State.”
- (4) In subsection (5) in the words before paragraph (a) before “and (b),” insert “; (ab)”.
- (5) After subsection (11) insert –
  - “(12) Paragraphs 1 and 2 of the Schedule apply in relation to the appointment made under subsection (3)(ab) as if –
    - (a) any reference to the Secretary of State was to the Welsh Ministers, and
    - (b) after the paragraph 2(7) treated as inserted by subsection (11) there were inserted –
      - “(8) Before the Welsh Ministers remove a person from office they must consult the Secretary of State.””
- (6) The Schedule to the Office of Communications Act 2002 is amended as follows.
- (7) In paragraph 11 (accounts and audit) –
  - (a) in sub-paragraph (3)(c) after “the Scottish Ministers” insert “and the Welsh Ministers”;
  - (b) after sub-paragraph (4) insert –
    - “(5) The Welsh Ministers shall lay a copy of the statement and report sent to them under sub-paragraph (3) before the National Assembly for Wales.”
- (8) In paragraph 12 (annual report) –
  - (a) in sub-paragraph (1) for “and the Scottish Ministers” substitute “, the Scottish Ministers and the Welsh Ministers”;
  - (b) after sub-paragraph (4) insert –
    - “(5) The Welsh Ministers shall lay a copy of every report sent to them under this paragraph before the National Assembly for Wales.”

## PART 3

### GENERAL

#### 30 Consequential provision

- (1) Schedule 3 contains minor and consequential amendments.
- (2) The Secretary of State may by regulations make such consequential provision in connection with any provision of this Act as the Secretary of State considers appropriate.
- (3) Regulations under subsection (2) may amend, repeal, revoke or otherwise modify—
  - (a) an enactment contained in primary legislation, or
  - (b) an instrument made under an enactment contained in primary legislation.
- (4) Regulations under subsection (2) may make—
  - (a) different provision for different purposes or cases;
  - (b) provision generally or for specific cases;
  - (c) provision subject to exceptions;
  - (d) provision for the delegation of functions;
  - (e) transitional or saving provision.
- (5) Regulations under subsection (2) must be made by statutory instrument.
- (6) A statutory instrument containing regulations under subsection (2) which includes provision amending or repealing any provision of primary legislation may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (7) Any other statutory instrument containing regulations under subsection (2), if made without a draft having been approved by a resolution of each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section “primary legislation” means—
  - (a) an Act of Parliament;
  - (b) a Measure or Act of the National Assembly for Wales.

#### 31 Transitional provision and savings

- (1) Schedule 4 contains transitional provision and savings.
- (2) The Secretary of State may by regulations make any other transitional or saving provision which may appear appropriate in consequence of, or otherwise in connection with, this Act.
- (3) Regulations under subsection (2) may, in particular, include any savings from the effect of any amendment or repeal or revocation made by this Act.
- (4) Nothing in Schedule 4 limits the power conferred by subsection (2); and such regulations may, in particular, make modifications of that Schedule.
- (5) Nothing in that Schedule, or in any provision made by virtue of subsection (2), prejudices the operation of sections 16 and 17 of the Interpretation Act 1978.

- 
- (6) Regulations under subsection (2) must be made by statutory instrument.
  - (7) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **32 Commencement**

- (1) The following come into force on the day on which this Act is passed—
  - (a) section 1;
  - (b) section 30(2) to (8);
  - (c) section 31(2) to (7);
  - (d) this section;
  - (e) section 33.
- (2) The following come into force on such day or days as the Secretary of State may appoint by regulations made by statutory instrument—
  - (a) section 9;
  - (b) section 26;
  - (c) section 27;
  - (d) section 29;
  - (e) section 30(1) and Schedule 3;
  - (f) section 31(1) and Schedule 4.
- (3) Regulations under subsection (2) may appoint different days for different purposes.
- (4) The other provisions of this Act come into force at the end of 2 months beginning with the day on which this Act is passed.

### **33 Short title**

This Act may be cited as the Wales Act 2016.

## SCHEDULES

### SCHEDULE 1

Section 3

#### NEW SCHEDULE 7A TO THE GOVERNMENT OF WALES ACT 2006

- 1 This Schedule sets out the new Schedule 7A to the Government of Wales Act 2006, to be substituted (with the new Schedule 7B) for Schedule 7 to that Act –

#### “SCHEDULE 7A

Section 108A

##### RESERVED MATTERS

###### PART 1

###### GENERAL RESERVATIONS

###### *The Constitution*

- 1 The following aspects of the constitution are reserved matters –
- (a) the Crown, including succession to the Crown and a regency,
  - (b) the union of the nations of Wales and England,
  - (c) the Parliament of the United Kingdom.
- 2 (1) Paragraph 1 does not reserve –
- (a) Her Majesty’s executive functions,
  - (b) functions exercisable by any person acting on behalf of the Crown, or
  - (c) the use of the Welsh Seal.
- (2) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the management (in accordance with any enactment regulating the use of land) of the Crown Estate.
- (3) Sub-paragraph (1) does not affect the reservation by paragraph 1 of the functions of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
- (4) In this paragraph “executive function” does not include a function conferred or imposed by or by virtue of any legislation or the prerogative.

###### *Public service*

- 3 The Civil Service of the State is a reserved matter.

*Political parties and elections*

- 4 The following are reserved matters—
- (a) the registration of political parties,
  - (b) funding of political parties and of their members and officers,
  - (c) expenditure on election campaigns by political parties and others in relation to—
    - (i) elections for membership of the House of Commons or the European Parliament, and
    - (ii) elections of police and crime commissioners,
  - (d) accounting requirements in relation to political parties, but this is subject to paragraph 5.
- 5 Paragraph 4 does not reserve making payments to any political party for the purpose of assisting members of the Assembly who are connected with the party to perform their Assembly duties.

*Single legal jurisdiction of England and Wales and tribunals*

- 6 (1) The following are reserved matters—
- (a) courts and tribunals (including, in particular, their jurisdiction),
  - (b) judges and members of tribunals (including, in particular, their appointment and remuneration),
  - (c) civil or criminal proceedings (including, in particular, bail, costs, custody pending trial, disclosure, enforcement of orders of courts or tribunals, evidence, limitation of actions, procedure, prosecutors and remedies),
  - (d) private international law,
  - (e) judicial review of administrative action.
- (2) Sub-paragraph (1) does not reserve the provision of advisory and support services in respect of family proceedings in which the welfare of children ordinarily resident in Wales is or may be in question.
- (3) In this paragraph “tribunal” does not include a tribunal whose purpose is to make determinations in relation to matters that are not reserved matters.
- (4) See also paragraphs 3 and 4 of Schedule 7B (restrictions on modifying private law, criminal law and civil penalties).

*Foreign affairs etc*

- 7 (1) International relations, regulation of international trade, and international development assistance and co-operation are reserved matters.
- (2) In sub-paragraph (1) “international relations” includes—
- (a) relations with territories outside the United Kingdom,
  - (b) relations with the EU and its institutions,
  - (c) relations with other international organisations.
- (3) But sub-paragraph (1) does not reserve—

- (a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law, or
- (b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.

*Interpretation*

“the Human Rights Convention” means –

- (a) the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950, and
- (b) the Protocols to the Convention,

as they have effect for the time being in relation to the United Kingdom.

*Defence*

8 (1) The following are reserved matters –

- (a) the defence of the realm,
- (b) the naval, military or air forces of the Crown, including reserve forces,
- (c) visiting forces,
- (d) international headquarters and defence organisations,
- (e) trading with the enemy and enemy property.

(2) Sub-paragraph (1) does not reserve the conferral of enforcement powers in relation to sea fishing on any person who is not a member of a force referred to in sub-paragraph (1)(b).

PART 2

SPECIFIC RESERVATIONS

*Preliminary*

- 9 The matters to which any of the Sections in this Part apply are reserved matters.
- 10 A Section applies to any matter described or referred to in it when read with any exceptions or interpretation provisions in that Section.
- 11 Any exceptions or interpretation provisions in a Section relate only to that Section (so that an entry under the heading “exceptions” does not affect any other Section).

*Reservations*

## Head A - Financial and Economic Matters

## Section A1

## A1 Fiscal, economic and monetary policy

- 12     Fiscal, economic and monetary policy, including the issue and circulation of money, taxes and excise duties, government borrowing and lending, control over United Kingdom public expenditure, the exchange rate, the Bank of England, the Office for Budget Responsibility, the National Audit Office and the Comptroller and Auditor General.

*Exceptions*

Devolved taxes, including their collection and management.  
Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates).

## Section A2

## A2 The currency

- 13     Coinage, legal tender and bank notes.

## Section A3

## A3 Financial services

- 14     Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.

## Section A4

## A4 Financial markets

- 15     Financial markets, including listing and public offers of securities and investments, transfer of securities and insider dealing.

## Section A5

## A5 Dormant accounts

- 16     Distribution of money from dormant bank and building society accounts.

Head B - Home Affairs

Section B1

B1 Elections

*(A) Elections for membership of the House of Commons and the European Parliament, and PCCs*

- 17      Elections for membership of the House of Commons and the European Parliament, including the subject-matter of—  
          (a) the Representation of the People Act 1983,  
          (b) the Representation of the People Act 1985,  
          (c) the Parliamentary Constituencies Act 1986,  
          (d) the Representation of the People Act 2000,  
          (e) the European Parliamentary Elections Act 2002,  
          (f) the Electoral Administration Act 2006, and  
          (g) the Electoral Registration and Administration Act 2013,  
so far as those enactments apply, or may be applied, in respect of such membership.
- 18      Elections of police and crime commissioners.
- 19      The Boundary Commission for Wales.

*(B) Elections for membership of the Assembly and local government elections in Wales*

- 20      The subject-matter of sections 3(1A) and (1B) and 13A of this Act.
- 21      The combination of—  
          (a) polls at elections or referendums that are outside the legislative competence of the Assembly with polls at—  
              (i) elections of Assembly members,  
              (ii) local government elections in Wales, or  
              (iii) referendums held under Part 2 of the Local Government Act 2000 (arrangements in respect of executives etc), and  
          (b) polls at ordinary general elections of Assembly members with polls at ordinary local government elections in Wales.
- 22      The timing of ordinary local government elections in Wales where the poll at such an election would otherwise be held on the same day as the poll at an ordinary general election of Assembly members.
- 23      Any digital service provided by a Minister of the Crown for the registration of electors.
- 24      The subject-matter of—  
          (a) Parts 5 and 6 of the Political Parties, Elections and Referendums Act 2000 (expenditure in connection with elections) in relation to an election within the legislative competence of the Assembly, where the poll at the election is combined with the poll at an election for membership of the House of Commons or the European Parliament, and

- (b) sections 145 to 148 and 150 to 154 of that Act (enforcement) as they apply for the purposes of Part 5 or 6, so far as the subject matter of that Part is reserved by paragraph (a).
- 25      The subject-matter of—
- (a) sections 155 and 156 of the Political Parties, Elections and Referendums Act 2000 except in relation to Parts 5 and 6 of that Act so far as those Parts relate to elections of Assembly members and local government elections in Wales, and
  - (b) sections 145 to 148 and 150 to 154 of that Act as they apply for the purposes of section 155 or 156, so far as the subject-matter of that section is reserved by paragraph (a).
- 26      The subject-matter of the following sections of the Political Parties, Elections and Referendums Act 2000 in relation to elections of Assembly members and local government elections in Wales—
- (a) section 1 (except in relation to any requirement for the Electoral Commission to prepare, lay and publish reports about the performance of its functions),
  - (b) sections 2 to 4, 6(1)(e) and (f) (and (g) to the extent that it relates to the law mentioned in those paragraphs),
  - (c) sections 12, 21 to 37, 39 to 57, 58 to 67, 69, 71, 71F to 71Y and 140A,
  - (d) section 149 (except in relation to the register kept under section 89),
  - (e) sections 157 to 163,
- and sections 145 to 148 and 150 to 154 as they apply for the purpose of a provision mentioned in paragraphs (a) to (e), so far as the subject-matter of that provision is reserved by paragraphs (a) to (e).

*Interpretation*

“Local government elections in Wales” includes mayoral elections in Wales.

Section B2

B2 Nationality and immigration

- 27      Nationality.
- 28      Immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens.
- 29      Free movement of persons within the European Economic Area.
- 30      Travel documents.

Section B3

B3 National security and official secrets

- 31      National security.
- 32      Special powers, and other special provisions, for dealing with terrorism.

- 33 The subject-matter of the Official Secrets Acts 1911 to 1989.

Section B4

B4 Interception of communications, communications data and surveillance

- 34 Interception of communications.
- 35 Communications data.
- 36 Covert surveillance by persons exercising public functions.
- 37 Use of surveillance systems.

*Interpretation*

“Covert surveillance” includes the use of covert human intelligence sources.

Section B5

B5 Crime, public order and policing

- 38 The prevention, detection and investigation of crime.
- 39 The maintenance of public order.
- 40 Policing.
- 41 Police and crime commissioners.

*Exception*

Powers of entry, search and seizure relating to the detection or investigation of an offence of a kind provision for the creation of which is within the Assembly’s legislative competence.

Section B6

B6 Anti-social behaviour

- 42 The subject-matter of Parts 1 to 6 of the Anti-social Behaviour, Crime and Policing Act 2014.
- 43 Dangerous dogs and dogs out of control.

Section B7

B7 Modern Slavery

- 44 The subject-matter of the Modern Slavery Act 2015.

Section B8

B8 Emergency powers

- 45 Emergency powers.

Section B9

B9 Extradition

46      Extradition.

Section B10

B10 Criminal records

47      Criminal records, including disclosure and barring.

Section B11

B11 Dangerous items

48      The subject-matter of the Firearms Acts 1968 to 1997.

49      The subject-matter of the Poisons Act 1972.

50      Knives.

*Interpretation*

“Knives” includes—

- (a) knife blades and razor blades,
- (b) axes,
- (c) swords.

Section B12

B12 Misuse or dealing in drugs or psychoactive substances

51      Misuse or dealing in drugs or psychoactive substances.

*Interpretation*

“Psychoactive substances” has the meaning given in section 2 of the Psychoactive Substances Act 2015.

Section B13

B13 Private security

52      Private security.

Section B14

B14 Entertainment and late night refreshment.

53      Classification of films and video recordings (including video games).

54      Licensing of—

- (a) the provision of entertainment, and
- (b) late night refreshment.

Section B15

B15 Alcohol

- 55 The sale and supply of alcohol.

Section B16

B16 Betting, gaming and lotteries

- 56 Betting, gaming and lotteries.

Section B17

B17 Hunting

- 57 Hunting with dogs.

Section B18

B18 Scientific and educational procedures on live animals

- 58 Procedures on live animals for scientific or educational purposes.

Section B19

B19 Local government

- 59 Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.

Section B20

B20 Lieutenancies

- 60 Lieutenancies.

Section B21

B21 Charities and fund-raising

- 61 Charities.

- 62 Raising funds for charitable, benevolent or philanthropic purposes.

*Interpretation*

“Funds” includes property other than money.

Head C - Trade and Industry

Section C1

C1 Business associations and business names

- 63 The creation, operation, regulation and dissolution of types of business association.

- 64 The regulation of the name under which an individual or business association carries on business.

*Exception*

The creation, operation, regulation and dissolution of particular public bodies, or public bodies of a particular type, established by or under any enactment.

*Interpretation*

“Business association” means any entity, whether or not a legal person, that is not an individual (including a body corporate, partnership or other unincorporated association) which is established for the purpose of carrying on any kind of business, whether or not for profit.

“Business” includes the provision of benefits to the members of an association.

Section C2

C2 Insolvency and winding up

- 65 Insolvency.  
 66 Winding up solvent business associations.

Section C3

C3 Competition

- 67 Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.

Section C4

C4 Intellectual property

- 68 Intellectual property.

*Exception*

Plant varieties and seeds.

Section C5

C5 Imports, exports and movement of plants etc

- 69 Prohibition and regulation of –  
 (a) imports and exports, and  
 (b) the movement of food, plants, animals and other things within the United Kingdom.

*Exceptions*

Prohibition and regulation which relates to food, plants, animals and related things, and which is for the purposes of –

- (a) protecting human, animal or plant health, animal welfare or the environment, or
- (b) observing or implementing obligations under the Common Agricultural Policy.

Prohibition and regulation which relates to animal feeding stuffs, fertilisers or pesticides (or things treated by virtue of an enactment as pesticides), and which is for the purposes of protecting human, animal or plant health or the environment.

But prohibition and regulation for the purposes of protecting endangered species of plants and animals is not excepted.

#### *Interpretation*

“Food” has the same meaning as in Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

“Animals” includes animal parts and derivatives and goods appearing to contain animal parts or derivatives (and the reference to endangered species of animals includes a reference to parts and derivatives of such species, and to goods appearing to contain parts or derivatives of such species).

“Plants” includes plant parts and derivatives and goods appearing to contain plant parts or derivatives (and the reference to endangered species of plants includes a reference to parts and derivatives of such species, and to goods appearing to contain parts or derivatives of such species).

### Section C6

#### C6 Consumer protection

- 70 Regulation of—
- (a) the sale and supply of goods and services to consumers,
  - (b) guarantees in relation to such goods and services,
  - (c) hire purchase, including the subject-matter of Part 3 of the Hire-Purchase Act 1964,
  - (d) trade descriptions,
  - (e) misleading and comparative advertising, except regulation specifically in relation to tobacco and tobacco products,
  - (f) price indications,
  - (g) auctions and mock auctions of goods and services, and
  - (h) hallmarking and gun barrel proofing.
- 71 Safety of, and liability for, services supplied to consumers.
- 72 The regulation of—
- (a) estate agents,
  - (b) timeshares, and
  - (c) package travel and package holidays.
- 73 The regulation of—

- (a) unsolicited goods and services, and
- (b) trading schemes.

74 The subject-matter of Part 8 of the Enterprise Act 2002.

*Exceptions*

Food, food products and food contact materials.

*Interpretation*

“Food” has the same meaning as it has in Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

“Food contact materials” means materials and articles to which Regulation (EC) No. 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC applies.

“Food products” means residues, contaminants and anything used in the process of producing food which does not remain in the food.

Section C7

C7 Product standards, safety and liability

- 75 Technical standards and requirements in relation to products in pursuance of an obligation under EU law.
- 76 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.
- 77 Product safety and liability.
- 78 Product labelling.

*Exceptions*

Food, food products and food contact materials.

Agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment).

*Interpretation*

“Food” has the same meaning as it has in Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

“Food contact materials” means materials and articles to which Regulation (EC) No. 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come

into contact with food and repealing Directives 80/590/EEC and 89/109/EEC applies.

“Food products” means residues, contaminants and anything used in the process of producing food which does not remain in the food.

“National accreditation body” means the body appointed for the purposes of Article 4(1) of Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9th July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93.

## Section C8

### C8 Weights and measures

- 79 Units and standards of weight and measurement.
- 80 Regulation of trade so far as involving weighing, measuring and quantities.

## Section C9

### C9 Telecommunications and wireless telephony

- 81 Telecommunications and wireless telephony (including electromagnetic disturbance).
- 82 Internet services.
- 83 Electronic encryption.

## Section C10

### C10 Post

- 84 Postal services, post offices, the original holding company and any Post Office company.

### *Exceptions*

Financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices.

### *Interpretation*

“The original holding company” and “Post Office company” have the same meanings as in Part 1 of the Postal Services Act 2011.

## Section C11

### C11 Research Councils

- 85 Research Councils within the meaning of the Science and Technology Act 1965.
- 86 The subject-matter of section 5 of that Act (funding of scientific research) so far as relating to Research Councils.

- 87 The Arts and Humanities Research Council within the meaning of Part 1 of the Higher Education Act 2004.
- 88 The subject-matter of section 10 of that Act (research in arts and humanities) so far as relating to that Council.

Section C12

C12 Assisted areas and limits on financial assistance to industry

- 89 The subject-matter of sections 1 and 8(5) and (7) of the Industrial Development Act 1982.

Section C13

C13 Industrial Development Advisory Board

- 90 The Industrial Development Advisory Board.

Section C14

C14 Protection of trading and economic interests

- 91 The subject-matter of—
  - (a) Part 2 of the Industry Act 1975 (powers in relation to transfer of control of important manufacturing undertakings), and
  - (b) the Protection of Trading Interests Act 1980.

Section C15

C15 Assistance in connection with exports of goods and services etc

- 92 The subject-matter of the Export and Investment Guarantees Act 1991.

Section C16

C16 Water

- 93 Appointment and regulation of a water undertaker whose area is not wholly or mainly in Wales.
- 94 Licensing and regulation of a water supply licensee.
- 95 Appointment and regulation of a sewerage undertaker whose area is not wholly or mainly in Wales.
- 96 Licensing and regulation of a sewerage licensee.
- 97 The Water Services Regulation Authority.

*Exceptions*

Regulation of a water supply licensee in relation to licensed activities that use the supply system of a water undertaker whose area is wholly or mainly in Wales.

Regulation of a sewerage licensee in relation to licensed activities that use the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales.

*Interpretation*

“Sewerage licensee” and “water supply licensee” have the same meanings as in the Water Industry Act 1991.

“Supply system of a water undertaker” has the meaning given in section 17B of that Act.

“Sewerage system of a sewerage undertaker” has the meaning given in section 17BA of that Act.

Section C17

C17 Non-energy minerals

- 98 The exploration for and exploitation of minerals which are not capable of producing energy.

Section C18

C18 Pubs Code Adjudicator and the Pubs Code

- 99 The subject-matter of Part 4 of the Small Business, Enterprise and Employment Act 2015.

Section C19

C19 Sunday trading

- 100 Sunday trading.

Section C20

C20 Pedlars and street trading

- 101 Pedlars and street trading.

*Interpretation*

“Pedlars” has the same meaning as in the Pedlars Act 1871.

“Street trading” has the same meaning as in Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

Head D – Energy

Section D1

D1 Electricity

- 102 Generation, transmission, distribution and supply of electricity.

## Section D2

### D2 Oil and gas

- 103 Oil and gas, including—
- (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas,
  - (b) offshore installations and pipelines,
  - (c) the subject-matter of the Pipe-lines Act 1962 (including section 5 (deemed planning permission)) so far as relating to pipelines within the meaning of section 65 of that Act,
  - (d) pollution relating to oil and gas exploration and exploitation, but only so far as the exploration or exploitation is seaward of relevant territorial waters,
  - (e) licensing of marine activities so far as relating to oil and gas exploration and exploitation, but only in relation to activities carried out seaward of relevant territorial waters,
  - (f) restrictions on navigation, fishing and other activities to ensure safe operation of offshore activities,
  - (g) liquefaction and regasification of natural gas, and
  - (h) the conveyance, shipping and supply of gas.

#### *Exceptions*

The granting and regulation of licences to search and bore for and get petroleum that, at the time of the grant of the licence, is within the Welsh onshore area, except for any consideration payable for such licences.

Access to land for the purpose of searching or boring for or getting petroleum under such a licence.

#### *Interpretation*

“Petroleum” means petroleum within the meaning given by section 1 of the Petroleum Act 1998 in its natural state in strata.

“Relevant territorial waters” means the waters which extend seaward for 3 miles from the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 from which the breadth of the territorial sea adjacent to Wales is measured (and a “mile” is an international nautical mile of 1,852 metres).

The “Welsh onshore area” is the area of Wales that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).

## Section D3

### D3 Coal

- 104 Coal, including—
- (a) the ownership and exploitation of coal,
  - (b) deep and opencast coal mining,
  - (c) subsidence relating to coal mining, and
  - (d) water discharge from coal mines.

*Exception*

Land restoration.

Section D4

D4 Nuclear energy

- 105 Nuclear energy and nuclear installations, including –  
(a) nuclear safety, security and safeguards, and  
(b) liability for nuclear occurrences.
- 106 The Office for Nuclear Regulation.

*Exception*

Disposal of very low level radioactive waste moved from a site requiring a nuclear site licence.

Section D5

D5 Energy conservation

- 107 Energy conservation.

*Exception*

The encouragement of energy efficiency otherwise than by prohibition or regulation.

Head E - Transport

Section E1

E1 Road transport

- 108 Road freight transport services in the United Kingdom (including goods vehicles operator licensing).
- 109 Regulation of the construction and equipment of motor vehicles and trailers, and regulation of the use of motor vehicles and trailers on roads.
- 110 Road traffic offences.
- 111 Driver licensing (including training, testing and certification).
- 112 Driving instruction.
- 113 Insurance of motor vehicles.
- 114 Drivers' hours.
- 115 Traffic regulation, other than speed limits, on special roads.
- 116 Pedestrian crossings.
- 117 Traffic signs.

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- 118 Exemptions from speed limits.
- 119 International road transport services for passengers or goods.
- 120 Public service vehicle operator licensing.
- 121 Documents relating to vehicles and drivers for the purposes of travel abroad and vehicles brought temporarily into Wales by persons resident outside the United Kingdom.
- 122 Vehicle excise duty and vehicle registration.

*Exceptions*

Regulation relating to trunk road charging schemes.

Regulation relating to the descriptions of motor vehicles and trailers which may be used under arrangements for persons to travel to and from the places where they receive education or training, unless the regulation is the setting of technical standards for construction or equipment of motor vehicles or trailers which differ from the standards that would or might otherwise apply to them.

Regulation of the carriage of animals in motor vehicles or trailers for the purposes of protecting human, animal or plant health, animal welfare or the environment.

Taxi and private hire vehicle licensing.

Taxi and private hire vehicle driver licensing.

Private hire vehicle operator licensing.

The placing and maintenance of traffic signs relating to trunk road charging schemes.

*Interpretation*

“Trunk road charging schemes” means schemes for imposing charges in respect of the use or keeping of vehicles on trunk roads in Wales.

Section E2

E2 Rail transport

- 123 Railway services.
- 124 Railway heritage.
- 125 The subject-matter of the Channel Tunnel Act 1987.

*Exception*

Financial assistance so far as relating to railway services, but this exception does not apply in relation to—

- (a) financial assistance relating to the carriage of goods,
- (b) financial assistance made in connection with a railway administration order, or
- (c) financial assistance made in connection with Regulation (EC) No. 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road.

*Interpretation*

“Railway services” has the meaning given by section 82 of the Railways Act 1993 (excluding the wider meaning of “railway” given by section 81(2) of that Act).

Section E3

E3 Marine and waterway transport

- 126 Navigational rights and freedoms.
- 127 Shipping and other marine and waterway transport, including the subject-matter of—
  - (a) section 2 of the Protection of Wrecks Act 1973,
  - (b) the Dangerous Vessels Act 1985,
  - (c) section 23 of the Pilotage Act 1987, and
  - (d) the Merchant Shipping Act 1995.
- 128 Search and rescue and coastguard services.
- 129 Reserved trust ports.
- 130 Safety standards in harbours.
- 131 Hovercraft.
- 132 Insurance against war risks.

*Exceptions*

Financial assistance for shipping services to, from or within Wales.

Regulation of the carriage of animals on vessels for the purposes of protecting human, animal or plant health, animal welfare or the environment.

The reference to navigational rights and freedoms does not reserve the regulation of works which may obstruct or endanger navigation apart from works in relation to, or for constructing, reserved trust ports.

*Interpretation*

“Reserved trust port” has the meaning given by section 14 of the Wales Act 2016.

Section E4

E4 Air transport

- 133 Aviation, air transport, airports and aerodromes.
- 134 Insurance against war risks.

*Exceptions*

Financial assistance to providers or proposed providers of air transport services or airport facilities or services.

Strategies by the Welsh Ministers or local or other public authorities about provision of air services.

Regulation of the carriage of animals on aircraft for the purposes of protecting human, animal or plant health, animal welfare or the environment.

#### Section E5

##### E5 Transport security

- 135 Transport security.

*Exception*

Regulation of transport security relating to the carriage of adults who supervise persons travelling to and from the places where they receive education or training.

#### Section E6

##### E6 Other matters

- 136 Technical specifications for public passenger transport for disabled persons, including the subject-matter of—
- (a) section 125(7) and (8) of the Transport Act 1985 (Secretary of State's guidance and consultation with the Disabled Persons Transport Advisory Committee), and
  - (b) Part 12 of the Equality Act 2010 (disabled persons: transport).
- 137 Technical specifications for fuel or other energy sources or processes for use in road, rail, marine, waterway or air transport.
- 138 Carriage of dangerous goods (including transport of radioactive material).

*Interpretation*

“Radioactive material” means any material having a specific activity in excess of—

- (a) 0.1 kilobecquerels per kilogram, or
- (b) such other specific activity (not exceeding 70 kilobecquerels per kilogram) as may be specified in regulations made by the Secretary of State.

#### Head F – Social Security, Child Support, Pensions and Compensation

#### Section F1

##### F1 Social security schemes

- 139 Social security schemes supported from public funds.
- 140 Requiring persons to—
- (a) establish and administer social security schemes,

- (b) keep records and supply information in connection with social security schemes,
- (c) make payments to or in respect of social security schemes, or
- (d) keep records and supply information in connection with payments made to or in respect of social security schemes.

*Exceptions*

The provision by a local authority of financial assistance to or in respect of an individual in respect of costs of meeting his or her needs for care or support that the authority would otherwise meet in some other way (for example, by providing accommodation, facilities or services).

*Interpretation*

“Social security schemes” means schemes providing financial assistance for social security purposes to or in respect of individuals, including, in particular, providing such assistance to or in respect of individuals –

- (a) who qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care,
- (b) who qualify by reason of low income, or
- (c) in relation to their housing costs or liabilities for local taxes.

“Payments to or in respect of social security schemes” includes national insurance contributions.

Section F2

F2 Child Support

141 Child support maintenance.

142 Collection and enforcement of –

- (a) periodical payments, other than child support maintenance, which are payable for the benefit of a child (“other maintenance”), and
- (b) periodical payments, other than child support maintenance or other maintenance, which are –
  - (i) payable to or for the benefit of any person, and
  - (ii) collected or enforced where child support maintenance or other maintenance is also collected.

Section F3

F3 Occupational and personal pensions

143 Occupational and personal pensions.

*Exception*

Occupational and personal pension schemes for or in respect of –

- (a) Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Welsh Ministers, and
- (b) members of local authorities,  
but pensions regulation in relation to such schemes is not excepted.

*Interpretation*

“Occupational and personal pensions” includes pension protection.

“Pension” includes gratuities and allowances.

“Pensions regulation” means the regulation of occupational and personal pensions, including in respect of members, employers, trustees or managers.

Section F4

F4 Public sector compensation

- 144 Schemes for the payment of compensation for or in respect of public sector workers in respect of—
  - (a) incapacity or death as a result of injury or illness,
  - (b) loss of office or employment, or
  - (c) loss or diminution of emoluments.
- 145 Regulation of amounts payable, or paid, to or in respect of public sector workers in consequence of leaving office or employment.

*Interpretation*

“Compensation” includes pensions, grants, allowances, supplements and gratuities.

“Public sector worker” means a person holding office or employed in the public sector.

Section F5

F5 Armed forces compensation

- 146 Schemes for the payment of compensation for or in respect of persons who have been injured, fallen ill or died in consequence of service as members of the naval, military or air forces of the Crown, including reserve forces.
- 147 The subject-matter of any scheme under the Personal Injuries (Emergency Provisions) Act 1939, sections 3 to 5 and 7 of the Pensions (Navy Army, Air Force and Mercantile Marine) Act 1939 or section 1 of the Polish Resettlement Act 1947.

*Interpretation*

“Compensation” includes pensions, grants, allowances, supplements and gratuities.

Head G - The Professions

Section G1

G1 Architects

148 Regulation of the profession of architect.

Section G2

G2 Health Professions

149 Regulation of—

- (a) the professions regulated by the following—
  - the Medical Act 1983
  - the Dentists Act 1984
  - the Opticians Act 1989
  - the Osteopaths Act 1993
  - the Chiropractors Act 1994
  - the Nursing and Midwifery Order 2001
  - the Health and Social Work Professions Order 2001
  - the Pharmacy Order 2010,
- (b) any other profession concerned with the physical or mental health of individuals.

*Exception*

Regulation of the social work profession.

Section G3

G3 Auditors

150 Regulation of the profession of auditor.

Section G4

G4 Veterinary Surgeons

151 Regulation of the profession of veterinary surgeon.

Section G5

G5 Recognition of professional qualifications and professional experience

152 Recognition of professional qualifications and professional experience of professionals obtained—

- (a) in a relevant European State, or
- (b) in a country which is not a relevant European State in the case of professionals who have professional experience in a relevant European State.

153 Professions regulated by bodies incorporated by Royal Charter but only in relation to enabling the recognition of the professional qualifications and professional experience of the members of those

bodies in a relevant European State other than the United Kingdom.

*Interpretation*

“Relevant European State” means—

- (a) an EEA State, or
- (b) Switzerland.

Head H - Employment

Section H1

H1 Employment and industrial relations

154 Employment rights and duties and industrial relations, including the subject-matter of—

- (a) the Employers’ Liability (Compulsory Insurance) Act 1969,
- (b) the Employment Agencies Act 1973,
- (c) the Pneumoconiosis etc (Workers’ Compensation) Act 1979,
- (d) the Trade Union and Labour Relations (Consolidation) Act 1992,
- (e) the Employment Tribunals Act 1996,
- (f) the Employment Rights Act 1996,
- (g) the National Minimum Wage Act 1998,
- (h) the Working Time Regulations 1998 (S. I. 1998/1833),
- (i) the Employment Relations Act 1999,
- (j) the Transnational Information and Consultation of Employees Regulations 1999 (S. I. 1999/3323),
- (k) the Employment Act 2002,
- (l) the Gangmasters (Licensing) Act 2004,
- (m) the Employment Relations Act 2004,
- (n) the Work and Families Act 2006,
- (o) the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S. I. 2006/246),
- (p) the Agency Workers Regulations 2010 (S. I. 2010/93), and
- (q) Part 2 of the Enterprise and Regulatory Reform Act 2013.

*Exception*

The subject-matter of the Agricultural Sector (Wales) Act 2014.

Section H2

H2 Industrial training boards

155 Industrial training boards.

*Interpretation*

“Industrial training board” has the meaning given by section 1(2) of the Industrial Training Act 1982.

Section H3

H3 Job search and support

- 156 Arrangements for assisting persons to select, train for, obtain and retain employment, and to obtain suitable employees.

*Exceptions*

Education.

Vocational, social and physical training.

Careers services.

*Interpretation*

“Disabled person” has the same meaning as it has in the Equality Act 2010 as at the day on which this Schedule comes into force.

“Employment” includes –

- (a) work on a person’s own account, and
- (b) employment of a disabled person (including work on the disabled person’s own account) under special conditions.

“Employees” includes partners and other business associates.

Head J – Health, Safety and Medicines

Section J1

J1 Abortion

- 157 Abortion.

Section J2

J2 Xenotransplantation

- 158 Xenotransplantation.

Section J3

J3 Embryology, surrogacy and genetics

- 159 Human genetics, human fertilisation, human embryology, surrogacy arrangements.

Section J4

J4 Medicines, medical supplies, biological substances etc

- 160 Medicinal products, including manufacture, authorisations for use and regulation of prices.

- 161 Regulation of prices of other medical supplies.
- 162 Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).
- 163 Veterinary medicinal products, including manufacture, authorisations for use and regulation of prices.
- 164 Specified feed additives.
- 165 Animal feeding stuffs, in relation to—
  - (a) the incorporation in them of veterinary medicinal products or specified feed additives;
  - (b) matters arising in consequence of such incorporation.
- 166 Vaccine damage payments.

*Interpretation*

- “Medical supplies” has the same meaning as in section 260 of the National Health Service Act 2006.
- “Medicinal products” has the same meaning as in the Human Medicines Regulations 2012 (S.I. 2012/1916).
- “Specified feed additives” has the same meaning as in Schedule 5 to the Veterinary Medicines Regulations 2013 (S.I. 2013/2033).
- “Veterinary medicinal products” has the same meaning as in those Regulations.

Section J5

J5 Welfare foods

- 167 Schemes established by regulations under section 13 of the Social Security Act 1988 (benefits under schemes for improving nutrition: pregnant women, mothers and children).

Section J6

J6 Health and safety

- 168 The Health and Safety Executive.
- 169 The rest of the subject-matter of Part 1 of the Health and Safety at Work etc. Act 1974.
- 170 The employment medical advisory service.
- 171 Fire safety.
- 172 Protection of the public from radiation.

*Exceptions*

- Provision of automatic fire suppression systems in newly constructed and newly converted residential premises.
- Promotion of fire safety otherwise than by prohibition or regulation.

Head K - Media, Culture and Sport

Section K1

K1 Media

- 173 Broadcasting and other media.  
174 The British Broadcasting Corporation.

Section K2

K2 Public lending right

- 175 Public lending right.

Section K3

K3 Government Indemnity Scheme

- 176 Government indemnities for objects on loan.

Section K4

K4 Property accepted in satisfaction of tax

- 177 Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax and the disposal of such property.

Section K5

K5 Sports grounds

- 178 Safety of sports grounds.

Head L - Justice

Section L1

L1 The legal profession, legal services and claims management services

- 179 The legal profession and legal services.  
180 Claims management services.

Section L2

L2 Legal aid

- 181 Legal aid.

Section L3

L3 Coroners and inquiries

- 182 Coroners (including their appointment and remuneration).  
183 The subject-matter of the Inquiries Act 2005.

Section L4

L4 Arbitration

184      Arbitration.

Section L5

L5 Mental capacity

185      The subject-matter of the Mental Capacity Act 2005.

Section L6

L6 Personal data

186      Protection of personal data.

Section L7

L7 Information rights

187      Public access to information held by a public authority.

*Exception*

Public access to information held by –

- (a) the Assembly,
- (b) the Assembly Commission,
- (c) the Welsh Government,
- (d) any Welsh public authority,

unless supplied by a Minister of the Crown or government department and held in confidence.

*Interpretation*

“Public authority” and “held by a public authority” –

- (a) in relation to environmental information, have the same meanings as in the Environmental Information Regulations 2004 (S.I. 2004/3391);
- (b) otherwise, have the meanings given in section 3 of the Freedom of Information Act 2000.

“Welsh public authority” has the meaning given in section 83 of that Act.

Section L8

L8 Public sector information

188      The subject-matter of –

- (a) the INSPIRE Regulations 2009 (S.I. 2009/3157);
- (b) the Re-use of Public Sector Information Regulations 2015 (S.I. 2015/1415).

Section L9

L9 Public records

- 189 The subject-matter of the Public Records Act 1958.

Section L10

L10 Compensation for persons affected by crime and miscarriages of justice

- 190 Compensation for persons affected by crime.  
191 Compensation for miscarriages of justice.

Section L11

Section L11 Offender management

- 192 (1) The management of—  
(a) offenders,  
(b) persons who are not offenders but who—  
(i) are detained (on remand or otherwise) in a relevant institution, or  
(ii) are remanded to accommodation provided by or on behalf of a local authority.  
(2) Relevant institutions other than secure children's homes.  
(3) Education and training for persons detained in relevant institutions other than secure children's homes.

*Exception*

Special educational provision for a person for whom a local authority in Wales maintains a statement of special educational needs.

*Interpretation*

“Management of offenders” includes probation, escort arrangements and the youth justice system.

“Offender” includes—

- (a) a person who is a restricted patient within the meaning given by section 79 of the Mental Health Act 1983,  
(b) a person who is subject to—  
(i) a hospital order with a restriction order, or  
(ii) a supervision order, other than one for the person to be under the supervision of a social worker, by virtue of section 5 of the Criminal Procedure (Insanity) Act 1964 or section 6 or 14 of the Criminal Appeal Act 1968.

“Relevant institution” means—

- (a) a prison,  
(b) a young offender institution,  
(c) a secure training centre,  
(d) a secure college,

- (e) a secure children's home,
- (f) any other institution for the detention of offenders.

Section L12

L12 Family law

193 Family law.

*Exception*

Adoption agencies and their functions.

Section L13

L13 Civil registration

- 194 Registration of births, adoptions, marriages, civil partnerships and deaths.
- 195 Registration of places of worship.

Section L14

L14 Gender recognition

196 Gender recognition.

Head M - Land and Agricultural Assets

Section M1

M1 Registration of land and land charges

- 197 The subject-matter of—
  - (a) the Land Charges Act 1972,
  - (b) the Land Registration Act 2002, and
  - (c) Part 1 of the Commonhold and Leasehold Reform Act 2002.

Section M2

M2 Local land charges

198 Local land charges.

*Exception*

Fees.

Section M3

M3 Registration of agricultural charges and debentures

- 199 The subject-matter of sections 9 and 14 of, and the Schedule to, the Agricultural Credits Act 1928.

## Section M4

### M4 Buildings and development

- 200 The regulation of –  
(a) the design and construction of buildings,  
(b) the demolition of buildings, and  
(c) services, fittings and equipment provided in or in connection with buildings.
- 201 National policy statements under the Planning Act 2008.
- 202 The subject-matter of Parts 3 to 8 of the Planning Act 2008, so far as relating to –  
(a) development of a kind for which development consent would have been required under that Act on the commencement date if the development were to be carried out to any extent in Wales, and  
(b) development which would have been associated development under section 115 of that Act in relation to that kind of development on that date;  
and for this purpose “the commencement date” is the date on which section 3(1) of the Wales Act 2016 came into force.
- 203 Community Infrastructure Levy.
- 204 Compulsory purchase of land.

## Section M5

### M5 University and college land

- 205 The subject-matter of the Universities and College Estates Acts 1925 and 1964.

## Head N - Miscellaneous

### Section N1

#### N1 Equal opportunities

- 206 Equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010.

### *Exceptions*

The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.

Imposing duties on any Welsh public authority to make arrangements with a view to securing that its functions are carried out with due regard to the need to meet the equal opportunity requirements.

Imposing duties on any specified public authority to make arrangements with a view to securing that its devolved Welsh functions are carried out with due regard to the need to meet the equal opportunity requirements.

The subject-matter of Part 1 of the Equality Act 2010 (socio-economic inequalities).

*Interpretation*

“Specified public authority” means a person (other than a Welsh public authority) who—

- (a) has any function that is exercisable only in relation to Wales and is a devolved Welsh function, and
- (b) is specified in an Order in Council made by Her Majesty under this Schedule.

“Devolved Welsh function” means a function which relates to—

- (a) a matter in respect of which functions are exercisable by the Welsh Ministers or the Counsel General, or
- (b) a matter which is not reserved.

“Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions, but not including language.

“Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

“Welsh public authority” means a person whose functions—

- (a) are exercisable only in relation to Wales, and
- (b) are wholly or mainly devolved Welsh functions.

Section N2

N2 Control of weapons

- 207      Control of nuclear, biological and chemical weapons and other weapons of mass destruction.

Section N3

N3 Ordnance Survey

- 208      Ordnance Survey.

Section N4

N4 Time

- 209      Timescales, time zones and the subject-matter of the Summer Time Act 1972.

- 210      The calendar; units of time; the date of Easter.

Section N5

N5 Outer space

- 211      Activities connected with outer space.

Section N6

N6 Antarctica

212 Activities connected with Antarctica.

*Interpretation*

“Antarctica” has the meaning given in section 1 of the Antarctic Act 1994.

Section N7

N7 Deep sea bed mining

213 Activities for the purposes of deep sea bed mining operations.

*Interpretation*

“Deep sea bed mining operations” has the meaning given in section 17 of the Deep Sea Mining Act 1981.

Section N8

N8 Intercountry adoption

214 Intercountry adoption.

215 Functions of “the Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

*Exception*

Adoption agencies and their functions.

Section N9

N9 The Children’s Commissioner

216 The Children’s Commissioner (established under the Children Act 2004).

Section N10

N10 School teachers’ pay and conditions

217 Remuneration and conditions of employment of school teachers.

*Interpretation*

“Conditions of employment” means the conditions of employment referred to in section 122(1)(b) of the Education Act 2002.

“School teachers” has the same meaning as in section 122 of that Act.

## PART 3

### GENERAL PROVISIONS

#### *Welsh public authorities*

- 218 (1) This Schedule does not reserve any Welsh public authority.
- (2) Sub-paragraph (1) has effect as regards—
- (a) the constitution of the authority, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
  - (b) conferring, imposing, modifying or removing (or giving power to confer, impose, modify or remove) functions specifically exercisable in relation to it.
- (3) Sub-paragraph (2)(b) does not apply to any function which is specifically exercisable in relation to a particular function of the authority if the particular function relates to reserved matters.
- (4) In this paragraph—
- (a) “Welsh public authority” means a public authority whose functions—
    - (i) are exercisable only in relation to Wales, and
    - (ii) are wholly or mainly functions that do not relate to reserved matters;
  - (b) “public authority” means a body (other than the Assembly Commission), office or holder of an office which has functions of a public nature.
- (5) In determining for the purposes of sub-paragraph (4)(a)(i) whether a function of a public authority is exercisable only in relation to Wales, ignore any function which—
- (a) is exercisable otherwise than in relation to Wales, and
  - (b) could (apart from paragraph 8 of Schedule 7B) be conferred or imposed by provision falling within the Assembly’s legislative competence.
- (6) In determining whether a provision of an Act of the Assembly is outside the Assembly’s legislative competence, assess whether a public authority is a Welsh public authority for the purposes of this paragraph as at the date of introduction of the Bill for the Act.

#### *Named authorities*

- 219 (1) The reservation of a named authority has effect to reserve—
- (a) its constitution, including its establishment and dissolution, its assets and liabilities and its funding and receipts,
  - (b) conferring or imposing (or giving power to confer or impose) functions on it,
  - (c) modifying or removing (or giving power to modify or remove) any of its functions,

- (d) conferring, imposing, modifying or removing (or giving power to confer, impose, modify or remove) functions specifically exercisable in relation to it.
- (2) “Named authority” means—
- (a) a body reserved by name by Part 2 of this Schedule,
  - (b) each of councils reserved by Section C11 of that Part,
  - (c) each of the boards reserved by Section H2 of that Part, and
  - (d) a police and crime commissioner.

*Interpretation of Schedule*

- 220 (1) References in this Schedule to the subject-matter of any enactment are to be read as references to the subject-matter of that enactment as it has effect on the day on which section 3(1) of the Wales Act 2016 comes into force.
- (2) For the purposes of sub-paragraph (1) any provision of an enactment which is not yet in force on the day in question is to be treated as if it were in force on that day.”

SCHEDULE 2

Section 3

NEW SCHEDULE 7B TO THE GOVERNMENT OF WALES ACT 2006

- 1 This Schedule sets out the new Schedule 7B to the Government of Wales Act 2006, to be substituted (with the new Schedule 7A) for Schedule 7 to that Act –

“SCHEDULE 7B

Section 108A

GENERAL RESTRICTIONS

PART 1

GENERAL RESTRICTIONS

*The law on reserved matters*

- 1 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the law on reserved matters.
- (2) “The law on reserved matters” means—
- (a) any enactment the subject-matter of which is a reserved matter and which is comprised in an Act of Parliament or subordinate legislation under an Act of Parliament, and
  - (b) any rule of law which is not contained in an enactment and the subject-matter of which is a reserved matter,  
and in this sub-paragraph “Act of Parliament” does not include this Act.
- 2 (1) Paragraph 1 does not apply to a modification which—

- (a) is ancillary to a provision made (whether by the Act in question or another enactment) which does not relate to reserved matters, and
  - (b) has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.
- (2) In determining what is necessary for the purposes of this paragraph, any power to make laws other than the power of the Assembly is to be disregarded.

*Private law*

- 3 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the private law.
- (2) “The private law” means the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession.
- (3) In sub-paragraph (2) the reference to the law of property does not include intellectual property rights relating to plant varieties or seeds.
- (4) Sub-paragraph (1) does not apply to a modification which—
  - (a) is necessary for a devolved purpose or is ancillary to a provision made (whether by the Act in question or another enactment) which has a devolved purpose, and
  - (b) has no greater effect on the general application of the private law than is necessary to give effect to that purpose.
- (5) “Devolved purpose” means a purpose, other than modification of the private law, which does not relate to a reserved matter.
- (6) In determining what is necessary for the purposes of this paragraph, any power to make laws other than the power of the Assembly is to be disregarded.

*Criminal law and civil penalties*

- 4 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the criminal law.
- (2) Sub-paragraph (1) does not apply to a modification which—
  - (a) is ancillary to a provision made (whether by the Act in question or another enactment) which has a devolved purpose, and
  - (b) has no greater effect on the general application of the criminal law than is necessary to give effect to the purpose of that provision.
- (3) But sub-paragraph (2) does not permit the creation of, or any other modification of the criminal law relating to, road traffic offences.

- (4) In this paragraph “devolved purpose” means a purpose, other than modification of the criminal law, which does not relate to a reserved matter.
- (5) In determining what is necessary for the purposes of this paragraph, any power to make laws other than the power of the Assembly is to be disregarded.
- (6) This paragraph applies to civil penalties as it applies to offences; and references in this paragraph to the criminal law are to be read accordingly.

*Enactments other than this Act*

- 5 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below –

<i>Enactment</i>	<i>Provisions protected from modification</i>
European Communities Act 1972	The whole Act.
Government of Wales Act 1998	Sections 144(7), 145, 145A and 146A(1).
Human Rights Act 1998	The whole Act.
Civil Contingencies Act 2004	The whole Act.
Public Audit (Wales) Act 2013 (anaw 3)	Sections 2(1) to (3), 3(2) to (4), 6(2) and (3) and section 8(1) in so far as that section relates to the Auditor General’s exercise of functions free from the direction or control of the Assembly or Welsh Government.

- (2) Sub-paragraph (1), so far as it applies in relation to –
  - (a) sections 145, 145A and 146A(1) of the Government of Wales Act 1998, and
  - (b) sections 2(1) to (3), 3(2) to (4) and 6(2) and (3) of the Public Audit (Wales) Act 2013,  
does not apply to a provision to which sub-paragraph (3) applies.
- (3) This sub-paragraph applies to a provision of an Act of the Assembly which –
  - (a) is a provision relating to the oversight or supervision of the Auditor General or of the exercise of the Auditor General’s functions, or
  - (b) is ancillary to a provision falling within paragraph (a).
- (4) Sub-paragraph (1), so far as it applies in relation to section 8(1) of the Public Audit (Wales) Act 2013 does not apply in relation to any provision to which sub-paragraph (3) applies.
- (5) But, subject to sub-paragraph (6), a provision to which sub-paragraph (3) applies cannot modify or confer power by

subordinate legislation to modify section 8(1) of the Public Audit (Wales) Act 2013.

- (6) Sub-paragraph (5) does not prevent the conferral of 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.

- 6 A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.

*This Act*

- 7 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
- (2) Sub-paragraph (1) does not apply to the following provisions—
- (a) the following provisions in Part 1 (the Assembly)—
    - (i) in section 1(1), the words from “the National Assembly for Wales” to the end,
    - (ii) section 1(2) to (5),
    - (iii) section 2,
    - (iv) section 3(1) and (2) to (4),
    - (v) sections 4 to 13,
    - (vi) section 20,
    - (vii) section 22,
    - (viii) section 23(2), (6) and (7),
    - (ix) section 24,
    - (x) section 25(1)(b) and (2) to (15),
    - (xi) section 26(2) to (4),
    - (xii) in section 27(1), the words from “the National Assembly for Wales Commission” to the end,
    - (xiii) section 27(2) to (4), (6) and (7),
    - (xiv) section 28,
    - (xv) section 30(2) to (4),
    - (xvi) section 34(1) and (2),
    - (xvii) sections 35 and 36,
    - (xviii) sections 38 to 43, and

- (xix) paragraphs 1, 2, 3(1), (2) and (4) to (7), 4 and 7 to 11 of Schedule 2,
  - (b) the following provisions in Part 2 (the Welsh Government) –
    - (i) sections 53 and 54,
    - (ii) sections 78 and 79, and
    - (iii) section 91,
  - (c) the following provisions in Part 4 (Acts of the Assembly) –
    - (i) in section 107(1), the words from “Acts of the National Assembly for Wales” to the end,
    - (ii) section 110, and
    - (iii) section 111(1)(a) and (b), (2), (3) and (5),
  - (d) the following provisions in Part 5 (finance) –
    - (i) section 119 in so far as it relates to estimated payments for a financial year into the Welsh Consolidated Fund or to the Welsh Ministers, the First Minister or the Counsel General,
    - (ii) section 120(2),
    - (iii) sections 125 to 128, and
    - (iv) any provision of Schedule 8, and
  - (e) the following provisions in Part 6 (miscellaneous and supplementary) –
    - (i) sections 146 to 148, and
    - (ii) section 156(2) to (5).
- (3) Sub-paragraph (1) does not apply to any provision –
- (a) making modifications of so much of any enactment as is modified by this Act, or
  - (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Act of the Assembly.
- (4) Sub-paragraph (1) does not apply to any provision that is consequential on or incidental to provision made by virtue of –
- (a) sub-paragraph (2)(a)(i) (change of name of the Assembly),
  - (b) sub-paragraph (2)(a)(xii) (change of name of the Assembly Commission), or
  - (c) sub-paragraph (2)(c)(i) (change of name of Acts of the Assembly).
- (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.
- (6) In sub-paragraph (5) “budgetary procedures” are procedures for a financial year relating to –

- (a) the authorisation of the amount of resources which may be used or retained in that year by relevant persons or pursuant to a relevant enactment,
  - (b) the authorisation of the amount which may be paid out of the Welsh Consolidated Fund in that year to relevant persons or for use pursuant to a relevant enactment, or
  - (c) the scrutiny of the use of the amounts so authorised under paragraph (a) or (b) or of the exercise of borrowing powers by the Welsh Ministers.
- (7) In sub-paragraph (6) –
- (a) the reference to the use of resources is a reference to their expenditure, consumption or reduction in value;
  - (b) “relevant persons” means –
    - (i) the Welsh Ministers,
    - (ii) the First Minister,
    - (iii) the Counsel General,
    - (iv) the Assembly Commission,
    - (v) the Wales Audit Office, and
    - (vi) the Public Service Ombudsman for Wales;
  - (c) “relevant enactment” means an enactment which provides for payment out of the Welsh Consolidated Fund.
- (8) Sub-paragraph (1) does not apply in relation to a provision to which paragraph 5(3) applies.

*Ministers of the Crown, government departments and other reserved authorities*

- 8 (1) A provision of an Act of the Assembly cannot –
- (a) remove or modify, or confer power by subordinate legislation to remove or modify, any function of a reserved authority,
  - (b) confer or impose, or confer power by subordinate legislation to confer or impose, any function on a reserved authority,
  - (c) confer, impose, modify or remove (or confer power by subordinate legislation to confer, impose, modify or remove) functions specifically exercisable in relation to a reserved authority, or
  - (d) make modifications of, or confer power by subordinate legislation to make modifications of, the constitution of a reserved authority,
- unless the appropriate Minister consents to the provision.
- (2) In this paragraph “reserved authority” means –
- (a) a Minister of the Crown or government department;
  - (b) any other public authority, apart from a Welsh public authority.
- (3) In this paragraph –
- (a) “public authority” means a body, office or holder of an office which has functions of a public nature (other than

- the First Minister, the Welsh Ministers, the Counsel General or the Assembly Commission);
- (b) “Welsh public authority” means a public authority whose functions –
- (i) are exercisable only in relation to Wales, and
  - (ii) are wholly or mainly functions that do not relate to reserved matters.
- (4) In determining for the purposes of sub-paragraph (3)(b)(i) whether functions of a public authority are exercisable only in relation to Wales, ignore any function which –
- (a) is exercisable otherwise than in relation to Wales, and
  - (b) could (apart from this paragraph) be conferred or imposed by provision falling within the Assembly’s legislative competence (see section 108A(3)).
- (5) In this paragraph references to modifications of the constitution of an authority include its establishment and dissolution, and modifications relating to its assets and liabilities and its funding and receipts.
- (6) In this paragraph “the appropriate Minister” means –
- (a) where the reserved authority in question is Her Majesty’s Revenue and Customs, the Treasury;
  - (b) otherwise, the Secretary of State.
- (7) In the application of this paragraph to the traffic commissioners, sub-paragraph (1)(a) has effect as if the references to removal of a function were omitted.
- (8) In determining whether a provision of an Act of the Assembly is outside the Assembly’s legislative competence, assess whether a public authority is a Welsh public authority for the purposes of this paragraph as at the date of introduction of the Bill for the Act.

## PART 2

### GENERAL EXCEPTIONS FROM PART 1

#### *Restatement*

- 9 (1) Part 1 does not prevent an Act of the Assembly –
- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
  - (b) repealing or revoking any spent enactment, or conferring power by subordinate legislation to do so.
- (2) For the purposes of paragraph 1, the law on reserved matters includes any restatement in an Act of the Assembly or an Assembly Measure, or subordinate legislation under such an Act or Measure, of the law on reserved matters if the subject-matter of the restatement is a reserved matter.

*Subordinate legislation*

- 10 Part 1 does not prevent an Act of the Assembly making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—
- (a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
  - (b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
  - (c) applying any enactment comprised in or made under an Act of the Assembly relating to the documents by which such powers may be exercised.”

SCHEDULE 3

Section 30

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF THE GOVERNMENT OF WALES ACT 2006

- 1 The Government of Wales Act 2006 is amended as follows.
- 2 Omit sections 103 to 106A (commencement of Assembly Act provisions) and the italic heading before section 103.
- 3 (1) Section 109 (legislative competence: supplementary) is amended as follows.
- (2) In subsection (1), for “Schedule 7” substitute “Schedule 7A or 7B”.
- (3) In subsection (4), for paragraphs (a) and (b) substitute “has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.”
- (4) For subsection (5) substitute—
- “(5) Any alteration of Schedule 7A or 7B (whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise) does not affect—
- (a) the validity of an Act of the Assembly passed before the alteration takes effect, or
  - (b) the previous or continuing operation of such an Act of the Assembly,
- (unless an enactment provides otherwise).”
- 4 In section 114 (power to intervene in certain cases), in subsection (1)(a), for the words from “any matter” to the end substitute “a reserved matter”.
- 5 In section 116B (status of officials of body that collects and manages devolved taxes), in subsection (3), for the words from “treated” to the end

substitute “is not to be regarded as falling outside the Assembly’s legislative by virtue of section 108A(2)(b) or (c)”.

6 In section 159 (index of defined expressions) –

- (a) omit the entry for “the Assembly Act provisions”;
- (b) in the entry for “Assembly’s legislative competence (in relation to Acts of the Assembly)”, for “section 108” substitute “section 108A”;
- (c) in the entry for “the Counsel General”, for “section 45(1)(c)” substitute “section 45(1B)(c)”;
- (d) insert at the appropriate places –

“ancillary (in relation to a provision) section 108A(6)”

“reserved matters Schedule 7A”.

7 In section 161 (commencement), omit subsection (7).

8 Omit Schedule 6 (referendums on commencement of Assembly Act provisions).

## PART 2

### AMENDMENTS OF OTHER ACTS

*Constitutional Reform and Governance Act 2010 (c. 25)*

9 In section 15 of the Constitutional Reform and Governance Act 2010 (definition of “special adviser”) in subsection (1) in the requirement for the Welsh Government for “section 45(1)(a) and (b) of the Government of Wales Act 2006” substitute “section 45(1B)(a) and (b) of the Government of Wales Act 2006”.

## SCHEDULE 4

Section 31

### TRANSITIONAL PROVISIONS

## PART 1

### TRANSITIONAL PROVISIONS RELATING TO PART 1 OF THE ACT

*Legislation by the Assembly*

- 1 (1) The repeal by this Act of section 105 of the Government of Wales Act 2006 does not affect the continued operation of any amendment of an enactment made by an order under subsection (2) of that section.
  - (2) That is subject to any amendment or repeal of such an enactment made by this Act.
- 2 (1) The repeal by this Act of section 106(2) of the Government of Wales Act 2006 does not affect the continued operation of the saving made by that provision.

- (2) That saving is that the ceasing to have effect of Part 3 of the Government of Wales Act 2006 on 5 May 2011 does not affect—
  - (a) the continuing operation, on and after that date, of any Assembly Measure enacted before that date, or
  - (b) the continuing operation, after the enactment of the Measure, of any Assembly Measure enacted in accordance with section 106A of that Act (before its repeal by this Act).
- 3 The amendments made by Part 1 of this Act do not affect—
  - (a) the validity of an Act of the National Assembly for Wales passed before the amendments come into force, or
  - (b) the previous or continuing operation of such an Act of the Assembly.
- 4 (1) Until the coming into force of section 1 of the Water Act 2014, Section C16 of Part 2 of Schedule 7A to the Government of Wales Act 2006 has effect subject to the following modification.
- (2) For “water supply licensee” (in each place) substitute “licensed water supplier”.

## PART 2

### TRANSITIONAL PROVISIONS RELATING TO PART 2 OF THE ACT

#### *Marine licensing in the Welsh zone: transitional provision*

- 5 (1) Section 65 of the 2009 Act (requirement for licence) has effect in relation to a devolved offshore activity as if the reference to the appropriate licensing authority included a reference to the Secretary of State and the Marine Management Organisation.
- (2) The amendments made by section 26 do not apply in relation to the determination of an application for a marine licence where the application is made before the commencement date (even if it is determined later).
- (3) For the purposes of sub-paragraph (2), an application is not made until an applicant has supplied such information or produced such articles as in the opinion of the Secretary of State may be necessary or expedient to enable the Secretary of State to determine the application.
- (4) The amendments made by section 26 do not apply in relation to the determination of an appeal against—
  - (a) a decision under section 71 of the 2009 Act, or
  - (b) a notice issued under section 72, 90, 91, 102 or 104 of that Act, where the appeal is made before the commencement date (even if it is determined later).
- (5) Section 72 of the 2009 Act (variation, suspension, revocation and transfer) has effect in relation to a marine licence granted in respect of a devolved offshore activity as if any reference to a licence granted by a licensing authority included a reference to a licence granted by the Secretary of State or the Marine Management Organisation.
- (6) In this paragraph—
  - “the 2009 Act” means the Marine and Coastal Access Act 2009;

“commencement date” means the date on which section 26 comes into force;

“devolved offshore activity” means a licensable marine activity in the Welsh offshore region in respect of which the Welsh Ministers are the appropriate licensing authority.

- (7) Expressions used in this paragraph and Part 4 of the 2009 Act have the same meaning in this paragraph as they have in that Part.

# DRAFT WALES BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the draft Wales Bill as produced in draft on 20 October 2015.

- These Explanatory Notes have been prepared by the Wales Office in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the draft Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the draft Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the draft Bill. They are not, and are not intended to be, a comprehensive description of the draft Bill. So where a provision of the draft Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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## Overview of the Draft Bill

- 1 The Draft Wales Bill will implement those elements of the St David's Day agreement which require legislative changes. It will create a clearer and stronger settlement in Wales which is durable and long-lasting.
- 2 The draft Bill is an enabling Bill and the majority of the provisions in the draft Bill set out the powers that are being transferred to the National Assembly for Wales (the Assembly) and or the Welsh Ministers.
- 3 In particular the draft Wales Bill amends the Government of Wales Act 2006 (GoWA) by moving to a reserved powers model for Wales. This is the model that underpins the devolution settlement in Scotland. The reserved powers model set out in the draft Bill will provide a clearer separation of powers between what is devolved and what is reserved, enabling the Assembly to legislate on any subject except those specifically reserved to the UK Parliament.
- 4 The draft Bill also devolves a number of additional subject areas to the Assembly or Welsh Ministers on which there is political consensus. These include:
  - a. A declaration that the Assembly and the Welsh Ministers are considered permanent parts of the UK's constitutional arrangements, and that the UK Parliament will not normally legislate in devolved areas without the consent of the Assembly, whilst retaining the sovereignty to do so.
  - b. Devolving responsibility to the Assembly to run its own affairs, including deciding its name.
  - c. Devolving responsibility to the Assembly for ports policy, speed limits, bus registration, taxi regulation, local government elections, sewerage and energy consenting up to 350MW (see below for additional detail);
  - d. Devolving responsibility to Welsh Ministers for marine licensing and conservation in the Welsh offshore region; to appoint a member of the OFCOM board and extending responsibility for building regulations to include excepted energy buildings;
  - e. Devolving power over all elements of Assembly elections ; and
  - f. Devolving powers over the licensing of onshore oil and gas extraction.
- 5 Some provisions will be subject to further work, and may be modified, during the period of pre-legislative scrutiny, irrespective of any amendments to the Bill made in response to recommendations made following pre-legislative scrutiny.

## Policy background

- 6 The Government established what became known as the St David's Day process in November 2014. Its aim was to determine where political consensus lay in implementing the recommendations of Sir Paul Silk's Commission on Devolution in Wales second report (Silk II) on the powers of the Assembly. The process also looked at whether there was political consensus to implement for Wales any elements of the Smith Commission proposals for Scotland.
- 7 The command paper, *Powers for a purpose: Towards a lasting devolution settlement for Wales*, published on 28 February, set out the recommendations on which there was political

- consensus. These form the basis for the new Welsh devolution settlement in this draft Bill
- 8 The St David's Day process also examined the powers which are being devolved to Scotland under the Smith Commission agreement. The draft Bill takes forward two significant commitments from this exercise on which there is strong political consensus. These are - devolving all powers in relation to Assembly elections, including the electoral system, conduct, franchise and registration and secondly the licensing of onshore oil and gas extraction (including shale gas licensing).

## Legal background

- 9 The draft Bill is an enabling Bill which changes the basis on which the legislative competence of the National Assembly for Wales and the powers of Welsh Ministers are defined in GoWA, moving from a conferred powers model to a reserved powers model.

## Territorial extent and application

- 10 The draft Bill will have UK extent and will require a Legislative Consent Motion from the Assembly on the basis that it contains provisions applying to Wales which alter the legislative competence of the Assembly. Discussions on the reserved powers model are underway with the Welsh Government and further discussion on the content of the Bill will take place during Pre-Legislative Scrutiny.

# **Commentary on provisions of the Draft Bill**

## **Part 1: Constitutional Arrangements**

### **Chapter 1: Permanence of the National Assembly for Wales and Welsh Government**

#### **Clause 1: Permanence of the National Assembly for Wales and Welsh Government**

- 11 Clause 1 provides that an Assembly and a Welsh Government are recognised as permanent parts of the United Kingdom's constitutional arrangements.

### **Chapter 2: Convention about Parliament legislating on devolved matters**

#### **Clause 2: Convention about Parliament legislating on devolved matters**

- 12 Clause 2 inserts subsection (6) into section 107 of GoWA so it is recognised in statute that, although the sovereignty of the UK Parliament is unchanged by the legislative competence of the Assembly, the UK Parliament will not normally legislate for devolved matters in Wales without the Assembly's consent.

### **Chapter 3: Legislative competence**

#### **Clause 3: Legislative competence**

- 13 Clause 3 substitutes new section 108A into GoWA to replace the current section 108. The new section sets out the limits on the legislative competence of the Assembly.
- 14 Subsection (1) replaces section 108 of GoWA with new section 108A. Subsections (1)-(6) of new section 108A define how the legislative competence of provisions in Assembly Acts is to be assessed.
- 15 Subsection (1) of new section 108A replicates section 108(2) to provide that an Act of the Assembly is not law so far as any of its provisions is outside the legislative competence of the Assembly.
- 16 Subsection (2) of new section 108A sets out that a provision in an Assembly Act is outside competence if any one of the paragraphs (a)-(e) apply.
  - a. Paragraph (a) replicates section 108(6)(b) of GoWA and provides that an Assembly Act provision will be outside competence if it extends beyond England and Wales. This reflects the existing limitation that an Assembly Act provision cannot form part of a legal system other than the unified jurisdiction of England and Wales.
  - b. Paragraph (b) provides that an Assembly Act provision will be outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales. However, new sections (3), (4) and (6) together make up the exception to paragraph (b), whereby an Assembly Act provision can apply otherwise than in relation to Wales.
  - c. Paragraph (c) provides that an Assembly Act provision will be outside competence if it relates to any of the reserved matters, as set out in Schedule 7A, having regard to

- the exceptions listed in that Schedule. "Relates to" is to be interpreted in accordance with the purpose test in subsection (5).
- d. Paragraph (d) provides that an Assembly Act provision will be outside competence if it breaches any of the restrictions set out in Part 1 of Schedule 7B, but subject to the exceptions in Part 2 of Schedule 7B.
  - e. Paragraph (e) replicates section 108(6)(c) of GoWA and provides that an Assembly Act provision will be outside competence if it is incompatible with the Convention rights or with EU law.
- 17 Subsection (3) of new section 108A provides an exception to new section (2)(b) so that an Assembly Act provision can apply otherwise than in relation to Wales if it is:
- a. ancillary (defined in new subsection (6)) to a provision which is within the Assembly's legislative competence (or which would be if it were in an Assembly Act); and
  - b. has no greater effect otherwise than in relation to Wales than is necessary to give effect to the provision.
- 18 Subsection (4) of new section 108A clarifies that, in determining what is "necessary" for the purposes of new section (2)(b), it is not relevant that the UK Parliament could itself have enacted the provision.
- 19 Subsection (5) of new section 108A replicates section 108(7) of GoWA to include the purpose test, which provides that, for the purposes of paragraph (c), the question whether an Assembly Act provision relates to a reserved matter, is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- 20 Subsection (6) of new section 108A defines "ancillary" for the purposes of new subsection (3) and Schedule 7B. A provision is considered ancillary to another if it:
- a. provides for the enforcement of the other provision, or is otherwise appropriate for making that provision effective, or
  - b. is otherwise incidental to, or consequential on, that provision.
- 21 Subsection (2) replaces Schedule 7 to GoWA with new Schedules 7A and 7B, as set out in Schedules 1 and 2 to the draft Bill respectively.

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

- 22 New Schedule 7A sets out the reserved matters for the purposes of section 108A(2)(c), as inserted by clause 3(1) of the draft Bill. Clause 3(2) provides that this Schedule, together with new Schedule 7B, replaces Schedule 7 to GoWA.
- 23 Part 1 of Schedule 7A lists the general reservations, whereas Part 2 lists the specific reservations. The reserved matters listed in the Schedule are the subjects about which an Assembly Act cannot make provision. Subject to the other restrictions on legislative competence in section 108A, an Assembly Act can therefore make provision about subjects which are listed as exceptions in the Schedule, or not listed at all.
- 24 Subject to the exceptions listed therein, the general reservations in Part 1 include the following matters: the Constitution, the Civil Service of the State, political parties, the single legal jurisdiction of England and Wales and tribunals, foreign affairs and defence. These matters are intended to reserve the core elements of the union of England and Wales and its shared legal system, as well as the fundamental tenets of the constitution of the United Kingdom.

- 25 In contrast to Part 1, Part 2 lists the more specific policy areas which are reserved matters about which the Assembly cannot legislate. Paragraph 11 of Part 2 provides that the exceptions and interpretation provisions included under each reserved matter are applicable only to that section and not to the reservations more generally.
- 26 In general terms, the reservations in Parts 1 and 2 represent the subjects which were either not expressly conferred on the Assembly by Part 1 of Schedule 7 to GoWA, or were listed as exceptions. Conversely, the subjects either not listed in Parts 1 and 2 of Schedule 7A, or listed as exceptions, are those which were expressly conferred by Part 1 of Schedule 7 to GoWA. Part 2 of Schedule 7A also takes account of the recommendations for further devolution in the Silk Commission's Part II report on which there was political consensus, and which were included in the St David's Day agreement on 28 February 2015.
- 27 Part 3 of the Schedule makes general provision about Welsh public authorities, the reservation of authorities listed by name in Part 2 of the Schedule, and the interpretation of the Schedule

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

- 28 For the purposes of new section 108A(2)(d) (as inserted by clause 3(1) of the draft Bill), Part 1 of this Schedule sets out the general restrictions on the Assembly's legislative competence; Part 2 sets out the general exceptions to those general restrictions. Clause 3(2) provides that this Schedule, together with Schedule 7A, replaces Schedule 7 to GoWA.
- 29 Paragraph 1(1) of the Schedule prevents an Assembly Act provision from modifying the law on reserved matters. The law on reserved matters is defined in paragraph 1(2) as any UK Parliament enactment or rule of common law, the subject matter of which is a reserved matter. Whilst Schedule 7A is intended to deal with the parameters of future Assembly Acts in terms of reserved matters about which it cannot legislate, the restrictions in paragraphs 1 and 2 of Schedule 7B are intended to protect the existing legislation and common law which has a reserved matter as its subject matter.
- 30 Paragraph 2 incorporates an exception to paragraph 1 which is in very similar terms to the exception in new section 108A(3). Paragraph 2(1) provides that an Assembly Act provision can modify the law on reserved matters where such modification :
  - a. is ancillary (as defined in new section 108A(6)) to a provision which does not relate to reserved matters, and
  - b. has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.
- 31 Paragraph 2(2) clarifies that, in determining what is "necessary" for the purposes of paragraph 2(1)(b), it is not relevant that the UK Parliament could itself have enacted the provision.
- 32 The restriction in relation to the private law in paragraph 3, together with the restriction in relation to the criminal law in paragraph 4, are intended to provide a general level of protection for the unified legal system of England and Wales, whilst allowing the Assembly some latitude to modify these areas of law within the confines of the exceptions in those paragraphs.
- 33 The private law is defined in paragraph 3(2). The topics specified form the core of the private law in England and Wales. Paragraph 3(3) clarifies that the law of property does not include intellectual property rights relating to plant varieties or seeds. This is because this subject matter has already been devolved by paragraph 1 of Part 1 of Schedule 7 to GoWA. The Assembly will only be able to make modifications to the private law to the extent it is permitted by paragraph 3(4).

- 34 Paragraph 3(4) provides that an Assembly Act provision can modify the private law where such modification is:
- necessary for a devolved purpose or is ancillary (as defined in new section 108A(6)) to a provision which has a devolved purpose, and
  - has no greater effect on the general application of the private law than is necessary to give effect to that purpose.
- 35 Paragraph 3(5) defines "devolved purpose" for the purposes of paragraph 3(4)(a) as one, other than modification of the private law, which does not relate to a reserved matter. The words "other than modification of the private law" ensure that although devolved matters can necessitate modifications to the private law that can be brought within the paragraph 3(4) exception, modifications for the purpose of changing the private law itself are not permitted. For example, modifications to tenancy law could be for the devolved purpose of housing, but modifications that sought to apply more broadly to the fundamental principles of the law of contract would not be permitted.
- 36 The wording "no greater effect on the general application of the private law" in paragraph 3(4)(b) ensures protection for the broad principles of the private law of England and Wales, but not at the expense of permitting the Assembly to modify it, provided such modification does not have a greater effect than necessary on the general application of the private law.
- 37 Paragraph 3(6) clarifies that, in determining what is "necessary" for the purposes of paragraph 3(4), it is not relevant that the UK Parliament could itself have enacted the provision.
- 38 The criminal law is not defined as it is self-explanatory but it includes the modification and creation of new offences and penalties. The Assembly will only be able to make modifications to the criminal law to the extent it is permitted by paragraph 4(2).
- 39 Paragraph 4(2) provides that an Assembly Act provision can modify the criminal law where such modification :
- is ancillary (as defined in section 108A(6)) to a provision which has a devolved purpose, and
  - has no greater effect on the general application of the criminal law than is necessary to give effect to the purpose of that provision.
- 40 Paragraph 4(3) clarifies that road traffic offences are not included within the paragraph 4(2) exception and therefore cannot be created or modified by an Assembly Act provision in any circumstance. This is because this subject matter was expressly excepted from the conferred matters in paragraph 10 of Part 1 of Schedule 7 to GoWA. It will therefore continue to be outside competence.
- 41 Paragraph 4(4) defines "devolved purpose" for the purposes of paragraph 4(2)(a) as one, other than modification of the criminal law, which does not relate to a reserved matter. As with the private law provisions in paragraph 3(5), the words "other than modification of the criminal law" ensure that although devolved policy requires enforcement provisions in order to be effective, modifications for the purpose of changing the criminal law itself are not permitted. For example, an Assembly Act provision that required landlords to be licensed would be a provision with the devolved purpose of housing. The Act might then also create an offence for a landlord who failed to hold a licence, in order to enforce the provision with the devolved purpose (this meeting the definition of "ancillary" in new section 108A(6)). In contrast, an Assembly Act cannot modify a freestanding criminal offence since, there, the modification to the criminal law would not be ancillary to a devolved provision. The wording "no greater

effect on the general application of the criminal law" in paragraph 4(2)(b) ensures that although the fundamental elements of the criminal law of England and Wales are not devolved, the Assembly is able to modify parts of the criminal law, provided such modification does not have a greater effect than necessary on the general application of the criminal law. So, taking the example above, while an Assembly Act might create an offence for a landlord who failed to hold a licence, provisions that sought to apply more broadly by modifying the sentencing of all licensing offences across the criminal law, for example, would not be permitted.

- 42 Paragraph 4(5) clarifies that, in determining what is "necessary" for the purposes of paragraph 4(2)(b), it is not relevant that the UK Parliament could itself have enacted the provision.
- 43 Paragraph 4(6) clarifies that paragraph 4 applies to civil penalties as well as criminal offences.
- 44 Paragraphs 5 and 6 provide that an Assembly Act provision cannot modify certain provisions of certain enactments.
- 45 Paragraph 7 provides that an Assembly Act provision cannot modify certain provisions of GoWA itself.
- 46 Paragraph 8 provides that an Assembly Act provision cannot (unless the appropriate Minister gives consent) remove, modify, confer or impose functions of reserved authorities, or modify the constitution of reserved authorities.
- 47 Paragraph 8(2) defines "reserved authorities" for the purposes of paragraph 8, as:
  - a. a Minister of the Crown or government department;
  - b. any other public authority that is not a Welsh public authority.
- 48 Paragraph 8(3)(b) defines "Welsh public authority" for the purposes of paragraph 8, as a public authority whose functions are:
  - a. exercisable only in relation to Wales, and
  - b. wholly or mainly functions that do not relate to reserved matters.
- 49 Paragraph 8(3)(a) defines "public authority" for the purposes of paragraph 8, as a body that has functions of a public nature. The First Minister, Assembly Commission, Counsel General and Welsh Ministers are excluded from this definition to make it clear that this paragraph does not apply to them, meaning an Assembly Act provision could modify their functions.
- 50 Paragraph 8(4) provides that, for the purposes of paragraph 8(3)(b)(i), to determine whether functions of a public authority are exercisable only in relation to Wales, it is not relevant to consider functions which are exercisable otherwise than in relation to Wales and which could be included in a provision within the Assembly's legislative competence.
- 51 Paragraph 8(5) further defines what is included in references to modifications of the constitution of an authority.
- 52 Paragraph 8(6) provides that the appropriate Minister for the purposes of paragraph 8(1) is the Secretary of State (in practice this is likely to be the Secretary of State for Wales), unless the relevant functions relate to HMRC in which case it will be the Treasury.
- 53 Paragraph 9 provides that Part 1 of Schedule 7B does not prevent the Assembly from being able to restate the law. However, paragraph 9(2) provides that the "law on reserved matters" in paragraph 1 includes any restatement of the law on reserved matters if the subject-matter of the restatement is a reserved matter. This ensures that the UK Parliament is able to consolidate or codify the law without the need for a Legislative Consent Motion.

- 54 Paragraph 10 contains provision to ensure that the restrictions in Part 1 do not unduly limit the Assembly's competence to legislate about its own subordinate legislation procedure.

## Chapter 4: Provision in connection with Assembly's new legislative competence

### Clause 4: Power to make provision about elections

- 55 Subsection (1) of Clause 4 substitutes a new section 13 into GoWA.
- 56 Subsection 1 of new section 13 gives the Welsh Ministers an order-making power to make provision about the conduct of Assembly elections, the questioning of such elections and the return of an Assembly member otherwise than at an election.
- 57 Subsection 2 of new section 13 clarifies the scope of the Welsh Ministers' power to make provision about the conduct of Assembly elections.
- 58 Subsection 3 of new section 13 makes clear that the Welsh Ministers' power to make provision about the return of an Assembly member otherwise than at an election, will include modifying sections 11(3) to (5) of GoWA 2006, which concern the procedure to be followed when a regional Assembly seat is vacant.
- 59 Subsection 4 of new section 13 clarifies that any provision made under new section 13(2)(a) cannot include provision about the Digital Service provided by a Minister of the Crown for the registration of electors.
- 60 Subsections 5 and 6 of new section 13 supplement and elaborate on the scope of subsection (1) and give the Welsh Ministers powers relating to the application and modification of electoral law.
- 61 Subsection 7 of new section 13 provides that the return of an Assembly member may only be questioned under Part 3 (legal proceedings) of the Representation of the People Act 1983, as applied or incorporated in an order under this section.
- 62 Subsection 8 of new section 13 provides that any order made under this section is subject to the affirmative procedure of the Assembly.
- 63 Subsection (1) also substitutes a new section 13A into GoWA.
- 64 Subsections 1 to 4 of new section 13A give the Secretary of State a regulation-making power to make provision to combine the polls at certain Assembly selections with the polls at certain UK Parliamentary and European Parliamentary elections. The Secretary of State must obtain the agreement of the Welsh Ministers before making any such regulations.
- 65 Subsections 5 and 6 of new section 13A supplement and elaborate on the regulation-making power and give the Secretary of State powers relating to the application and modification of electoral law as well as a power to amend forms contained in, or in regulations or rules made under, the Representation of the People Acts.
- 66 Subsection (2) of the clause inserts a new subsection 5C into section 15 of the Representation of the People Act 1985, requiring the Secretary of State to consult the Welsh Ministers before making combination rules under section 15(5), where one of the elections is a local government election in Wales.

### Clause 5: Timing of elections

- 67 Clause 5 concerns the timing of Assembly and local government elections in Wales and prevents Assembly ordinary general elections being held on the same day as ordinary general

elections to the UK Parliament, general elections to the European Parliament, and local government elections in Wales.

- 68 Subsection (3) gives the Welsh Ministers a power to move the date of Assembly ordinary general elections if, otherwise, they would be held on the same date as a UK Parliamentary ordinary general election or European Parliamentary general election. Subsection (5) provides that any order made using that power is subject to the affirmative procedure of the Assembly.
- 69 Subsections (4) and (6) to (10) make consequential amendments to sections 3 and 4 of GoWA.
- 70 Subsections (11) to (13) insert a new section 37ZA into the Representation of the People Act 1983 in order that local government elections in Wales cannot take place on the same day as Assembly ordinary general elections and gives the Welsh Ministers a power to move the date of a local government election in Wales where that would otherwise be the case.
- 71 Subsections (14) to (16) amend section 37B of the Representation of the People Act 1983 so that the Welsh Ministers' power to change the date of a local government election in Wales to the same date as a European Parliamentary general election, does not apply if the date of the European Parliamentary general election is the same date as an Assembly ordinary general election.

#### **Clause 6: Electoral registration: the Digital Service**

- 72 Subsections (1) to (4) of Clause 6 amend section 53 of the Representation of the People Act 1983 to provide for a power to make regulations about the Digital Service, in relation to the registration for Assembly elections and local government elections in Wales. This power is exercisable by the Welsh Ministers concurrently with the Secretary of State and can only be exercised by the Welsh Ministers with the agreement of the Secretary of State.
- 73 Subsection (5) makes consequential amendments to subsection (13) of section 53, in order that certain requirements and powers apply to the Welsh Ministers, in their exercise of this function.

#### **Clause 7: Intervention in case of serious adverse impact on sewerage services etc**

- 74 Legislative competence for sewerage was not previously conferred on the Assembly, and will be devolved as set out in reservation C16 of Schedule 1 to the draft Bill. Clause 7 amends section 114 of GoWA by adding a new intervention power over the competence of the Assembly to pass an Act of the Assembly relating to sewerage. This intervention power enables the Secretary of State to make an order prohibiting the Presiding Officer from submitting a Bill for Royal Assent where the Secretary of State has reasonable grounds to believe that the Bill, if it became an Act of the Assembly in that form, might have a serious adverse impact on sewerage services in England or sewerage systems in England. This intervention power is similar to one already held by the Secretary of State in relation to the devolution of matters relating to water.
- 75 Clause 7 amends section 152 of GoWA by adding a new intervention power over executive functions. This intervention power enables the Secretary of State to intervene over any function exercisable by the Welsh Ministers, the First Minister or the Counsel General or any function conferred by an Assembly Measure or an Act of the Assembly, where it appears to the Secretary of State that the exercise of a relevant function (or the failure to exercise a relevant function) might have a serious adverse impact on sewerage services in England or sewerage systems in England. In such a case the person who had the power to exercise the function may not exercise that function, and the Secretary of State may exercise the function in their stead. This intervention power is similar to one already held by the Secretary of State in relation to the devolution of matters relating to water.

## Clause 8: Onshore petroleum licensing

- 76 Clause 8 transfers to Welsh Ministers certain executive functions exercised currently by the Secretary of State relating to onshore petroleum licensing in the Welsh onshore area (defined in a new section 8B to be inserted by section 17(7) as that area of Wales landward of the “baseline”).
- 77 Subsection (2) inserts a new paragraph (aa) into subsection (5) of section 3 of the Petroleum Act 1998. Subsection (5) is itself inserted into section 5 of the Petroleum Act by the Scotland Bill, currently before Parliament. The new paragraph (aa) defines “the appropriate Minister” for the granting of licences to search and bore for and get petroleum as being the Welsh Ministers in relation to the Welsh onshore area.
- 78 Subsections (3)(a) amends subsections (1A) and (1B) of section 4 of the Petroleum Act 1998 (which are also inserted into the Petroleum Act by the Scotland Bill). The amendments to these subsections have the effect of reserving, for the Secretary of State, regulatory powers to make model clauses in relation to the consideration payable for a licence granted by Welsh Ministers as well as: (a) the measurement and facilitation of measurement of petroleum obtained from the licensed areas and (b) the keeping of accounts. The powers of the Welsh Ministers do not, therefore, extend to the drafting of model clauses on the above matters or to the modification or exclusion of such clauses.
- 79 Subsections (3)(b) insert a new subsection (3B) into section 4 of the Petroleum Act 1998 to establish that any regulations under section 4 made by the Welsh Ministers shall be made as statutory instruments subject to the annulment in pursuance of a resolution of the Assembly.
- 80 Subsections (3)(c) inserts a new subsection (4B) into section 4 of the Petroleum Act 1998 which requires Welsh Ministers to publish notices of licenses granted by them for the Welsh onshore area in the London Gazette.
- 81 Subsections (4) amends section 4A of the Petroleum Act 1998, to transfer functions from the Secretary of State in relation to hydraulic fracturing consents to the Welsh Ministers as regards wells in the Welsh onshore area. These functions include the conditions regulating the issuance of such consent by the Secretary of State or the Welsh Ministers.
- 82 Subsection (5) amends section 4B of the Petroleum Act 1998, which contains further provision about the issue of hydraulic fracturing consents. Paragraphs (a) and (b) of subsection (5) amend subsections (4)(a), (4)(b) and (7) of Section 4B to limit to the English onshore area (which is defined in a new section 8C to be inserted by section 16(7) as England including waters inside of the “baseline” by which the extent of territorial sea is established) the Secretary of State’s power to make regulations by means of statutory instrument with regard to the descriptions of areas which are “protected groundwater source areas” and with regard to those which are “other protected areas”. The subsections, as amended, require the Secretary of State to consult the Environment Agency.
- 83 Paragraph (c) inserts new subsections (7A), (7B) and (7C) into section 4B into the Petroleum Act 1998 to provide Welsh Ministers with the power to make regulations by means of statutory instrument on the descriptions of areas which are “protected groundwater source areas” and “other protected areas” insofar as these apply to the Welsh onshore area. Any draft instrument must be laid before and approved by a resolution of the Assembly before such a statutory instrument can be made. The Welsh Ministers are required to consult the Natural Resources Body for Wales before making such regulations.
- 84 Paragraph (d) amends subsection (8) to specify that the Environment Agency is the relevant environmental regulator for wells in the English onshore area and that the Natural Resources Body for Wales is the relevant environmental regulator for wells in the Welsh onshore area.

The subsections also align the definition of a well consent to reflect the devolution of such consents to “the appropriate Minister”.

- 85 Paragraph (e) restricts the power of the Secretary of State in subsection (9) of section 4B to amend the definition of "onshore licence for England and Wales" in consequence of regulations made under section 4. So, if the amendment is made, the Secretary of State will only be able to amend the definition as it applies in the English onshore area, and the Secretary of State will only be able to exercise the power in consequence of his own exercise of the power in section 4 of the Petroleum Act (and not in consequence of the exercise of the same power by the Welsh Ministers).
- 86 Paragraph (f) inserts subsection (9A) section 4B to provide an equivalent power to that in subsection (9) (as amended by paragraph (e)) to the Welsh Ministers.
- 87 Paragraph (g) amends subsection 4B(10) to limit to the English onshore area the power of the Secretary of State to make amendments in relation to the requirements to be fulfilled before issuing a hydraulic fracturing consent set out in Column 2 of the table in section 4A.
- 88 Paragraph (h) inserts subsection (12) and (13) into section 4B. Subsection (12) provides Welsh Ministers with the power to amend by regulations the requirements set out in Column 2 of the table in section 4A so far as related to the Welsh onshore area. A draft instrument must be laid before and approved by a resolution of the National Assembly for Wales before such a statutory instrument can be made (see new subsection (13)).
- 89 Subsection (6) of Clause 8 amends subsection 7(2)(d) of the Petroleum Act 1998, which determines the effects of the Mines (Working Facilities and Support) Act 1966 when applied to licensing under the Petroleum Act 1998, by specifying that, within section 4 of that Act, “the Minister” shall refer to Welsh Ministers for licences granted in the Welsh onshore area.
- 90 Subsection (7) insert new sections 8B and 8C into the Petroleum Act 1998 after section 8A (which is inserted by the Scotland Bill). New section 8B defines the “Welsh onshore area” as the area of Wales (including the territorial sea adjacent to Wales) within the baselines set out by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).
- 91 New section 8C defines the “English onshore area” as the area of England and the territorial waters adjacent to England that is within the baselines set out by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).
- 92 Subsection (8) inserts a new subsection (13) into section 188 of the Energy Act 2004 to attribute, to Welsh Ministers, powers to make provisions that require the payment of charges to them in respect of their carrying out their relevant energy functions under Part 1 of the Petroleum Act 1998. The sums received under such charges must be paid by the Welsh Ministers into the Welsh Consolidated Fund. The provisions to require payment of such charges are to be set out by means of statutory instruments, subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- 93 Subsection (9)(a) amends section 12(1A)(a)(ii) of the Oil Taxation Act 1975 to include the revocation of a licence by the Welsh Ministers to the list of cessation events by which a person ceases to be a licensee in relation to oil fields.
- 94 Subsection (9)(b) amends paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975 by inserting new paragraphs (ac) and (ad) after paragraphs (aa) and (ab) (which are inserted by the Scotland Bill). These new paragraphs limit the powers of the Secretary of State for determining oil fields to those areas that are such that the granting of a licence within them, under Part 1 of the Petroleum Act 1998, would fall exclusively to the Secretary of State. Where

areas are such that the granting of a licence within them would fall exclusively to the Welsh Ministers, they become the appropriate authority for determining oil fields. Where areas are such that the granting of licences partially fall to the Secretary of State and partially fall to the Welsh Ministers, these shall act jointly for the purposes of determining oil fields.

- 95 Subsection (10)(a) amends regulation 2 of the Petroleum (Production)(Landward Areas) Regulations 1995 to introduce a definition of the "Welsh onshore area" that is in line with that of section 8B of the Petroleum Act 1998.
- 96 Subsection (10)(b) amends regulation 3 of the Petroleum (Production)(Landward Areas) Regulations 1995 to exclude the Welsh onshore area from the applicability of the Regulations in terms of licence applications. The Regulations continue to apply to the Welsh onshore area in terms of model clauses.

## Clause 9: Onshore petroleum: existing licences

- 97 Clause 9 provides the Secretary of State with powers to make amendments to the provisions and model clauses of licences that were in existence before the commencement of devolved oil and gas licensing powers. This additional power is limited to those licences already in existence in onshore Wales.
- 98 Subsection (1) provides the Secretary of State with the power to make amendments to the provisions of an existing licence and to the model clauses that are incorporated or have the effect as if incorporated into such an existing licence.
- 99 Subsection (2) specifies that the power to make amendments, conferred on the Secretary of State by subsection (1), is to be exercised only where it is deemed necessary or expedient in consequence of either the devolution of legislative competence over onshore oil and gas licensing (as mentioned in the exceptions in Section D2 of Part 2 of Schedule 7A to the GoWA) or in consequence of the devolution of executive functions, as set out in Clause 8.
- 100 Subsection (3) provides the Secretary of State with the power to direct that, where a licence was only partially in onshore Wales at the time of granting, this licence may have effect as one licence in onshore Wales and as a separate licence in the area outside of onshore Wales. The power of the Secretary of State to make necessary amendments to existing licences and to the model clauses incorporated therein or having the effect as if incorporated therein is extended to such licences.
- 101 Subsection (4) specifies that the power to make amendments to the model clauses, provided by subsection (1)(a) is to be exercised by regulations made by statutory instrument. (The power to make amendments to other provisions of existing licences, provided by subsection (1)(b), does not need to be exercised by regulations.)
- 102 Subsection (5) specifies that any such statutory instruments, containing regulations to make amendments to existing licences, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 103 Subsection (6) defines "existing licences" as those licences granted under section 3 of the Petroleum Act 1998 or under section 2 of the Petroleum (Production) Act 1934 before the commencement of the devolution of licensing powers to Welsh Ministers for the "Welsh onshore area", as defined by Section D2 of Part 2 of Schedule 7A to GoWA.

## Clause 10: Speed limits

- 104 In consequence of the devolution to the Welsh Ministers of almost all powers to legislate for speed limits in Wales, Clause 10 transfers the relevant functions of the Secretary of State to the Welsh Ministers in relation to roads in Wales.

105 This clause amends the following provisions of the Road Traffic Regulation Act 1984:-

106 Section 17 (traffic regulation on special roads) to:

- a. enable Welsh Ministers to exercise the power to make regulations with respect to a particular special road in Wales
- b. enable Welsh Ministers to exercise the power to make regulations regulating the speed of vehicles on special roads in Wales before making regulations under subsection (2) require Welsh Ministers to consult the National Park Authority for any National Park which would be affected by the regulations

107 Section 81 (general speed limit for restricted roads) to:

- a. enable the national authority<sup>1</sup> to exercise the power by order to increase or reduce the speed limit for motor vehicles on restricted roads;
- b. provide that any such order made by Welsh Ministers is subject to the affirmative procedure; and

108 Section 83 (provisions as to directions by a traffic authority under section 82(2), to provide that any direction by the national authority under section 82(2) (as the traffic authority for a road) must be made by order after giving public notice.

- a. The power for Welsh Ministers to make the order under 83(1) is exercisable by statutory instrument

109 Section 85 (traffic signs for indicating speed restrictions), to:

- a. impose upon the national authority the duty, in the case of a road for which it is the traffic authority, to erect and maintain traffic signs;
- b. enable the national authority to exercise the powers to give general or other directions to local traffic authorities in respect of the erection, maintenance, alteration or removal of traffic signs;
- c. enable the national authority to exercise the default powers to carry out works in respect of traffic signs in consequence of any failure by a local traffic authority to comply with directions and to recover the costs of doing so from the relevant traffic authority;
- d. provide that the power of the Welsh Ministers to give general directions is to be exercisable by Welsh statutory instrument; and
- e. require the Welsh Ministers and the Secretary of State to consult each other before exercising their powers to give general directions.

110 Section 88 (temporary speed limits), to:

- a. (8A) provide that the first order to be made under subsection (1)(b) by the Welsh Ministers is subject to the affirmative procedure
- b. (11A) provide that the power of the Welsh Ministers to make an order under

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1 In this Part “national authority”—

(a) in relation to roads in England, means the Secretary of State;  
(b) in relation to roads in Wales, means the Welsh Ministers;  
(c) in relation to roads in Scotland, means the Scottish Ministers

subsection (4) is exercise by statutory instrument

- c. (11B) provide that any such order made under subsection (4) by the Welsh Ministers is subject to the negative procedure

111 Section 134 (regulations), to:

- a. Provide the procedure for Welsh Ministers making regulations under section 17 or Part 6

112 Section 142(1) (general interpretation), to:

- a. Provide an exception to the definition of national authority in Part 6

113 This clause removes the reference to the Road Traffic Regulation Act 1984 in Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) as a result of the amendments made by it.

## Clause 11: Traffic Commissioners

114 In consequence of the devolution of bus route registration clause 11 amends section 4C of the Public Passenger Vehicles Act 1981 so that the senior traffic commissioner's power to give guidance or general directions to other traffic commissioners does not apply in relation to devolved Welsh matters. This reflects the situation already existing in Scotland where the senior traffic commissioner cannot give guidance or directions in relation to devolved Scottish matters.

## Clause 12: Taxis: transfer of certain functions to Welsh Ministers

115 In consequence of the devolution to the Welsh Government of powers to legislate for taxi and private hire vehicle licensing, taxis and private hire vehicle driver licensing and private hire vehicle operator licensing, this clause transfers the Secretary of State's functions in section 10 of the Transport Act 1985 (the immediate hiring of taxis at separate fares) to Welsh Ministers

## Clause 13: Transfer of executive functions in relation to Welsh harbours

116 Clause 13 transfers to Welsh Ministers executive functions in relation to the construction, operation and management of harbours, docks, piers and boatslips in Wales that are not already devolved, other than reserved trust ports which are defined in clause [14]. Functions have previously been devolved mainly in respect of fishery harbours.

117 Subsection (2) sets out the functions to be transferred under the Harbours Act 1964, the Docks and Harbours Act 1966, the Ports (Finance) Act 1985, the Pilotage Act 1987 and the Ports Act 1991.

118 Subsection (3) transfers to Welsh Ministers functions in subsection (2) that relate to two or more harbours only to the extent that the harbours are both (or all) in Wales and are not reserved trust ports.

119 Subsection (4) provides that Part 2 of Schedules 3 to GoWA applies to the transfer of functions transferred under subsection (1) as it applies to a transfer of functions made by an Order in Council under section 58 of GoWA.

120 Subsections (5) to (11) make consequential amendments to the Harbours Act 1964

121 Subsection (12) makes a consequential amendment to the Ports Act 1991.

## Clause 14: Welsh harbours: reserved trust ports

122 Clause 14 defines a reserved trust port as a harbour, dock, pier or boatslip which on the date that clause 3 comes into force is owned or managed by a relevant port authority as defined in

section 1 of the Ports Act 1991 that meets the annual turnover requirement set out in section 11 of the Ports Act (as slightly modified to refer to accounting years for which accounts have been submitted to the Secretary of State).

### Clause 15: Welsh harbours: development consent

123 Clause 15 amends section 24 of the Planning Act 2008, in relation to development consents for construction or alteration of harbour facilities, by removing harbour facilities in Wales or in waters adjacent to Wales from the scope of the development consent regime, except where the harbour facilities are, or form part of, a reserved trust port.

### Clause 16: Cross-border harbours: power to make regulations

124 Clause 16 creates a new power for the Secretary of State to make regulations about the exercise of any functions transferred to Welsh Ministers under clauses 13 and 15 in relation to harbours that are only partly in Wales (including waters adjacent to Wales).

### Clause 17: Planning consent for generating stations with 350MW capacity or less

125 Clause 17 gives effect to the policy intention to devolve to Wales the responsibility for energy planning development consents for projects up to and including 350MW onshore and in Welsh territorial waters.

126 Subsections (1)-(5) - The combined effect of these subsections is to dis-apply the Secretary of State's power under the Planning Act 2008 ("the 2008 Act") to grant development consent for all electricity generating stations in Wales and in Welsh territorial waters insofar as such projects (not including onshore wind powered generating stations) do not exceed a capacity of 350MW, and for all onshore wind powered generating stations.

127 Subsections (6)-(8) - The disapplication in subsections (1) - (5) would otherwise leave consenting for electricity generating stations to be determined in accordance with section 36 of the Electricity Act 1989. The combined effect of subsections (6) - (8) is to remove the requirements of section 36 of the Electricity Act 1989 in so far as they relate to electricity generating stations up to and including 350MW in Wales and in Welsh territorial waters.

### Clause 18: Alignment of associated development consent

128 Clause 18 implements the recommendation of the Silk Commission, taken forward in the St David's Day Agreement, that the responsibility for granting consent for associated development for energy projects should be aligned with the responsibility for granting consent for the main project.

129 Planning consents for energy generation projects above 50 megawatts are currently granted through a Development Consent Order made by the Secretary of State under the regime for nationally significant infrastructure set out in the 2008 Act. The Secretary of State may grant consent under the 2008 Act for an energy generation project for which development consent is required.

130 Large energy generation projects are also likely to require consent for development which is associated with the principle project and necessary for the project to be developed ('associated development') and the Secretary of State can also grant consent for this under the 2008 Act. Some indicative examples of associated development can be found in Annex A and B of the Department of Communities and Local Government guidance note for infrastructure projects that are consented under the 2008 Act:

<https://www.gov.uk/government/publications/planning-act-2008-associated-development-applications-for-major-infrastructure-projects>

- 131 In Wales, the power of the Secretary of State to consent associated development is restricted to surface works, boreholes or pipes that are associated with a project comprising of underground gas storage facilities. There is therefore currently no provision in the 2008 Act for the Secretary of State to grant development consent for associated development for an energy generation project in Wales.
- 132 The effect of this is that for an energy generation project above 50 megawatts in Wales, development consent can only be granted by the Secretary of State for the infrastructure project itself. Any consents for associated development must be sought from the appropriate consenting body in Wales (in the case of any planning consent for associated development, this will normally be from the relevant local planning authority).
- 133 Clause 16 devolves consents for energy generation projects up to, and including, 350 megawatts to Wales. For these projects, there will be no change to how consent is granted for associated development.
- 134 Energy projects above 350 megawatts in Wales will continue to be determined by the Secretary of State under the provisions of the 2008 Act. In order for the recommendation on aligning associated development consents to be implemented, the 2008 Act needs to be amended so the Secretary of State can grant consent for associated development linked to these projects. This will be achieved by the amendment to section 115(4) of the 2008 Act (which currently restricts the Secretary of States powers to grant consent for associated development in Wales).

### **Clause 19: Change of the name of the Assembly etc: translation of references**

- 135 Clause 19 inserts a new section 150A into GoWA to ensure that references in other legislation to the Assembly and other bodies are automatically amended if the Assembly exercises its power to change its name (or the name of the National Assembly for Wales Commission or the name of Acts of the National Assembly for Wales). Such name changes are made possible by paragraph 7(2)(a)(i) and (viii) and paragraph 7(2)(c)(i) of new Schedule 7B inserted into GoWA by Schedule 2 to the Bill, which mean that the restriction on the Welsh Assembly on amending GoWA itself does not include amending those names as provided for by sections 1(1), 27(1) and 107(1) respectively. Subsection (2) of new s.150A ensures that any references to the National Assembly for Wales, the National Assembly for Wales Commission or an Act of the National Assembly for Wales in other legislation will reflect the new name if it is changed.
- 136 Subsection (2) of Clause 19 ensures that the definition of enactment in new section 150A includes Acts of the Scottish Parliament or instruments made under such Acts, so if the Assembly changes its name, references to it in ASPs will also be automatically updated.

## **Chapter 5: Other provision about legislation by the Assembly**

### **Clause 20: Super-majority requirement for certain legislation**

- 137 Clause 20 inserts new sections 111A and 111B into GoWA to require certain types of electoral legislation to be passed by a two-thirds majority of the Assembly.
- 138 Subsection (2) of new section 111A sets out when a provision of a Bill relates to a protected subject-matter for the purpose of the clause. This is when a provision would modify the law relating to the following specified matters, or enable the law relating to the following matters to be changed by subordinate legislation unless a provision is incidental to or consequential on any other provision of the Bill. These specified matters are, in relation to elections to the Assembly: the franchise for those elections, the system by which Assembly members are returned, the number of constituencies and regions or other such areas and the numbers of

members to be returned in each constituency or region or other such areas. In addition, a provision changing the name of the Assembly would also relate to a protected subject-matter and require a two-thirds majority before it could be passed.

139 Subsection (3) of new section 111A requires the Presiding Officer to decide before the final stage at which an Assembly Bill can be voted on whether, in her view, the provisions of the Bill relate to a protected subject-matter. The Presiding Officer must make a statement to this effect and subsection 5 of new section 111A requires this statement to be made in both English and Welsh. Subsection 6 of new section 111A requires the standing orders to provide for this statement to be published.

140 Subsection (4) of new section 111A provides that a Bill which the Presiding Officer has decided relates to a protected subject-matter can only be passed if, at its final stage, the number of members voting for it comprises at least two-thirds of the total number of Assembly seats.

141 New section 111B provides for the reference to the Supreme Court by the Attorney General or the Counsel General, the question of whether any provision of a Bill, relates to a protected subject-matter.

142 Subsection (2) of new section 111B provides that any such reference must be made in certain circumstances within 4 weeks of the passing or rejection of a Bill at its final stage, or within 4 weeks of the approval of a Bill following reconsideration after a Supreme Court decision.

143 Subsection (3) of new section 111B provides that a reference to the Supreme Court cannot be made by the Counsel General if he has previously notified the Presiding Officer that he will not be making a reference or by the Attorney General if he has previously notified the Presiding Officer that he will not be making a reference. Subsection (4) of new section 111B ensures this restriction does not apply if after such a notification, the Bill has been approved by the Assembly following reconsideration after a Supreme Court decision.

## Clause 21: Super-majority requirement: amendments relating to procedure etc.

144 Clause 21 amends sections 111 and 112 of GoWA to reflect the new processes required as a result of a reference to the Supreme Court.

145 Subsection (2) inserts new paragraph (za) into subsection (6) of section 111 to require the standing orders to provide for a Bill that has been passed to be reconsidered once the Supreme Court has decided on the question of it relates to a protected subject-matter after the Presiding Officer has certified that it does not relate to a protected subject-matter.

146 Subsection (3) inserts a new subsection (6A) into section 111 to require the standing orders to provide for a Bill to be reconsidered if it has been rejected by the Assembly, and the Supreme Court has decided that no provision in the Bill relates to a protected subject-matter (following a decision of the Presiding Officer that the Bill does relate to a protected subject-matter).

147 Subsection (4) replaces subsection (7) in section 111 with a new subsection (7) that requires the standing orders to ensure that any Bill reconsidered following a protected subject-matter reference is subject to a final approval stage in the Assembly.

148 Subsection (5) amends section 111 to ensure subsection (8) reflects the new reconsideration processes.

149 Subsection (6) amends section 112 to make it clear that the section only relates to references to the Supreme Court of questions of legislative competence (thus distinguishing it from the new section on references to the Supreme Court on protected subject-matter). It also provides for a reference to be made on a question of competence after reconsideration of an Assembly Bill.

150 Subsection (7) amends section 114 of GoWA to allow the Secretary of State to intervene after the reconsideration of an Assembly Bill.

151 Subsection (8) amends section 115 of GoWA to prevent the Presiding Officer from submitting a Bill for Royal Assent if the Supreme Court is still to make a decision on a protected subject-matter reference or if the Bill has not yet been approved after reconsideration by the Assembly once the Supreme Court has decided on such a reference.

### Clause 22: Submission of Bills for Royal Assent: role of Presiding Officer

152 Clause 22 amends section 115 of GoWA to provide that the Presiding Officer, rather than the Clerk of the Assembly, should submit Assembly legislation for Royal Assent. It also provides that the Presiding Officer rather than the Clerk of the Assembly should be notified where a Bill is the subject of a Supreme Court reference and where the Attorney General or Counsel General do not intend to make a reference. This reflects the process in the Scottish Parliament.

## Chapter 6: Other provision about the Assembly

### Clause 23: Composition of Assembly committees

153 Clause 23 repeals section 29 of GoWA to remove the restrictions on the composition of committees and allows for them to be amended by changes to Assembly standing orders.

### Clause 24: Assembly proceedings: participation by UK Ministers etc

154 Clause 24 repeals sections 32 and 33 of GoWA. The repeal of section 32 removes the entitlement of the Secretary of State for Wales to participate in Assembly proceedings (this power has never been exercised). The repeal of section 33 removes the requirement for the Secretary of State to attend the Assembly as part of the process of consultation on the UK Government's legislative programme.

155 These provisions were included in GoWA when the Assembly was still finding its feet, and the distinction between the Assembly's legislative role and the Welsh (Assembly) Government's executive functions had yet to be implemented. The Assembly is now well established, with clear lines of engagement between it and the UK Government. These provisions are no longer needed in that context.

## Part 2: Executive Competence

### Chapter 7: Executive functions of Welsh Ministers

#### Clause 25: Functions of Welsh Ministers

156 Clause 25 confers common law powers on Welsh Ministers.

157 Clause 25(1) inserts section 58A into GoWA; the new section comprising of eight subsections.

158 Subsection (1) provides the general proposition that certain executive functions of Her Majesty are to be transferred, so that such functions are exercisable by Welsh Ministers instead of by a Minister of the Crown.

159 Subsection (2) limits subsection (1) so that the executive functions transferred are only those that are:

- a. within devolved competence, including those which are incidental to the exercise by the Welsh Ministers of a function within devolved competence; or
- b. incidental to the exercise by the Welsh Ministers of a function outside devolved competence.

160 "Devolved competence" is defined in subsections (5)-(7). The reference in subsection (2)(b), and elsewhere in this section, to Welsh Ministers' functions is not limited to statutory functions and would therefore include functions under prerogative instruments.

161 Subsection (3) provides that the functions in subsection (4) are exercisable concurrently with a Minister of the Crown.

162 Subsection (4) provides that Welsh Ministers' functions are exercisable concurrently with a Minister of the Crown if they are:

- a. incidental to the exercise by the Welsh Minister of a function (within or outside devolved competence) which is shared with a Minister of the Crown,
- b. incidental to the exercise by a Minister of the Crown of a function within devolved competence,
- c. exercisable within devolved competence where not incidental to the exercise of another function, or
- d. observing or implementing EU law.

163 Subsection (5) states that devolved competence is defined in subsections (6) and (7).

164 Subsection (6) provides that it is outside devolved competence to make, confirm or approve subordinate legislation which would be outside legislative competence. In other words, a provision that section 108A would prohibit from appearing in an Assembly Act is similarly prohibited by this section from appearing in subordinate legislation.

165 Subsection (7) applies to functions other than those relating to making, confirming or approving subordinate legislation. It provides that it is outside devolved competence to exercise such functions if an Assembly Act provision conferring those functions would be outside the Assembly's legislative competence.

166 Subsection (8)(a) clarifies that executive functions does not include either legislative functions or prerogative functions. Subsection (8)(b) explains what is meant in this section when reference is made to a function being exercisable for the purposes of another function.

167 Clause 23(2) removes the Welsh Ministers' powers under section 71 of GoWA which enable them to do anything conducive or incidental to the exercise of their powers as such powers are no longer required, given the transfer of common law, executive functions under section 58A; however this provision still applies to the First Minister acting in his capacity as First Minister and the Counsel General.

## **Chapter 8: Marine licensing and conservation**

### **Clause 26: Marine licensing in the Welsh offshore region**

168 Clause 26 implements the recommendation of the Silk Commission, taken forward in the St David's Day Agreement, that the existing executive responsibilities for marine licensing in the Welsh inshore region should be extended to the Welsh offshore region. The amendments made by clause 26 provide for Welsh Ministers to exercise functions relating to marine licensing in the Welsh offshore region. Part 4 of the Marine and Coastal Access Act 2009 ("the 2009 Act") regulates the licensing of certain activities which take place in UK waters, other than the Scottish inshore region (defined in section 322(1) of the 2009 Act). The Welsh offshore region is defined in section 322(1) to mean so much of the Welsh zone as lies beyond the seaward limits of the territorial sea. Welsh zone takes its meaning from section 158(1) and (3) of GoWA.

169 Section 113 of the 2009 Act contains the rules for determining who is the appropriate licensing authority for any area. This varies depending on both the area and the nature of the activity. Subsection(2) amends section 113(4) so that Welsh Ministers are the appropriate licensing authority for Wales, the Welsh inshore region and the Welsh offshore region, unless the activity to be licensed falls within section 113(5) of the 2009 Act. In respect of those “reserved activities” the Secretary of State is the licensing authority.

170 Subsection (2)(b) amends the list of those "reserved activities" in section 113(5) so as to additionally reserve, in relation to the Welsh offshore region only, any activity falling within the subject matter of Part 6 of the Merchant Shipping Act 1995 (pollution etc.) (MSA). This type of activity is licensable by the Secretary of State in relation to the Welsh offshore region.

171 Marine enforcement officers (MEOs) may be appointed under section 235 of the 2009 Act to carry out enforcement functions in relation to the marine licensing regime. Section 236 of the 2009 Act sets out the areas in which and the vessels and installations in relation to which a MEO may exercise enforcement powers. Subsection (3) of clause 24 amends section 236(2) of the 2009 Act so as to extend the activities in relation to which a MEO cannot exercise its enforcement powers to include: (i) an activity in the Welsh offshore region concerning or arising from the exploration for, or production of, petroleum; and (ii) any activity in the Welsh offshore region falling within the subject matter of Part 6 of the MSA.

172 Under section 240 of the 2009 Act, the Secretary of State is able to appoint persons to enforce the marine licensing regime in Part 4 of that Act, to the extent that it relates to the licensing of those “reserved activities”. Subsection(4) amends subsection 240(1)(b) of the 2009 Act so that the Secretary of State is able to appoint persons for enforcement purposes relating to any activity in Wales or the Welsh offshore region concerning the exploration for, or production of, petroleum.

173 Subsections 5 to 8 of clause 26 make consequential amendments to the Marine Licensing (Exempted Activities) (Wales) Order 2011 ("the 2011 Order"). The 2011 Order specifies activities which do not need a marine licence, or do not need a marine licence if conditions specified in the Order are satisfied. By virtue of Article 2 of the 2011 Order and subsection (2)(a) of clause 24 , the 2011 Order applies in relation to any licensable marine activity carried on in Wales, the Welsh inshore region and the Welsh offshore region for which the Welsh Ministers are the appropriate licensing authority.

## Clause 27: Marine conservation zones

174 The amendments made by clause 27 appoint the Welsh Ministers as appropriate authority in the Welsh offshore region allowing them to designate areas as marine conservation zones (MCZ) in that region pursuant to Part 5 (Nature Conservation) of the Marine and Coastal Access Act 2009 (the 2009 Act).

175 The Welsh offshore region is defined in section 322(1) of the 2009 Act.

176 Subsection 2b states that the Welsh Ministers may not designate an MCZ that includes any part of the Welsh offshore region without agreement from the Secretary of State.

## Chapter 9: Building regulations

### Clause 28: Transfer of functions in relation to excepted energy buildings

177 The regulation of buildings and building work is a reserved matter. However functions under the Building Act 1984 to make building regulations and associated matters have been transferred to the Welsh Ministers by an order in 2009 that came into force in 2011. An exclusion from the transfer was made in relation to “excepted energy buildings”; that is

buildings forming part of energy infrastructure. Clause 27 removes this exclusion by making the necessary provision for the transfer of functions under the Building Act 1984 for that category of buildings.

## Chapter 10: Office of Communications

### Clause 29: Office of Communications

- 178 Ofcom is the UK-wide independent communications regulator overseeing television, radio, telecoms, mobiles, postal services and the airwaves. It was established by the Office of the Communications Act 2002 ("the 2002 Act").
- 179 Section 1 of the 2002 Act provides that the Secretary of State appoints the chairman and other members of Ofcom. Subsections (2) and (3) of this clause amend section 1 of the 2002 Act to provide that the Welsh Ministers shall appoint one member of Ofcom and, before doing so, they must consult the Secretary of State. Subsection (4) also amends section 1(5) to ensure that the member appointed by the Welsh Ministers is involved in the appointment of any executive members of Ofcom.
- 180 The Schedule to the 2002 Act makes further provision about Ofcom including qualification for membership, tenure of office, accounts & audit and annual reports. Subsection (5) of this clause amends the application of the Schedule in relation to the member of Ofcom appointed by the Welsh Ministers. The functions relating to ensuring that a person being appointed to Ofcom does not have any conflict of interest and the functions relating to a member's resignation or removal for office are conferred on the Welsh Ministers. The member may only be removed from office by the Welsh Ministers following consultation with the Secretary of State.
- 181 Subsections (7) of this clause amend the Schedule to the 2002 Act to require the Comptroller and Auditor General to send a copy of Ofcom's statement of accounts and his report to the Welsh Ministers and for the Welsh Ministers to lay those documents before the National Assembly for Wales. Similarly, subsection (8) amends the Schedule to the 2002 Act to require Ofcom to send its annual report to the Welsh Ministers and for the Welsh Ministers to lay the report before the National Assembly for Wales.

## Part 3: General

### Clause 30: Consequential provision

- 182 Subsection (1) incorporates Schedule 3 which makes minor and consequential amendments.
- 183 Subsections (2)-(5) create a power for the Secretary of State to make regulations amending primary or secondary legislation in consequence of any provision in the draft Bill.
- 184 Subsection (6) requires regulations made under subsection (2) to be made by affirmative resolution procedure in Parliament, if the regulations amend primary legislation.
- 185 Subsection (7) requires regulations made under subsection (2) to be made by negative resolution procedure in Parliament, if the regulations do not amend primary legislation.
- 186 Subsection (8) clarifies that "primary legislation", for the purposes of this section, includes Measures and Acts of the Assembly, as well as Acts of Parliament.

### Schedule 3: Minor and consequential amendments

- 187 This Schedule contains further amendments to existing legislation relating to Part 1 of the draft Bill.

## **Part 1: Amendments of the Government of Wales Act 2006**

188 Part 1 of Schedule 3 contains minor and consequential amendments to GoWA relating to Part 1 of the draft Bill. The changes are primarily a consequence of the conferred powers model being replaced by a reserved powers model.

## **Part 2: Amendments of other Acts**

189 Part 2 of Schedule 3 contains a minor amendment to the Constitutional Reform and Governance Act 2010 relating to Part 1 of the draft Bill.

## **Clause 31: Transitional provision and savings**

190 Subsection (1) incorporates Schedule 4, which makes transitional and savings provisions that are required in relation to the draft Bill's provisions.

191 Subsection (2) creates a regulation making power for the Secretary of State to make additional transitional or savings provisions which appear appropriate in relation to the draft Bill.

192 Subsection (3) clarifies that the subsection (2) power includes the ability to make savings resulting from any amendment, repeal or revocation made by the draft Bill.

193 Subsection (4) provides that Schedule 4 does not limit the subsection (2) power and, indeed, that Schedule can itself be modified by the subsection (2) power.

194 Subsection (5) protects sections 16 and 17 of the Interpretation Act 1978 from being affected by any savings or transitional provisions made by either Schedule 4 or by the subsection (2) power.

195 Subsection (6) provides for regulations made under the subsection (2) power to be subject to negative resolution procedure in Parliament.

## **Schedule 4: Transitional provisions**

196 This Schedule contains transitional provisions. In particular, it provides that the draft Bill's replacement of the conferred powers model with a reserved powers model, does not affect the continuing effect of Assembly Measures and Assembly Acts made under the conferred powers model.

197 It also contains transitional provisions in relation to marine licensing in the Welsh offshore region.

## **Clause 32: Commencement**

198 Clause 32 details the commencement arrangements for the Bill.

## **Clause 33: Short title**

199 Clause 33 states that the Act may be cited as the Wales Act 2016.

## **Commencement**

200 Commencement of the provisions of the Bill is specified in Clause 32.

## **Financial implications of the Bill**

201 The Wales Bill is a piece of constitutional, enabling legislation which itself does not trigger immediate financial implication. It will be for the Assembly to determine how they will use the devolved powers, and assess the financial impact of their policy choices.

# Compatibility with the European Convention on Human Rights

202 The Government will publish a separate ECHR memorandum with its assessment of compatibility of the Bill's provisions with the Convention rights on introduction of the Bill.

## Related documents

203 The following documents are relevant to the Bill and can be read at the stated locations:

- Powers for a Purpose: Towards a lasting devolution settlement for Wales 2015:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408587/47683\\_CM9020\\_ENGLISH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf)
- Empowerment and Responsibility: Legislative Powers to Strengthen Wales 2014:  
<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>
- Wales Act 2014: <http://www.legislation.gov.uk/ukpga/2014/29>
- Empowerment and Responsibility: Financial Powers to Strengthen Wales 2012:  
<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2013/01/English-WEB-main-report1.pdf>

## **Annex A - Territorial extent and application**

204 To the extent the draft Bill amends the Government of Wales Act 2006, it has the same extent as that Act - UK extent. To the extent that the draft Bill amends other legislation, in practice, it has the same extent as that legislation.

# **DRAFT WALES BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Draft Wales Bill as produced in draft on 20 October 2015.

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# BIL CYMRU DRAFFT

## NODIADAU ESBONIADOL

### Beth mae'r nodiadau hyn yn ei wneud

Mae'r Nodiadau Esboniadol hyn yn ymwneud â'r Bil Cymru Drafft fel y'i cynhyrchwyd mewn ffurf Ddrafft ar 20 Hydref 2015.

- Paratowyd y Nodiadau Esboniadol hyn gan Swyddfa Cymru er mwyn helpu'r sawl sy'n darllen y Bil drafft a chyfrannu at y drafodaeth arno. Nid ydynt yn rhan o'r Bil drafft ac nid ydynt wedi cael eu cymeradwyo gan y Senedd.
- Mae'r Nodiadau Esboniadol hyn yn egluro beth y bydd pob rhan o'r Bil drafft yn ei olygu yn ymarferol; yn darparu gwybodaeth gefndir ynglŷn â datblygu polisi; ac yn darparu gwybodaeth ychwanegol ynglŷn â sut y bydd y Bil drafft yn effeithio ar ddeddfwriaeth sy'n bodoli'n barod yn y maes hwn.
- Efallai mai'r ffordd orau o ddarllen y Nodiadau Esboniadol hyn yw ochr yn ochr â'r Bil drafft. Nid ydynt yn ddisgrifiad cynhwysfawr o'r Bil drafft, ac ni fwriadwyd iddynt fod. Felly, os yw'n ymddangos nad oes angen rhoi eglurhad neu wneud sylw ar un o ddarpariaethau'r Bil drafft, mae'r Nodiadau'n dweud yn syml iawn bod y ddarpariaeth yn egluro'i hun.

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## Trosolwg o'r Bil Drafft

- 1 Bydd y Bil Cymru Drafft yn gweithredu'r elfennau hynny o gytundeb Dydd Gŵyl Dewi sy'n galw am newidiadau deddfwriaethol. Bydd yn creu setliad cliriach a chryfach yng Nghymru, a fydd yn gadarn ac yn para'n hir.
- 2 Mae'r Bil drafft yn Fil galluogi ac mae'r rhan fwyaf o'r darpariaethau sydd yn y Bil drafft yn amlinellu'r pwerau sy'n cael eu trosglwyddo i Gynulliad Cenedlaethol Cymru (y Cynulliad) a/neu i Weinidogion Cymru.
- 3 Yn fwyaf arbennig, mae'r Bil Cymru drafft yn diwygio Deddf Llywodraeth Cymru 2006 (DLIC) drwy newid i fodel cadw pwerau. Dyma'r model y seiliwyd y setliad datganoli yn yr Alban arno. Bydd y model cadw pwerau a amlinellir yn y Bil drafft yn gwahaniaethu'n gliriach rhwng pwerau sydd wedi'u datganoli a phwerau sydd wedi'u cadw, gan alluogi'r Cynulliad i ddeddfu ar unrhyw bwnc ac eithrio'r rhai hynny sydd wedi'u cadw'n benodol i Senedd y DU.
- 4 Mae'r Bil drafft hefyd yn datganoli nifer o feysydd pwnc eraill y mae consensws gwleidyddol arnynt i'r Cynulliad neu i Weinidogion Cymru. Mae'r rhain yn cynnwys:
  - a. Datganiad bod y Cynulliad a Gweinidogion Cymru yn cael eu hystyried yn rhannau parhaol o drefniadau cyfansoddiadol y DU, ac na fydd Senedd y DU yn ddeddfu fel arfer mewn meysydd datganoledig heb gydsyniad y Cynulliad, ond y bydd yn cadw'r sofraniaeth i wneud hynny;
  - b. Datganoli i'r Cynulliad y cyfrifoldeb i fod yn gyfrifol am ei faterion ei hun, gan gynnwys penderfynu ar ei enw;
  - c. Datganoli cyfrifoldeb i'r Cynulliad am bolisi porthladdoedd, terfynau cyflymder, cofrestru bysiau, rheoleiddio tacsis, etholiadau llywodraeth leol, carthffosiaeth a rhoi caniatâd i ddatblygiadau ynni hyd at 350MW (gweler isod am ragor o fanylion);
  - d. Datganoli cyfrifoldeb i Weinidogion Cymru am drwyddedu a chadwraeth forol yn rhanbarth môr mawr Cymru; penodi aelod o fwrrd OFCOM ac ymestyn cyfrifoldeb am reoliadau adeiladu i gynnwys adeiladau ynni a eithrir;
  - e. Datganoli pŵer dros bob elfen o etholiadau'r Cynulliad; a
  - f. Datganoli pwerau dros drwyddedu echdynnu olew a nwy ar y tir.
- 5 Bydd rhagor o waith yn cael ei wneud ar rai darpariaethau ac mae'n bosibl y cânt eu haddasu yn ystod y cyfnod o graffu cyn y broses ddeddfu, ac eithrio unrhyw ddiwygiadau i'r Bil a gaiff eu gwneud mewn ymateb i argymhellion a wneir yn dilyn y cyfnod o graffu cyn y broses ddeddfu.

## Cefndir polisi

- 6 Sefydlodd y Llywodraeth y broses y daethpwyd i'w hadnabod fel proses Dydd Gŵyl Dewi yn Nhachwedd 2014. Ei nod oedd canfod ar ba faterion yr oedd consensws gwleidyddol er mwyn gweithredu argymhellion ail adroddiad Comisiwn Syr Paul Silk ar Ddatganoli yng Nghymru (Silk II) a oedd yn ymwneud â phwerau'r Cynulliad. Roedd y broses hefyd yn edrych a oedd consensws gwleidyddol i weithredu unrhyw elfennau o gynigion Comisiwn Smith ar gyfer yr Alban yng Nghymru.
- 7 Roedd y papur gorchymyn, *Pwerau at bwrrpas: Tuag at setliad datganoli sy'n para i Gymru*, a gyhoeddwyd ar 28 Chwefror, yn nodi'r argymhellion yr oedd consensws gwleidyddol arnynt.

Yr argymhellion hyn yw sail y setliad datganoli newydd i Gymru sydd yn y Bil drafft hwn.

- 8 Edrychodd proses Dydd Gŵyl Dewi hefyd ar y pwerau sy'n cael eu datganoli i'r Alban dan gytundeb Comisiwn Smith. Mae'r Bil drafft yn gweithredu dau ymrwymiad pwysig o'r ymarfer hwn y mae consensws gwleidyddol cryf arnynt. Y ddau ymrwymiad yw - datganoli'r holl bwerau sy'n ymwneud ag etholiadau'r Cynulliad, gan gynnwys y system etholiadol, y dull o gynnal etholiadau, etholfraint a chofrestru, ac yn ail, trwyddedu echdynnu olew a nwy ar y tir (gan gynnwys trwyddedu nwy siâl).

## Cefndir cyfreithiol

- 9 Mae'r Bil drafft yn Fil galluogi sy'n newid y sail a ddefnyddiwyd i ddiffinio cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru a phwerau Gweinidogion Cymru yn DLIC, gan newid o fodel rhoi pwerau i fodel cadw pwerau.

## Rhychwant tiriogaethol a chymhwysiad

- 10 Bydd y Bil drafft yn weithredol ym mhob rhan o'r DU a bydd angen Cynnig Cydsyniad Deddfwriaethol gan y Cynulliad ar y sail ei fod yn cynnwys darpariaethau perthnasol i Gymru sy'n newid cymhwysedd deddfwriaethol y Cynulliad. Mae trafodaethau ynglŷn â'r model cadw pwerau'n cael eu cynnal gyda Llywodraeth Cymru a chynhelir trafodaeth bellach ar gynnwys y Bil yn y cyfnod o graffu cyn y broses ddeddfu.

# Sylwadau am ddarpariaethau'r Bil Drafft

## Rhan 1: Trefniadau Cyfansoddiadol

### Pennod 1: Parhauster Cynulliad Cenedlaethol Cymru a Llywodraeth Cymru

#### Cymal 1: Parhauster Cynulliad Cenedlaethol Cymru a Llywodraeth Cymru

- 11 Mae cymal 1 yn darparu bod Cynulliad Cymru a Llywodraeth Cymru yn cael eu cydnabod fel rhannau parhaol o drefniadau cyfansoddiadol y Deyrnas Unedig.

### Pennod 2: Cytundeb ynglŷn â'r Senedd yn deddfu ar faterion datganoledig

#### Cymal 2: Cytundeb ynglŷn â'r Senedd yn deddfu ar faterion datganoledig

- 12 Mae cymal 2 yn mewnosod is-adran (6) yn adran 107 o DLIC fel bod cydnabyddiaeth mewn statud, er nad yw cymhwysedd deddfwriaethol y Cynulliad yn cael unrhyw effaith ar sofraniaeth Senedd y DU, na fydd Senedd y DU fel arfer yn deddfu ar gyfer materion datganoledig yng Nghymru heb gydsyniad y Cynulliad.

### Pennod 3: Cymhwysedd deddfwriaethol

#### Cymal 3: Cymhwysedd deddfwriaethol

- 13 Mae cymal 3 yn mewnosod adran 108A newydd yn DLIC yn lle'r adran 108 bresennol. Mae'r adran newydd yn amlinellu'r cyfyngiadau ar gymhwysedd deddfwriaethol y Cynulliad.
- 14 Mae is-adran (1) yn cyflwyno adran 108A newydd yn lle adran 108 o DLIC. Mae is-adrannau (1)-(6) o adran 108A newydd yn diffinio sut y bydd cymhwysedd deddfwriaethol darpariaethau yn Neddfau'r Cynulliad yn cael ei asesu.
- 15 Mae is-adran (1) o adran 108A newydd yn ailadrodd adran 108(2) er mwyn darparu nad yw Deddf Cynulliad yn gyfraith os yw unrhyw rai o'i darpariaethau y tu allan i gymhwysedd deddfwriaethol y Cynulliad.
- 16 Mae is-adran (2) o adran 108A newydd yn nodi bod darpariaeth mewn Deddf Cynulliad y tu allan i gymhwysedd os yw unrhyw un o'r paragraffau (a)-(e) yn berthnasol.
- Mae paragraff (a) yn ailadrodd adran 108(6)(b) o DLIC ac yn darparu y bydd darpariaeth Deddf Cynulliad y tu allan i gymhwysedd os yw'n ymestyn y tu hwnt i Gymru a Lloegr. Mae hyn yn adlewyrchu'r cyfyngiad presennol na all darpariaeth Deddf Cynulliad fod yn rhan o system gyfreithiol ar wahân i awdurdodaeth unedig Cymru a Lloegr.
  - Mae paragraff (b) yn darparu y bydd darpariaeth Deddf Cynulliad y tu allan i gymhwysedd os yw'n berthnasol heblaw mewn cysylltiad â Chymru neu os yw'n rhoi, gosod, addasu neu ddileu swyddogaethau y gellir eu cyflawni heblaw mewn cysylltiad â Chymru. Er hyn, mae adrannau newydd (3), (4) a (6) gyda'i gilydd yn ffurfio eithriad i baragraff (b), lle gall darpariaeth Deddf Cynulliad fod yn berthnasol heblaw mewn cysylltiad â Chymru.

- c. Mae paragraff (c) yn darparu y bydd darpariaeth Deddf Cynulliad y tu allan i gymhwysedd os yw'n ymwneud ag unrhyw rai o'r materion a gedwir yn ôl, fel y'u nodir yn Atodlen 7A, gan roi sylw i'r eithriadau a restrir yn yr Atodlen honno. Mae "yn ymwneud â" i'w ddehongli yn unol â'r prawf pwrpas yn is-adran (5).
  - d. Mae paragraff (d) yn darparu y bydd darpariaeth Deddf Cynulliad y tu allan i gymhwysedd os yw'n torri unrhyw un o'r cyfyngiadau a nodwyd yn Rhan 1 o Atodlen 7B, ond yn amodol ar yr eithriadau yn Rhan 2 o Atodlen 7B.
  - e. Mae paragraff (e) yn ailadrodd adran 108(6)(c) o DLIC ac yn darparu y bydd darpariaeth Deddf Cynulliad y tu allan i gymhwysedd os nad yw'n gyson â hawliau'r Confensiwn neu â chyfraith yr Undeb Ewropeaidd.
- 17 Mae is-adran (3) o adran 108A newydd yn darparu eithriad i adran (2)(b) newydd fel bod modd i ddarpariaeth Deddf Cynulliad fod yn berthnasol heblaw mewn cysylltiad â Chymru:
- a. os yw'n ategol (yn unol â'r diffiniad yn is-adran (6) newydd) i ddarpariaeth sydd o fewn cymhwysedd deddfwriaethol y Cynulliad (neu a fyddai o fewn cymhwysedd deddfwriaethol pe bai mewn Deddf Cynulliad); ac
  - b. os nad yw'n cael mwy o effaith heblaw mewn cysylltiad â Chymru nag sydd ei angen er mwyn gweithredu'r ddarpariaeth.
- 18 Mae is-adran (4) o adran 108A newydd yn egluro, wrth benderfynu "beth sydd ei angen" at ddibenion adran (2)(b) newydd, nad yw'n berthnasol y gallai Senedd y DU fod wedi gwneud y ddarpariaeth ei hun.
- 19 Mae is-adran (5) o adran 108A newydd yn ailadrodd adran 108(7) o DLIC i gynnwys y prawf pwrpas, sy'n darparu, at ddibenion paragraff (c), y bydd y cwestiwn a yw darpariaeth Deddf Cynulliad yn ymwneud â mater a gedwir yn ôl, yn cael ei benderfynu drwy gyfeirio at bwrpas y ddarpariaeth, gan roi sylw (ymhlith pethau eraill) i'w heffaith yn yr holl amgylchiadau.
- 20 Mae is-adran (6) o adran 108A newydd yn diffinio "ategol" at ddibenion is-adran (3) newydd ac Atodlen 7B. Ystyrir darpariaeth yn ategol i un arall:
- a. os yw'n darparu ar gyfer gorfodi'r ddarpariaeth arall, neu os yw'n briodol mewn ffordd arall ar gyfer gwneud y ddarpariaeth honno'n weithredol, neu
  - b. os yw'n gysylltiedig mewn ffordd arall, neu o ganlyniad, i'r ddarpariaeth honno.
- 21 Mae is-adran (2) yn disodli Atodlen 7 i DLIC ag Atodlenni 7A a 7B newydd, fel y'u nodwyd yn Atodlenni 1 a 2 i'r Bil drafft yn y drefn honno.

### **Atodlen 1: Atodlen 7A newydd i Ddeddf Llywodraeth Cymru 2006**

- 22 Mae Atodlen 7A newydd yn amlinellu'r materion a gedwir yn ôl at ddibenion adran 108A(2)(c), fel y'i mewnosodwyd gan gymal 3(1) o'r Bil drafft. Mae cymal 3(2) yn darparu bod yr Atodlen hon, ynghyd ag Atodlen 7B newydd, yn cymryd lle Atodlen 7 i DLIC.
- 23 Mae Rhan 1 o Atodlen 7A yn rhestru'r cymalau cadw cyffredinol, ac mae Rhan 2 yn rhestru'r cymalau cadw penodol. Y materion a gedwir yn ôl a restrir yn yr Atodlen yw'r pynciau na all Deddf Cynulliad wneud darpariaeth yn ymwneud â hwy. Yn amodol ar y cyfyngiadau eraill ar gymhwysedd deddfwriaethol yn adran 108A, gall Deddf Cynulliad felly wneud darpariaeth ynglŷn â phynciau a restrir fel eithriadau yn yr Atodlen, neu bynciau nad ydynt wedi'u rhestru o gwbl.
- 24 Yn amodol ar yr eithriadau a restrir yno, mae'r cymalau cadw cyffredinol yn Rhan 1 yn

cynnwys y materion a ganlyn: y Cyfansoddiad, Gwasanaeth Sifil y Wladwriaeth, pleidiau gwleidyddol, awdurdodaeth gyfreithiol sengl Cymru a Lloegr a thribiwnlysoedd, materion tramor ac amddiffyn. Bwriedir i'r materion hyn gadw elfennau craidd uno Cymru a Lloegr a'r system gyfreithiol a rennir ganddynt, yn ogystal ag egwyddorion sylfaenol cyfansoddiad y Deyrnas Unedig.

- 25 Yn wahanol i Ran 1, mae Rhan 2 yn rhestru'r meysydd polisi mwy penodol sy'n faterion a gedwir yn ôl na all y Cynulliad ddeddfu arnynt. Mae paragraff 11 o Ran 2 yn darparu bod yr eithriadau a'r darpariaethau dehongli sydd wedi'u cynnwys dan bob mater a gedwir yn ôl yn berthnasol i'r adran honno yn unig ac nid i'r cymalau cadw yn fwy cyffredinol.
- 26 Yn gyffredinol, y cymalau cadw yn Rhannau 1 a 2 yw'r pynciau naill ai na chawsant eu trosglwyddo'n ffurfiol i'r Cynulliad gan Ran 1 o Atodlen 7 i DLIC, neu a restrir fel eithriadau. I'r gwrthwyneb, y pynciau sydd naill ai heb gael eu rhestru yn Rhannau 1 a 2 o Atodlen 7A, neu a restrir fel eithriadau, yw'r rhai a drosglwyddwyd yn ffurfiol gan Ran 1 o Atodlen 7 i DLIC. Mae Rhan 2 o Atodlen 7A hefyd yn rhoi sylw i'r argymhellion ar gyfer rhagor ddatganoli yn adroddiad Rhan II Comisiwn Silk yr oedd consensws gwleidyddol arnynt, ac a gafodd eu cynnwys yn y Cytundeb Dydd Gŵyl Dewi ar 28 Chwefror 2015.
- 27 Mae Rhan 3 o'r Atodlen yn gwneud darpariaeth gyffredinol yn ymwneud ag awdurdodau cyhoeddus Cymru, cymal cadw yr awdurdodau a restrir wrth eu henwau yn Rhan 2 o'r Atodlen, a dehongli'r Atodlen.

## **Atodlen 2: Atodlen 7B newydd i Ddeddf Llywodraeth Cymru 2006**

- 28 At ddibenion adran 108A(2)(d) newydd (fel y'i mewnosodwyd gan gymal 3(1) o'r Bil drafft), mae Rhan 1 o'r Atodlen hon yn amlinellu'r cyfngiadau cyffredinol ar gymhwysedd deddfwriaethol y Cynulliad; mae Rhan 2 yn nodi'r eithriadau cyffredinol i'r cyfngiadau cyffredinol hynny. Mae cymal 3(2) yn darparu bod yr Atodlen hon, ynghyd ag Atodlen 7A, yn cymryd lle Atodlen 7 i DLIC.
- 29 Mae paragraff 1(1) o'r Atodlen yn atal darpariaeth Deddf Cynulliad rhag addasu'r gyfraith ar faterion a gedwir yn ôl. Diffinnir y gyfraith ar faterion a gedwir yn ôl ym mharagraff 1(2) fel unrhyw ddeddfiad neu reolaeth cyfraith gyffredin gan Senedd y DU, y mae'r pwnc y mae'n ymwneud ag ef yn fater a gedwir yn ôl. Er bod Atodlen 7A wedi'i bwriadu er mwyn ymdrin â pharamedrau Deddfau Cynulliad yn y dyfodol, o ran materion a gedwir yn ôl na all y Cynulliad ddeddfu arnynt, bwriadwyd y cyfngiadau ym mharagraffau 1 a 2 o Atodlen 7B er mwyn amddiffyn y ddeddfwriaeth a'r gyfraith gyffredin bresennol sydd â'i phwnc yn fater a gedwir yn ôl.
- 30 Mae paragraff 2 yn cynnwys eithriad i baragraff 1 sydd mewn telerau tebyg iawn i'r eithriad yn adran 108A(3) newydd. Mae paragraff 2(1) yn darparu y gall darpariaeth Deddf Cynulliad addasu'r gyfraith ar faterion a gedwir yn ôl os yw addasiad o'r fath:
  - a. yn ategol (yn unol â'r diffiniad yn adran 108A(6) newydd) i ddarpariaeth nad yw'n ymwneud â materion a gedwir yn ôl, ac
  - b. yn cael dim mwy o effaith ar faterion a gedwir yn ôl nag sydd ei angen er mwyn gweithredu pwrrpas y ddarpariaeth honno.
- 31 Mae paragraff 2(2) yn egluro, wrth benderfynu "beth sydd ei angen" at ddibenion paragraff 2(1)(b), nad yw'n berthnasol y gallai Senedd y DU fod wedi gwneud y ddarpariaeth ei hun.
- 32 Bwriadwyd y cyfngiad mewn cysylltiad â chyfraith breifat ym mharagraff 3, ynghyd â'r cyfngiad mewn cysylltiad â chyfraith trosedd ym mharagraff 4, er mwyn darparu lefel gyffredinol o amddiffyniad i system gyfreithiol unedig Cymru a Lloegr, tra'n caniatáu rhywfaint o ryddid i'r Cynulliad addasu'r meysydd cyfreithiol hyn o fewn cyfngiadau'r

eithriadau yn y paragraffau hynny.

- 33 Diffinnir cyfraith breifat ym mharagraff 3(2). Y pynciau a nodwyd yw craidd cyfraith breifat yng Nghymru a Lloegr. Mae paragraff 3(3) yn egluro nad yw cyfraith eiddo'n cynnwys hawliau eiddo deallusol sy'n ymwneud â mathau o blanhigion neu hadau. Mae hyn oherwydd bod y pwnc hwn wedi cael ei ddatganoli'n barod gan baragraff 1 o Ran 1 o Atodlen 7 i DLIC. Dim ond i'r graddau y caniateir iddo wneud hynny gan baragraff 3(4) y bydd y Cynulliad yn gallu gwneud addasiadau i gyfraith breifat.
- 34 Mae paragraff 3(4) yn darparu y gall darpariaeth Deddf Cynulliad addasu cyfraith breifat os yw addasiad o'r fath:
  - a. yn angenrheidiol ar gyfer pwrrpas datganoledig neu'n ategol (yn unol â'r diffiniad yn adran 108A(6) newydd) i ddarpariaeth sydd â phwrrpas datganoledig, a
  - b. yn cael dim mwy o effaith ar gymhwysiad cyffredinol cyfraith breifat nag sydd ei angen er mwyn gweithredu'r pwrrpas hwnnw.
- 35 Mae paragraff 3(5) yn diffinio "pwrrpas datganoledig" at ddibenion paragraff 3(4)(a) fel un, ar wahân i addasu cyfraith breifat, nad yw'n ymwneud â mater a gedwir yn ôl. Mae'r geiriau "ar wahân i addasu cyfraith breifat" yn sicrhau, er y gallai materion datganoledig olygu bod angen addasiadau i gyfraith breifat y gellid dod â hwy o fewn eithriad paragraff 3(4), na chaniateir addasiadau at bwrrpas newid y gyfraith breifat ei hun. Er enghraifft, gallai addasiadau i gyfraith tenantiaeth fod ar gyfer pwrrpas datganoledig cartrefu, ond ni chaniateid addasiadau a fyddai'n ceisio cymhwys'o'n fwy cyffredinol i egwyddorion sylfaenol cyfraith contractau.
- 36 Mae'r geiriau "dim mwy o effaith ar gymhwysiad cyffredinol cyfraith breifat" ym mharagraff 3(4)(b) yn sicrhau amddiffyniad ar gyfer egwyddorion eang cyfraith breifat Cymru a Lloegr, ond nid ar draul caniatáu i'r Cynulliad ei haddasu, cyn belled nad yw addasiad o'r fath yn cael mwy o effaith nag sydd ei angen ar gymhwysiad cyffredinol cyfraith breifat.
- 37 Mae paragraff 3(6) yn egluro, wrth benderfynu "beth sydd ei angen" at ddibenion paragraff 3(4), nad yw'n berthnasol y gallai Senedd y DU fod wedi gwneud y ddarpariaeth ei hun.
- 38 Ni ddiffinnir cyfraith trosedd gan fod hynny'n egluro'i hun ond mae'n cynnwys addasu a chreu troseddau a chosbau newydd. Dim ond i'r graddau y caniateir iddo wneud hynny gan baragraff 4(2) y bydd y Cynulliad yn gallu gwneud addasiadau i gyfraith trosedd.
- 39 Mae paragraff 4(2) yn darparu y gall darpariaeth Deddf Cynulliad addasu cyfraith trosedd os yw addasiad o'r fath:
  - a. yn ategol (yn unol â'r diffiniad yn adran 108A(6)) i ddarpariaeth sydd â phwrrpas datganoledig, a
  - b. yn cael dim mwy o effaith ar gymhwysiad cyffredinol cyfraith trosedd nag sydd ei angen er mwyn gweithredu pwrrpas y ddarpariaeth honno.
- 40 Mae paragraff 4(3) yn egluro nad yw troseddau traffig ffordd wedi'u cynnwys yn eithriad paragraff 4(2) ac o ganlyniad na allant gael eu creu na'u haddasu gan ddarpariaeth Deddf Cynulliad mewn unrhyw amgylchiadau. Mae hyn oherwydd bod y pwnc hwn wedi cael ei eithrio'n ffurfiol o'r materion a drosglwyddwyd ym mharagraff 10 o Ran 1 o Atodlen 7 i DLIC. Bydd felly'n dal y tu allan i gymhwysedd.
- 41 Mae paragraff 4(4) yn diffinio "pwrrpas datganoledig" at ddibenion paragraff 4(2)(a) fel un, ar wahân i addasu cyfraith trosedd, nad yw'n ymwneud â mater a gedwir yn ôl. Fel y darpariaethau cyfraith breifat ym mharagraff 3(5), mae'r geiriau "ar wahân i addasu cyfraith

trosedd" yn sicrhau, er na all polisi datganoledig fod yn effeithiol heb ddarpariaethau gorfodi, na chaniateir addasiadau at bwrpas newid cyfraith trosedd ei hun. Er enghraift, byddai darpariaeth Deddf Cynulliad a fyddai'n ei gwneud yn ofynnol i landlordiaid gael eu trwyddedu yn ddarpariaeth â phwrpas datganoledig cartrefu. Yn dilyn hynny, gallai'r Ddeddf hefyd greu trosedd ar gyfer landlord heb drwydded, er mwyn gorfodi'r ddarpariaeth â'r pwrrpas datganoledig (gan fodloni'r diffiniad o "ategol" yn adran 108A(6) newydd). Yn wahanol i hyn, ni all Deddf Cynlluniad addasu trosedd sy'n sefyll ar ei phen ei hun oherwydd, yn yr achos hwnnw, ni fyddai'r addasiad i gyfraith trosedd yn ategol i ddarpariaeth ddatganoledig. Mae'r geiriau "dim mwy o effaith ar gymhwysiad cyffredinol cyfraith trosedd" ym mharagraff 4(2)(b) yn sicrhau, er nad yw elfennau sylfaenol cyfraith trosedd Cymru a Lloegr wedi cael eu datganoli, y gall y Cynulliad addasu rhannau o gyfraith trosedd, cyn belled nad yw addasiad o'r fath yn cael mwy o effaith nag sydd ei angen ar gymhwysiad cyffredinol cyfraith trosedd. Felly, gan gymryd yr enghraift uchod, er y gallai Deddf Cynulliad greu trosedd ar gyfer landlord heb drwydded, ni fyddai darpariaethau a fyddai'n ceisio cymhwys'o'n ehangach drwy addasu dedfrydu pob trosedd drwyddedu ar draws cyfraith trosedd, er enghraift, yn cael eu caniatáu.

- 42 Mae paragraff 4(5) yn egluro, wrth benderfynu "beth sydd ei angen" at ddibenion paragraff 4(2)(b), nad yw'n berthnasol y gallai Senedd y DU fod wedi gwneud y ddarpariaeth ei hun.
- 43 Mae paragraff 4(6) yn egluro bod paragraff 4 yn berthnasol i gosbau sifil yn ogystal â throseddau.
- 44 Mae paragraffau 5 a 6 yn darparu na all darpariaeth Deddf Cynulliad addasu darpariaethau penodol mewn deddfiadau penodol.
- 45 Mae paragraff 7 yn darparu na all darpariaeth Deddf Cynulliad addasu darpariaethau penodol yn DLIC ei hun.
- 46 Mae paragraff 8 yn darparu na all darpariaeth Deddf Cynulliad (oni bai bod y Gweinidog priodol yn rhoi caniatâd) ddileu, addasu, rhoi na gorfodi swyddogaethau awdurdodau a gedwir, nac addasu cyfansoddiad awdurdodau a gedwir.
- 47 Mae paragraff 8(2) yn diffinio "awdurdodau a gedwir" at ddibenion paragraff 8, fel:
  - a. Gweinidog y Goron neu un o adrannau'r llywodraeth;
  - b. unrhyw awdurdod cyhoeddus arall nad yw'n awdurdod cyhoeddus Cymreig.
- 48 Mae paragraff 8(3)(b) yn diffinio "awdurdod cyhoeddus Cymreig" at ddibenion paragraff 8, fel awdurdod cyhoeddus y mae ei swyddogaethau:
  - a. yn rhai y gellir eu cyflawni mewn cysylltiad â Chymru yn unig, a
  - b. yn gyfan gwbl neu'n bennaf, yn swyddogaethau nad ydynt yn ymwneud â materion a gedwir yn ôl.
- 49 Mae paragraff 8(3)(a) yn diffinio "awdurdod cyhoeddus" at ddibenion paragraff 8, fel corff sydd â swyddogaethau o natur gyhoeddus. Mae Prif Weinidog Cymru, Comisiwn y Cynulliad, y Cwnsler Cyffredinol a Gweinidogion Cymru wedi'u heithrio o'r diffiniad hwn er mwyn ei gwneud yn glir nad yw'r paragraff hwn yn berthnasol iddynt, hynny yw y gallai darpariaeth Deddf Cynulliad addasu eu swyddogaethau.
- 50 Mae paragraff 8(4) yn darparu, at ddibenion paragraff 8(3)(b)(i), er mwyn canfod a yw swyddogaethau awdurdod cyhoeddus yn rhai y gellir eu cyflawni mewn cysylltiad â Chymru yn unig, nad yw'n berthnasol ystyried swyddogaethau y gellir eu cyflawni heblaw mewn cysylltiad â Chymru ac a allai gael eu cynnwys mewn darpariaeth o fewn cymhwysedd

deddfwriaethol y Cynulliad.

- 51 Mae paragraff 8(5) yn diffinio ymhellach yr hyn sy'n cael ei gynnwys mewn cyfeiriadau at addasiadau i gyfansoddiad awdurdod.
- 52 Mae paragraff 8(6) yn darparu mai'r Gweinidog priodol at ddibenion paragraff 8(1) yw'r Ysgrifennydd Gwladol (yn ymarferol mae'n debyg mai Ysgrifennydd Gwladol Cymru fydd hwn), oni bai fod y swyddogaethau perthnasol yn ymwneud â Chyllid a Thollau Ei Mawrhydi ac os hynny y Trysorlys fydd y Gweinidog priodol.
- 53 Mae paragraff 9 yn darparu nad yw Rhan 1 o Atodlen 7B yn atal y Cynulliad rhag gallu ailddatgan y gyfraith. Fodd bynnag, mae paragraff 9(2) yn darparu bod y "gyfraith ar faterion a gedwir yn ôl" ym mharagraff 1 yn cynnwys unrhyw ailddatganiad o'r gyfraith ar faterion a gedwir yn ôl os yw pwnc yr ailddatganiad yn fater a gedwir yn ôl. Mae hyn yn sicrhau bod Senedd y DU yn gallu cydgrynhau neu godeiddio'r gyfraith heb fod angen Cynnig Cydsyniad Deddfwriaethol.
- 54 Mae paragraff 10 yn cynnwys darpariaeth er mwyn sicrhau nad yw'r cyfyngiadau yn Rhan 1 yn cyfyngu'n ddiangen ar gymhwysedd y Cynulliad i ddeddfu ynglŷn â'i weithdrefn is-ddeddfwriaethau ei hun.

## Pennod 4: Darpariaeth mewn cysylltiad â chymhwysedd deddfwriaethol newydd y Cynulliad

### Cymal 4: Pŵer i wneud darpariaeth yn ymwneud ag etholiadau

- 55 Mae is-adran (1) o Gymal 4 yn rhoi adran 13 newydd yn DLIC.
- 56 Mae is-adran (1) o adran 13 newydd yn rhoi i Weinidogion Cymru bŵer gwneud gorchmyntion i wneud darpariaeth ynglŷn â'r dull o gynnal etholiadau'r Cynulliad, cwestiynu etholiadau o'r fath a dychwelyd aelod Cynulliad mewn ffordd arall ar wahân i etholiad.
- 57 Mae is-adran (2) o adran 13 newydd yn egluro cwmpas pŵer Gweinidogion Cymru i wneud darpariaeth yn ymwneud â'r dull o gynnal etholiadau'r Cynulliad.
- 58 Mae is-adran (3) o adran 13 newydd yn nodi'n glir y bydd pŵer Gweinidogion Cymru i wneud darpariaeth ynglŷn â dychwelyd aelod Cynulliad mewn ffordd arall ar wahân i etholiad, yn cynnwys addasu adrannau 11(3) i (5) o DLIC 2006, sy'n ymwneud â'r weithdrefn i'w dilyn pan fydd sedd Cynulliad ranbarthol yn wag.
- 59 Mae is-adran (4) o adran 13 newydd yn egluro na all unrhyw ddarpariaeth a wneir dan adran 13(2)(a) newydd gynnwys darpariaeth yn ymwneud â'r Gwasanaeth Digidol a ddarperir gan Weinidog y Goron ar gyfer cofrestru etholwyr.
- 60 Mae is-adrannau (5) a (6) o adran 13 newydd yn ategu ac yn ymhelaethu ar gwmpas is-adran (1) ac yn rhoi i Weinidogion Cymru bwerau yn ymwneud â chymhwysyo ac addasu cyfraith etholiadol.
- 61 Mae is-adran (7) o adran 13 newydd yn darparu na ellir cwestiynu dychweliad aelod Cynulliad ac eithrio o dan Ran 3 (gweithdrefnau cyfreithiol) o Ddeddf Cynrychiolaeth y Bobl 1983, fel y mae'n cael ei chymhwysyo neu ei hymgorffori mewn gorchymyn o dan yr adran hon.
- 62 Mae is-adran (8) o adran 13 newydd yn darparu bod unrhyw orchymyn a wneir o dan yr adran hon yn ddarostyngedig i weithdrefn gadarnhaol y Cynulliad.
- 63 Mae is-adran (1) hefyd yn rhoi adran 13A newydd yn DLIC.

- 64 Mae is-adrannau (1) i (4) o adran 13A newydd yn rhoi i'r Ysgrifennydd Gwladol bŵer gwneud rheoliadau i wneud darpariaeth i gyfuno'r polau mewn rhai etholiadau Cynulliad â'r polau mewn rhai etholiadau i Senedd y DU a Senedd Ewrop. Rhaid i'r Ysgrifennydd Gwladol sicrhau bod Gweinidogion Cymru yn cytuno cyn gwneud unrhyw reoliadau o'r fath.
- 65 Mae is-adrannau (5) a (6) o adran 13A newydd yn ategu ac yn ymhelaethu ar y pŵer gwneud rheoliadau ac yn rhoi i'r Ysgrifennydd Gwladol bwerau sy'n ymwneud â chymhwysol addasu cyfraith etholiadol yn ogystal â phŵer i ddiwygio ffurflenni sydd wedi'u cynnwys yn y Deddfau Cynrychiolaeth y Bobl, neu sydd mewn rheoliadau neu reolau a wnaethpwyd o dan y deddfau hynny.
- 66 Mae is-adran (2) o'r cymal yn mewnosod is-adran 5C newydd yn adran 15 o Ddeddf Cynrychiolaeth y Bobl 1985, sy'n ei gwneud yn ofynnol i'r Ysgrifennydd Gwladol ymgynghori â Gweinidogion Cymru cyn gwneud rheolau cyfuno o dan adran 15(5), os yw un o'r etholiadau yn etholiad llywodraeth leol yng Nghymru.

### Cymal 5: Amseriad etholiadau

- 67 Mae cymal 5 yn ymwneud ag amseriad etholiadau'r Cynulliad ac etholiadau llywodraeth leol yng Nghymru ac yn atal etholiadau cyffredinol arferol y Cynulliad rhag cael eu cynnal ar yr un diwrnod ag etholiadau cyffredinol arferol i Senedd y DU, etholiadau cyffredinol i Senedd Ewrop ac etholiadau llywodraeth leol yng Nghymru.
- 68 Mae is-adran (3) yn rhoi i Weinidogion Cymru bŵer i newid dyddiad etholiadau cyffredinol arferol y Cynulliad pe byddent, fel arall, yn cael eu cynnal ar yr un dyddiad ag etholiad cyffredinol arferol Senedd y DU neu etholiad cyffredinol Senedd Ewrop. Mae is-adran (5) yn darparu bod unrhyw orchymyn a wneir gan ddefnyddio'r pŵer hwnnw yn ddarostyngedig i weithdrefn gadarnhaol y Cynulliad.
- 69 Mae is-adrannau (4) a (6) i (10) yn gwneud diwygiadau canlyniadol i adrannau 3 a 4 o DLIC.
- 70 Mae is-adrannau (11) i (13) yn mewnosod adran 37ZA newydd yn Neddf Cynrychiolaeth y Bobl 1983 fel na ellir cynnal etholiadau llywodraeth leol yng Nghymru ar yr un diwrnod ag etholiadau cyffredinol arferol y Cynulliad ac yn rhoi i Weinidogion Cymru bŵer i newid dyddiad etholiad llywodraeth leol yng Nghymru pe bai hynny'n digwydd fel arall.
- 71 Mae is-adrannau (14) i (16) yn diwygio adran 37B o Ddeddf Cynrychiolaeth y Bobl 1983 fel nad yw pŵer Gweinidogion Cymru i newid dyddiad etholiad llywodraeth leol yng Nghymru i'r un dyddiad ag etholiad cyffredinol Senedd Ewrop, yn berthnasol os yw dyddiad etholiad cyffredinol Senedd Ewrop yr un fath â dyddiad etholiad cyffredinol arferol y Cynulliad.

### Cymal 6: Cofrestru etholiadol: y Gwasanaeth Digidol

- 72 Mae is-adrannau (1) i (4) o gymal 6 yn diwygio adran 53 o Ddeddf Cynrychiolaeth y Bobl 1983 i ddarparu ar gyfer pŵer i wneud rheoliadau yn ymwneud â'r Gwasanaeth Digidol, mewn cysylltiad â chofrestru ar gyfer etholiadau Cynulliad ac etholiadau llywodraeth leol yng Nghymru. Caiff y pŵer hwn ei ddefnyddio gan Weinidogion Cymru ar y cyd â'r Ysgrifennydd Gwladol, ac ni chaiff Gweinidogion Cymru ei ddefnyddio oni bai bod yr Ysgrifennydd Gwladol yn cytuno.
- 73 Mae is-adran (5) yn gwneud diwygiadau canlyniadol i is-adran (13) o adran 53, er mwyn i rai gofynion a phwerau fod yn berthnasol i Weinidogion Cymru, wrth iddynt gyflawni'r swyddogaeth hon.

## Cymal 7: Ymyrryd os bydd effaith niweidiol ddifrifol ar wasanaethau carthffosiaeth etc

- 74 Nid oedd cymhwysedd deddfwriaethol ar gyfer carthffosiaeth wedi'i drosglwyddo i'r Cynulliad o'r blaen, a bydd yn cael ei ddatganoli fel y nodwyd yng nghymal cadw C16 yn Atodlen 1 i'r Bil drafft. Mae cymal 7 yn diwygio adran 114 o DLIC drwy ychwanegu pŵer ymyrryd newydd dros gymhwysedd y Cynulliad i basio Deddf Cynulliad yn ymwneud â charthffosiaeth. Mae'r pŵer ymyrryd hwn yn galluogi'r Ysgrifennydd Gwladol i wneud gorchymyn yn gwahardd y Llywydd rhag cyflwyno Bil ar gyfer Cydsyniad Brenhinol os oes gan yr Ysgrifennydd Gwladol sail resymol dros gredu y gallai'r Bil, pe bai'n dod yn Ddeddf Cynulliad yn y ffurf honno, gael effaith niweidiol ddifrifol ar wasanaethau carthffosiaeth yn Lloegr neu ar systemau carthffosiaeth yn Lloegr. Mae'r pŵer ymyrryd hwn yn debyg i un sydd gan yr Ysgrifennydd Gwladol yn barod mewn cysylltiad â datganoli materion sy'n ymwneud â dŵr.
- 75 Mae cymal 7 yn diwygio adran 152 o DLIC drwy ychwanegu pŵer ymyrryd newydd dros swyddogaethau gweithredol. Mae'r pŵer ymyrryd hwn yn galluogi'r Ysgrifennydd Gwladol i ymyrryd mewn cysylltiad ag unrhyw swyddogaeth y gellir ei chyflawni gan Weinidogion Cymru, Prif Weinidog Cymru neu'r Cwnsler Cyffredinol neu unrhyw swyddogaeth a drosglwyddwyd gan Fesur Cynulliad neu Ddeddf Cynulliad, os yw'n ymddangos i'r Ysgrifennydd Gwladol y gallai cyflawni swyddogaeth berthnasol (neu beidio â chyflawni swyddogaeth berthnasol) gael effaith niweidiol ddifrifol ar wasanaethau carthffosiaeth yn Lloegr neu ar systemau carthffosiaeth yn Lloegr. Mewn achos o'r fath ni chaiff y sawl a oedd â'r pŵer i gyflawni'r swyddogaeth gyflawni'r swyddogaeth honno, a chaiff yr Ysgrifennydd Gwladol gyflawni'r swyddogaeth yn ei le. Mae'r pŵer ymyrryd hwn yn debyg i un sydd gan yr Ysgrifennydd Gwladol yn barod mewn cysylltiad â datganoli materion sy'n ymwneud â dŵr.

## Cymal 8: Trwyddedu petrolewm ar y tir

- 76 Mae cymal 8 yn trosglwyddo i Weinidogion Cymru swyddogaethau gweithredol penodol sy'n cael eu cyflawni ar hyn o bryd gan yr Ysgrifennydd Gwladol mewn perthynas â thrwyddedu petrolewm ar y tir yn ardal glannau Cymru (a ddiffinnir mewn adran 8B newydd i'w mewnosod gan adran 17(7) fel y rhan honno o Gymru sydd tua'r tir o'r "waelodlin")<sup>1</sup>
- 77 Mae is-adran (2) yn mewnosod paragraff (aa) newydd yn is-adran (5) o adran 3 o Ddeddf Petrolewm 1998. Mae is-adran (5) ei hun yn cael ei mewnosod yn adran 5 o'r Ddeddf Petrolewm gan Fil yr Alban, sydd gerbron y Senedd ar hyn o bryd. Mae'r paragraff (aa) newydd yn diffinio'r "Gweinidog priodol" ar gyfer rhoi trwyddedau i chwilio a thyllu am betrolewm, a chael petrolewm, fel Gweinidogion Cymru mewn cysylltiad ag ardal glannau Cymru.
- 78 Mae is-adran (3)(a) yn diwygio is-adrannau (1A) ac (1B) o adran 4 o Ddeddf Petrolewm 1998 (sydd hefyd yn cael eu mewnosod yn y Ddeddf Petrolewm gan Fil yr Alban). Effaith y diwygiadau i'r is-adrannau hyn yw cadw, i'r Ysgrifennydd Gwladol, bwerau rheoleiddio i wneud cymalau engrheifftiol mewn perthynas â'r swm sy'n daladwy am drwydded a roddir gan Weinidogion Cymru yn ogystal ag: (a) mesur a hwyluso'r gwaith o fesur faint o betrolewm a gafwyd o'r ardaloedd trwyddedig a (b) cadw cyfrifon. Nid yw pwerau

1 yn unol â'r diffiniad yng Ngorchymyn Moroedd Tiriogaethol (Gwaelodlinau) 2014 neu mewn unrhyw Orchymyn dilynol.

Gweinidogion Cymru, felly, yn ymestyn i ddrafftio cymalau engrheifftiol ar y materion uchod nac addasu neu eithrio cymalau o'r fath.

- 79 Mae is-adran (3)(b) yn mewnosod is-adran (3B) newydd yn adran 4 o Ddeddf Petrolewm 1998 i sefydlu y bydd unrhyw reoliadau o dan adran 4 a wneir gan Weinidogion Cymru yn cael eu gwneud fel offerynnau statudol ond y gallent gael eu dirymu yn dilyn penderfyniad a wneir gan y Cynulliad.
- 80 Mae is-adran (3)(c) yn mewnosod is-adran (4B) newydd yn adran 4 o Ddeddf Petrolewm 1998 sy'n ei gwneud yn ofynnol i Weinidogion Cymru gyhoeddi hysbysiadau o drwyddedau a roddwyd ganddynt ar gyfer ardal glannau Cymru yn y London Gazette.
- 81 Mae is-adran (4) yn diwygio adran 4A o Ddeddf Petrolewm 1998, i drosglwyddo swyddogaethau sy'n ymwneud â chaniatadau holli hydrolig oddi wrth yr Ysgrifennydd Gwladol i "Weinidogion Cymru" mewn cysylltiad â ffynhonnau yn ardal glannau Cymru. Mae'r swyddogaethau hyn yn cynnwys yr amodau sy'n rheoleiddio'r broses o roi caniatadau o'r fath gan yr Ysgrifennydd Gwladol neu gan Weinidogion Cymru.
- 82 Mae is-adran (5) yn diwygio adran 4B o Ddeddf Petrolewm 1998, sy'n cynnwys darpariaeth bellach yn ymwneud â rhoi caniatadau holli hydrolig. Mae paragraffau (a) a (b) o is-adran (5) yn diwygio is-adrannau (4)(a), (4)(b) a (7) o adran 4B i gyfyngu pŵer yr Ysgrifennydd Gwladol i wneud rheoliadau drwy gyfrwng offeryn statudol, o ran y disgrifiadau o ardaloedd sydd yn "ardaloedd tarddiad dŵr daear gwarchodedig" ac o ran y rhai hynny sydd yn "ardaloedd gwarchodedig eraill", i ardal glannau Lloegr (a ddiffinnir mewn adran 8C newydd i'w mewnosod gan adran 16(7) fel Lloegr gan gynnwys dyfroedd y tu mewn i'r "waelodlin" a ddefnyddir i bennu maint môr tiriogaethol). Mae'r is-adrannau, fel y'u diwygiwyd, yn ei gwneud yn ofynnol i'r Ysgrifennydd Gwladol ymgynghori ag Asiantaeth yr Amgylchedd.
- 83 Mae paragraff (c) yn mewnosod is-adrannau (7A), (7B) a (7C) newydd yn adran 4B o Ddeddf Petrolewm 1998 i ddarparu'r pŵer i Weinidogion Cymru wneud rheoliadau drwy gyfrwng offeryn statudol yn ymwneud â'r disgrifiadau o ardaloedd sy'n "ardaloedd tarddiad dŵr daear gwarchodedig" ac "ardaloedd gwarchodedig eraill" i'r graddau y mae'r rhain yn berthnasol i ardal glannau Cymru. Rhaid i unrhyw offeryn drafft gael ei roi gerbron y Cynulliad a chael ei gymeradwyo drwy benderfyniad gan y Cynulliad cyn y gellir gwneud offeryn statudol o'r fath. Mae'n ofynnol i Weinidogion Cymru ymgynghori â Chorff Adnoddau Naturiol Cymru cyn gwneud rheoliadau o'r fath.
- 84 Mae paragraff (d) yn diwygio is-adran (8) i nodi mai Asiantaeth yr Amgylchedd yw'r rheoleiddiwr amgylcheddol perthnasol ar gyfer ffynhonnau yn ardal glannau Lloegr ac mai Corff Adnoddau Naturiol Cymru yw'r rheoleiddiwr amgylcheddol perthnasol ar gyfer ffynhonnau yn ardal glannau Cymru. Mae'r is-adrannau hefyd yn cysoni'r diffiniad o ganiatâd ffynnon i adlewyrchu datganoli caniatadau o'r fath i'r "Gweinidog priodol".
- 85 Mae paragraff (e) yn cyfyngu pŵer yr Ysgrifennydd Gwladol yn is-adran (9) o adran 4B i ddiwygio'r diffiniad o "drwydded glannau ar gyfer Cymru a Lloegr" o ganlyniad i reoliadau a wnaethpwyd o dan adran 4. Felly, os bydd y diwygiad yn cael ei wneud, bydd yr Ysgrifennydd Gwladol ddim ond yn gallu diwygio'r diffiniad fel y mae'n berthnasol i ardal glannau Lloegr, a dim ond ar ôl i'r Ysgrifennydd Gwladol ddefnyddio'r pŵer yn adran 4 o'r Ddeddf Petrolewm y bydd ef ei hun yn gallu defnyddio'r pŵer (ac nid ar ôl i Weinidogion Cymru ddefnyddio'r un pŵer).
- 86 Mae paragraff (f) yn mewnosod is-adran (9A) yn adran 4B i ddarparu pŵer cyfatebol i'r un yn is-adran (9) (fel y'i diwygiwyd gan baragraff (e)) i Weinidogion Cymru.

- 87 Mae paragraff (g) yn diwygio is-adran 4B(10) i gyfyngu pŵer yr Ysgrifennydd Gwladol i wneud diwygiadau mewn cysylltiad â'r gofynion i'w cyflawni cyn rhoi caniatâd holttî hydrolig, a amlinellir yng Ngholofn 2 o'r tabl yn adran 4A, i ardal glannau Lloegr.
- 88 Mae paragraff (h) yn mewnosod is-adrannau (12) ac (13) yn is-adran 4B. Mae is-adran (12) yn darparu pŵer i Weinidogion Cymru ddiwygio drwy reoliadau y gofynion a amlinellir yng Ngholofn 2 o'r tabl yn adran 4A i'r graddau y maent yn ymwneud ag ardal glannau Cymru. Rhaid i offeryn drafft gael ei roi gerbron, a chael ei gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru, cyn y gellir gwneud offeryn statudol o'r fath (gweler is-adran (13) newydd).
- 89 Mae is-adran (6) o gymal 8 yn diwygio is-adran 7(2)(d) o Ddeddf Petrolewm 1998, sy'n pennu effeithiau Deddf Mwynfeydd (Cyfleusterau Gweithio a Dal Pwysau) 1966 pan gymhwysir hi i drwyddedu o dan Ddeddf Petrolewm 1998, drwy nodi y bydd "y Gweinidog", yn adran 4 o'r Ddeddf honno, yn cyfeirio at Weinidogion Cymru ar gyfer trwyddedau a roddir yn ardal glannau Cymru.
- 90 Mae is-adran (7) yn mewnosod adrannau 8B ac 8C newydd yn Neddf Petrolewm 1998 ar ôl adran 8A (sy'n cael ei mewnosod gan Fil yr Alban). Mae adran 8B newydd yn diffinio "ardal glannau Cymru" fel yr ardal o Gymru (gan gynnwys y môr tiriogaethol sy'n gyfagos i Gymru) sydd o fewn y gwaelodlinau a nodir gan unrhyw Orchymyn yn y Cyfrin Gyngor o dan adran 1(1)(b) o Ddeddf Moroedd Tiriogaethol 1987 (estyniad môr tiriogaethol).
- 91 Mae adran 8C newydd yn diffinio "ardal glannau Lloegr" fel yr ardal o Loegr a'r dyfroedd tiriogaethol cyfagos i Loegr sydd o fewn y gwaelodlinau a nodir gan unrhyw Orchymyn yn y Cyfrin Gyngor o dan adran 1(1)(b) o Ddeddf Moroedd Tiriogaethol 1987 (estyniad môr tiriogaethol).
- 92 Mae is-adran (8) yn mewnosod is-adran (13) newydd yn adran 188 o Ddeddf Ynni 2004 i briodoli, i Weinidogion Cymru, bwerau i wneud darpariaethau a fydd yn ei gwneud yn ofynnol i daliadau gael eu gwneud iddynt mewn cysylltiad â'r swyddogaethau ynni perthnasol a gyflawnir ganddynt o dan Ran 1 o Ddeddf Petrolewm 1998. Rhaid i'r symiau a dderbynir o dan daliadau o'r fath gael eu talu gan Weinidogion Cymru i Gronfa Gyfunol Cymru. Bydd y darpariaethau i'w gwneud yn ofynnol i daliadau o'r fath gael eu talu'n cael eu hamlinellu drwy gyfrwng offerynnau statudol, ond gallent gael eu dirymu yn dilyn penderfyniad gan Gynulliad Cenedlaethol Cymru.
- 93 Mae is-adran (9)(a) yn diwygio adran 12(1A)(a)(ii) o Ddeddf Trethu Olew 1975 i gynnwys Gweinidogion Cymru yn dirymu trwydded yn y rhestr o ddigwyddiadau terfynu sy'n golygu bod person yn peidio â bod yn drwyddedai mewn cysylltiad â meysydd olew.
- 94 Mae is-adran (9)(b) yn diwygio paragraff 1(2) o Atodlen 1 i Ddeddf Trethu Olew 1975 drwy fewnosod paragraffau newydd (ac) ac (ad) ar ôl paragraffau (aa) ac (ab) (sy'n cael eu mewnosod gan Fil yr Alban). Mae'r paragraffau newydd hyn yn cyfyngu pwerau'r Ysgrifennydd Gwladol ar gyfer pennu meysydd olew i'r ardaloedd hynny lle byddai'r gwaith o roi trwydded ynddynt, o dan Ran 1 o Ddeddf Petrolewm 1998, yn disgyn yn gyfan gwbl i'r Ysgrifennydd Gwladol. Mewn ardaloedd lle byddai'r gwaith o roi trwydded ynddynt yn disgyn yn gyfan gwbl i Weinidogion Cymru, byddant hwy'n dod yn awdurdod priodol ar gyfer pennu meysydd olew. Mewn ardaloedd lle byddai'r gwaith o roi trwyddedau'n disgyn yn rhannol i'r Ysgrifennydd Gwladol ac yn rhannol i Weinidogion Cymru, bydd y rhain yn gweithredu ar y cyd at ddibenion pennu meysydd olew.
- 95 Mae is-adran (10)(a) yn diwygio rheoliad 2 o Reoliadau Petrolewm (Cynhyrchu)(Ardaloedd Tua'r Tir) 1995 i gyflwyno diffiniad o "ardal glannau Cymru" sy'n unol â'r diffiniad yn adran 8B o Ddeddf Petrolewm 1998.

96 Mae is-adran (10)(b) yn diwygio rheoliad 3 o Reoliadau Petrolewm (Cynhyrchu)(Ardaloedd Tua'r Tir) 1995 i eithrio ardal glannau Cymru fel nad yw'r Rheoliadau'n berthnasol iddi, o ran ceisiadau am drwydded. Mae'r Rheoliadau'n dal yn berthnasol i ardal glannau Cymru o ran cymalau enghreifftiol.

### Cymal 9: Petrolewm ar y tir: trwyddedau sy'n bodoli'n barod

- 97 Mae cymal 9 yn darparu pwerau i'r Ysgrifennydd Gwladol wneud diwygiadau i ddarpariaethau a chymalau enghreifftiol trwyddedau a oedd yn bodoli cyn cychwyn y pwerau trwyddedu olew a nwy datganoledig. Mae'r pŵer ychwanegol hwn wedi'i gyfyngu i'r trwyddedau hynny sy'n bodoli'n barod yn ardal glannau Cymru.
- 98 Mae is-adran (1) yn darparu pŵer i'r Ysgrifennydd Gwladol wneud diwygiadau i ddarpariaethau trwydded sy'n bodoli'n barod ac i'r cymalau enghreifftiol sydd wedi'u hymgorffori ynddi neu sy'n cael yr un effaith â phe baent wedi'u hymgorffori mewn trwydded o'r fath sy'n bodoli'n barod.
- 99 Mae is-adran (2) yn nodi bod y pŵer i wneud diwygiadau, a roddwyd i'r Ysgrifennydd Gwladol drwy is-adran (1), i gael ei ddefnyddio dim ond os bernir bod angen ei ddefnyddio, neu y byddai'n fuddiol ei ddefnyddio, naill ai o ganlyniad i ddatganoli cymhwysedd deddfwriaethol dros drwyddedu olew a nwy ar y tir (fel a grybwyllyd yn yr eithriadau yn Adran D2 o Ran 2 o Atodlen 7A i DLIC neu o ganlyniad i ddatganoli swyddogaethau gweithredol, fel y'u nodir yng nghymal 8.
- 100 Mae is-adran (3) yn darparu pŵer i'r Ysgrifennydd Gwladol ddatgan, os oedd trwydded yn ardal glannau Cymru yn rhannol yn unig ar yr adeg y rhoddwyd hi, y gall y drwydded hon gael effaith fel un drwydded yn ardal glannau Cymru ac fel trwydded ar wahân yn yr ardal y tu allan i ardal glannau Cymru. Mae pŵer yr Ysgrifennydd Gwladol i wneud diwygiadau angenrheidiol i drwyddedau sy'n bodoli'n barod ac i'r cymalau enghreifftiol sydd ynddynt neu sy'n cael yr un effaith â phe baent ynddynt yn cael ei ymestyn i drwyddedau o'r fath.
- 101 Mae is-adran (4) yn nodi bod y pŵer i wneud diwygiadau i'r cymalau enghreifftiol, a ddarperir gan is-adran (1)(a) i'w weithredu drwy reoliadau a wneir drwy offeryn statudol. (Nid oes angen i'r pŵer i wneud diwygiadau i ddarpariaethau eraill mewn trwyddedau sy'n bodoli'n barod, a ddarparwyd gan is-adran (1)(b), gael ei weithredu drwy reoliadau.)
- 102 Mae is-adran (5) yn nodi y gallai unrhyw offerynnau statudol o'r fath, sy'n cynnwys rheoliadau i wneud diwygiadau i drwyddedau sy'n bodoli'n barod, gael eu dirymu yn dilyn penderfyniad gan Dŷ'r Cyffredin neu Dŷ'r Arglwyddi.
- 103 Mae is-adran (6) yn diffinio "trwyddedau sy'n bodoli'n barod" fel y trwyddedau hynny a roddwyd o dan adran 3 o Ddeddf Petrolewm 1998 neu o dan adran 2 o Ddeddf Petrolewm (Cynhyrchu) 1934 cyn cychwyn datganoli pwerau trwyddedu i Weinidogion Cymru ar gyfer "ardal glannau Cymru", fel y'i diffinnir gan Adran D2 o Ran 2 o Atodlen 7A i DLIC.

### Cymal 10: Terfynau cyflymder

- 104 O ganlyniad i ddatganoli bron yr holl bwerau i ddeddfu ar gyfer terfynau cyflymder yng Nghymru i Weinidogion Cymru, mae cymal 10 yn trosglwyddo swyddogaethau perthnasol yr Ysgrifennydd Gwladol i Weinidogion Cymru mewn perthynas â ffyrdd yng Nghymru.
- 105 Mae'r cymal hwn yn diwygio'r darpariaethau a ganlyn yn Nedd Rheoleiddio Traffig Ffyrdd 1984:-
- 106 Adran 17 (rheoleiddio traffig ar ffyrdd arbennig) i:
- alluogi Gweinidogion Cymru i ddefnyddio'r pŵer i wneud rheoliadau yn ymwneud â ffordd arbennig benodol yng Nghymru;

- b. galluogi Gweinidogion Cymru i ddefnyddio'r pŵer i wneud rheoliadau sy'n rheoleiddio cyflymder cerbydau ar ffyrdd arbennig yng Nghymru cyn gwneud rheoliadau o dan is-adran (2) sy'n ei gwneud yn ofynnol i Weinidogion Cymru ymgynghori ag Awdurdod y Parc Cenedlaethol ar gyfer unrhyw Barc Cenedlaethol a fyddai'n cael ei effeithio gan y rheoliadau.

107 Adran 81 (terfyn cyflymder cyffredinol ar gyfer ffyrdd cyfyngedig) i:

- a. alluogi'r awdurdod cenedlaethol 2 i ddefnyddio'r pŵer drwy orchymyn i godi neu ostwng terfyn cyflymder ar gyfer cerbydau modur ar ffyrdd cyfyngedig;
- b. darparu bod unrhyw orchymyn o'r fath a wneir gan Weinidogion Cymru yn ddarostyngedig i'r weithdrefn gadarnhaol.

108 Adran 83 (darpariaethau yn ymwneud â chyfarwyddiadau gan awdurdod traffig o dan adran 82(2), i ddarparu bod yn rhaid i unrhyw gyfarwyddyd gan yr awdurdod cenedlaethol o dan adran 82(2) (fel yr awdurdod traffig ar gyfer ffordd) gael ei wneud drwy orchymyn ar ôl cyflwyno hysbysiad cyhoeddus.

- a. Caiff y pŵer i Weinidogion Cymru wneud y gorchymyn o dan 83(1) ei weithredu drwy offeryn statudol

109 Adran 85 (arwyddion traffig ar gyfer dangos cyfyngiadau cyflymder), i:

- a. roi i'r awdurdod cenedlaethol y ddyletswydd, yn achos ffordd y mae'n awdurdod traffig ar ei chyfer, i godi a chynnal a chadw arwyddion traffig;
- b. galluogi'r awdurdod cenedlaethol i ddefnyddio'r pwerau i roi cyfarwyddiadau cyffredinol neu gyfarwyddiadau eraill i awdurdodau traffig lleol mewn cysylltiad â chodi, cynnal a chadw, addasu neu dynnu arwyddion traffig;
- c. galluogi'r awdurdod cenedlaethol i ddefnyddio'r pwerau diofyn i gyflawni gwaith sy'n ymwneud ag arwyddion traffig o ganlyniad i unrhyw fethiant gan awdurdod traffig lleol i gydymffurfio â chyfarwyddiadau ac i adennill costau gwneud hynny gan yr awdurdod traffig perthnasol;
- d. darparu y bydd pŵer Gweinidogion Cymru i roi cyfarwyddiadau cyffredinol yn cael ei ddefnyddio drwy offeryn statudol Cymreig; ac
- e. ei gwneud yn ofynnol i Weinidogion Cymru a'r Ysgrifennydd Gwladol ymgynghori a'i gilydd cyn defnyddio eu hawliau i roi cyfarwyddiadau cyffredinol.

110 Adran 88 (cyfyngiadau cyflymder dros dro), i:

- a. (8A) ddarparu bod y gorchymyn cyntaf a fydd yn cael ei wneud o dan is-adran (1)(b) gan Weinidogion Cymru yn ddarostyngedig i'r weithdrefn gadarnhaol
- b. (11A) darparu bod pŵer Gweinidogion Cymru i wneud gorchymyn o dan is-adran (4) yn cael ei ddefnyddio drwy offeryn statudol
- c. (11B) darparu bod unrhyw orchymyn o'r fath a wneir o dan is-adran (4) gan Weinidogion Cymru yn ddarostyngedig i'r weithdrefn negyddol

2 Yn y Rhan hon ystyr "awdurdod cenedlaethol"—

(a) mewn perthynas â ffyrdd yn Lloegr, yw'r Ysgrifennydd Gwladol;  
 (b) mewn perthynas â ffyrdd yng Nghymru, yw Gweinidogion Cymru;  
 (c) mewn perthynas â ffyrdd yn yr Alban, yw Gweinidogion yr Alban

111 Adran 134 (rheoliadau), i:

- a. Ddarparu'r weithdrefn ar gyfer Gweinidogion Cymru sy'n gwneud rheoliadau o dan adran 17 neu Ran 6

112 Adran 142(1) (dehongliad cyffredinol), i:

- a. Ddarparu eithriad i'r diffiniad o awdurdod cenedlaethol yn Rhan 6

113 Mae'r cymal hwn yn dileu'r cyfeiriad at Ddeddf Rheoleiddio Traffig Ffyrdd 1984 yn Atodlen 2 i Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (OS 1999/672) o ganlyniad i'r diwygiadau a wnaethpwyd ganddo.

### Cymal 11: Comisiynwyr Traffig

114 O ganlyniad i ddatganoli cofrestru llwybrau bysiau mae cymal 11 yn diwygio adran 4C o Ddeddf Cerbydau Teithwyr Cyhoeddus 1981 fel nad yw pŵer yr uwch gomisiynydd traffig i roi arweiniad neu gyfarwyddiadau cyffredinol i gomisiynwyr traffig eraill yn berthnasol mewn perthynas â materion Cymreig a ddatganolwyd. Mae hyn yn adlewyrchu'r sefyllfa sy'n bodoli'n barod yn yr Alban lle na all yr uwch gomisiynydd traffig roi arweiniad na chyfarwyddiadau mewn perthynas â materion sydd wedi'u datganoli yn yr Alban.

### Cymal 12: Tacsis: trosglwyddo rhai swyddogaethau i Weinidogion Cymru

115 O ganlyniad i ddatganoli i Lywodraeth Cymru bwerau i ddeddfu ar gyfer trwyddedu tacsis a cherbydau hurio preifat, trwyddedu gyrwyr tacsis a cherbydau hurio preifat a thrwyddedu gweithredwyr cerbydau hurio preifat, mae'r cymal hwn yn trosglwyddo swyddogaethau'r Ysgrifennydd Gwladol yn adran 10 o Ddeddf Trafnidiaeth 1985 (hurio tacsis ar unwaith â thaliadau ar wahân) i Weinidogion Cymru.

### Cymal 13: Trosglwyddo swyddogaethau gweithredol yn ymwneud â harbyrau Cymru

116 Mae cymal 13 yn trosglwyddo i Weinidogion Cymru swyddogaethau gweithredol sy'n ymwneud ag adeiladu, gweithredu a rheoli harbyrau, dociau, pierau a glanfeydd yng Nghymru nad ydynt wedi'u datganoli'n barod, ar wahân i borthladdoedd ymddiriedolaeth a gedwir sy'n cael eu diffinio yng nghymal 14. Mae'r swyddogaethau sydd wedi cael eu datganoli o'r blaen yn ymwneud yn bennaf â harbyrau pysgodfeydd.

117 Mae is-adran (2) yn nodi'r swyddogaethau sydd i'w trosglwyddo o dan Ddeddf Harbyrau 1964, Deddf Dociau a Harbyrau 1966, Deddf Porthladdoedd (Cyllid) 1985, Deddf Peilotiaeth 1987 a Deddf Porthladdoedd 1991.

118 Mae is-adran (3) yn trosglwyddo i Weinidogion Cymru swyddogaethau yn is-adran (2) sy'n ymwneud â dau neu ragor o harbyrau dim ond i'r graddau bod yr harbyrau ill dau (neu i gyd) yng Nghymru ac nad ydynt yn borthladdoedd ymddiriedolaeth a gedwir.

119 Mae is-adran (4) yn darparu bod Rhan 2 o Atodlen 3 i DLIC yn berthnasol i drosglwyddo swyddogaethau a drosglwyddwyd o dan is-adran (1) fel y mae'n berthnasol i drosglwyddiad swyddogaethau a wnaethpwyd drwy Orchymyn yn y Cyfrin Gyngor o dan adran 58 o DLIC.

120 Mae is-adrannau (5) i (11) yn gwneud diwygiadau canlyniadol i Ddeddf Harbyrau 1964.

121 Mae is-adran (12) yn gwneud diwygiad canlyniadol i Ddeddf Porthladdoedd 1991.

### Cymal 14: Harbyrau Cymru: porthladdoedd ymddiriedolaeth a gedwir

122 Mae cymal 14 yn diffinio porthladd ymddiriedolaeth a gedwir fel harbwr, doc, pier neu lanfa sydd ar y dyddiad y daw cymal 3 i rym yn eiddo i awdurdod porthladd perthnasol, neu'n cael

ei reoli gan awdurdod porthladd perthnasol, yn unol â'r diffiniad yn adran 1 o Ddeddf Porthladdoedd 1991, sy'n bodloni'r gofyniad trosiant blynnyddol a nodir yn adran 11 o'r Ddeddf Porthladdoedd (fel y'i haddaswyd ychydig i gyfeirio at flynyddoedd cyfrifyddu y cyflwynwyd cyfrifon ar eu cyfer i'r Ysgrifennydd Gwladol).

### Cymal 15: Harbyrau Cymru: caniatâd datblygu

123 Mae cymal 15 yn diwygio adran 24 o Ddeddf Cynllunio 2008, mewn perthynas â chaniatâd datblygu ar gyfer adeiladu neu addasu cyfleusterau harbwr, drwy dynnu cyfleusterau harbwr yng Nghymru neu mewn dyfroedd sy'n gyfagos i Gymru o gwmpas y trefniadau caniatâd datblygu, ac eithrio lle y mae'r cyfleusterau harbwr yn borthladd ymddiriedolaeth a gedwir, neu'n rhan o borthladd o'r fath.

### Cymal 16: Harbyrau ar draws ffiniau: pŵer i wneud rheoliadau

124 Mae cymal 16 yn creu pŵer newydd i'r Ysgrifennydd Gwladol wneud rheoliadau yn ymwneud â chyflawni unrhyw swyddogaethau a drosglwyddwyd i Weiridogion Cymru o dan gymalau [13] ac [15] mewn cysylltiad â harbyrau sydd ddim ond yn rhannol yng Nghymru (gan gynnwys dyfroedd cyfagos i Gymru).

### Cymal 17: Caniatâd cynllunio ar gyfer gorsafoedd cynhyrchu â chapasiti o 350MW neu lai

125 Mae cymal 17 yn gweithredu'r bwriad polisi i ddatganoli i Gymru y cyfrifoldeb o ganiatáu cynlluniau datblygu ynni ar gyfer prosiectau hyd at a chan gynnwys 350MW ar y tir ac yn nyfroedd tiriogaethol Cymru.

126 Is-adrannau (1)-(5) - Effaith gyfunol yr is-adrannau hyn yw datgymhwys o pŵer yr Ysgrifennydd Gwladol o dan Ddeddf Cynllunio 2008 ("Deddf 2008") i roi caniatâd datblygu ar gyfer pob gorsaf gynhyrchu trydan yng Nghymru ac yn nyfroedd tiriogaethol Cymru i'r graddau nad yw capasiti prosiectau o'r fath (heb gynnwys gorsafoedd cynhyrchu trydan sy'n defnyddio ynni gwynt ar y tir) yn fwy na 350MW, ac ar gyfer pob gorsaf gynhyrchu trydan sy'n defnyddio ynni gwynt ar y tir.

127 Is-adrannau (6)-(8) - Byddai'r datgymhwys o is-adrannau (1)-(5) fel arall yn gadael i benderfyniadau yn ymwneud â chaniatâd ar gyfer gorsafoedd cynhyrchu trydan gael eu gwneud yn unol ag adran 36 o Ddeddf Trydan 1989. Effaith gyfunol is-adrannau (6)-(8) yw dileu gofynion adran 36 o Ddeddf Trydan 1989 i'r graddau y maent yn ymwneud â gorsafoedd cynhyrchu trydan hyd at a chan gynnwys 350MW yng Nghymru ac mewn dyfroedd tiriogaethol yng Nghymru.

### Cymal 18: Cysoni caniatadau datblygu cysylltiedig

128 Mae cymal 18 yn gweithredu argymhelliaid Comisiwn Silk, y rhoddwyd sylw iddo yng Nghytundeb Dydd Gŵyl Dewi, y dylai'r cyfrifoldeb am roi caniatâd i ddatblygiadau cysylltiedig ar gyfer prosiectau ynni fod yn gyson â'r cyfrifoldeb am roi caniatâd ar gyfer y prif brosiect.

129 Ar hyn o bryd rhoddir caniatâd cynllunio i brosiectau cynhyrchu ynni sydd dros 50 megawat drwy Orchymyn Caniatâd Datblygu a wneir gan yr Ysgrifennydd Gwladol o dan y trefniadau ar gyfer prosiect seilwaith cenedlaethol ei arwyddocâd a nodir yn Neddf 2008. Caiff yr Ysgrifennydd Gwladol roi caniatâd dan Ddeddf 2008 ar gyfer prosiect cynhyrchu ynni y mae angen caniatâd datblygu ar ei gyfer.

130 Mae prosiectau cynhyrchu ynni mawr hefyd yn debygol o fod angen caniatâd ar gyfer datblygiad sy'n gysylltiedig â'r prif brosiect ac sydd ei angen er mwyn i'r prosiect gael ei ddatblygu ('datblygiad cysylltiedig') a chaiff yr Ysgrifennydd Gwladol hefyd roi caniatâd ar

gyfer hyn o dan Ddeddf 2008. Mae rhai enghreifftiau dangosol o ddatblygiad cysylltiedig i'w gweld yn Atodiad A a B o ganllawiau'r Adran Gymunedau a Llywodraeth Leol ar gyfer prosiectau seilwaith y rhoddir caniatâd iddynt o dan Ddeddf 2008:

<https://www.gov.uk/government/publications/planning-act-2008-associated-development-applications-for-major-infrastructure-projects>

- 131 Yng Nghymru, mae pŵer yr Ysgrifennydd Gwladol i roi caniatâd i ddatblygiad cysylltiedig wedi'i gyfyngu i waith arwyneb, tyllau turio neu bibellau sy'n gysylltiedig â phrosiect sy'n cynnwys cyfleusterau storio nwy o dan y ddaear. O ganlyniad nid oes darpariaeth ar hyn o bryd yn Nedd 2008 i'r Ysgrifennydd Gwladol roi caniatâd datblygu i ddatblygiad cysylltiedig ar gyfer prosiect cynhyrchu ynni yng Nghymru.
- 132 Golyga hyn, yn achos prosiect cynhyrchu ynni sydd dros 50 megawat yng Nghymru, mai dim ond ar gyfer y prosiect seilwaith ei hun y caiff yr Ysgrifennydd Gwladol roi caniatâd datblygu. Rhaid i unrhyw ganiatâd ar gyfer datblygiad cysylltiedig gael ei roi gan y corff caniatadau priodol yng Nghymru (yn achos unrhyw ganiatâd cynllunio ar gyfer datblygiad cysylltiedig, bydd hyn fel arfer yn golygu caniatâd gan yr awdurdod cynllunio lleol perthnasol).
- 133 Mae cymal 16 yn datganoli caniatadau ar gyfer prosiectau cynhyrchu ynni hyd at, a chan gynnwys, 350 megawat i Gymru. Ar gyfer y prosiectau hyn, ni fydd unrhyw newid i'r ffordd y rhoddir caniatâd ar gyfer datblygiad cysylltiedig.
- 134 Bydd penderfyniadau ynglŷn â phrosiectau ynni sydd dros 350 megawat yng Nghymru'n dal i gael eu gwneud gan yr Ysgrifennydd Gwladol o dan ddarpariaethau Deddf 2008. Er mwyn gweithredu'r argymhelliad sy'n ymwneud â chysoni caniatadau datblygu cysylltiedig, mae angen diwygio Deddf 2008 fel bod yr Ysgrifennydd Gwladol yn gallu rhoi caniatâd ar gyfer datblygiad cysylltiedig sydd wedi'i gysylltu â'r prosiectau hyn. Gwneir hyn drwy'r diwygiad i adran 115(4) o Ddeddf 2008 (sydd ar hyn o bryd yn cyfyngu ar bwerau'r Ysgrifennydd Gwladol i roi caniatâd ar gyfer datblygiad cysylltiedig yng Nghymru).

### Cymal 19: Newid enw'r Cynulliad etc: trosi cyfeiriadau

- 135 Mae cymal 19 yn mewnosod adran 150A newydd yn DLIC i sicrhau bod cyfeiriadau mewn deddfwriaethau eraill at y Cynulliad a chyrff eraill yn cael eu diwygio'n awtomatig os bydd y Cynulliad yn defnyddio'i bŵer i newid ei enw (neu enw Comisiwn Cynulliad Cenedlaethol Cymru neu enw Deddfau Cynulliad Cenedlaethol Cymru). Gwneir newid enw o'r fath yn bosibl drwy baragraff 7(2)(a)(i) a (viii) a pharagraff 7(2)(c)(i) o Atodlen 7B newydd a fewnosodwyd yn DLIC gan Atodlen 2 i'r Bil, sy'n golygu nad yw'r cyfyngiad sy'n atal Cynulliad Cymru rhag diwygio DLIC ei hun yn cynnwys diwygio'r enwau hynny fel y darperir ar eu cyfer gan adrannau 1(1), 27(1) a 107(1) yn y drefn honno. Mae is-adran (2) o adran 150A newydd yn sicrhau y bydd unrhyw gyfeiriadau at Gynulliad Cenedlaethol Cymru, Comisiwn Cynulliad Cenedlaethol Cymru neu Ddeddf Cynulliad Cenedlaethol Cymru mewn deddfwriaeth arall yn adlewyrchu'r enw newydd os caiff ei newid.
- 136 Mae is-adran (2) o gymal 19 yn sicrhau bod y diffiniad o ddeddfiad yn adran 150A newydd yn cynnwys Deddfau Senedd yr Alban neu offerynnau a wnaethpwyd o dan Ddeddfau o'r fath, felly os bydd y Cynulliad yn newid ei enw, bydd cyfeiriadau ato yn Neddfau Senedd yr Alban yn cael eu diweddar u'n awtomatig.

## Pennod 5: Darpariaeth arall yn ymwneud â deddfwriaeth gan y Cynulliad

### Cymal 20: Y gofyn am uwch-fwyafrif ar gyfer rhai deddfwriaethau

- 137 Mae cymal 20 yn mewnosod adrannau 111A a 111B newydd yn DLIC i'w gwneud yn ofynnol i rai mathau o ddeddfwriaethau etholiadol gael eu pasio gan fwyafrif o ddwy ran o dair o'r Cynulliad.
- 138 Mae is-adran (2) o adran 111A newydd yn nodi pa bryd y mae darpariaeth Bil yn ymwneud â phwnc a warchodir at ddiben y cymal. Golyga hyn pan fyddai darpariaeth yn addasu'r gyfraith sy'n ymwneud â'r materion penodedig a ganlyn, neu'n galluogi'r gyfraith sy'n ymwneud â'r materion a ganlyn i gael ei newid gan is-ddeddfwriaeth oni bai fod darpariaeth yn gysylltiedig neu'n digwydd o ganlyniad i unrhyw ddarpariaeth arall yn y Bil. Y materion penodedig hyn, mewn perthynas ag etholiadau i'r Cynulliad yw: yr etholfraint ar gyfer yr etholiadau hynny, y system a ddefnyddir i ddychwelyd aelodau Cynulliad, nifer yr etholaethau a rhanbarthau neu ardaloedd eraill o'r fath a nifer yr aelodau sydd i'w dychwelyd ym mhob etholaeth neu ranbarth neu ardal arall o'r fath. Yn ychwanegol at hyn, byddai darpariaeth sy'n newid enw'r Cynulliad hefyd yn berthnasol i bwnc a warchodir a byddai angen mwyafrif o ddwy ran o dair cyn y gellid ei phasio.
- 139 Mae is-adran (3) o adran 111A newydd yn ei gwneud yn ofynnol i'r Llywydd benderfynu, cyn y cam olaf pan fydd modd pleidleisio ar Fil Cynulliad, a yw darpariaethau'r Bil, yn ei barn hi, yn ymwneud â phwnc a warchodir. Rhaid i'r Llywydd wneud datganiad i'r perwyl hwn ac mae is-adran (5) o adran 111A newydd yn nodi ei bod yn ofynnol i'r datganiad hwn gael ei wneud yn y Gymraeg a'r Saesneg. Mae is-adran (6) o adran 111A newydd yn ei gwneud yn ofynnol i'r rheolau sefydlog ddarparu ar gyfer cyhoeddi'r datganiad hwn.
- 140 Mae is-adran (4) o adran 111A newydd yn darparu na all Bil y mae'r Llywydd wedi penderfynu ei fod yn ymwneud â phwnc a warchodir gael ei basio oni bai fod nifer yr aelodau sy'n pleidleisio drosto, yn ei gam olaf, yn cynnwys o leiaf ddwy ran o dair o gyfanswm seddi'r Cynulliad.
- 141 Mae adran 111B newydd yn darparu ar gyfer cyfeirio at y Goruchaf Lys, gan y Twrnai Cyffredinol neu'r Cwnsler Cyffredinol, y cwestiwn a yw unrhyw ddarpariaeth mewn Bil yn ymwneud â phwnc a warchodir.
- 142 Mae is-adran (2) o adran 111B newydd yn darparu bod yn rhaid i unrhyw gyfeiriad o'r fath gael ei wneud mewn amgylchiadau penodol cyn pen 4 wythnos ar ôl i Fil gael ei basio neu ei wrthod yn ei gam olaf, neu cyn pen 4 wythnos ar ôl i Fil gael ei gymeradwyo ar ôl ailystyriaeth yn dilyn penderfyniad gan y Goruchaf Lys.
- 143 Mae is-adran (3) o adran 111B newydd yn darparu na all mater gael ei gyfeirio i'r Goruchaf Lys gan y Cwnsler Cyffredinol os yw wedi hysbysu'r Llywydd cyn hynny na fydd yn cyfeirio mater, na chan y Twrnai Cyffredinol os yw wedi hysbysu'r Llywydd cyn hynny na fydd yn cyfeirio mater. Mae is-adran 4 o adran 111B newydd yn sicrhau na fydd y cyfyngiad hwn yn berthnasol os yw'r Bil, ar ôl hysbysiad o'r fath, wedi cael ei gymeradwyo gan y Cynulliad yn dilyn ailystyriaeth ar ôl penderfyniad gan y Goruchaf Lys.

### Cymal 21: Y gofyn am uwch-fwyafrif: diwygiadau yn ymwneud â gweithdrefnau etc.

- 144 Mae cymal 21 yn diwygio adrannau 111 a 112 o DLIC i adlewyrchu'r prosesau newydd sy'n ofynnol o ganlyniad i gyfeirio mater i'r Goruchaf Lys.
- 145 Mae is-adran (2) yn mewnosod paragraff newydd (za) yn is-adran (6) o adran 111 i'w gwneud yn ofynnol i'r rheolau sefydlog ddarparu ar gyfer ailystyried Bil sydd wedi cael ei basio pan

fydd y Goruchaf Lys wedi penderfynu ynglŷn â'r cwestiwn a yw'n ymwneud â phwnc a warchodir ar ôl i'r Llywydd ardystio nad yw'n ymwneud â phwnc a warchodir.

- 146 Mae is-adran (3) yn mewnosod is-adran (6A) newydd yn adran 111 i'w gwneud yn ofynnol i'r rheolau sefydlog ddarparu ar gyfer ailstyried Bil os yw wedi cael ei wrthod gan y Cynulliad, a bod y Goruchaf Lys wedi penderfynu nad yw unrhyw ddarpariaeth yn y Bil yn ymwneud â phwnc a warchodir (yn dilyn penderfyniad y Llywydd nad yw'r Bil yn ymwneud â phwnc a warchodir).
- 147 Mae is-adran (4) yn disodli is-adran (7) yn adran 111 ag is-adran (7) newydd sy'n ei gwneud yn ofynnol i'r rheolau sefydlog sicrhau bod unrhyw Fil sy'n cael ei ailstyried yn dilyn cyfeirio mater a warchodir yn mynd drwy gam cymeradwyo terfynol yn y Cynulliad.
- 148 Mae is-adran (5) yn diwygio adran 111 er mwyn sicrhau bod is-adran (8) yn adlewyrchu'r prosesau ailstyried newydd.
- 149 Mae is-adran (6) yn diwygio adran 112 er mwyn nodi'n glir bod yr adran yn ymwneud dim ond â chyfeirio cwestiynau sy'n ymwneud â chymhwysedd deddfwriaethol i'r Goruchaf Lys (felly'n ei gwneud yn wahanol i'r adran newydd ar gyfeiriadau i'r Goruchaf Lys sy'n ymwneud â phwnc a warchodir). Mae hefyd yn darparu ar gyfer cyfeirio mewn cysylltiad â mater cymhwysedd ar ôl ailstyried Bil Cynulliad.
- 150 Mae is-adran (7) yn diwygio adran 114 o DLIC er mwyn caniatáu i'r Ysgrifennydd Gwladol ymyrryd ar ôl ailstyried Bil Cynulliad.
- 151 Mae is-adran (8) yn diwygio adran 115 o DLIC er mwyn atal y Llywydd rhag cyflwyno Bil ar gyfer Cydsyniad Brenhinol os yw'r Goruchaf Lys yn dal heb wneud penderfyniad ynglŷn â chyfeiriad yn ymwneud â mater a warchodir neu os nad yw'r Bil wedi cael ei gymeradwyo eto ar ôl cael ei ailstyried gan y Cynulliad pan fydd y Goruchaf Lys wedi penderfynu ynglŷn â chyfeiriad o'r fath.

## Cymal 22: Cyflwyno Biliau ar gyfer Cydsyniad Brenhinol: rôl y Llywydd

- 152 Mae cymal 22 yn diwygio adran 115 o DLIC i ddarparu y dylai'r Llywydd, yn hytrach na Chlerc y Cynulliad, gyflwyno deddfwriaeth y Cynulliad ar gyfer Cydsyniad Brenhinol. Mae hefyd yn darparu y dylid hysbysu'r Llywydd yn hytrach na Chlerc y Cynulliad os yw Bil yn destun cyfeiriad i'r Goruchaf Lys ac os nad yw'r Twrnai Cyffredinol neu'r Cwnsler Cyffredinol yn bwriadu cyfeirio mater. Mae hyn yn adlewyrchu'r broses yn Senedd yr Alban.

## Pennod 6: Darpariaeth arall yn ymwneud â'r Cynulliad

### Cymal 23: Cyfansoddiad pwylgorau'r Cynulliad

- 153 Mae cymal 23 yn diddymu adran 29 o DLIC i ddileu'r cyfyngiadau ar gyfansoddiad pwylgorau ac yn caniatáu iddynt gael eu diwygio drwy newidiadau i reolau sefydlog y Cynulliad.

### Cymal 24: Gweithdrefnau'r Cynulliad: cyfranogiad Gweinidogion y DU etc

- 154 Mae cymal 24 yn diddymu adrannau 32 a 33 o DLIC. Mae diddymu adran 32 yn dileu hawl Ysgrifennydd Gwladol Cymru i gymryd rhan yng ngweithdrefnau'r Cynulliad (nid yw'r pŵer hwn wedi cael ei ddefnyddio erioed). Mae diddymu adran 33 yn dileu'r gofyniad i'r Ysgrifennydd Gwladol ddod i'r Cynulliad fel rhan o'r broses o ymgynghori ar raglen ddeddfwriaethol Llywodraeth y DU.
- 155 Cafodd y darpariaethau hyn eu cynnwys yn DLIC pan oedd y Cynulliad yn dal i gael ei draed dano, ac nid oedd y gwahaniaeth rhwng rôl ddeddfwriaethol y Cynulliad a swyddogaethau gweithredol Llywodraeth (Cynulliad) Cymru wedi cael eu gweithredu eto. Erbyn hyn mae'r

Cynulliad wedi cael ei gefn ato ac wedi sefydlu llinellau ymgysylltu clir â Llywodraeth y DU.  
Nid oes angen y darpariaethau hyn mwyach yn y cyswllt hwnnw.

## Rhan 2: Cymhwysedd Gweithredol

### Pennod 7: Swyddogaethau gweithredol Gweinidogion Cymru

#### Cymal 25: Swyddogaethau Gweinidogion Cymru

- 156 Mae cymal 25 yn rhoi pwerau cyfraith gyffredin i Weinidogion Cymru.
- 157 Mae cymal 25(1) yn mewnosod adran 58A yn DLIC; mae'r adran newydd yn cynnwys wyth is-adran.
- 158 Mae is-adran (1) yn darparu'r cynnig cyffredinol i drosglwyddo rhai o swyddogaethau gweithredol Ei Mawrhydi, fel bod swyddogaethau o'r fath yn cael eu cyflawni gan Weinidogion Cymru yn hytrach na Gweinidog y Goron.
- 159 Mae is-adran (2) yn cyfyngu ar is-adran (1) fel mai'r swyddogaethau gweithredol a drosglwyddir yw dim ond y rhai:
- sydd o fewn cymhwysedd datganoledig, gan gynnwys y rhai hynny sy'n gysylltiedig â swyddogaeth o fewn cymhwysedd datganoledig a gyflawnir gan Weinidogion Cymru; neu
  - sy'n gysylltiedig â swyddogaeth y tu allan i gymhwysedd datganoledig a gyflawnir gan Weinidogion Cymru.
- 160 Diffinnir "cymhwysedd datganoledig" yn is-adrannau (5)-(7). Nid yw'r cyfeiriad yn is-adran (2)(b), ac mewn rhannau eraill o'r adran hon, at swyddogaethau Gweinidogion Cymru wedi'i gyfyngu i swyddogaethau statudol ac felly byddai'n cynnwys swyddogaethau o dan offerynnau uchelfreiniol.
- 161 Mae is-adran (3) yn darparu bod y swyddogaethau yn is-adran (4) i'w gweithredu ar y cyd â Gweinidog y Goron.
- 162 Mae is-adran (4) yn darparu bod swyddogaethau Gweinidogion Cymru i'w gweithredu ar y cyd â Gweinidog y Goron os ydynt:
- yn gysylltiedig ag un o Weinidogion Cymru yn cyflawni swyddogaeth (o fewn neu y tu allan i gymhwysedd datganoledig) sy'n cael ei rhannu â Gweinidog y Goron;
  - yn gysylltiedig â Gweinidog y Goron yn cyflawni swyddogaeth o fewn cymhwysedd datganoledig;
  - i'w gweithredu o fewn cymhwysedd datganoledig lle nad ydynt yn gysylltiedig â chyflawni swyddogaeth arall; neu
  - yn dilyn neu'n gweithredu cyfraith yr UE.
- 163 Mae is-adran (5) yn nodi bod cymhwysedd datganoledig yn cael ei ddiffinio yn is-adrannau (6) a (7).
- 164 Mae is-adran (6) yn darparu ei bod y tu allan i gymhwysedd datganoledig i wneud, cadarnhau neu gymeradwyo is-ddeddfwriaeth a fyddai y tu allan i gymhwysedd deddfwriaethol. Mewn geiriau eraill, mae darpariaeth y byddai adran 108A yn ei gwahardd rhag ymddangos mewn Deddf Cynulliad yn cael ei gwahardd yr un modd gan yr adran hon rhag ymddangos mewn is-ddeddfwriaeth.

- 165 Mae is-adran (7) yn berthnasol i swyddogaethau ar wahân i'r rhai hynny sy'n ymwneud â gwneud, cadarnhau neu gymeradwyo is-ddeddfwriaeth. Mae'n darparu ei bod y tu allan i gymhwysedd deddfwriaethol i gyflawni swyddogaethau o'r fath pe bai darpariaeth Deddf Cynulliad a fyddai'n trosglwyddo'r swyddogaethau hynny y tu allan i gymhwysedd deddfwriaethol y Cynulliad.
- 166 Mae is-adran (8)(a) yn egluro nad yw swyddogaethau gweithredol yn cynnwys swyddogaethau deddfwriaethol na swyddogaethau uchelfreiniol. Mae is-adran (8)(b) yn egluro beth a olygir yn yr adran hon pan ddywedir y gall swyddogaeth gael ei chyflawni at ddibenion swyddogaeth arall.
- 167 Mae cymal 23(2) yn dileu pwerau Gweinidogion Cymru o dan adran 71 o DLIC sy'n eu galluogi i wneud unrhyw beth sy'n gydnaws neu sy'n gysylltiedig â defnyddio eu pwerau gan nad oes angen y cyfryw bwerau mwyach, gan fod swyddogaethau gweithredol cyfraith gyffredin wedi cael eu trosglwyddo o dan adran 58A; er hyn, mae'r ddarpariaeth hon yn dal yn berthnasol i Brif Weinidog Cymru wrth iddo weithredu yn rhinwedd ei swydd fel Prif Weinidog a Chwnsler Cyffredinol.

## Pennod 8: Trwyddedu a chadwraeth forol

### Cymal 26: Trwyddedu morol yn rhanbarth môr mawr Cymru

- 168 Mae cymal 26 yn gweithredu argymhelliad Comisiwn Silk, y rhoddwyd sylw iddo yng Nghytundeb Dydd Gŵyl Dewi, y dylid ymestyn y cyfrifoldebau gweithredol presennol am drwyddedu morol yn ardal glannau Cymru i ddyfroedd môr mawr Cymru. Mae'r diwygiadau sy'n cael eu gwneud gan gymal 24 yn nodi y dylai Gweinidogion Cymru gyflawni swyddogaethau sy'n ymwneud â thrwyddedu morol yn rhanbarth môr mawr Cymru. Mae Rhan 4 o Ddeddf y Môr a Mynediad i'r Arfordir 2009 ("Deddf 2009") yn rheoleiddio trwyddedu rhai gweithgareddau sy'n cael eu cyflawni yn nyfroedd y DU, ar wahân i ardal glannau'r Alban (a ddiffinnir yn adran 322(1) o Ddeddf 2009). Diffinnir rhanbarth môr mawr Cymru yn adran 322(1) i olygu cymaint o barth Cymru ag sydd y tu hwnt i derfynau tua'r môr y môr tiriogaethol. Daw ystyr parth Cymru o adran 158(1) a (3) o DLIC.
- 169 Mae adran 113 o Ddeddf 2009 yn cynnwys y rheolau ar gyfer penderfynu pwy yw'r awdurdod trwyddedu priodol ar gyfer unrhyw ardal. Mae hyn yn amrywio gan ddibynnu ar yr ardal a hefyd ar natur y gweithgaredd. Mae is-adran (2) yn diwygio adran 113(4) fel mai Gweinidogion Cymru yw'r awdurdod trwyddedu priodol ar gyfer Cymru, rhanbarth glannau Cymru a môr mawr Cymru, oni bai bod y gweithgaredd i'w drwyddedu'n dod o dan adran 113(5) o Ddeddf 2009. O ran y "gweithgareddau a gedwir" hynny, yr Ysgrifennydd Gwladol yw'r awdurdod trwyddedu.
- 170 Mae is-adran (2)(b) yn diwygio'r rhestr o'r "gweithgareddau a gedwir" hynny yn adran 113(5) er mwyn cadw yn ogystal, mewn cysylltiad â rhanbarth môr mawr Cymru yn unig, unrhyw weithgaredd sy'n dod o fewn pwnc Rhan 6 o Ddeddf Llongau Masnach 1995 (Ilygredd etc.). Mae'r math hwn o weithgaredd i'w drwyddedu gan yr Ysgrifennydd Gwladol mewn cysylltiad â rhanbarth môr mawr Cymru.
- 171 Caiff swyddogion gorfodi morol eu penodi o dan adran 235 o Ddeddf 2009 i gyflawni swyddogaethau gorfodi mewn cysylltiad â'r trefniadau trwyddedu morol. Mae adran 236 o Ddeddf 2009 yn nodi ym mha ardaloedd, ac mewn cysylltiad â pha longau a gosodiadau, y gall swyddogion gorfodi morol ddefnyddio pwerau gorfodi. Mae is-adran (3) o gymal 24 yn diwygio adran 236(2) o Ddeddf 2009 er mwyn ymestyn y gweithgareddau na all swyddog gorfodi morol ddefnyddio ei bwerau gorfodi mewn cysylltiad â hwy i gynnwys: (i) gweithgaredd yn rhanbarth môr mawr Cymru sy'n ymwneud â chwilio am betrolewm, neu

gynhyrchu petrolewm, neu sy'n deillio o hynny; a (ii) unrhyw weithgaredd yn rhanbarth môr mawr Cymru sy'n dod o fewn pwnc Rhan 6 o'r Ddeddf Llongau Masnach.

- 172 O dan adran 240 o Ddeddf 2009, gall yr Ysgrifennydd Gwladol benodi personau i orfodi'r trefniadau trwyddedu morol yn Rhan 4 o'r Ddeddf honno, i'r graddau y mae'n ymwneud â thrwyddedu'r "gweithgareddau a gedwir" hynny. Mae is-adran (4) yn diwygio is-adran 240(1)(b) o Ddeddf 2009 fel bod yr Ysgrifennydd Gwladol yn gallu penodi personau at ddibenion gorfodi sy'n ymwneud ag unrhyw weithgaredd yng Nghymru neu ranbarth môr mawr Cymru sy'n ymwneud â chwilio am betrolewm, neu gynhyrchu petrolewm.
- 173 Mae is-adrannau (5) i (8) o gymal 25 yn gwneud diwygiadau canlyniadol i Orchymyn Trwyddedu Morol (Gweithgareddau Esemp) (Cymru) 2011 ("Gorchymyn 2011"). Mae Gorchymyn 2011 yn nodi gweithgareddau nad oes arnynt angen trwydded forol, neu nad oes arnynt angen trwydded forol os bodlonir amodau a nodir yn y Gorchymyn. Yn rhinwedd Erthygl 2 o Orchymyn 2011 ac is-adran (2)(a) o gymal 24, mae Gorchymyn 2011 yn berthnasol mewn cysylltiad ag unrhyw weithgaredd morol i'w drwyddedu sy'n cael ei gyflawni yng Nghymru, rhanbarth glannau Cymru a rhanbarth môr mawr Cymru y mae Gweinidogion Cymru'n awdurdod trwyddedu priodol ar ei gyfer.

### Cymal 27: Parthau cadwraeth morol

- 174 Mae'r diwygiadau sy'n cael eu gwneud gan gymal 26 yn penodi Gweinidogion Cymru fel awdurdod priodol yn rhanbarth môr mawr Cymru gan ganiatáu iddynt ddynodi ardaloedd yn barthau cadwraeth morol yn yr ardal honno yn unol â rhan 5 (Gwarchod Natur) o Ddeddf y Môr a Mynediad i'r Arfordir 2009 (Deddf 2009).
- 175 Diffinnir rhanbarth môr mawr Cymru yn adran 322(1) o Ddeddf 2009.
- 176 Mae is-adran (2)(b) yn nodi na chaiff Gweinidogion Cymru ddynodi Parth Cadwraeth Morol sy'n cynnwys unrhyw ran o ranbarth môr mawr Cymru oni bai fod yr Ysgrifennydd Gwladol yn cytuno.

### Pennod 9: Rheoliadau adeiladu

#### Cymal 28: Trosglwyddo swyddogaethau sy'n ymwneud ag adeiladau ynni a eithrir

- 177 Mae rheoleiddio adeiladau a gwaith adeiladu yn fater a gedwir yn ôl. Er hyn, mae swyddogaethau o dan Ddeddf Adeiladu 1984 i wneud rheoliadau adeiladu a materion cysylltiedig wedi cael eu trosglwyddo i Weinidogion Cymru drwy orchymyn yn 2009 a ddaeth i rym yn 2011. Gwnaethpwyd eithriad mewn cysylltiad ag "adeiladau ynni a eithrir"; hynny yw adeiladau sy'n ffurffio rhan o seilwaith ynni. Mae cymal 28 yn dileu'r eithriad hwn drwy wneud y ddarpariaeth angenrheidiol ar gyfer trosglwyddo swyddogaethau o dan Ddeddf Adeiladu 1984 ar gyfer y categori hwnnw o adeiladau.

### Pennod 10: Y Swyddfa Gyfathrebiadau

#### Cymal 29: Y Swyddfa Gyfathrebiadau

- 178 Ofcom yw'r corff rheoleiddio cyfathrebiadau annibynnol ar gyfer y DU sy'n goruchwyllo teledu, radio, telathrebu, ffonau symudol, gwasanaethau post a darlleddydd. Cafodd ei sefydlu gan Ddeddf Swyddfa Gyfathrebiadau 2002 ("Deddf 2002").
- 179 Mae adran 1 o Ddeddf 2002 yn darparu y bydd yr Ysgrifennydd Gwladol yn penodi cadeirydd ac aelodau eraill Ofcom. Mae is-adrannau (2) a (3) o'r cymal hwn yn diwygio adran 1 o Ddeddf 2002 i ddarparu y bydd Gweinidogion Cymru'n penodi un aelod o Ofcom a, chyn gwneud hynny, rhaid iddynt ymgynghori â'r Ysgrifennydd Gwladol. Mae is-adran (4) hefyd yn diwygio adran 1(5) i sicrhau bod yr aelod a benodir gan Weinidogion Cymru yn ymwneud

â phenodi unrhywaelodau gweithredol o Ofcom.

- 180 Mae'r Atodlen i Ddeddf 2002 yn gwneud rhagor o ddarpariaethau sy'n ymwneud ag Ofcom gan gynnwys cymhwyster ar gyfer aelodaeth, dal swydd, cyfrifon ac archwilio ac adroddiadau blynnyddol. Mae is-adran (5) o'r cymal hwn yn diwygio cymhwysiad yr Atodlen mewn cysylltiad â'r aelod o Ofcom a benodwyd gan Weinidogion Cymru. Trosglwyddir y swyddogaethau sy'n ymwneud â sicrhau nad oes gan berson sy'n cael ei benodi i Ofcom unrhyw wrthdaro buddiannau, a'r swyddogaethau sy'n ymwneud ag ymddiswyddiad neu ddiswyddiad aelod, i Weinidogion Cymru. Dim ond ar ôl ymgynghori â'r Ysgrifennydd Gwladol y caiff yr aelod ei ddiswyddo gan Weinidogion Cymru.
- 181 Mae is-adran (7) o'r cymal hwn yn diwygio'r Atodlen i Ddeddf 2002 i'w gwneud yn ofynnol i'r Rheolwr ac Archwilydd Cyffredinol anfon copi o ddatganiad o gyfrifon Ofcom a'i adroddiad at Weinidogion Cymru, ac i Weinidogion Cymru roi'r dogfennau hynny gerbron Cynulliad Cenedlaethol Cymru. Yn yr un modd, mae is-adran (8) yn diwygio'r Atodlen i Ddeddf 2002 i'w gwneud yn ofynnol i Ofcom anfon ei adroddiad blynnyddol at Weinidogion Cymru, ac i Weinidogion Cymru roi'r adroddiad gerbron Cynulliad Cenedlaethol Cymru.

## Rhan 3: Cyffredinol

### Cymal 30: Pŵer i wneud darpariaeth ganlyniadol

- 182 Mae is-adran (1) yn ymgorffori Atodlen 3 sy'n gwneud mân ddiwygiadau a diwygiadau canlyniadol.
- 183 Mae is-adrannau (2)-(5) yn creu pŵer i'r Ysgrifennydd Gwladol wneud rheoliadau sy'n diwygio deddfwriaeth sylfaenol neu is-ddeddfwriaeth sy'n ganlyniadol i unrhyw ddarpariaeth yn y Bil drafft.
- 184 Mae is-adran (6) yn ei gwneud yn ofynnol i reoliadau sy'n cael eu gwneud o dan is-adran (2) gael eu gwneud drwy weithdrefn penderfyniad cadarnhaol yn y Senedd, os yw'r rheoliadau'n diwygio deddfwriaeth sylfaenol.
- 185 Mae is-adran (7) yn ei gwneud yn ofynnol i reoliadau sy'n cael eu gwneud o dan is-adran (2) gael eu gwneud drwy weithdrefn penderfyniad negyddol yn y Senedd, os nad yw'r rheoliadau'n diwygio deddfwriaeth sylfaenol.
- 186 Mae is-adran (8) yn egluro bod "deddfwriaeth sylfaenol", at ddibenion yr atran hon, yn cynnwys Mesurau a Deddfau'r Cynulliad, yn ogystal â Deddfau Seneddol.

### Atodlen 3: Mân ddiwygiadau a diwygiadau canlyniadol sy'n ymwneud â Rhan 1

- 187 Mae'r Atodlen hon yn cynnwys diwygiadau pellach i'r ddeddfwriaeth bresennol sy'n ymwneud â Rhan 1 o'r Bil drafft.

### Rhan 1: Diwygiadau Deddf Llywodraeth Cymru 2006

- 188 Mae Rhan 1 o Atodlen 3 yn cynnwys mân ddiwygiadau a diwygiadau canlyniadol i DLIC sy'n ymwneud â Rhan 1 o'r Bil drafft. Mae'r newidiadau yn bennaf o ganlyniad i gyflwyno model cadw pwerau yn ôl yn lle'r model rhoi pwerau.

### Rhan 2: Diwygiadau Deddfau eraill

- 189 Mae Rhan 2 o Atodlen 3 yn cynnwys diwygiad bach i Ddeddf Diwygio a Llywodraethu Cyfansoddiadol 2010 sy'n ymwneud â Rhan 1 o'r Bil drafft.

### Cymal 31: Darpariaethau trosiannol ac arbedion

- 190 Mae is-adran (1) yn ymgorffori Atodlen 4, sy'n gwneud darpariaethau trosiannol a

darpariaethau arbedion sy'n ofynnol mewn cysylltiad â darpariaethau'r Bil drafft.

191 Mae is-adran (2) yn creu pŵer gwneud rheoliadau i'r Ysgrifennydd Gwladol wneud darpariaethau trosiannol neu ddarpariaethau arbedion ychwanegol sy'n ymddangos yn briodol mewn cysylltiad â'r Bil drafft.

192 Mae is-adran (3) yn egluro bod pŵer is-adran (2) yn cynnwys y gallu i wneud arbedion sy'n deillio o unrhyw ddiwygiad, diddymiad neu ddirymiad a wneir gan y Bil drafft.

193 Mae is-adran (4) yn darparu nad yw Atodlen 4 yn cyfyngu ar bŵer is-adran (2) ac, yn wir, gall yr Atodlen honno ei hun gael ei haddasu gan bŵer is-adran (2).

194 Mae is-adran (5) yn amddiffyn adrannau 16 ac 17 o Ddeddf Dehongli 1978 rhag cael eu heffeithio gan unrhyw ddarpariaethau arbedion neu ddarpariaethau trosiannol a wneir naill ai gan Atodlen 4 neu gan bŵer is-adran (2).

195 Mae is-adran (6) yn darparu ar gyfer rheoliadau a wneir o dan bŵer is-adran (2) i fod yn ddarostyngedig i weithdrefn penderfyniad negyddol yn y Senedd.

#### Atodlen 4: Darpariaethau trosiannol

196 Mae'r Atodlen hon yn cynnwys darpariaethau trosiannol. Yn fwyaf arbennig, mae'n darparu nad yw'r cyfeiriad yn y Bil drafft at gyflwyno model cadw pwerau yn lle'r model rhoi pwerau, yn effeithio ar effaith barhaus Mesurau Cynulliad a Deddfau Cynulliad a wnaethpwyd o dan y model rhoi pwerau.

197 Mae hefyd yn cynnwys darpariaethau trosiannol sy'n ymwneud â thrwyddedu morol yn rhanbarth môr mawr Cymru.

#### Cymal 32: Cychwyn

198 Mae cymal 32 yn rhoi manylion am y trefniadau cychwyn ar gyfer y Bil.

#### Cymal 33: Teitl byr

199 Mae cymal 33 yn nodi y gellir cyfeirio at y Ddeddf fel Deddf Cymru 2016.

## Cychwyn

200 Rhagnodir cychwyn darpariaeth y Bil yng Nghymal 32.

## Goblygiadau ariannol y Bil

201 Mae Bil Cymru yn ddeddfwriaeth gyfansoddiadol alluogi nad yw'n arwain at oblygiadau ariannol uniongyrchol ynddi'i hyn. Cyfrifoldeb y Cynulliad fydd penderfynu sut y bydd yn defnyddio'r pwerau datganoledig, ac asesu effaith ariannol eu dewisiadau polisi.

## Cydweddu â'r Confensiwn Ewropeaidd ar Hawliau Dynol

202 Bydd y Llywodraeth yn cyhoeddi memorandwm ar wahân ar y Confensiwn Ewropeaidd ar Hawliau Dynol â'i hasesiad o gydweddoldeb darpariaethau'r Bil â hawliau'r Confensiwn pan gyflwynir y Bil.

## Dogfennau cysylltiedig

203 Mae'r dogfennau a ganlyn yn berthnasol i'r Bil a gellir eu darllen yn y lleoliadau a nodwyd:

- Pwerau at Bwrpas: Tuag at setliad datganoli sy'n para i Gymru 2015:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408589/47683\\_CM9020\\_WELSH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408589/47683_CM9020_WELSH.pdf)
- Grymuso a Chyfrifoldeb: Pwerau Deddfwriaethol i Gryfhau Cymru 2014:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/310592/Grymuso-a-Chyfrifoldeb-Pwerau-Deddfwriaethol-i-Gryfhau-Cymru.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310592/Grymuso-a-Chyfrifoldeb-Pwerau-Deddfwriaethol-i-Gryfhau-Cymru.pdf)
- Deddf Cymru 2014: <http://www.legislation.gov.uk/ukpga/2014/29>
- Grymuso a Chyfrifoldeb: Pwerau Ariannol i Gryfhau Cymru 2012:  
<http://llyw.cymru/docs/caecd/publications/140320silk1cy.pdf>

## **Atodiad A - Rhychwant tiriogaethol a chymhwysiad**

204 I'r graddau y mae'r Bil drafft yn diwygio Deddf Llywodraeth Cymru 2006, mae iddo'r un rhychwant â'r Ddeddf honno - rhychwant y DU. I'r graddau y mae'r Bil drafft yn diwygio deddfwriaeth arall, yn ymarferol, mae iddo'r un rhychwant â'r ddeddfwriaeth honno.

# **BIL CYMRU DRAFFT**

## **NODIADAU ESBONIADOL**

Mae'r Nodiadau Esboniadol hyn yn ymwneud â'r Bil Cymru Drafft fel y'i cynhyrchwyd mewn ffurf Ddrafft ar 20 Hydref 2015.

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Gorchmynnwyd gan Dŷ'r Cyffredin i'w argraffu, 20 Hydref 2015

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