

LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Section 17 – Meaning of devolved competence

119. **Section 17** defines devolved competence by reference to provision that would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly enacted on the day this section comes into force. This confirms the limits in terms of legislative competence, but also means that regulations under the specified sections can also make provision that an Act of the Assembly could make, including modifying primary legislation and delegation of the power to make regulations. The fact that the powers can be used to modify primary legislation is confirmed in the relevant sections.
120. In assessing devolved competence under section 17(1), this would include consideration of the restriction on legislating incompatibly with EU law contained in section 108(6)(c) of the GoWA 2006. However, the restriction in section 108(6)(c) would not be relevant to any provision in regulations that are to have effect on or after exit day as the Treaties (as defined in section 20(5)) would have ceased to apply. For example, regulations made under section 3 cannot come into force before exit day and therefore at a point where the Treaties apply to the UK. The regulations could not therefore engage the restriction in section 108(6)(c). The situation is different for regulations under sections 9 and 10 as such regulations can come into force before exit day. However, any provision in regulations made under sections 9 and 10 to come into force before exit day would be subject to the restriction in section 108(6)(c).
121. Subsection (2) provides a different definition of devolved competence for the purpose of sections 11, 14 and 15, which was intended to operate in the event that the section came into force before 1 April 2018. The definition reflects the amendments made to the legislative powers of the Assembly by the Wales Act 2017 (“WA 2017”). Prior to 1 April 2018 the devolution settlement provided for under section 108 of, and Schedule 7 to, the GoWA 2006 is to apply. On and after 1 April 2018, a provision is within devolved competence for the purpose of sections 11, 14 and 15 if the provision could be included in an Act of the Assembly under both the current devolution settlement and the new devolution settlement provided for under the WA 2017. The intended effect of this was that any reductions in the legislative competence of the Assembly as a result of the WA 2017 would apply to sections 11, 14 and 15 and any increases in the legislative competence of the Assembly by virtue of WA 2017 would not apply.