

Assembly Acts the Welsh Government Claim Could Not Be Made Under the New Reserved Powers Model: UK Government Analysis and Welsh Government response

Key:

Acts which we believe would be passed under the new model, requiring no greater consents than at present	Acts where new consenting requirements apply under the new model, or where provision could not be made under the new model
--	--

Assembly Act or Measure	Relevant provision(s)	Welsh Government’s analysis of why the same provision could <u>not</u> be made under the Draft Wales Bill settlement	Wales Office Legal Advisers’ analysis of whether or not the same provision <u>could</u> be made under the Draft Wales Bill settlement	Welsh Government response
1. Control of Horses (Wales) Act 2014	Section 7 (dispute resolution procedure for disagreements between horse owners and the local authority)	Arguably would engage reservation 184 (arbitration)	<p>The purpose¹ of this Act is a devolved one - animal welfare. It does not “relate to” arbitration, nor have that as its purpose.</p> <p>The creation of a dispute resolution procedure is “ancillary”² to the Act’s purpose, and therefore within the Assembly’s legislative</p>	<p>Reservation 184 says simply “arbitration”. There is no reference to “the subject matter of the Arbitration Act 1996”.</p> <p>The Wales Office has, however, clarified that the “arbitration” reservation should be taken to mean “the subject matter of the</p>

¹ The “purpose test” in the new model states that the question of 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 (amongst other things) to its effect in all the circumstances. This is similar to the current test, but expressed in terms of relating to reserved matters rather than conferred subjects.

² An Assembly Act provision is “**ancillary**” if it provides for the enforcement of another provision; or is otherwise appropriate for making that provision effective; or is otherwise incidental to, or consequential on, that provision (clause 3 of the draft bill). Throughout this table, where a provision is said to satisfy the “ancillary test”, it should be read as also satisfying the additional “no greater effect” requirement, as it appears in new section 108A(3) and paras 2, 3 and 4 of new Schedule 7B, as appropriate.

			<p>competence.</p> <p>The arbitration reservation in para 184 is designed to prevent the Assembly from legislating about the subject of, and the law and procedures relating to, arbitration (e.g. the subject matter of the Arbitration Act 1996).</p> <p>That reservation does not have the effect of preventing the Assembly from applying a dispute resolution mechanism of its choosing.</p>	<p>Arbitration Act 1996”. Therefore, taking this interpretation on good faith and in reliance on this position, we now agree that this Act does not engage the “arbitration” reservation.</p>
2. Planning (Wales) Act 2015	Section 50 and paragraph 27 of Schedule 5	<p>Engagement of reservation 183 (inquiries under or by virtue of an enactment)</p> <p>Section 50 of the Planning (Wales) Act 2015 inserts new section 323A into the Town and Country Planning Act 1990. This section confers power on the Welsh Ministers to make regulations prescribing the procedure to be followed in connection with planning hearings and inquiries. Planning hearings and inquiries take place under powers contained in section 320 TCPA 1990.</p>	<p>Section 50 is for the enforcement of a provision with a devolved planning purpose.</p> <p>This section required SofS consent because it modified Lord Chancellor functions. Consent was given on 17 September 2014. Had this provision been made under the new reservation model, it would similarly have required consent which would likely have been given.</p>	<p>The Inquires reservation in the published Wales Bill has been changed since the original draft supplied to the Welsh Government.</p> <p>The Welsh Government’s comments opposite are based on the earlier draft of the reservation.</p> <p>Further consideration is being given to whether this Act would be within competence under the new proposed</p>

		<p>WG relied on conferred subjects in S7 (paragraph 18 - town and country planning) and paragraph 14 (inquiries in respect of matters in relation to which the Welsh Ministers exercise functions). MoC consent was received so far as the provision removed or modified functions of the Lord Chancellor under section 9 Tribunals and Inquiries Act 1992. This provision would not be possible under reservation 183. Also, paragraph 27 of Schedule 5 to the Planning (Wales) Act made an amendment to the definition of “statutory inquiry” in the Tribunals and Inquiries Act 1992, to exclude Planning Act inquiries in Wales.</p>	<p>The reservation for the subject matter of the Inquiries Act 2005 in para 183 is intended to reserve the framework under which inquiries, set up by Ministers into events of public concern, can operate effectively to deliver recommendations.</p> <p>Planning inquiries, on the other hand, are a necessary component part of the planning regime and would satisfy the ancillary test.</p>	<p>settlement.</p>
<p>3. Planning (Wales) Act 2015</p>	<p>Section 288 creates a right of challenge to the High Court.</p>	<p>These amendments were consequential on changes in Part 5 P(W)A. Depending on the view taken of the meaning of “civil proceedings” and “judicial review of administrative action”, it is possible/ likely that these reservations if in force would have inhibited the Assembly’s ability to pass paragraphs 15 and 16 Schedule 4 P(W)A.</p>	<p>Rights of appeal are for the enforcement of devolved provisions. The section 288 right of appeal would satisfy the ancillary test and be within competence.</p> <p>Proper application of the purpose test would not result in section 288 ‘relating to’ civil proceedings or judicial review of administrative action,</p>	<p>The Wales Office have applied the “ancillary” test in circumstances where it does not apply (the ancillary test is only available to provision which applies ‘otherwise than in relation to Wales’ (section 108A(3), the ‘law on reserved matters (para 1 of Schedule 7B) and the private and criminal law (paras 3 and 4 of Schedule</p>

			<p>because those subjects are designed to protect the fundamental principles of those areas of law and to prevent the Assembly from legislating about them directly. They would not prevent the Assembly creating normal rights of appeal such as section 288.</p>	<p>7B). If a provision relates to a reserved matter in Schedule 7A then it will be outside competence (s. 108A(2)(c)) and para 2 of Schedule 7B will not save it.</p> <p>Arguably there is more than a loose and consequential connection between creating a right of appeal and reservation 6. It should be noted, for example, that the “jurisdiction” of a court is a reserved matter under para 6(1)(a) of Sch 7A. Creating new rights of appeal arguably expands a court’s jurisdiction. Furthermore, it is arguable that creating rights of appeal to the High Court is conferring a function on a “reserved authority” in breach of the restriction in paragraph 8(1)(b) of new Schedule 7B. The courts are a “reserved authority” for the purposes of paragraph 8. Such an appeal to the High Court would arguably require the Secretary of State’s consent.</p>
--	--	--	--	--

<p>4. Local Government (Democracy) (Wales) Act 2013</p>	<p>Section 49(7)</p>	<p>Creation of Offences would be considered ancillary but Minister of the Crown consent would be needed.</p> <p>Also confers functions on the Independent Remuneration Panel for Wales (IRP) to make recommendations to relevant authorities about proposed changes to salaries of heads of paid service and any policies about such pay. This may not be possible depending on the interpretation of proposed reservation 154 (Employment and Industrial Relations).</p>	<p>SofS consent is not required to create offences if the offence is being created in order to enforce Assembly provision in a devolved area. Section 49(7) would satisfy the ancillary test.</p> <p>The IRP is a Welsh public authority. The purpose of the provisions relating to the IRP is to enable it to review local authority policies and practice in relation to heads of paid service. Applying the purpose test, this provision relates to the devolved subject of local authorities, rather than employment law. It does not fall within any of the listed enactments in the employment reservation.</p>	<p>Whilst it is arguable whether the provision will satisfy the “ancillary” test for the creation of offences (para 4 Sch 7B - notwithstanding the uncertainty over the phrase “general application of the criminal law” in that paragraph), SoS consent would arguably be required as a result of a new offence conferring functions on a “reserved authority” (courts, prison service, probation service etc) contrary to paragraph 8 of new Schedule 7B.</p> <p>It is not at all clear whether the functions of the IRP relate to ‘employment rights and duties’ or any of the listed legislation in the “Employment and industrial relations” reservation. A detailed examination of each piece of legislation would need to be undertaken and if there is more than a loose or consequential connection</p>
---	----------------------	---	--	--

				<p>between the Assembly Act provision and the subject-matter of the legislation, then that provision would be outside competence.</p>
<p>5. Local Government Byelaws (Wales) Act 2012</p>		<p>Creation of Offences in the Act were not ancillary so question whether they would be competent. Minister of the Crown consent would also be needed.</p>	<p>The purpose of this Act was to reform the process for confirming byelaws and to enable local authorities to make byelaws themselves (i.e. it has a devolved purpose).</p> <p>This Act also enables fixed penalties to be imposed for breach of byelaws. This satisfies the ancillary test in relation to the power to create byelaws (and thus a permissible modification of criminal law under para 4 of Schedule 7B).</p> <p>The Supreme Court decided that the power of the SofS to confirm byelaws was a default power exercisable as a consequence of the conferral of powers on Welsh Ministers. Were a comparable default power, exercisable by the SofS in a devolved area, to be modified by the Assembly in</p>	<p>The Wales Office have applied the “ancillary” test in circumstances where it does not apply (the ancillary test is only available to provision which applies ‘otherwise than in relation to Wales’ (section 108A(3), the ‘law on reserved matters (para 1 of Schedule 7B) and the private and criminal law (paras 3 and 4 of Schedule 7B)).</p> <p>Further, the creation of offences also imposes functions on reserved bodies in breach of paragraph 8 of Schedule 7B.</p> <p>There is no doubt that the Secretary of State’s consent would be required if such a piece of legislation came before the Assembly under the proposed settlement.</p>

			<p>future the Supreme Court judgement would apply and so there would be no requirement for SofS consent.</p>	<p>The Supreme Court judgment only applied to this Act under the current settlement. The judgment would not apply to the same Act under the new settlement because there is no competence for the Assembly to modify or remove a Minister of the Crown function where its modification or removal is incidental or consequential on another Assembly Act provision.</p> <p>The Act imposes functions on local authorities. It is not clear whether local authorities are “Welsh public authorities” for the purposes of reservation 218 of Schedule 7A and paragraph 8 of Schedule 7B due to their non-devolved functions and powers exercisable outside Wales.</p>
6. Public Audit (Wales) Act 2013	Generally	It is difficult to be certain that the entirety of the WAO and/or the AGW’s functions would clearly fall (although if the provisions remain,	Both the WAO and AGW are Welsh public authorities under the new model. It seems WG has overlooked the	The Welsh Government did not overlook the provision in para 8(4) of Schedule 7B in voicing its concern in this

	<p>Specifically: Schedule 4, paragraph 24</p>	<p>arguments could perhaps be made) within the definition of functions “exercisable only in relation to Wales” for the purposes of meeting the definition of a “Welsh public authority” in the draft reservation 215 of Schedule 7A and paragraph 8 of Schedule 7B.</p> <p>If the AGW or WAO did not meet the definition of a “Welsh public authority” this would mean that the Minister of the Crown consent would have been required for huge parts (if not all of the 2013 Act) under the proposed new settlement, but which was not needed under Part 4 of GoWA 2006.</p> <p>It would also mean that the Assembly would not have been able to rely on the provisions of paragraph 215 in passing the Act.</p> <p>The Employment reservations may consequently have made certain provisions within the Act difficult.</p> <p>Minister of the Crown consent would have been needed for this provision as offence removed from</p>	<p>provision in para 8(4) of Schedule 7B which states that in deciding whether a body is a Welsh public authority, ignore any function which is exercisable otherwise than in relation to Wales. No SoS consent would be necessary.</p>	<p>context. The Wales Office has only cited from a part of the relevant test. The whole test provides:</p> <p><i>“ignore any function which- (a) is exercisable otherwise than in relation to Wales, <u>and</u> (b) could (apart from this paragraph) be conferred or imposed by provision falling within the Assembly’s legislative competence (see section 108A(3))”.</i></p> <p>It is the latter part of this provision which raises concerns in this context. These authorities have functions conferred upon them by Acts of Parliament which are not subject to the same legislative competence constraints as an Act of the Assembly (e.g. the Public Audit (Wales) Act 2004, as amended by, for example, the Police and Justice Act 2006.)</p> <p>For example, the AGW and WAO have functions in</p>
--	---	---	--	--

		under section 19 of the Public Audit (Wales) Act 2004.	Schedule 4 makes minor and consequential amendments including to the Public Audit Wales Act 2004. This includes repeal of an offence of failing to provide information to local authority auditors. This offence is an enforcement provision for the audit of Welsh local authorities by private sector auditors; the 2013 Act prescribes such audits by the WAO. Not only is this offence therefore otiose, but enforcement provisions like this, in relation to devolved matters fall within the definition of ancillary and do not require SofS consent.	relation to UK wide fraud initiatives and of providing assistance to UK inspectorates in the discharge of any of the inspectorates' functions. It is not clear to the Welsh Government that such provisions would fall within section 108A(3) as "ancillary". Similarly, they have functions which would relate to reserved matters under the new proposals such as reservation 38, "the prevention, detection and investigation of crime", and reservation 40, "policing".
7. Education (Wales) Measure 2009	Sections 9 to 16	These provisions gave the Special Educational Needs Tribunal for Wales (SENTW) jurisdiction to hear disability discrimination claims. As these provisions made amendments to the Equality Act 2010, they may well have related to reservation 202 which includes –	SENTW is a Welsh public authority set up using the competence for education. This Measure gives the tribunal the power to hear appeals against SEN provision and also disability discrimination in schools. It does not modify the	The relevant provisions of the Measure made amendments to the Equality Act 2010. Therefore, it is still far from clear whether the Assembly could do this under the new settlement given the wording of reservation 206, "the

		the subject matter of the Equality Act 2010.	test for when such discrimination occurs, which would engage the equalities reservation. Its purpose is to provide a local enforcement forum relating to the devolved purpose of education.	subject matter of the Equality Act 2010”. If a provision relates to a reserved matter in Schedule 7A of the draft Bill it is outside competence (s. 108A(2)(c); para 2 of Schedule 7B do not save such a provision.
8. School Standards and Organisation (Wales) Act 2013	Section 61	Local inquiries on proposals submitted or proposed in relation to education provision. It is arguable that this provision may now relate to reservation 183 – Inquiries under or by virtue of an enactment.	As with para 27 of Sch 5 to the Planning (Wales) Act 2015, which is referred to above, it is not correct to interpret the reservation of the subject matter of the Inquiries Act 2005 as reserving local, devolved inquiries like the one in section 61 of the SSO(W)A 2013. A normal application of the purpose test would result in this provision being within competence by virtue of its devolved education purpose.	The Inquires reservation in the published Wales Bill has been changed since the original draft supplied to the Welsh Government. The Welsh Government’s comments opposite are based on the earlier draft of the reservation. Further consideration is being given to whether this Act would be within competence under the new proposed settlement.
9. Qualifications (Wales) Act 2015	Section 35	This provision excludes Ofqual’s conditions of recognition from applying in relation to qualifications awarded in Wales. Depending on the finalised legal position, this may amount to a	Although this provision would require SofS consent under the new model (para 8 of Sch 7B) such consent would likely be forthcoming. This is evidenced by the Wales Office	This provision did not require consent under the current settlement, yet as acknowledged by the Wales Office, it would require consent under the proposed

		modification of Ofqual's functions and therefore require consent under paragraph 8 of Schedule 7B. No consent was required during the passage of the Act.	and DfE working closely with the WG in readiness to take forward any section 150 Order that will be required in consequence of this Act.	settlement. Therefore, this Act should not be categorised in the group - Acts which we believe would be passed under the new model, requiring no greater consents than at present.
10. Mobile Homes (Wales) Act 2013	e.g sections 17, 21, 22	Confers jurisdiction on the court to consider certain questions arising under the Act, this would relate to the reservation in paragraph 6, as there is no exception that it could relate to devolved matters. Minister of the Crown consent is also likely to be required as the right of appeal is to the upper tribunal by virtue of section 231 of the Housing Act 2004.	These provisions relate to enforcement of the licensing system for mobile homes sites, which is a devolved matter. We consider rights of appeal to the upper-tier tribunal to be part of the enforcement regime and would therefore satisfy the ancillary test. It is not the intention for SofS consent to be required.	We consider that a right of appeal to the upper-tier tribunal is likely to engage reservation 6 and/or require consent under paragraph 8 of Schedule 7B. Reservation 6 may apply because the jurisdiction of tribunals is reserved and the exception for tribunals that are devolved may not apply (para 6(3) of Sch 7A). Paragraph 8 of Schedule 7B will apply because the Upper Tier Tribunal is a reserved body. In addition, the Wales Office have applied the ancillary test incorrectly. It is not available in relation to reserved matters under s. 108A(2)(c) and Sch 7A or Minister of the Crown consents (The ancillary test is only available to provision

				which applies ‘otherwise than in relation to Wales’ (section 108A(3), the ‘law on reserved matters (para 1 of Schedule 7B) and the private and criminal law (paras 3 and 4 of Schedule 7B).
11, The Agricultural Sector (Wales) Act 2014	Section 24 (of the National Minimum Wage Act 1998) provides that “A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 23	Minister of the Crown consent would be needed for this provision.	<p>Section 5 of the 2014 Act modifies a number of provisions of the National Minimum Wage Act 1998 (“NMWA”), including its section 24.</p> <p>It would clearly satisfy the purpose test because it ‘relates to’ the express exception for the 2014 Act in Section H1 (i.e. agricultural wages are devolved in the new model). The existence of the exception means it would not relate to the NMWA reservation.</p> <p>It would also be a permissible modification to ‘the law on reserved matters’ (for the purposes of para 2 of Sch 7B) because it satisfies the test of being ancillary to a devolved provision.</p>	<p>We do not agree with the proposition in the last paragraph - it is not clear whether enabling a worker to bring a complaint to the employment tribunal would amount to a modification of a function of a reserved authority. The position is ambiguous.</p> <p>It is important to note also that the effect of the reservation in para 154 of Sch 7A is to prevent the Assembly making similar provision in other devolved contexts. Furthermore, the exception to that reservation covers “the subject-matter of the Agricultural Sector (Wales) Act 2014”. Clearly that exception cannot mean that the Assembly would only</p>

			It would not modify the functions of a ‘reserved authority’ under para 8 of Sch 7B, because complaints to employment tribunals would simply be part of the tribunal’s ordinary functions and not amount to the imposition of a new duty. SofS consent would therefore not be required.	have competence to make provision that is identical to that in the 2014 Act - the UK Government should set out what sorts of matters they consider that the formulation of “subject-matter of” in this context would enable the Assembly to legislate about.
12. NHS Redress (Wales) Measure 2008	The whole Measure	<p>The preamble to the Measure provides that the purpose of the Measure is to: “to make provision about arrangements for redress <i>in relation to liability in tort</i> in connection with services provided as part of the health service in Wales; and for connected purposes.” Arguably the whole Measure is outside competence as a result of the restriction on modifying the private law in paragraph 3 of Schedule 7B.</p> <p>In addition, section 6 of the Measure (suspension of limitation periods) arguably relates to Reservation 6(2) (g) (Single legal jurisdiction of England and Wales- limitation of actions) and</p>	<p>The purpose of this Measure relates to funding of the NHS by providing an ADR mechanism for complaints relating to medical negligence (a head of tort) to be dealt with before the complainant goes to court. The NHS in Wales, as in England, self-insures and a redress process could potentially save on the costs of lawyers representing claimants.</p> <p>S.6 of the Measure does modify the private law but would satisfy the ancillary test. No SofS consent would be necessary.</p> <p>Similarly, the Assembly can</p>	<p>We re-iterate the comments made previously. Modifying the law of tort is the purpose of the Act – it is not ancillary.</p> <p>We also point to reservation 180 – Claims Management Services.</p>

		<p>Reservation 180 (Claims management services).</p> <p>As the effect of the Measure is to impose functions on NHS bodies in England, Minister of the Crown consent would also have been needed (paragraph 8 of Schedule 7B).</p>	<p>legislate for England (clause 3 of the draft Bill introducing new s108A(3)) and so NHS and private sector bodies providing services to the NHS in Wales can be covered by this Measure because it would also satisfy the ancillary test.</p>	
13. Food Hygiene Rating (Wales) Act 2013	Section 14	<p>The imposition of functions on the Food Standards Agency (FSA) would have breached the restriction on imposing functions on reserved authorities (paragraph 8 of Schedule 7B). Minister of the Crown consent would have been needed.</p>	<p>The FSA would be a reserved authority in the new model (paragraph 8, Schedule 7B). SofS consent would therefore be needed for provisions such as s.14, which would likely be given.</p>	<p>The fact that the Wales Office acknowledge that the Assembly could not make this Act without UK Government permission under the new settlement is but one example that clearly demonstrates the reduction in the Assembly's legislative competence which will result from the proposed new settlement.</p>
14. Human Transplantation (Wales) Act 2013	Section 15	<p>The imposition of functions on the Human Tissue Authority would have breached the restriction on imposing functions on reserved authorities (paragraph 8 of Schedule 7B). Minister of the Crown consent would have been needed.</p>	<p>Although this provision would require SofS consent under para 8 of Sch 7B, such consent would likely have been forthcoming. This is evidenced by the fact the SofS for Wales took forward the Human Transplantation (Wales) Act 2013 (Consequential Provision)</p>	<p>The fact that the Wales Office acknowledge that the Assembly could not make this Act without UK Government permission under the new settlement clearly demonstrates the reduction in the Assembly's legislative competence</p>

			Order 2015 so that tissue collected from patients in Wales could be used elsewhere in the UK, even though the consent provisions differ, and vice versa.	which will result from the proposed new settlement.
15. Welsh Language (Wales) Measure 2011	The whole Measure	If the purpose of the Measure is to promote equality for Welsh language speakers and to prevent Welsh language speakers from discrimination, then the Measure will engage the equal opportunities reservation (202) and would be outside competence under the proposed new settlement.	The purpose of the Measure would be within competence under the reserved powers model published in the draft Bill because it relates to the devolved subjects of Welsh language; not any reserved matter.	<p>The Equal Opportunities reservation in the published Wales Bill has been changed since the original draft supplied to the Welsh Government.</p> <p>The Welsh Government's comments opposite are based on the earlier draft of the reservation.</p> <p>We point to entry 16 below which also relates to the Welsh Language (Wales) Measure 2011 and states that this Measure is still likely to be outside competence for other reasons.</p>
16. Welsh Language (Wales) Measure 2011	Part 4 (standards)	The imposition of standards on certain bodies will relate to the named bodies reservation (216) and/or breach the restriction on	The Measure provides that standards can only be imposed on MoC with consent (thus mirroring the Welsh Language	The fact that this Measure could not be made under the new proposed settlement demonstrates the reduction

		<p>imposing functions on reserved authorities (paragraph 8 of Schedule 7B) for which Minister of the Crown consent will be required under the proposed new settlement, but which was not obtained under Part 3 of GoWA 2006.</p>	<p>Act 1993), but it also lists Named Authorities, such as the Bank of England, and reserved authorities, such as government departments and the Charity Commission, as being subject to the standards.</p> <p>Named Authorities in the new model could not have functions imposed on them by the Assembly, and thus could not be subject to the standards if the Bill were passed under the new model. In future, an Order made by the Secretary of State under s.150 of GoWA 2006 would be the appropriate mechanism to modify the standards regime as it applies to Named Authorities. It would now be necessary to obtain SofS consent to impose duties (standards) on reserved authorities.</p>	<p>in the Assembly’s legislative competence which will result from the proposed new settlement.</p>
<p>17. Social Services and Well-being (Wales) Act 2014</p>	<p>Section 134</p>	<p>Section 134 designates the chief officer of police as a partner on safeguarding boards. This would be outside competence as a result of one or more of reservations 33-35.</p>	<p>The reservations for crime, public order and policing prevent the Assembly from creating provisions that have those matters as their purpose.</p>	<p>The fact that the Wales Office acknowledge that the Assembly could not make this Act without UK Government permission</p>

			<p>Creating safeguarding boards and specifying the partners thereof however, would be within competence for the purposes of section 108A(2)(c) because the purpose of the provision is a devolved one - social welfare.</p> <p>It was necessary to obtain SofS consent to membership of such boards by probation services and NOMs.</p> <p>However, because of the way the SofS policing functions are expressed in statute, they were not being modified and so no SofS consent was necessary. As police forces are reserved authorities under the new model, SoS consent would now be necessary for compulsory membership and contributions to the funding of boards by police forces in Wales (para. 8 of Sch 7B).</p>	<p>under the new settlement clearly demonstrates the reduction in the Assembly's legislative competence which will result from the proposed new settlement.</p>
18. Violence Against Women,	Various provisions	The stated purposes of the Act are set out in section 1: (a) arrangements for the prevention of	The reservation for anti-social behaviour in the draft Bill as published refers to the subject	The anti-social behaviour reservation in the published Wales Bill has been changed

<p>Domestic Abuse and Sexual Violence (Wales) act 2015</p>		<p>gender-based violence, domestic abuse and sexual violence; (b) arrangements for the protection of victims of gender-based violence, domestic abuse and sexual violence; (c) support for people affected by gender-based violence, domestic abuse and sexual violence. The Act could be outside competence under the new settlement due to the “anti-social behaviour” reservation (36).</p>	<p>matter of Parts 1 to 6 of the Anti-social behaviour, Crime and Policing Act 2014. However, proper application of the purpose test means the 2015 Act would not relate to this reservation and would be within the Assembly’s competence under the new model.</p>	<p>since the original draft supplied to the Welsh Government. Despite the amendment to the reservation, it is still arguable that the Act engages this reservation. Furthermore, the reservation as amended is still broader than the exception in Schedule 7 of GOWA 2006.</p> <p>In addition, this Act also arguably relates to reservation 38 (the prevention, detection and investigation of crime).</p>
<p>19. Housing (Wales) Act 2014</p>	<p>Section 95</p>	<p>Paragraph 8 of Schedule 7A would mean that Minister of the Crown consent would be required for the conferral of the function of co-operation of local authorities and other public bodies in England. Was not needed under current settlement.</p>	<p>Section 95 of this Act confers functions on certain bodies in England which would be reserved authorities in the new model (para. 8, Sch 7B).</p> <p>As such, section 95 would need SofS consent but this would likely have been forthcoming.</p>	<p>The fact that the Wales Office acknowledge that the Assembly could not make this Act without UK Government permission under the new settlement clearly demonstrates the reduction in the Assembly’s legislative competence which will result from the proposed new settlement.</p>
<p>20. Housing (Wales)</p>	<p>Part 2</p>	<p>Minister of the Crown consents would be needed when not required</p>	<p>The reservation for charities is intended to reserve charities</p>	<p>If the Wales Office had intended to reserve</p>

Measure 2011		under current settlement. RSLs can be charities and therefore provisions within Part 2 of the Measure which impose functions in relation to RSLs which are charities may now have been outside competence due to the Charities reservation.	law. It is not intended to prevent the Assembly from imposing housing functions on bodies in Wales , some of whom may be registered charities. Housing remains a devolved subject.	“charities law” then the reservation should say that as has been done in respect of, for example, private and criminal <i>law</i> in Schedule 7B and family <i>law</i> in paragraph 193 of Schedule 7A. Merely to refer to “charities” raises an ambiguity about the extent of the reservation (which could only be finally resolved by the Supreme Court) and whether a provision such as that in the 2011 Measure would” relate to”that subject Currently RSL, which are charities, will be captured by this reservation or the position is so unclear as to require clarification in drafting terms.
21. Well-being of Future Generations (Wales) Act 2015	s.30 in relation to bullet point 1.	<ul style="list-style-type: none"> • Section 30 authorises a public services board to invite the participation of the relevant PCC and chief constable. This would be outside competence as a result of one or more of reservations 33-35. • Highly likely that provisions of the Act would constitute ‘regulation’ therefore falling 	<p>We do not consider that any of WG’s concerns would prevent the Assembly from legislating.</p> <p>Invitations to PCCs and Chief Constables to participate in public services boards would not relate to crime, public order or policing reservations. The</p>	<p>The Welsh Government rejects the Wales Office’s analysis.</p> <p>The reservations potentially engaged here are very wide and ambiguous, for example, “policing” and “public order”. The Wales Office have given an interpretation of these</p>

		<p>outside the competence of the Assembly in respect of the first exception in reservation 202.</p> <ul style="list-style-type: none"> • The narrower definition of ‘Welsh Public Authority’ would also restrict competence. • Minister of the Crown consent would now be required • Reservation 58 (charities) would have caused difficulties. 	<p>creation of public service boards and their possible membership does not have these reservations as their purpose.</p> <p>We do not consider that reservation 202 would apply because the exceptions in relation to the devolved areas of equal opportunities would be relevant.</p> <p>We do not see the relevance of the “Welsh public authority” definition and therefore do not see that it would limit competence in relation to s.30.</p> <p>Police and crime commissioners are “Named Authorities” in the new model, and so the Assembly would not be able to impose duties on them (even with SofS consent). Chief constables are reserved authorities. However, we do not consider an <i>invitation</i> to participate (without any obligation to do so) amounts to the conferral of a function.</p> <p>Therefore, neither the Named</p>	<p>reservations, but this is not borne out in the broad wording of those reservations. A court may not necessarily take the same view in relation to say s. 36(2)(c) and s. 39(2) and (3) of the 2015 Act which demonstrate how certain bodies that UKG may regard as non-devolved contribute to the achievement of public service boards by the exercise of their functions.</p> <p>If the sort of thing that the Act requires is the sort of thing that the police may do as a matter of good practice then the reservation of “policing” may cover those sorts of things and therefore exclude them from the Assembly’s competence, such is the ambiguity about the word “policing”</p> <p>Further, it is more than merely arguable that provisions (e.g. section 37(6)(b) and perhaps the well-being goal of a more equal</p>
--	--	--	---	---

			<p>Authority nor the reserved authority restriction would apply.</p> <p>The charities reservation would not apply because that is not the purpose of section 30.</p>	<p>Wales) of the Act would constitute ‘regulation’ therefore falling outside the competence of the Assembly in respect of the first exception and other exceptions in reservation 206 (referred to incorrectly as 202 in the Wales Office response). The Wales Office have given an interpretation of this reservation, but this is not borne out in the broad wording of those reservations. A court may not necessarily take the same view.</p> <p>Reservation 206 is a significant reduction of the Assembly’s current equal opportunities legislative competence.</p> <p>The definition of ‘Welsh Public Authority’ in reservation 218 of Schedule 7A and paragraph 8 of Schedule 7B would also have restricted the Assembly’s competence. There is an overlap between these</p>
--	--	--	---	--

				<p>provisions – e.g. in relation to Police and Crime Commissioners.</p> <p>Minister of the Crown consent would, therefore, have been required</p>
22. Children and Families (Wales) Measure 2010	Part 2	<p>Offences relating to regulation of child minding and day care services may relate to reservation 36 on detection and investigation of crime.</p>	<p>Social welfare, including the protection and care of children, is a devolved subject. Applying the purpose test in new subsection 108A(5), it seems clear that the purpose of the Measure, which is to create a framework of regulation is a devolved one – social welfare.</p> <p>The Assembly may enforce provisions in an Assembly Act by creating offences and imposing penalties (so long as those provisions are for a devolved purpose).</p>	<p>We re-affirm our comments made previously. The reservation on the detection and investigation of crime is potentially wide-ranging., , in particular regarding provisions relating to the investigation of the suitability of child minders (section 38).</p> <p>Barring references in the Measure may also relate to reservation 47 (criminal records, including disclosure and barring)</p>
23. Further and Higher Education (Governance and Information) (Wales) Act	Section 4 and section 9	<p>We have concerns around the definition of ‘business association’ in section C1 (reservations 60 and 61). This may catch designated institutions (a type of further education institution – usually companies limited by guarantee)</p>	<p>Further and Higher Education institutions would not be caught by the exception to the C1 business associations reservation because they are Welsh public authorities.</p>	<p>The definition of ‘business association’ in section C1 (reservations 63 and 64) may catch designated institutions (a type of further education institution which are usually companies limited by</p>

2014		<p>which may not satisfy the exception relating to public bodies. This may have complicated the passage of section 4 of the Bill which deals with the governance of designated institutions.</p>	<p>The C1 business associations reservation relates to the law about such bodies and the benefits and responsibilities of incorporation. It does not apply to specific classes of such corporate bodies such as those in the further and higher education sector (which are devolved).</p>	<p>guarantee) including their creation and dissolution. These bodies may not satisfy the exception relating to public bodies given their legal status.</p> <p>The Wales Office have provided a view of the meaning of the reservation, which would not necessarily be the same as the view taken by a court.</p> <p>This shows the lack of clarity in the reservation.</p>
24. Higher Education (Wales) Act 2015	Entire Act	<p>Questionable whether the Higher Education Funding Council for Wales (HEFCW) is a 'Welsh public authority' for the purposes of paragraph 8 of Schedule 7B, as it exercises some functions in England. The Assembly may therefore have required Secretary of State consent, which it did not require under the existing settlement.</p>	<p>HEFCW would fall within the "Welsh public authority" definition because, even though it may have some functions exercisable in England, its functions are wholly or mainly exercisable in relation to institutions whose main establishment is in Wales (para 8(3)(b)(i) of Sch 7). SofS consent would not be required.</p>	<p>The Wales Office have not applied their own test.</p> <p>The test in paragraph 8(3)(b)(i) is whether a body has functions "<u>only exercisable in relation to Wales AND</u> are wholly or mainly functions that do not relate to reserved matters". The Wales Office acknowledge that HEFCW has some functions exercisable in England and</p>

				<p>should therefore note that it does not pass the first element of their test.</p> <p>The Wales Office have taken a view on the meaning of “Welsh public authority”, but because of the definition in the Bill and HEFCW’s functions outside Wales it is far from clear whether it is a “Welsh public authority”</p>
25. Social Services and Well Being (Wales) Act 2014	Sections 34, 78, 85, 127, 138, 139 and Part 11.	<p>Section 127 (adult protection orders) and section 78 (protecting members of the public from serious injury) may now relate to reservation 36 (anti social behaviour) and therefore fall outside competence.</p> <p>Section 85 and Schedule 1 (payments in respect of care from those with parental responsibility) may now be found to relate to reservations 141 and 142 on child support.</p> <p>Part 4 - elements of duties relating to those detained in secure estate</p>	<p>The purpose of section 78 is to create an intervention power for local authorities to take action in respect of looked-after children. On that basis, it does not relate to the antisocial behaviour reservation.</p> <p>Similarly, section 127 is an enforcement mechanism for the purpose of protecting vulnerable adults.</p> <p>Section 85 and Schedule 1 make provision for payments where a local authority is looking after a child. In that sense, it is a local</p>	<p>The Wales Office have taken a view on whether section 78 relates to reservation 42, but a court would not necessarily take the same view. Reservation 42 is ambiguous and unclear because it refers to “the subject-matter of” a substantial part of the 2014 Act.</p> <p>Section 127 may engage reservation 6 and/or paragraph 8 of Schedule 7B in relation to functions conferred on magistrates.</p>

		<p>may relate to reservation 192 - Offender Management.</p> <p>Section 138 and 139 (safeguarding board partners) would have required Secretary of State consent under paragraph 8 of Schedule 7B.</p>	<p>authority funding mechanism. In contrast, the child support maintenance reservation in Section F2 reserves the Child Support Agency and the payment obligations <i>between</i> parents in respect of a child's living costs following the parents' separation. This reservation is therefore not engaged.</p> <p>The Part 4 provisions relate to social welfare and the provision of social care to those in need in Wales. None of the provisions have as their purpose the management of offenders.</p> <p>S.138 and 139 would continue to require SofS consent pursuant to para 8 of Sch 7B, which would again likely have been forthcoming.</p>	<p>Section 134 designates the chief officer of police for specified police areas as a partner on safeguarding boards. This would be outside competence as a result of one or more of reservations 38-40.</p> <p>Sections 138 and 139 (which concern safeguarding board and their partners) would have required Secretary of State consent under paragraph 8 of Schedule 7B.</p> <p>Part 4 - elements of duties relating to those detained in secure estate may relate to reservation 192 (offender management). The same comments apply to Part 6 (looked after and accommodated children) which impose certain duties upon local authorities and Part 11 which disapplies some of those duties in certain circumstances.</p>
--	--	---	--	---