



Wales Act 2017

2017 CHAPTER 4

PART 1

CONSTITUTIONAL ARRANGEMENTS

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;
 - (e) it is incompatible with the Convention rights or with EU law.
- (3) But subsection (2)(b) does not apply to a provision that—
- (a) is ancillary to a provision of any Act of the Assembly or Assembly Measure or to a devolved provision of an Act of Parliament, and

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- (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) For this purpose, a provision of an Act of Parliament is “devolved” if it would be within the Assembly’s legislative competence if it were contained in an Act of the Assembly (ignoring any requirement for consent or consultation imposed under paragraph 8, 10 or 11 of Schedule 7B or otherwise).
- (5) In determining what is necessary for the purposes of subsection (3), any power to make laws other than that of the Assembly is disregarded.
- (6) The question whether a provision of an Act of the Assembly relates to a reserved matter is determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.
- (7) 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 that 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.

4 Devolved Welsh authorities

- (1) After section 157 of the Government of Wales Act 2006 insert—

“157A Devolved Welsh authority”

- (1) In this Act “devolved Welsh authority” means—
- (a) a public authority that meets the conditions in subsection (2),
 - (b) a public authority that is specified, or is of a description specified, in Schedule 9A (whether or not it meets those conditions), or
 - (c) the governing body of an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.
- (2) A public authority meets the conditions in this section if its functions—
- (a) are exercisable only in relation to Wales, and
 - (b) are wholly or mainly functions that do not relate to reserved matters.
- (3) In determining for the purposes of this section whether functions of a public authority are exercisable only in relation to Wales, no account is taken of any function that—
- (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 (by virtue of section 108A(3)).

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- (4) Where the conditions in subsection (2) are relevant to determining whether a provision of an Act of the Assembly is within the Assembly’s legislative competence, the time for assessing whether those conditions are met is the time when the Act is passed.
- (5) Her Majesty may by Order in Council amend Schedule 9A—
 - (a) so as to remove or revise an entry, or
 - (b) so as to add or substitute a public authority whose functions—
 - (i) are exercisable wholly or mainly in relation to Wales, and
 - (ii) are wholly or mainly functions that do not relate to reserved matters.
- (6) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (7) Subsection (6) does not apply to a statutory instrument containing an Order in Council that only makes provision for—
 - (a) the omission of an entry where the authority concerned has ceased to exist, or
 - (b) the variation of an entry in consequence of a change of name or transfer of functions.

Such an Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament.

- (8) In this section “public authority” means a body, office or holder of an office that has functions of a public nature.”

(2) After Schedule 9 to that Act insert the Schedule 9A set out in Schedule 3 to this Act.