

WALES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 3: Miscellaneous

Section 24: Local housing authorities: limits on housing revenue account debt

204. **Section 24** amends Part 6 of the Local Government and Housing Act 1989 (the “1989 Act”).
205. This section enables HM Treasury to set a cap on the maximum level of housing debt that may be held, in aggregate, by Welsh local housing authorities (“LHAs”) and requires the Welsh Minister to determine how much housing debt may be held by each LHA within that cap. This creates a similar system in Wales to that which applies in England by virtue of sections 171 – 173 of the Localism Act 2011.
206. *Subsection (1)* introduces the amendments to the 1989 Act.
207. *Subsection (2)* inserts new sections 76A and 76B into the 1989 Act. It provides:
- that HM Treasury may make a determination of the maximum amount of housing debt that may be held, in aggregate, by Welsh LHAs;
 - that HM Treasury must send a copy of its determination to the Welsh Ministers and lay a copy of it before the House of Commons;
 - that the Welsh Ministers may from time to time make determinations in relation to each LHA of the amount of housing debt they are to be treated as holding and the maximum amount of housing debt they may hold;
 - that the aggregate amount the Welsh Ministers may determine cannot exceed HM Treasury’s determination;
 - that the Welsh Ministers must make determinations within 6 months of receiving one from HM Treasury;
 - a definition of housing debt as debt held by the LHA in relation to the LHA’s housing functions and other property within its Housing Revenue Account; and
 - that the Welsh Ministers have the power to obtain information from Welsh LHAs in order for them to make the determinations.
208. *Subsection (3)* introduces amendments to section 87 of the 1989 Act (which provides for how determinations are to be made and how they are to be communicated to LHAs).
209. *Subsection (4)* changes references in section 87 from “Secretary of State” to “appropriate person”. “Appropriate person” is defined in section 88 of the 1989 Act as the Secretary of State in England and the Welsh Ministers in Wales.

210. *Subsection (5)* provides that subsection (1)(b) of section 87 (which provides that determinations can be made before, during or after the end of the year to which it relates) does not apply to determinations made by the Welsh Ministers under new section 76A.
211. *Subsection (6)* applies the defined term “appropriate person” to section 87(2).

Section 25: The work of the Law Commission so far as relating to Wales

212. The powers of the Law Commission in relation to advice to the Welsh Government are currently unclear. At present law reform matters relating to the law of England and Wales are only referred by UK government departments, albeit the Welsh Government can request these departments to refer a matter on behalf of the Welsh Government.
213. *Section 25* inserts new provisions into the Law Commissions Act 1965 (“the 1965 Act”) in order to impose a new duty on the Law Commission to provide advice and information to the Welsh Ministers directly. This makes it clear that the Welsh Ministers will be able to refer law reform matters to the Law Commission themselves.
214. *Subsection (3)* of this section provides that, in preparing reports on Law Commission proposals under the existing section 3A of the 1965 Act, the Lord Chancellor is not required to report on proposals on which the Welsh Ministers will be required to report under new section 3C.
215. New section 3C is inserted into the 1965 Act by *subsection (4)* of section 25 to provide that Welsh Ministers must produce an annual report to be laid before the Assembly. The report must include details of any Law Commission proposals which relate to Welsh devolved matters and either have been implemented since the last report or have yet to be implemented.
216. Law Commission proposals are defined as any proposal or recommendation for the reform of the law that has been published in a report by the Law Commission. A Law Commission proposal relates to “Welsh devolved matters” if it would be within the legislative competence of the Assembly or if it is a matter relating to functions which are exercisable by the Welsh Ministers, First Minister, Counsel General to the Welsh Government or the Assembly Commission.
217. If in the previous year there are proposals that have yet to be implemented, the Welsh Ministers’ report must include plans for implementation, any decisions not to implement, and the reasons for any such decision. If there are no outstanding Law Commission proposals on Welsh devolved matters in the year since the previous report, the Welsh Ministers will not be required to produce a report for the Assembly.
218. *Subsection (4)* of section 25 also inserts a new section 3D into the 1965 Act to provide for a protocol about the Law Commission’s work as regards Wales. The protocol would be agreed between the Law Commission and Welsh Ministers for purposes of the Law Commission’s work relating to Welsh devolved matters.
219. The Lord Chancellor is required to approve the protocol, which may include provision about the principles and methods to be applied when deciding which work the Law Commission carries out, the advice and information that the Law Commission and Welsh Ministers are to give each other, and the way in which the Welsh Ministers are to deal with the Law Commission proposals. This subsection deliberately allows flexibility in respect of the provisions of the protocol, for example in relation to the funding and other practicalities of Welsh Ministers’ references.
220. *Subsection (4)* also provides that the protocol must be kept under review from time to time and it must be laid before the Assembly. There is also an explicit duty on Welsh Ministers and the Law Commission to have regard to the protocol.

*These notes refer to the Wales Act 2014 (c.29)
which received Royal Assent on 17 December 2014*

221. *Subsection (5) of section 25 makes a minor amendment to section 5 of the 1965 Act to clarify that the expenses of the Law Commission will now derive not just from Parliament, but also from the Welsh Ministers.*