

Changes to legislation: Wales Act 2017, SCHEDULE 2 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 2

Section 3

NEW SCHEDULE 7B TO THE GOVERNMENT OF WALES ACT 2006

Commencement Information

II Sch. 2 in force at 1.4.2018 by S.I. 2017/1179, reg. 2

This Schedule sets out the new Schedule 7B to the Government of Wales Act 2006, to be substituted (with the new Schedule 7A) for Schedule 7 to that Act—

“SCHEDULE 7B

Section 108A

GENERAL RESTRICTIONS

PART 1

GENERAL RESTRICTIONS

The law on reserved matters

- 1 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the law on reserved matters.
 - (2) ““The law on reserved matters”” means—
 - (a) any enactment the subject-matter of which is a reserved matter and which is comprised in an Act of Parliament or subordinate legislation under an Act of Parliament, and
 - (b) any rule of law which is not contained in an enactment and the subject-matter of which is a reserved matter,and in this sub-paragraph ““Act of Parliament”” does not include this Act.
- 2 (1) Paragraph 1 does not apply to a modification that—
 - (a) is ancillary to a provision made (whether by the Act in question or another enactment) which does not relate to reserved matters, and
 - (b) has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.
 - (2) In determining what is necessary for the purposes of this paragraph, any power to make laws other than the power of the Assembly is disregarded.

Private law

- 3 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the private law.

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- (2) ““The private law”” means the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession.
- (3) In sub-paragraph (2) the reference to the law of property does not include intellectual property rights relating to plant varieties or seeds but does include the compulsory acquisition of property.
- (4) Sub-paragraph (1) does not apply to a modification that has a purpose (other than modification of the private law) which does not relate to a reserved matter.

Criminal law

- 4 (1) A provision of an Act of the Assembly cannot—
 - (a) make modifications of, or confer power by subordinate legislation to make modifications of, an offence in a listed category;
 - (b) create, or confer power by subordinate legislation to create, an offence in a listed category.
 - (2) The listed categories of offences are—
 - (a) treason and related offences;
 - (b) homicide offences (including offences relating to suicide) and other offences against the person (including offences involving violence or threats of violence) that are triable only on indictment;
 - (c) sexual offences (including offences relating to indecent or pornographic images);
 - (d) offences of a kind dealt with by the Perjury Act 1911.
 - (3) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, the law about—
 - (a) criminal responsibility and capacity,
 - (b) the meaning of intention, recklessness, dishonesty and other mental elements of offences,
 - (c) inchoate and secondary criminal liability, or
 - (d) sentences and other orders and disposals in respect of defendants in criminal proceedings, or otherwise in respect of criminal conduct, and their effect and operation.
 - (4) For the purposes of this paragraph, a modification of the law relating to defences to an offence is a modification of the offence.
 - (5) This paragraph does not affect the reservation, by virtue of Schedule 7A, of the creation or modification of offences in relation to reserved matters.
- (See also paragraph 8 of that Schedule (single legal jurisdiction of England and Wales).)

Enactments other than this Act

- 5 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the table below—

Enactment

Provisions protected from modification

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European Communities Act 1972	The whole Act.
Government of Wales Act 1998	Section 144(7).
Human Rights Act 1998	The whole Act.
Civil Contingencies Act 2004	The whole Act.
Energy Act 2008	Section 100 and regulations under that section.

- (2) A provision of an Act of the Assembly cannot, unless it is an oversight provision, make modifications of—
- (a) section 146A(1) of the Government of Wales Act 1998, or
 - (b) sections 2(1) to (3), 3(2) to (4) or 6(2) and (3) of the Public Audit (Wales) Act 2013 (anaw 3),
- or confer power by subordinate legislation to do so.
- (3) A provision of an Act of the Assembly cannot, unless it is an oversight provision and also a non-governmental committee provision—
- (a) make modifications of section 8(1) of the Public Audit (Wales) Act 2013 so far as that section relates to the Auditor General's exercise of functions free from the direction or control of the Assembly or Welsh Government, or
 - (b) confer power by subordinate legislation to do so.
- (4) An “oversight provision” is a provision of an Act of the Assembly that—
- (a) relates to the oversight or supervision of the Auditor General or of the exercise of the Auditor General's functions, or
 - (b) is ancillary to a provision falling within paragraph (a).
- (5) A “non-governmental committee provision” is a provision conferring functions on a committee of the Assembly that—
- (a) does not consist of or include members of the Welsh Government, and
 - (b) is not chaired by an Assembly member who is a member of a political group with an executive role,
- or a provision conferring power by subordinate legislation to do so.
- (6) A person designated under section 46(5) to exercise the functions of the First Minister is treated as a member of the Welsh Government for the purposes of sub-paragraph (5)(a).
- 6 A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.

This Act

- 7 (1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
- (2) Sub-paragraph (1) does not apply to—
- (a) the following provisions in Part 1 (the Assembly)—
 - (i) in section 1(1), the words from “the National Assembly for Wales” to the end;

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- (ii) section 1(2) to (5);
 - (iii) section 2;
 - (iv) section 3(1), (1B) and (2) to (4);
 - (v) sections 4 to 20;
 - (vi) section 22;
 - (vii) section 23(2), (6) and (7);
 - (viii) section 24;
 - (ix) section 25(1)(b) and (2) to (15);
 - (x) section 26(2) to (4);
 - (xi) in section 27(1), the words from ““the National Assembly for Wales Commission”” to the end;
 - (xii) section 27(2) to (4), (6) and (7);
 - (xiii) section 28;
 - (xiv) section 30;
 - (xv) section 34(1) and (2);
 - (xvi) sections 35 and 36;
 - (xvii) sections 38 to 43;
 - (xviii) section 51;
 - (xix) paragraphs 1, 2, 3(1), (2) and (4) to (7), 4 and 7 to 11 of Schedule 2;
 - (b) the following provisions in Part 2 (the Welsh Government)—
 - (i) sections 53 and 54;
 - (ii) sections 60 and 61;
 - (iii) sections 72 to 75;
 - (iv) sections 77 to 79;
 - (v) section 91;
 - (c) the following provisions in Part 4 (Acts of the Assembly)—
 - (i) in section 107(1), the words from ““Acts of the National Assembly for Wales”” to the end;
 - (ii) section 110;
 - (iii) section 111(1)(a) and (b), (2), (3) and (5);
 - (d) the following provisions in Part 5 (finance)—
 - (i) section 120(2);
 - (ii) sections 125 to 130;
 - (iii) sections 131 to 135;
 - (iv) sections 137 to 143;
 - (v) any provision of Schedule 8;
 - (e) the following provisions in Part 6 (miscellaneous and supplementary)—
 - (i) sections 146 to 148;
 - (ii) section 156(2) to (5).
- (3) Sub-paragraph (1) does not apply to any provision—
- (a) making modifications of so much of any enactment as is modified by this Act, or
 - (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Act of the Assembly.

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- (4) Sub-paragraph (1) does not apply to any provision that is consequential on or incidental to provision made by virtue of—
- (a) sub-paragraph (2)(a)(i) (change of name of the Assembly),
 - (b) sub-paragraph (2)(a)(xi) (change of name of the Assembly Commission), or
 - (c) sub-paragraph (2)(c)(i) (change of name of Acts of the Assembly).
- (5) Sub-paragraph (1), so far as it applies in relation to a provision of Part 5 not listed in sub-paragraph (2)(d), or section 159, does not apply to a provision of an Act of the Assembly if the provision is incidental to, or consequential on, a provision of an Act of the Assembly relating to budgetary procedures or devolved taxes.
- (6) In sub-paragraph (5) ““budgetary procedures”” are procedures for a financial year relating to—
- (a) the authorisation of the amount of resources that may be used or retained in that year by relevant persons or pursuant to a relevant enactment,
 - (b) the authorisation of the amount that may be paid out of the Welsh Consolidated Fund in that year to relevant persons or for use pursuant to a relevant enactment, or
 - (c) the scrutiny of the use of the amounts so authorised under paragraph (a) or (b) or of the exercise of borrowing powers by the Welsh Ministers.
- (7) In sub-paragraph (6)—
- (a) the reference to the use of resources is a reference to their expenditure, consumption or reduction in value;
 - (b) ““relevant persons”” means—
 - (i) the Welsh Ministers,
 - (ii) the First Minister,
 - (iii) the Counsel General,
 - (iv) the Assembly Commission,
 - (v) the Wales Audit Office, and
 - (vi) the Public Service Ombudsman for Wales;
 - (c) ““relevant enactment”” means an enactment that provides for payment out of the Welsh Consolidated Fund.
- (8) Sub-paragraph (1) does not apply in relation to a provision to which paragraph 5(3) applies.

Ministers of the Crown, government departments and other reserved authorities

- 8 (1) A provision of an Act of the Assembly cannot—
- (a) confer or impose, or confer power by subordinate legislation to confer or impose, any function on a reserved authority,
 - (b) make modifications of, or confer power by subordinate legislation to make modifications of, the constitution of a reserved authority, including modifications relating to its assets and liabilities and its funding and receipts, or
 - (c) confer, impose, modify or remove, or confer power by subordinate legislation to confer, impose, modify or remove, functions specifically exercisable in relation to a reserved authority,
- unless the appropriate Minister consents to the provision.
- (2) Sub-paragraph (1) is subject to the exceptions in paragraph 9.

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- (3) In this paragraph “reserved authority” means—
- (a) a Minister of the Crown or government department;
 - (b) any other public authority apart from a devolved Welsh authority.
- (4) In this paragraph “public authority” means a body, office or holder of an office that has functions of a public nature.
- (5) In this paragraph the “appropriate Minister” means—
- (a) where the authority in question is Her Majesty's Revenue and Customs, the Treasury;
 - (b) otherwise, the Secretary of State.
- 9 (1) This paragraph contains exceptions to paragraph 8.
- (2) Paragraph 8(1)(a) does not apply in relation to—
- (a) the Electoral Commission;
 - (b) the Food Standards Agency;
 - (c) the Water Services Regulation Authority;
 - (d) the Joint Committee on Vaccination and Immunisation;
 - (e) the Human Tissue Authority;
 - (f) the NHS Business Services Authority or Awdurdod Gwasanaethau Busnes y GIG;
 - (g) NHS Blood and Transplant or Gwaed a Thrawsblaniadau'r GIG;
 - (h) the Open University.
- (3) Paragraph 8(1)(a) does not apply to the conferral or imposition on the traffic commissioners of a function relating to—
- (a) the registration of local bus services, or
 - (b) the application and enforcement of traffic regulation conditions in relation to those services.
- (4) Paragraph 8(1)(a) does not apply to—
- (a) the conferral or imposition on a court of a devolved function (within the meaning of paragraph 6 of Schedule 7A);
 - (b) the conferral or imposition on a tribunal of a function involving, or connected with, making a decision in relation to a matter that is not a reserved matter.
- (5) Paragraph 8(1)(c) does not apply to a provision to which paragraph 8(1)(a) applies or would apply but for sub-paragraph (2) of this paragraph.
- (6) Paragraph 8(1) does not apply in relation to—
- (a) a water or sewerage undertaker;
 - (b) the Consumer Council for Water;
 - (c) the Chief Inspector of Drinking Water for Wales or any other person appointed by the Welsh Ministers under section 86 of the Water Industry Act 1991 (assessors for the enforcement of water quality).
- (7) Paragraph 8(1) does not apply in relation to the funding of police and crime commissioners through council tax precepts.
- 10 (1) A provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority

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other than a devolved Welsh authority, unless the appropriate Minister consents to the provision.

- (2) This paragraph does not apply in relation to—
- (a) a Minister of the Crown (as to which, see paragraph 11);
 - (b) the Electoral Commission;
 - (c) the Food Standards Agency;
 - (d) the Water Services Regulation Authority;
 - (e) a water or sewerage undertaker;
 - (f) the Consumer Council for Water;
 - (g) the Chief Inspector of Drinking Water for Wales or any other person appointed by the Welsh Ministers under section 86 of the Water Industry Act 1991 (assessors for the enforcement of water quality);
 - (h) the Joint Committee on Vaccination and Immunisation;
 - (i) the Human Tissue Authority;
 - (j) the NHS Business Services Authority or Awdurdod Gwasanaethau Busnes y GIG;
 - (k) NHS Blood and Transplant or Gwaed a Thrawsblaniadau'r GIG;
 - (l) the Open University.
- (3) This paragraph does not apply to the removal or modification of a function of the traffic commissioners relating to—
- (a) the registration of local bus services, or
 - (b) the application and enforcement of traffic regulation conditions in relation to those services.
- (4) This paragraph does not apply to—
- (a) the removal or modification of a devolved function (within the meaning of paragraph 6 of Schedule 7A) of a court;
 - (b) the removal or modification of a function of a tribunal involving, or connected with, making a decision in relation to a matter that is not a reserved matter.
- (5) This paragraph does not apply in relation to the funding of police and crime commissioners through council tax precepts.
- (6) In this paragraph ““public authority”” and ““appropriate Minister”” have the same meaning as in paragraph 8.
- 11 (1) A provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify—
- (a) any function of a Minister of the Crown that relates to a qualified devolved function,
 - (b) any function of a Minister of the Crown exercisable in relation to the Welsh language,
 - (c) any function of a Minister of the Crown exercisable in relation to water supply, water quality, water resources management, control of pollution of water resources, sewerage, rivers and other watercourses, land drainage, flood risk management or coastal protection,
 - (d) any function of a Minister of the Crown under Chapter 1 of Part 3, or section 58, of the Marine and Coastal Access Act 2009,

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- (e) any power of the Secretary of State under section 6 of the Railways Act 2005 (financial assistance relating to railway services etc), or
 - (f) any function of the Treasury under section 138(2) or 141(4),
- unless the appropriate Minister consents to the provision.
- (2) A provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a Minister of the Crown not falling within sub-paragraph (1) unless the Welsh Ministers have consulted the appropriate Minister about the provision.
- (3) In this paragraph ““qualified devolved function”” means a function that—
- (a) is conferred or imposed on or transferred to the Welsh Ministers, the First Minister or the Counsel General by any Act (whenever passed) or by an instrument made under any Act (whenever made), and
 - (b) is to any extent exercisable—
 - (i) concurrently or jointly with a Minister of the Crown, or
 - (ii) only with the consent or agreement of, or after consultation with, a Minister of the Crown.
- (4) For the purposes of sub-paragraph (1)(a)—
- (a) the functions of a Minister of the Crown that ““relate to”” qualified devolved functions within sub-paragraph (3)(b)(i) are the qualified devolved functions so far as exercisable by the Minister;
 - (b) the functions of a Minister of the Crown that ““relate to”” qualified devolved functions within sub-paragraph (3)(b)(ii) are those concerning consent or agreement to, or consultation about, the exercise of the qualified devolved functions.
- (5) In this paragraph ““appropriate Minister”” has the same meaning as in paragraph 8.
- 12 (1) In any enactment (whenever passed or made) not contained in this Act —
- (a) a reference to provision within the legislative competence of the Assembly does not include provision that could be made in an Act of the Assembly only with the consent of a Minister of the Crown (under paragraph 8, 10 or 11 or otherwise);
 - (b) a reference to provision outside that competence includes provision that could be made in an Act of the Assembly only with such consent.
- (2) But paragraph 11(2) is to be ignored for the purposes of any such references.

PART 2

GENERAL EXCEPTIONS FROM PART 1

Restatement

- 13 (1) Part 1 does not prevent an Act of the Assembly—
- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
 - (b) repealing or revoking any spent enactment,
- or conferring power by subordinate legislation to do so.

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- (2) For the purposes of paragraph 1, the law on reserved matters includes any restatement in an Act of the Assembly or an Assembly Measure, or subordinate legislation under such an Act or Measure, of the law on reserved matters if the subject-matter of the restatement is a reserved matter.

Subordinate legislation

- 14 Part 1 does not prevent an Act of the Assembly making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—
- (a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised;
 - (b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject;
 - (c) applying any enactment comprised in or made under an Act of the Assembly relating to the documents by which such powers may be exercised.”

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Changes and effects yet to be applied to :

- specified provision(s) transitional and savings provisions for commencing S.I. 2017/1179 by [S.I. 2018/278](#) [reg. 2Sch.](#)