

No.3: WG28243



Llywodraeth Cymru
Welsh Government

Government and Laws in Wales

Draft Bill

Explanatory Summary

Introduction and Summary

In the UK Government's Command Paper 9020 'Powers for a Purpose' published in February 2015, the Secretary of State for Wales set out proposals for devolution in Wales. His intention was to make the Welsh settlement clearer, more stable and long lasting. He set out his proposals in legislative form in the draft Wales Bill published for pre-legislative scrutiny in October 2015.

Over the past months, the Welsh Government has been engaged in detailed analysis of the Secretary of State's draft Bill with the aim of improving it in order to meet his objectives.

The First Minister has written several letters to the Secretary of State and officials have had detailed discussions with the Wales Office and other UK Government departments. We further explained our position in written evidence to the pre-legislative scrutiny of the Bill by the National Assembly's Constitutional and Legislative Affairs Committee (CLAC) and the UK Parliament's Welsh Affairs Committee, followed by supplementary evidence on the question of the Welsh Jurisdiction, both published in November 2015.

The purpose of this work was to seek to improve the UK Government's proposals so that they provide a stable and lasting settlement, one that appropriately empowers the Welsh legislature in accordance with the 2011 referendum mandate.

During this process we have been trying to improve a draft Bill that sought to create a new settlement on the reserved powers model by amending the present conferred powers model. This has proved a futile exercise because it perpetuates the legacy of executive devolution. It has become clear to us that a fundamental rethink is needed if we are to create a coherent and lasting settlement for Wales. Simply amending the earlier legislation does not work.

We believe that a different approach is required: one that is based on constitutional principle, that gives full effect to the recommendations of the Silk Commission, and which consolidates the previous devolution statutes as recommended by CLAC.

We have accordingly developed an alternative Bill which sets out our vision for a clear, stable and long-lasting settlement for Wales. As with the earlier documents mentioned above, we are publishing this draft as a constructive contribution to the development of Welsh devolution, and to assist the Secretary of State and the UK Parliament when they consider how the settlement should be improved.

Our alternative Bill is not complete in all respects, and further work will be needed on detailed provisions. But it shows what is possible if the aim is to express the settlement from a starting point of clarity and constitutional principle. It shows how a proper Reserved powers model of devolution should work for Wales. The policy given effect in the draft Bill is summarised in the Box below.

Government and Laws in Wales Draft Bill:

Summary of provisions

- the National Assembly is re-named the Welsh Parliament; both it and the Welsh Government are confirmed as permanent parts of the UK's constitutional arrangements;
- the electoral arrangements for the Welsh Parliament remain the same as the current arrangements for the National Assembly, but the Parliament will have full legislative competence in this area to make new arrangements (though support of two-thirds of the total membership of the Parliament would be required to change the arrangements);
- legislative power is conferred on the Welsh Parliament by a reserved powers model - reserved matters include the Crown and constitution, foreign affairs, immigration, economic and fiscal policy, social security benefits, consumer protection, employment rights and duties, and other matters crucial to the UK's integrity, internal market and common citizenship;
- legislative responsibility for reserved matters remains exclusively with the UK Parliament but the UK Parliament will not normally legislate on devolved matters without the Welsh Parliament's consent;
- the Welsh Parliament will make its legislation bilingually in English and Welsh, with the languages having equal standing;
- powers in relation to the justice system (police, courts, prisons, the administration of justice, criminal and family law) are to be "deferred matters";
- deferred matters are to be devolved with effect from 1 March 2026 (or such later date as may be determined with the agreement of both the Welsh Parliament and UK Parliament);

- but the Welsh Parliament will be able to legislate on deferred matters before then—
 - for the purposes of enforcement of provisions that are not reserved or deferred, or otherwise to make them effective,
 - to make incidental or consequential etc. provision, or
 - if a Bill containing more substantive provisions that relate to deferred matters has not been disapproved by the UK Parliament.
- all Minister of the Crown (UK Government) functions within the Welsh Parliament's legislative competence transfer to the Welsh Ministers, subject to specific (limited) exceptions to be agreed;
- the Welsh Ministers also have certain executive responsibilities on limited matters that are outside the Welsh Parliament's legislative competence;
- the existing legal jurisdiction of England and Wales is divided into two distinct jurisdictions, one for each country - a law of Wales (and a law of England) is created, with the senior courts and the family and county courts split into separate courts for Wales and for England respectively (but served by a common judiciary and courts service);
- the partial devolution of income tax will be brought into effect by regulations, following a vote in which at least two-thirds of the total membership of the Welsh Parliament expresses support;
- air passenger duty and aggregates levy are to be devolved taxes (alongside stamp duty land tax and landfill tax);
- a Law Commission for Wales is to be established;
- there is to be a Queen's Printer for Wales responsible for publishing devolved Welsh legislation.

Principles

In drafting this alternative Bill, the guiding principles have been:

- **Subsidiarity:** legislative and ministerial responsibility for matters in Wales should be devolved unless there is good reason to retain power at UK or England-and-Wales level;
- **Clarity:** the draft sets out the devolution settlement in a logical way that is more accessible to the lay person. It provides the clarity and certainty that is needed to minimise the risk of legal challenge, and consolidates existing legislation in one place as recommended by CLAC;
- **A lasting settlement:** in providing for a distinct Welsh jurisdiction, the draft recognises the divergence of the law which is the natural consequence of the creation of a Welsh legislature. In providing for the long term devolution of justice, the Bill enables a stable, coherent workable and long term devolution settlement in line with Scotland and Northern Ireland.

Reserved matters

Defining the reserved matters on the basis of principle gives the devolved institutions a coherent set of responsibilities, based on our vision for Wales within the UK. We propose a list of reservations which includes those matters essential to the UK's political, economic and social union. Thus provisions supporting the UK's internal market, or the equity of entitlement to social security benefits which underpins our common citizenship of the UK, are reserved matters. By taking this principled approach, the number of reservations is kept to an essential minimum.

Justice and policing

The Bill provides for an immediate change from a conferred powers model of devolution to a reserved powers model, and for devolution in the longer term of policing, the administration of justice, criminal law, and family law all of which are 'deferred matters' until the 'deferred transfer date' of 1 March 2026 (or any later date agreed).

Devolution in 2026 would allow for orderly preparation to ensure a smooth transition of responsibility. The Welsh Government made the case for devolving these matters in this way in our evidence to the Silk Commission.

Before 2026, those matters will not be devolved. During this time, however, as with reserved matters, the Welsh Parliament will be able to make some provision touching on deferred matters, if to do so is consequential on or incidental to devolved law or appropriate for making that law effective or for enforcing it.

The Welsh Parliament would also be able to propose legislation in these deferred areas that goes beyond merely making ancillary provision. In such a case, a Welsh Parliament Bill having that effect could only become law if the UK Parliament does not disapprove it. In other words the UK Parliament would be able to stop any such legislation during this period.

Welsh Legal Jurisdiction

The draft Bill provides for the immediate creation of a distinct Welsh legal jurisdiction, separating the laws of England from the laws of Wales. This will reflect the existing reality of diverging Welsh law - which is a natural consequence of having separate legislatures and governments within England and Wales.

The Welsh Government first initiated the debate about the Welsh jurisdiction in 2011. At that point, we concluded that the jurisdiction should develop organically over time. But our detailed work on the reserved powers model for Wales has made clear that creating such a model within a joint jurisdiction risks creating new complexity and uncertainty. Therefore, as we argued in our evidence to CLAC mentioned above, we have concluded that a Welsh jurisdiction is the right way forward in line with the principles set out above.

Establishing a distinct Welsh jurisdiction reflects the reality of the growing Welsh statute book, and, in the view of legal stakeholders, would involve very little change in the practical operation of the courts. But it would give the Welsh Parliament the scope to legislate, that a body with primary law-making responsibilities must have.

Restrictions on the powers of the Welsh Parliament

The Bill is drafted with the intention of creating long term stability in the Welsh devolution settlement, based on principle. To achieve this it has been necessary to extend competence in some areas and curtail it in others, based on the principles set out above.

Thus the Bill provides for some new restrictions on the powers of the Welsh Parliament— in three ways.

- First, the creation of a distinct jurisdiction addresses the argument that there is a democratic deficit in Welsh laws that have effect in England; the Welsh Parliament's powers will be exercisable only in relation to Wales. So, by establishing a distinct Welsh jurisdiction, the draft Bill removes the ability for Welsh laws to apply in some respects in England. As with Scotland, changes in

the law of England consequential upon Acts of the Welsh Parliament made for Wales will be made by the UK Government by regulations.

- Second, in areas such as basic rights and duties in employment law, consistently with our evidence to the Silk Commission, we accept some reduction of power is necessary in order to achieve the logical and clear reservation of employment rights and duties which is needed to underpin the UK's internal labour market.
- Thirdly, the Welsh Parliament will not be able to modify the functions or constitutions of listed reserved authorities without the Secretary of State's consent, or modify the law on reserved matters unless doing so is necessary for a devolved purpose.

This demonstrates a reasonable and principled approach – accepting some limitation of power in the interests of clarity, stability and the strategic interests of the UK.

Conclusion

This Welsh Government Bill has arisen from our attempts to improve the UK Government's proposals. In this process it has become clear that many of the problems derive from the foundations of the existing devolution statutes. So we have taken a different approach in order to achieve a lasting settlement based on constitutional principles.

The Bill is offered as a positive contribution to the debate and aims to share the product of the hard thinking we have done about the way forward for devolution in Wales. As well as containing the Welsh Government's proposals for improving the settlement, it also consolidates and modernises the existing law on Wales's constitution so that it can all be found together. For this reason it is a lengthy Bill, though much of it reflects the existing law. We believe that it sets out a constructive vision of a constitution that will meet the needs of Wales and the UK for the long term.

The Government and Laws in Wales Draft Bill: Detailed Provisions

General

1. The Bill as drafted consists of 141 clauses and 14 Schedules. As explained above this draft is not presented as complete; some additional work would be necessary in relation to such (primarily technical) matters as amendments and repeals, and transitional arrangements, before the Bill would be ready for presentation to Parliament. We believe that this illustrative draft provides the right starting point for a lasting settlement.
2. The Bill's provisions are derived from:
 - restated provisions of the Government of Wales Act 2006 ("the 2006 Act") and the Wales Act 2014 ("the 2014 Act"), sometimes with drafting amendments to fit the new context;
 - restated provisions from certain Assembly Measures which the Welsh Government believes are appropriate for incorporation into this Bill;
 - provisions taken, sometimes with amendments, from the Scotland Bill currently before Parliament; and
 - provisions taken, sometimes with amendments, from the Secretary of State's draft Wales Bill (October 2015).
3. The Bill also contains new provisions, some of which reflect requests made by the Welsh Government to the Secretary of State for additional powers for the National Assembly or for Welsh Ministers; others make new provision for the "deferred subjects" and legal jurisdiction mentioned above.
4. The Bill therefore does not attempt simply to restate the existing statutory provision in consolidated form; rather, it incorporates many existing statutory (both UK Parliament and National Assembly Act) provisions and places them alongside provision currently under consideration by Parliament, together with entirely new provision proposed by the Welsh Government to develop devolution in accordance with the principles of subsidiarity, clarity and coherence.
5. This Bill is not one that the National Assembly could itself enact, given its existing powers; and in any event it seems constitutionally appropriate that an Act based on this Bill, which would be the foundation legislation for the governance of Wales within the UK, should either be made by the UK Parliament, or under authority specifically conferred on the National Assembly by the UK Parliament. The Bill therefore takes the form of draft Parliamentary legislation, and is in English only (but if Parliament authorised the National Assembly to legislate in these terms, any Assembly Bill to this effect would necessarily come forward in bilingual form).

Part 1: Government and Laws in Wales

6. Part 1 of the Bill affirms the continuing existence of the Welsh devolved institutions (legislature and executive).
7. Clause 1(1) renames the National Assembly as the Welsh Parliament. Clause 20 of the Secretary of State's draft Wales Bill, the substance of which is restated in cl. 44 of the present Bill, empowers the Assembly (if it wishes, and subject to a "super-majority" requirement) to change its statutory name. For the purposes of the present Bill, and our desire to create a comprehensive, long lasting devolution statute for Wales, we have used the Welsh Government's preferred title, which is the "Welsh Parliament" or "Senedd Cymru"; the remainder of the Bill is drafted accordingly.
8. Clause 1(3) affirms that both the Welsh Parliament and Welsh Government are "a permanent part" of the UK's constitutional arrangements, and clause 1(4) (which is based on amendments to the Scotland Bill proposed for discussion at later stages in the House of Lords) provides a "double lock" to give effect to this permanent character. The relevant provisions affirming permanence may only be repealed with the consent of the Welsh Parliament, and following approval by the people of Wales of such a repeal in a referendum.
9. Clause 2(1) confirms that the Welsh Parliament will make legislation for Wales in the form of Welsh Acts. As a fully bilingual institution (see clause 23), that legislation is made bilingually, and clause 113 reaffirms that the texts in each language are to be treated for all purposes as of equal standing.
10. The Welsh Parliament will not however have exclusive competence to legislate for Wales; as clause 2(3) states, the UK Parliament continues to be able to make laws for Wales (on all matters). Clause 2(4), drawing on provision in the Scotland Bill which provides statutory underpinning for the Sewel Convention, clarifies how the respective legislative responsibilities of the two parliaments are to be exercised: notwithstanding the continuing unlimited scope of its legislative competence, the UK Parliament will "not normally" pass Acts about devolved matters without the consent of the Welsh Parliament. Clause 2(5) explains what is to be regarded as a "devolved matter" for this purpose. Our definition (in providing that a provision that modifies the legislative competence of the Welsh Parliament is also to be regarded as a devolved matter) reflects existing practice between the UK and Welsh Governments, and agreed text in Devolution Guidance notes prepared for the information of civil servants in both administrations.
11. Finally in this Part, clause 3 declares the creation of a distinct legal jurisdiction for Wales, further provision in relation to which is made in Part 5 of the draft Bill.

Part 2: The Welsh Parliament

12. Part 2 of the Bill deals with two broad sets of issues: the membership of the Welsh Parliament, including its electoral arrangements and disqualification from membership, and the Parliament's arrangements and powers with respect to its own internal governance.

Membership and Electoral Arrangements

13. The National Assembly currently uses the Additional Member System (AMS) for its elections; provision for this is set out in detail in Part 1 of the 2006 Act. This Bill restates the AMS arrangements, and will give power (subject to it satisfying a "super-majority" requirement) to the Welsh Parliament to adopt a different electoral system if it wishes to do so, with the relevant 2006 Act provisions restated in slightly different form. Clauses 5-6 and 8-13 of this Bill make provision, drawn from the 2006 Act (for terms of office of elected members; timing of the Parliament's five-yearly general elections and extraordinary general elections; entitlement to vote at the Parliament's elections based on the local government franchise; and order-making powers for the organisation of polls) which will continue to be needed whatever electoral system is to be used by the Parliament.
14. The provisions relating specifically to the operation of the AMS are restated in Schedule 1 to the Bill which is introduced by clause 4. If the Parliament decided to adopt a new electoral system, Schedule 1 would be repealed and a replacement Schedule inserted, making the provision required for the new system.
15. Finally on elections, clause 14 introduces Schedule 3, which makes new further provision, in particular for regulation of campaign expenditure in devolved elections, which becomes a new responsibility (as it does under the UK Government's draft Bill) of the Welsh Ministers.
16. The existing provisions on disqualification from membership of the National Assembly are restated in Schedule 2 (introduced by clause 7) to this Bill, and these will continue to apply in respect of the Welsh Parliament until replaced. If the Welsh Parliament did decide to move to new arrangements in respect of disqualification (perhaps in line with the recommendations made by the Assembly's Constitutional and Legislative Affairs Committee's Report in 2014), doing so would be fairly straightforward, by repealing the existing Schedule and inserting a new Schedule 2 into the Bill.

Remuneration of Members

17. The 2006 Act requires the National Assembly to make provision for the payment of salaries to its members; it may also make provision for the payment of allowances. (Section 21 of that Act also specifies circumstances when limits on members' salaries are to apply). In 2010 the Assembly enacted a National Assembly for Wales Remuneration Measure, which establishes an independent Remuneration Board to make determinations on salaries and allowances payable to members.
18. The 2006 Act's provisions in relation to this matter are restated in this Bill (clauses 15 to 17), and the opportunity has been taken to integrate the provisions of the 2010 Remuneration Measure into the overall structure as Schedule 4 to the Bill (introduced by clause 15), which renames the Board as the Welsh Parliament Remuneration Board. The effect of clauses 15 to 17 and Schedule 4 taken together is therefore to provide a comprehensive account of the arrangements for remuneration of the Parliament's members.

The Parliament's Internal Governance

19. When the National Assembly was first created in 1999, the Government of Wales Act 1998 made detailed provision for its Standing Orders and the organisation and membership of its Committees (as well as for the participation of the Secretary of State in its proceedings). Some of these stipulations were removed by the 2006 Act, and the draft Wales Bill continued in the same direction, with the objective of making the Welsh Parliament a largely self-governing institution. Our alternative Bill reflects and further develops that approach.
20. Clause 20 restates the requirement for the election of a Presiding Officer, and clause 21 for the appointment of a Clerk. But clause 20 gives the Welsh Parliament an additional freedom to appoint such number of Deputy Presiding Officers as Standing Orders may permit, rather than only the one Deputy to which it is limited by section 25 of the 2006 Act.
21. Provision continues to be made, by clause 22, for a Commission (now the "Welsh Parliament Commission") to provide the Parliament with the property, staff and services which it requires for its purposes, and Schedule 5 to the Bill (introduced by clause 22) makes further provision, based on relevant 2006 Act provisions, for the work of the Commission.
22. The Parliament's (bilingual: see clause 23) proceedings will be governed by the Standing Orders it adopts for itself (with the support of two-thirds of members voting, see clause 24(7)), for which the Bill makes provision in clause 24. Much of the day-to-day work of the Welsh Parliament will continue to be done, as is the case in the National Assembly now, by its committees, and the Bill (clause 25) affirms the Parliament's powers to establish these, but allows the

Parliament greater flexibility on the appointment of members to committees. The requirement in section 29 of the 2006 Act that the membership of each committee should reflect the overall political balance in the National Assembly is replaced by a less onerous requirement that membership of the Parliament's committees in the round will have to have regard to the balance of political parties in the Parliament (see clause 25(4)). It will be for the Welsh Parliament to decide what committees it wishes to establish, but there continues to be a requirement for an Audit Committee (clause 26), which will be chaired by a member of an opposition party and cannot have members of the Welsh Government in membership of the Committee. Committees' powers to summon witnesses and call for documents are restated in clauses 29 to 32.

23. Under the heading of "Integrity", clause 27 of the Bill restates the requirement for a public register of members' interests, and for declaration of relevant interests before a member participates in the Parliament's plenary or committee proceedings. In 2009, the National Assembly enacted the National Assembly for Wales Commissioner for Standards Measure, the principal aim of the office of Commissioner being "to promote, encourage and safeguard high standards of conduct in the public office" of Assembly Member. The provisions of that Measure, with minor textual amendments, have been incorporated into this Bill as Schedule 6 (introduced by clause 28), so that clauses 27, 28 and Schedule 6 together provide a comprehensive statement of the measures taken to secure the highest standards of conduct in the Welsh Parliament.
24. Finally in this Part, clauses 33 to 35 restate provision in the 2006 Act covering a variety of specific legal issues: proceedings by or against the Welsh Parliament; the application, for purposes of the law of defamation, of absolute privilege in respect of statements made in proceedings; and provision about contempt of court. No new issues arise in transposing these provisions from the 2006 Act to this Bill.

Part 3: Legislation

25. The provisions of Part 3 of the Bill enable the Welsh Parliament to make laws (“Welsh Acts”) within its legislative competence, for which Schedules 7 and 8 make further provision. Part 3 sets out what kind of provision is within the Parliament’s competence (clauses 37 to 41), the procedure to be followed when making Welsh Acts (clauses 42 to 46) and the means by which both the Supreme Court may scrutinise whether a Welsh Act is within the Parliament’s competence (clauses 48 and 49) and the Secretary of State may intervene to block Royal Assent in certain limited circumstances (clause 50).
26. In all these respects, Part 3 of this Bill draws on provisions from Part 4 of the 2006 Act, albeit with a number of significant changes, particularly in respect of what is to be within the legislative competence of the Parliament.

Legislative competence: reserved and deferred matters

27. Part 3 provides for both the immediate change from a conferred powers model of devolution to a reserved powers model (clause 37), and for devolution in the longer term of policing, civil and criminal proceedings, criminal law and family law (clause 38), all of which are ‘deferred matters’ until the ‘deferred transfer date’ of 1 March 2026 (see further Part 2 of Schedule 7 to the Bill). Separating the laws of Wales and England by creating a distinct jurisdiction of Wales (see Part 5 of the Bill) and providing a clearer statement of when the Welsh Parliament may make provision modifying aspects of the criminal law (prior to it being more fully devolved), avoids the complexity that maintaining one legal jurisdiction for England and Wales would otherwise cause.
28. Clause 37 circumscribes the Welsh Parliament’s legislative competence by imposing four limitations, which state that a Welsh Act cannot include any provision which would:
 - *Form part of the law of a country or territory other than Wales.* The effect of this is to confine the extent of Welsh Acts to Wales alone, reflecting the creation of a distinct jurisdiction of Wales. This therefore changes the position as it is under the 2006 Act, under which Welsh Acts technically form part of the law of England and Wales (even though they must *relate* to Wales).
 - *Relate to any of the reserved matters in Part 1 of Schedule 7, unless it is ‘ancillary’ to another provision of a Welsh Act which does not relate to a reserved matter (as was the case under the 2006 Act).* For the purposes of the draft Bill, a provision is ‘ancillary’ if it is for the enforcement of another provision, for making another provision effective or if it is incidental to or consequential upon another provision. As under the 2006 Act, the question of whether a provision ‘relates’ to something is to be

determined by reference to the purpose of the provision, having regard to its effect in all the circumstances (clause 37(3)).

- *Breach any of the restrictions in Schedule 8*, subject to any of the exceptions from those restrictions in that Schedule (see further below).
 - *Breach either EU law or those rights under the European Convention on Human Rights which are incorporated by the Human Rights Act 1998*. This restriction is also imposed by the 2006 Act.
29. As explained above, matters in the “deferred matters” category will be fully devolved after the deferred transfer date of March 2026. Clause 38 provides some flexibility for the Welsh Parliament to deal with deferred matters by way of ‘ancillary’ provision prior to the deferred transfer date.
30. A Welsh Act may also make any provision in relation to deferred matters prior to the “deferred transfer date” if a copy of it is laid before both Houses of Parliament and neither disapproves it. Clause 47 provides that, prior to the deferred transfer date, it is for the Counsel General to determine whether a Bill that relates to a deferred matter must be laid in this way, and clause 45 allows the Parliament to reconsider any Bill which is subsequently disapproved.

Legislative procedure

31. Clause 42 sets out the procedure for the introduction of Bills into the Welsh Parliament in largely the same way as does section 110 of the 2006 Act. Clause 43 sets out the procedure for stages of Bills, again largely replicating the relevant provisions in the 2006 Act, but clause 44 adds a new requirement (following provision in the Secretary of State’s draft Wales Bill) in respect of “protected subject-matter” (i.e. provisions in a Bill which the Presiding Officer determines reform the Welsh Parliament’s electoral arrangements). Bills containing provisions which relate to protected subject-matter cannot proceed to Royal Assent unless at least two-thirds of the total membership of the Parliament vote at the final stage of the Bill’s consideration to support it.
32. Clause 46 specifies the procedure by which Bills are to be submitted for Royal Assent, retaining much the same mechanism as is provided for in section 115 of the 2006 Act, but now giving the role of submission of the Bill to the Presiding Officer rather than the Clerk of the Assembly. Provision relating to Royal Assent is in clause 51.
33. The current mechanism in section 112 of the 2006 Act, by which the Counsel General or Attorney General may refer questions to the Supreme Court about whether a Bill’s provisions are within legislative competence, is replicated by clause 48, and new provision is made in clause 49 for referral of Bills with provision that may relate to “protected matters” in circumstances where the “super-majority” requirement has not been satisfied.

34. Clause 50 contains a power (equivalent to that in section 114 of the 2006 Act) for the Secretary of State to intervene to prevent Bills being submitted for Royal Assent where he or she has reason to believe that its provisions would be incompatible with the UK's international obligations or adverse to national security; or where they might have an adverse impact on the law as it applies to reserved (or, prior to the deferred transfer date, deferred) matters.
35. Clause 52 retains existing arrangements for the Welsh Seal under the 2006 Act.

Schedule 7

36. Schedule 7 contains the lists of reserved and deferred matters (Parts 1 and 2 of Schedule 7), together with some general provisions (Part 3 of Schedule 7).
37. Part 1 sets out reserved matters by thematic groupings ('sections'), and makes clear that reserved matters are subject to any of the interpretations or exceptions listed in the same section, but that exceptions etc. under one section do not apply to other sections. Part 2 sets out the deferred matters, also by section, and includes the same provision to make clear that deferred matters are also subject to any interpretations or exceptions appearing in the same section (but, again, that exceptions etc. under one section do not apply to other sections).
38. Part 3 contains general provisions in relation to 'Welsh public authorities' and the provision of financial assistance. Paragraphs 165 to 167 provide that 'Welsh public authorities' which do not exercise any functions relating to a reserved matter are not reserved, and that 'Welsh public authorities' exercising some reserved and some non-reserved functions are only reserved in relation to the exercise of their reserved functions – not, for instance, in relation to their constitution or the modification of any of their non-reserved functions. Paragraph 167 then provides that, prior to the deferred transfer date, deferred matters are to be treated for these purposes in the same way as reserved matters.

Schedule 8

39. The effect of Schedule 8 and clause 37(1)(d) is that a provision of a Welsh Act, even if within competence in all other respects, will be outside competence if it breaches any of the restrictions in the Schedule (Similar provisions appear in s.108(6)(a) and Schedule 7 to the 2006 Act). Schedule 8 draws on Schedule 4 to the Scotland Act 1998 and Parts 2 and 3 of Schedule 7 to the 2006 Act, but it:
 - (a) removes the general restriction under the 2006 Act that protects UK Government Minister of the Crown functions but reflects the need to protect *some* Minister of the Crown functions in respect of *certain* matters

whilst those matters are deferred (e.g. functions in relation to criminal justice) – i.e. those matters not immediately devolved but which will become devolved on and after the “deferred transfer date”; and

- (b) affords protection to authorities for which the Welsh Government and Welsh Parliament do not generally have responsibility (reserved authorities) whilst bringing clarity by specifically naming each such authority.
40. Part 2 of the Schedule provides for general exceptions to the restrictions in Part 1. For example, paragraph 12 permits a Welsh Act to modify a Minister of the Crown function (for example one that relates to a deferred matter prior to the deferred transfer date (i.e. before it is fully devolved)) if the Secretary of State consents, or without such consent if doing so is consequential or incidental on any other provision of the Welsh Act. Similarly paragraph 13 permits a Welsh Act to modify the functions etc. of a reserved authority if the Secretary of State consents, or without such consent if doing so is consequential upon or incidental to any other provision of the Welsh Act.

Schedule 12

41. Schedule 12 (introduced by clause 115) draws on Schedule 6 to the Scotland Act 1998 and Schedule 9 to the 2006 Act. It sets out what a ‘devolution issue’ is, and makes provision so that if such an issue arises (for example, in civil or criminal proceedings) after a Welsh Act has been enacted, it can be identified, the relevant Law Officers notified and the issue referred ultimately to the Supreme Court. In certain cases the relevant Law Officers may refer such an issue to the Supreme Court whether or not it has arisen in legal proceedings.

Part 4: The Welsh Government

42. Part 4 restates, with some amendments, much of the provision currently set out in Part 2 of the 2006 Act about the constitution of the Welsh Government and the executive responsibilities of the Welsh Ministers.

The Welsh Government and the Welsh Ministers

43. Clause 53 provides that the “Welsh Government” consists of the First Minister, Ministers and Deputy Ministers appointed by the First Minister, and the Counsel General for Wales. The First Minister and Ministers are known as “the Welsh Ministers”. (Statutory functions are normally exercisable by or on behalf of “the Welsh Ministers”). Clauses 54 to 58 restate provision on the appointment of the First Minister, other Ministers, Deputy Ministers and the Counsel General. Clauses 59 to 61 provide for Ministers’ remuneration and their oath of office. Clause 63 makes provision about appointment of Welsh Government staff and their status as civil servants.

Executive Responsibilities

44. Clauses 64 to 73 deal in general terms with the executive functions (both statutory and non-statutory) of the Welsh Ministers. They are loosely based on sections 52 to 58 of the Scotland Act 1998.
45. Clause 64 provides the Welsh Ministers with certain prerogative and other executive powers. Prerogative powers are historic powers formally exercised by the Queen, but which in reality are usually exercised in Her name by Government Ministers. The other executive powers referred to enable Ministers to do things in exercise of their responsibilities which a natural person can do, for example powers to incur expenditure and enter into contracts. In general terms, clause 64 transfers these prerogative and other executive powers where they are exercisable within the Welsh Parliament’s devolved competence (further discussed below), or where they are exercisable in conjunction with existing statutory functions.
46. Clause 65 affects a general transfer of UK Minister of the Crown functions within devolved competence to the Welsh Ministers (reducing complexity by more closely aligning the powers of the Welsh Government to the powers of the Welsh Parliament). The transfer covers functions exercisable within devolved competence which were originally conferred on a Minister of the Crown by any legislation pre-dating this Bill, or any prerogative instrument pre-dating this Bill. This section also confirms that the Welsh Ministers will continue to exercise the functions previously transferred to them under existing legislation. From the “deferred transfer date” of 1 March 2026

previously discussed, this clause will also transfer UK Minister functions relating to deferred matters.

47. Clause 67 is based on section 57 of the 2006 Act. It confirms that functions may be conferred on the Welsh Ministers by name, and that those functions will be exercisable on behalf of Her Majesty. It also provides that functions of the Welsh Ministers are exercisable by Deputy Ministers.
48. Clause 68, which is based on section 54 of the Scotland Act 1998, sets out the meaning of exercising a function within or outside devolved competence. When exercising a function to make, confirm or approve subordinate legislation, it will be outside devolved competence to include any provision which could not be included in an Act of the Welsh Parliament. When exercising any other function, it will be outside devolved competence if an Act of the Welsh Parliament could not confer that function on the Welsh Ministers, or confer it on the Welsh Ministers in the way necessary.
49. Clause 69 provides that any function which is subject to a requirement to exercise it with the agreement of, or after consultation with, another Minister of the Crown, and which is transferred to the Welsh Ministers under this Bill, will no longer be subject to that requirement. This is based on section 55 of the Scotland Act 1998.
50. Clause 70 enables an Order in Council to specify functions of a Minister of a Crown within devolved competence which will not transfer to the Welsh Ministers under clause 64 or 65 of the Bill. These functions will either be exercisable solely by a Minister of the Crown, or by both a Minister of the Crown and the Welsh Ministers. An Order in Council under this clause will be subject to approval in both the Welsh and UK Parliaments.
51. Clause 71 provides that, despite the transfer of functions under Part 4 of the Bill, UK Ministers are to retain functions for the purpose of observing and implementing EU Law in respect of devolved matters in Wales. This section also confirms that the Welsh Government is unable to do anything which is incompatible with EU Law or the European Convention on Human Rights. Similar provision is currently made in sections 80 and 81 of the 2006 Act and section 57 of the Scotland Act 1998.
52. Clause 72 provides the Secretary of State with a power to direct that a member of the Welsh Government must take action to give effect to any of the UK's international obligations, or refrain from taking action which may be incompatible with any of the UK's international obligations. This provision is similar to section 82 of the 2006 Act and section 58 of the Scotland Act 1998.
53. Clauses 74 and 75 make general provision about the property, rights and liabilities of the Welsh Ministers, First Minister and Counsel General. In particular, they make provision on how property may be held by them, perpetual succession and the further transfer of UK Government property rights and liabilities to Wales.

54. Finally, clause 76 provides Her Majesty with a power to transfer further functions of UK Ministers to the Welsh Ministers via Order in Council. Similar provision is already made in section 58 of the 2006 Act and section 63 of the Scotland Act 1998.

Schedule 9 – Specific new functions of the Welsh Ministers

55. Schedule 9, introduced by clause 73, provides the Welsh Ministers with certain new executive functions. Paragraphs 1 and 2 provide that the agreement of the Welsh Ministers is required in relation to certain appointments to the BBC and S4C. Paragraph 3 provides the Welsh Ministers with new functions under the Gambling Act 2005. These functions will enable them to vary the number of gaming machines authorised by a betting premises licence. Paragraph 4 provides the Welsh Ministers with new equal opportunities functions, including a power to issue guidance to public authorities exercising devolved Welsh functions on how to fulfil the public sector socio-economic duty in section 1 of the Equality Act 2010.

Part 5: Legal jurisdictions of England and of Wales

56. England and Wales currently share a legal jurisdiction, with a common judiciary and a single system of courts. In the Welsh Government's view, as explained in our Supplementary Evidence (November 2015) to the National Assembly's Constitutional and Legislative Affairs Committee, some of the most intractable problems with the UK Government's draft Wales Bill - in particular in respect of the limitations proposed on the Assembly's legislative powers - arose as a result of the Bill's assumption that the existing jurisdiction should be retained. The UK Government sought to justify the imposition of new, significant and impractical constraints on the Assembly's legislative competence by reference to the need to protect this jurisdiction. In our view the body of Welsh law that already exists, the different demands on courts in Wales (different laws and a different language), the move to a reserved powers model of devolution, and the essential requirement not to constrain the Welsh legislature in this way, makes the creation of a distinct Welsh jurisdiction essential.
57. Accordingly, Part 5 of the Bill divides the existing England and Wales jurisdiction, creating two parallel jurisdictions, a legal jurisdiction of England and a legal jurisdiction of Wales. Identifiably distinct court systems for each of England and Wales will be created but initially their administration would remain a responsibility of the UK Government. A common judiciary would also be retained initially to serve both court systems interchangeably.
58. Clause 79 of the Bill separates the Senior Courts of England and Wales to create the Senior Courts of England and the Senior Courts of Wales. This sees the creation of the Court of Appeal of Wales, the High Court of Wales and the Crown Court of Wales. The county court and family court are also separated by clause 80 to create a county court of Wales and the family court of Wales. Corresponding Senior Courts, county and family courts are created for England. Each Court will be able to exercise all of the same functions as were exercisable by the corresponding court prior to the provision coming into force. Provision is made by clause 83 for transfer of proceedings pending in any court at the point of division of the jurisdiction to the appropriate court in the jurisdiction for which the case is relevant.
59. Judges who hitherto would have been appointed to the Court of Appeal or High Court of England and Wales will now, by virtue of clause 81, be appointed to the Court of Appeal or High Court of England, and simultaneously to the Court of Appeal or High Court of Wales; and will sit in the Court appropriate to the cases before them. The continued existence of a common judiciary is likely to lead to consistency of the common law and equity as between the jurisdictions. The Supreme Court will sit at the apex of the Welsh (and, separately, English) courts system in the same way as it currently does for the England and Wales, Northern Irish and (subject to certain limits) Scottish jurisdictions. Thus the Supreme Court will continue to act as the overall supervisor of the fundamentals, and forward development, of the law and

legal principle for England, for Wales, for Northern Ireland and (allowing for systemic differences) for Scotland.

60. Expert legal stakeholders have confirmed that the distinct legal jurisdiction would present no further significant issues for the legal profession or the judiciary. Legal professionals who are now able to practise in and from Wales or England will continue to be able to do so under a distinct Welsh legal jurisdiction. As that is already the case in relation to Northern Ireland there is no reason why that shouldn't be the case.
61. Currently, because Wales and England form a single jurisdictional territory, the National Assembly's legislation becomes part of the 'law of England and Wales' i.e. it 'extends' to England and Wales, even if it only 'applies' (or has legal effect) in Wales. (In the same way, it is open to Parliament to make law which applies only in England, although it extends to England and Wales). The consequence of creating a new legal jurisdiction for Wales is that the Welsh Parliament's legislation will not only apply to Wales but also extend only to Wales; the "extra-territorial" effect of Welsh legislation (outside Wales) will cease to be possible. Provision is made in clause 82 for the courts of Wales to apply the law extending to Wales (i.e. Welsh law), and equivalent provision is made for application of the law extending to England by the courts of England (i.e. English law). The law itself is divided by clause 78, so that the law of England and Wales becomes the law of Wales and the law of England.
62. Responsibility for the courts, the judiciary and most administration of justice functions is currently not devolved in Wales and remains with the Ministry of Justice. Nothing in Part 5 of the Bill affects this, but these responsibilities become 'deferred matters' (see Schedule 7 Part 2), and at the 'deferred transfer date' of 1 March 2026, these become matters within the legislative competence of the Welsh Parliament (and so within the executive competence of the Welsh Ministers by virtue of clause 65).

Part 6: Finance

63. Part 6 retains the fundamental principles of fiscal control as laid out in Part 5 of the 2006 Act, but removes the descriptive requirements of the budgetary and accounting procedures which will be the subject of future financial framework legislation of the Welsh Parliament. Transitional arrangements will ensure that the provisions of the 2006 Act apply until such legislation is passed by the Welsh Parliament.
64. Clause 85 provides for the continuation of the Welsh Consolidated Fund (WCF) which must be held by the Paymaster General. Payments from the Secretary of State, deriving from moneys voted to him or her by the UK Parliament must be paid into the WCF. Sums received by the Welsh Administration will be paid into the WCF unless an enactment expressly provides that it is not to be paid into the WCF. HM Treasury may designate receipts which must be paid into the WCF and Welsh Ministers must make a payment to the Secretary of State of such sums received.
65. Clause 86 provides for sums to be paid out of the WCF if it has been charged on the WCF by any enactment, or it is paid out for the purposes of meeting expenditure of the Welsh Administration in accordance with rules made by or under an Act of the Welsh Parliament.
66. Clauses 87 to 89 provide for Welsh Ministers to borrow from the Secretary of State to cover a temporary deficit in the WCF, to provide a working balance in the Fund; to meet current expenditure because of a shortfall in receipts from devolved taxes against the forecast of revenues; or to fund capital expenditure. Total borrowing for revenue purposes cannot exceed £500 million. A separate limit of £500 million is set for total borrowing for capital purposes. The Secretary of State, with consent of HM Treasury, may revise the capital or revenue borrowing limit upwards or downwards but never below £500 million.
67. Clause 90 provides for Welsh legislation to continue the requirement for there to be an Auditor General for Wales (provision for which is made in the Public Audit (Wales) Act 2013). Welsh legislation must also provide for the appointment of the Auditor General by Her Majesty on the nomination of the Welsh Parliament and that a recommendation his or her removal from office must not be made unless the Welsh Parliament has agreed that recommendation by a majority of two thirds.
68. Clause 91 provides for Welsh legislation to be passed to provide for the preparation of accounts by persons funded from the WCF for persons who receive sums directly or derived from the WCF to be accountable for expenditure and receipts; for functions of the Auditor General for Wales including the examination of the accounts prepared by the Welsh Administration and approval to draw funds from the WCF; and for the laying of parliamentary accounts and reports on such accounts before the Welsh Parliament.

69. Clause 92 provides for the Secretary of State to prepare an account on sums paid and received in respect of loans to Welsh Ministers under clauses 87 and 88.

Part 7: Taxation

70. The provisions in Part 7 of the Bill enable the Welsh Parliament to set rates of income tax to be paid by Welsh taxpayers and specifies particular taxes as devolved taxes about which the Welsh Parliament may make provision in accordance with clause 36.

Income tax

71. Clause 94 sets out the procedures for the income tax provisions made in clause 95 to come into force. No regulations may be made bringing those provisions into force unless the Welsh Parliament has resolved, in a motion proposed by one of the Welsh Ministers, that they should. The resolution must be passed by at least two-thirds of the total number of Welsh Parliament seats.
72. Clause 95 provides that, the Welsh Parliament will, by resolution, set a Welsh basic, higher, and additional rate of income tax for Welsh taxpayers. Part 1 of Schedule 10 defines a Welsh taxpayer for the purposes of income tax. A Welsh taxpayer is an individual who is resident in the UK for income tax purposes and meets at least one of the three conditions specified in the Schedule. An individual is deemed a Welsh taxpayer if their only place of residence is in Wales and for at least part of the year they live at that place. If an individual has more than one place of residence with one in Wales and one in another place in the UK they are deemed a Welsh taxpayer if their main place of residence is in Wales or if the time in the year at their residence in Wales is more of the year than the time in the year when the individual is in the other residence in the other part of the UK. An individual is also a Welsh taxpayer if for the whole or any part of the year the individual is a member of the Parliament for a constituency in Wales, a member of the European Parliament for Wales or a Member of the Welsh Parliament.
73. To calculate the Welsh rate of income tax for a tax year, the UK basic, higher and additional rates will be reduced by 10 percentage points and the separate Welsh rates, set by the Welsh Parliament, will be added to each of the reduced rates. The Welsh Parliament can introduce a different rate for each of the Welsh basic, higher and additional rates, meaning that rates could vary compared with rates within the rest of the UK. The Welsh basic, higher and additional rates apply to “non-savings income” and “non-dividend income”.
74. The Welsh rate of income tax resolution applies for only one tax year and must be a rate that is either a half or whole number that applies for the whole of that year. The resolution must specify the tax year to which it applies and must be made before the start of the year but cannot be made more than 12 months before the start of that year. If a Welsh rate resolution is cancelled before the start of the tax year for which it is to apply, the Income Tax Acts have effect for that year as if the resolution had never been passed.

Devolved taxes

75. Clause 96 provides that tax on transactions involving interests in land in Wales is a devolved tax. The collection and management of Stamp Duty Land Tax in Wales will come to an end with the Welsh Parliament able to bring forward its own land transaction tax. A Welsh land transaction means an acquisition of an estate, interest, right or power over land in Wales. A devolved tax on a Welsh land transaction will apply regardless of where any party to the transaction is or is resident, and whether or not there is any instrument effecting the transaction. Part 2 of Schedule 10 specifies that a devolved tax on land transactions in Wales may not be imposed to the extent they apply to land below mean low water mark and may not be imposed on Ministers of the UK and devolved governments and corporate bodies associated with the legislatures in the UK.
76. Clause 97 provides that a tax which is charged on disposals to landfill made in Wales is a devolved tax. The collection and management of Landfill tax in Wales will come to an end with the Welsh Parliament able to bring forward its own tax on the disposals of waste to landfill. A disposal is a disposal to a landfill if it is a disposal of material as waste and is made by way of landfill.
77. Clause 98 provides that a tax which is charged on the carriage of passengers by air from airports in Wales is a devolved tax. The collection and management of air passenger duty in Wales will come to an end with the Welsh Parliament able to bring forward its own tax on the carriage of passenger by air from airports in Wales.
78. Clause 99 provides that a tax which is charged on aggregate when it is subject to commercial exploitation in Wales is a devolved tax. Part 2 of Schedule 10 specifies that a tax must not be chargeable when aggregate is subjected to commercial exploitation for fuel. The collection and management of aggregates levy for aggregate subject to commercial exploitation in Wales will come to an end with the Welsh Parliament able to bring forward its own tax on aggregate subjected to commercial exploitation in Wales.
79. Clause 100 provides that Her Majesty may by Order in Council add new devolved taxes of any description. No recommendations can be made to Her Majesty unless a draft statutory instrument containing the Order has been laid before, and approved by resolution of, each Houses of Parliament and the Welsh Parliament.

Part 8: Law reform

80. Part 8 establishes a new Welsh Law Commission and is based, in part, on the Justice (Northern Ireland) Act 2002 and the Law Commissions Act 1965 as amended.
81. As discussed above, Part 5 of the Bill divides the existing England and Wales legal jurisdiction to create a legal jurisdiction of Wales and a legal jurisdiction of England. The establishment of the Welsh Law Commission is linked to this separation. Although the Welsh Government and the Law Commission serving England and Wales currently have effective and valued working relationships, the creation of a legal jurisdiction for Wales will require establishment of a specifically Welsh body to oversee the development and reform of the law in that jurisdiction. This is comparable to the position of the Scottish and Northern Irish Law Commissions and what will become the Law Commission for England.
82. Clause 102 establishes the Welsh Law Commission and provides that it will consist of a Commissioner who is to chair it and four other Commissioners, all appointed by the Welsh Ministers. Schedule 11 to the Bill, introduced by clause 102, makes further provision about the governance and funding of the Commission.
83. Clause 103 sets out the Commission's general duty, which is to keep the law of Wales under review with a view to its systematic development and reform. It is required to act in consultation with the English Law Commission for England, the Scottish Law Commission and the Northern Ireland Law Commission. Its methods for discharging its responsibilities are to include consolidation and codification, and proposals for repeal of obsolete or redundant statutes and elimination of anomalies, with a view to the simplification and modernisation of the law in Wales. In exercising this general duty the Commission is required to do a number of things, including considering proposals for reform from the Welsh Ministers, formulating draft Bills and non-legislative proposals as means of reform, and providing advice to Welsh Ministers and public authorities on law reform proposals. Clause 105 makes provision for a protocol between the Welsh Ministers and the Commission about its work.
84. Clause 104 places a duty on the Welsh Ministers to lay a report before the Welsh Parliament each year setting out which Commission proposals for reform have been implemented and which remain for implementation; what plans Ministers have for dealing with unimplemented proposals, and in the case of any decision not to proceed to implementation, the reasons for any such decision.

Part 9: Miscellaneous and supplementary

85. Part 9 is based principally on existing law currently found in the 2006 Act or in the Scotland Act 1998. It contains a number of unconnected provisions, most of which are explained below. Where the provisions are self-explanatory, no further information is provided.
86. This Part refers in many places to “pre-commencement enactments”. Broadly speaking, these are Acts and other legislation, passed or made, prior to the passing of this Bill.
87. Clause 106 provides for the creation of the Office of Queen’s Printer for Wales and is required to regularise and formalise existing administrative arrangements for the publication of Welsh law by the National Archives. This reflects the position in relation to publication the Scottish and Northern Irish laws. The Queen’s Printer of Acts of (the UK) Parliament currently also holds the post of Queen’s Printer for Scotland and Government Printer for Northern Ireland, and will in future also hold the post of Queen’s Printer for Wales.
88. Clause 107 reproduces (with certain changes) section 83 of the 2006 Act. It allows arrangements to be made between the Welsh Ministers and Ministers of the Crown, government departments and certain public authorities for purposes such as the exercise of each others functions and provision of administrative, professional or technical services. These arrangements are often referred to as “agency arrangements”.
89. Clauses 108 to 111, which are similar to sections 88 to 90 of the Scotland Act 1998, make provision about cross-border public authorities. Such authorities are those specified by the Queen in an Order in Council and which have, in addition to other functions, functions exercisable in or as regards Wales and which do not relate to reserved matters. Her Majesty is given the power to make certain provision about these authorities in consequence of this Bill or where a Welsh Act provides that a function of theirs is no longer exercisable in or as regards Wales.
90. Clause 112 provides that where Welsh legislation can be interpreted in such a way as to be within the Welsh Parliament’s legislative competence or within the powers conferred on Welsh Ministers to make (subordinate) legislation, or can be interpreted in such a way as to be outside that competence or power, the former is to prevail. This replicates similar provision made in each of the Acts establishing the devolved legislatures.
91. Clauses 113 and 114 relate to the legislation in the Welsh language. Clause 113 replicates part of section 156 of the 2006 Act in providing that the Welsh language and English language texts of Welsh legislation are of equal status. Clause 114 is a new provision which enables an Order in Council to be made enacting Welsh language text that corresponds with text enacted in English only by the UK Parliament or made in English only by Ministers in subordinate legislation. The Welsh language text would be of equal status to the English

language text unless subsequently modified in English only. This provision is likely to be used in circumstances in which the UK Parliament amends bilingual Welsh legislation in English only.

92. Clause 116 consolidates provision for legal relations to arise between the Crown in right of Her Majesty's Government in the UK and the Crown in right of the Welsh Administration. For example, the transfer of property and liabilities may occur between both manifestations and additionally, in specified circumstances, each can sue the other.
93. Clause 117 consolidates and develops conditions in relation to standing, application, damages and time limits for the bringing of proceedings in a court or tribunal, on the basis that the making of legislation, or any other act of (or indeed a failure to act by) a member of the Welsh Government is incompatible with human rights. In relation to time limits, this clause makes provision equivalent to that in section 14 of the Scotland Act 2012 (and the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 before it) which was passed in response to the *Somerville* case. In that case, the House of Lords held that proceedings for breaches of Convention rights by Scottish Ministers under the Scotland Act 1998 were not subject to the same statutory time limit of twelve months as under the Human Rights Act 1998. The Scotland Act 1998 was therefore amended so as to provide a time limit to proceedings brought against Scottish Ministers. For clarification, and parity with Scotland, clause 117 introduces equivalent time limits for the bringing of human rights proceedings under this Act against the Welsh Ministers or a member of the Welsh Government, where it is claimed that they have acted incompatibly with human rights.
94. Clause 118 consolidates provision to the effect that where any court or tribunal decides that a provision of Welsh legislation would be outside the relevant powers, the court or tribunal may make an order removing or limiting any retrospective effect, or suspending the effect (for a specified period and subject to conditions) to allow the defect to be corrected.
95. Clauses 119 to 120 provide the Secretary of State with powers to make such provision as is considered appropriate in consequence of the legislation of, or scrutinised by, the Welsh Parliament, and enables the Secretary of State to modify existing enactments where that is appropriate in consequence of this Bill; and the Welsh Ministers are provided with similar modification powers with respect to Acts of Parliament as is appropriate in consequence of the passage of this Bill.
96. Clauses 121 to 124 provide Her Majesty in Council with a range of Order-making powers. By virtue of clause 121, She may make such provision as She considers appropriate for the purpose of enabling or facilitating the transfer of a function to the Welsh Ministers. Under clause 122, She may by Order in Council rectify legislation and the exercise of functions which are not, or may not have been, within the powers either of the Parliament or of the Welsh Ministers or Counsel General. Clause 123 enables the agreed re-distribution of

functions from the Welsh Ministers to UK Ministers by Order in Council and clause 124 makes provision for the equivalent re-distribution of property and liabilities.

97. Clause 126 provides that any power in the Act to make certain types of subordinate legislation (regulations, Orders in Council and directions) is to be exercised by statutory instrument. It also explains how those powers may be used.
98. Finally, clauses 127 to 133 are based on sections 117 to 123 of the Scotland Act 1998. In broad terms, these provisions amend the interpretation of pre-commencement enactments and other documents to reflect the fact that some Minister of the Crown functions have transferred to the Welsh Ministers.

Coming Into Force Provisions

99. Clause 138 makes provision for the provisions of this Bill, other than specified sections, to come into force on such day as the Secretary of State specifies by statutory instrument. Different days may be specified for the coming into force of different sections of the Act.