

LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Sections 14 and 15 – Welsh Ministers’ consent to making subordinate legislation and Welsh Ministers’ consent to approval or confirmation of subordinate legislation

107. These sections establish the default position in law that the Welsh Ministers’ consent is required before any person can make, confirm or approve subordinate legislation covering devolved subjects that are made under Acts of Parliament passed after the Act comes into force (and which meet other conditions). This default position can be changed by the UK Parliament if it wishes when it creates new functions to make, confirm or approve subordinate legislation.
108. There are five conditions for the application of the consent requirement in similar terms in each section, with the differences relating to the type of legislation covered by each section. Section 14 covers subordinate legislation made by a Minister of the Crown and section 15 covers subordinate legislation approved or confirmed by a Minister of the Crown.
109. [Sections 14](#) and [15](#) apply where all of conditions 1, 2 and 3 are met and condition 4 or 5 is met. The requirement to seek Welsh Ministers’ consent would not arise where the subordinate legislation is being made, confirmed or approved by the Welsh Ministers.
110. Condition 1 is linked to the limits of the Assembly’s legislative competence. It is not met where the subordinate legislation does not contain provision within devolved competence as defined in section 17. A requirement for Welsh Ministers’ consent could therefore not arise for provisions in subordinate legislation that are outside the legislative competence of the Assembly. For example, provision in a subject that is not devolved, such as banking, would not be within the Assembly’s legislative competence and could therefore not meet condition 1.
111. Condition 2 limits the effect of sections 14 and 15 to the scope of EU law as defined in section 20(1) of the Act. The definition of EU law in section 20(1) is consistent with the definition of EU law in section 158(1) of the GoWA 2006.
112. Condition 3 limits sections 14 and 15 to subordinate legislation made by statutory instrument. In section 15 (which applies to approval and confirmation of subordinate legislation) it is also a condition that the legislation to which approval or confirmation is given is to be made by a person other than the Welsh Ministers.
113. Condition 4 covers situations where subordinate legislation is made, approved or confirmed under new functions to make, confirm or approve subordinate legislation conferred by or under an Act of Parliament. For condition 4 to be met, the Act of Parliament conferring the function must be enacted after the day on which the section comes into force. Where the function has been conferred in an Act of Parliament that

*These notes refer to the Law Derived from the European Union
(Wales) Act 2018 (c.3) which received Royal Assent on 6 June 2018*

has been enacted before the section comes into force, condition 4 is not met. Even where a function is exercised after the section has come into force, if the Act of Parliament conferring the function was enacted before the section came into force, condition 4 is not met.

114. Condition 5 covers situations where subordinate legislation is made, approved or confirmed under existing functions that are modified by an Act of Parliament which is enacted after the sections have come into force. For condition 5 to be met the modification must result in the function being exercisable so that subordinate legislation made, confirmed or approved contains devolved provision that it could not previously contain.
115. [Section 15\(9\)](#) confirms that a function of giving consent to subordinate legislation is included within the scope of section 15.