

Competence tests currently under Part 4 of and Schedule 7 to the Government of Wales Act 2006

1. Does the provision relate to one or more subjects listed in Part 1 of Schedule 7?

If yes, go to question 2

If no – the provision is outside competence unless:

- (a) it provides for the enforcement of a competent provision of a Assembly Act or Measure or it is otherwise appropriate for making such provision effective;*
- or*
- (b) it is otherwise incidental to, or consequential on, such a provision.*

2. Does the provision fall within any of the exceptions in Part 1 of Schedule 7?

If no, go to question 3.

If yes – the provision is outside competence unless:

- (a) it provides for the enforcement of a competent provision of a Assembly Act or Measure or it is otherwise appropriate for making such provision effective;*
- or*
- (b) it is otherwise incidental to, or consequential on, such a provision.*

3. Does the provision apply otherwise than in relation to Wales or confer, impose, modify or remove (or give power to do so) functions exercisable otherwise than in relation to Wales?

If no, go to question 4.

If yes –the provision is outside competence unless:

- (a) it provides for the enforcement of a competent provision of a Assembly Act or Measure or it is otherwise appropriate for making such provision effective;*
- or*
- (b) it is otherwise incidental to, or consequential on, such a provision.*

4. Do any of the restrictions in Part 2 of Schedule 7 apply having regard to any exception to those restrictions in Part 3 of that Schedule?

(a) Does the provision remove or modify (or confer power to do so) any pre-commencement function of a Minister of the Crown?

(b) Does the provision confer or impose (or confer power to do so) any function on a Minister of the Crown?

(c) Does the provision modify any of the provisions listed in the table in paragraph 2(1) of Part 2 of Schedule 7 (having regard to any relevant exceptions)?

(d) Does the provision make modifications of (or confer power to do so) any provision of an Act of Parliament other than GoWA 2006 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?

(e) Does the provision make modification of (or confer power to do so) any functions of the Comptroller and Auditor General or the National Audit Office?

(f) Does the provision remove or modify (or confer power to do so) any function or Her Majesty's Revenue and Customs?

(g) Does the provision confer or impose (or confer power to do so) any function on Her Majesty's Revenue and Customs?

(h) Does the provision modify provisions of GoWA 2006, other than those provisions referred to in paragraph 5(2),(3) and (4A) of Part 1 of Schedule 7?

If yes, the provision is outside competence.

If no:

5. Does the provision extend otherwise than only to England and Wales?

If yes – the provision is outside competence.

If no:

6. Is the provision incompatible with the Convention rights or with EU law?

If yes – the provision is outside competence.

If no – the provision is within competence.

Competence tests under section 108A and Schedules 7A and 7B of the proposed Wales Bill

1. Does the provision extend otherwise than only to England and Wales?

If yes – the provision is outside competence.

If no:

2. Does the provision apply otherwise than in relation to Wales or confer, impose, modify or remove (or give power to do so) functions exercisable otherwise than in relation to Wales?

If no, go to question 3:

If yes, is the provision:

(a) ancillary to a provision which is within the Assembly's legislative competence (or would be if it were included in an Act of the Assembly), and

(b) does it have 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.

If no – the provision is outside competence.

If yes:

3. Does the provision relate to reserved matters (see Schedule 7A)?

If yes – outside competence.

If no:

4. Does the provision breach any of the restrictions in Part 1 of Schedule 7B, having regard to any exception to those restrictions in Part 2 of that Schedule? (See questions 5 to 11)

5. Does the provision modify “the law on reserved matters” (see paragraph 1(2) of Part 1 of Schedule 7B)?

If no, go to question 6.

If yes:

*Is the modification ancillary to a provision which does not relate to reserved matters **and** has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision?*

If yes, go to question 6.

If no, the provision is outside competence.

6. Does the provision modify the private law (see paragraph 3(2) of Part 1 of Schedule 7B)?

If no, go to question 7

If yes:

*Is the modification (1) necessary for a devolved purpose or (2) is ancillary to a provision made which has a devolved purpose **and** has no greater effect on the general application of the private law than is necessary to give effect to that purpose?*

If yes, go to question 7.

If no, the provision is outside competence.

7. Does the provision modify the criminal law?

If no, go to question 8.

If yes:

*(ii) Is the modification ancillary to a provision which has a devolved purpose **and** has no greater effect on the general application of the criminal law than is necessary to give effect to the purpose of that provision?*

If yes, go to question 8.

If no, the provision is outside competence.

8. Does the provision modify any of the provisions listed in the table in paragraph 5(1) of Part 1 of Schedule 7B (having regard to relevant exceptions)?

If yes, the provision is outside competence

If no, go to question 9

9. Does the provision make modifications of (or confer power to do so) 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?

If yes, the provision is outside competence

If no, go to question 10.

10. Does the provision modify provisions of the Wales Bill/Act, other than those provisions referred to in paragraph 7(2)(3) and(4) of Part 1 of Schedule 7B?

If yes, the provision is outside competence,

If no, go to question 11.

11. Does the provision:

(a) remove or modify (or confer power to do so), any function of a reserved authority;

(b) confer or impose (or confer power to do so) any function on a reserved authority;

(c) confer, impose, modify or removed (or confer power to do so) functions specifically exercisable in relation to a reserved authority, or

(d) make modifications of, or confer power by subordinate legislation to make modifications of, the constitution of a reserved authority?

If no, go to question 12.

If yes, has the appropriate UK Minister consented to the provision?

If yes, go to question 12.

If no, the provision is outside competence.

12. Is the provision incompatible with the Convention rights or with EU law?

If yes, the provision is outside competence.

If no, the provision is within competence.