

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT GOVERNMENT OF WALES ACT 2006  
(AMENDMENT) ORDER 2021

*Tuesday 2 February 2021*

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**Saturday 6 February 2021**

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**The Committee consisted of the following Members:**

*Chair:* †MRS MARIA MILLER

Andrew, Stuart (*Treasurer of Her Majesty's Household*)

† Atherton, Sarah (*Wrexham*) (Con)

† Caulfield, Maria (*Lewes*) (Con)

† Chamberlain, Wendy (*North East Fife*) (LD)

Coyle, Neil (*Bermondsey and Old Southwark*) (Lab)

† Davies, David T. C. (*Parliamentary Under-Secretary of State for Wales*)

Davies-Jones, Alex (*Pontypridd*) (Lab)

† Doughty, Stephen (*Cardiff South and Penarth*) (Lab/Co-op)

† Farris, Laura (*Newbury*) (Con)

Jones, Mr Marcus (*Vice-Chamberlain of Her Majesty's Household*)

† Lake, Ben (*Ceredigion*) (PC)

Mann, Scott (*North Cornwall*) (Con)

† Morris, James (*Lord Commissioner of Her Majesty's Treasury*)

† Russell, Dean (*Watford*) (Con)

Russell-Moyle, Lloyd (*Brighton, Kemptown*) (Lab/Co-op)

Rutley, David (*Lord Commissioner of Her Majesty's Treasury*)

† Smith, Jeff (*Manchester, Withington*) (Lab)

Nicholas Taylor, *Committee Clerk*

† **attended the Committee**

# First Delegated Legislation Committee

Tuesday 2 February 2021

[MRS MARIA MILLER *in the Chair*]

## Draft Government of Wales Act 2006 (Amendment) Order 2021

2.30 pm

**The Chair:** Before we begin, I would like to remind Members about social distancing regulations; spaces available to Members are clearly marked. May I also remind colleagues that Mr Speaker has stated that masks should be worn in Committee, except when speaking. Hansard colleagues would be grateful if you could any send any speaking notes to them via email. I call the Minister to move the motion.

### The Parliamentary Under-Secretary of State for Wales (David T. C. Davies): I beg to move,

That the Committee has considered the draft Government of Wales Act 2006 (Amendment) Order 2021.

Diolch yn fawr, Cadeirydd. It is a pleasure to serve under your chairmanship, Mrs Miller. I am very sorry that the hon. Member for Merthyr Tydfil and Rhymney (Gerald Jones) is not here today. I understand the reason why, and I express my deepest condolences to his family, as I will to the hon. Gentleman when I next see him.

The draft order makes changes to the Welsh devolution settlement by amending schedules 7A and 7B to the Government of Wales Act 2006 in the light of the EU exit. That includes removing references that are no longer relevant now that the UK has left the EU, and modifying consenting arrangements in relation to concurrent powers and in relation to the Controller of Plant Variety Rights. The order also corrects some minor errors in both schedules, and I shall take each of those elements in turn.

Hon. Members will be familiar with the need, in the light of our exit from the EU, to amend references to the EU and its institutions as they appear throughout the statute book. A number of such references appear within the list of reservations in schedule 7A to the Government of Wales Act 2006. For example, paragraph 20 of the schedule reserves powers to the UK Parliament to legislate over elections to the European Parliament. Clearly, such a reference is no longer necessary. Although the majority of EU references in the Government of Wales Act 2006 were corrected through the European Union (Withdrawal) Act 2018, it only amended the list of reservations where there was a direct read-across to the devolution settlement for Northern Ireland.

The Government committed to correcting the remaining references in schedule 7A through the order to enable the Senedd to have a direct say over the amendments. I make it clear that our approach to these changes is that they are devolution-neutral. Removing those references will not result in the Senedd gaining any additional powers, nor will it take away any of their current powers.

As well as making corrections to the schedule that are necessary as a result of EU exit, we are also taking the opportunity presented by the order to rectify a small

number of minor errors in schedules 7A and 7B, which had come to light since the Wales Act 2017 gained Royal Assent. Those errors that have affected the competence of the Senedd and their correction will, similarly, be devolution-neutral.

I now turn to matters related to the consent requirements in schedule 7B to the Government of Wales Act 2006. Paragraph 11 of the schedule prevents the Senedd from modifying or removing functions of a Minister of the Crown that relate to a qualified devolved function without the UK Government's consent. A qualified devolved function is defined as one conferred on the First Minister, Welsh Ministers, or the Counsel General and is to any extent exercisable concurrently, or jointly, with the Minister of the Crown, or only with the consent of, or following consultation with, the Minister of the Crown. The need for UK Government consent was put in place to protect the concurrent and joint functions that are set out in schedule 3A to the Government of Wales Act 2006.

EU exit has, however, necessitated hundreds of new concurrent functions being established through statutory instruments made under the European Union (Withdrawal) Act 2018. That approach was taken for expediency and to allow for UK-wide approaches to be implemented in a number of areas where powers have returned from the EU. Those functions are wholly in devolved areas, and the vast majority relate to matters that are the responsibility of the Department for Environment, Food and Rural Affairs and the Department of Health and Social Care.

For example, The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 include powers for the appropriate authority to update retained EU law in respect of the limitation of admissions of certain pollutants in the light of scientific and technical progress, and The Nutrition (Amendment etc.) (EU Exit) Regulations 2019 provide regulation-making powers to set the minimum and maximum amounts of vitamins and minerals that may be present within food supplements.

Concurrent functions in devolved areas have similarly been established in the UK Government's programme of primary legislation. The Welsh Government have raised concerns over the Senedd's ability to break those concurrent arrangements in future, in the light of the restrictions I have already outlined. The UK Government agree that in those circumstances the consent arrangements are not appropriate.

The order therefore provides that the consent requirements do not apply where the Senedd seek to remove, or confer a power to remove, a function of a Minister of the Crown that is exercisable concurrently with Welsh Ministers and is established through one of the enactments specified in the order. The specified enactments are: statutory instruments made under sections 8 to 8C of the European Union (Withdrawal) Act 2018; the European Union (Withdrawal Agreement) Act 2020 or in regulations made under it; the Direct Payments to Farmers (Legislative Continuity) Act 2020; the Coronavirus Act 2020; the Fisheries Act 2020; the Agriculture Act 2020; and the Act of Parliament that will result from the Trade Bill.

I should make it clear that this carve-out only applies where the Senedd seek to remove the function of a Minister of the Crown and therefore break the concurrency. It will not apply to any wider modifications that the Senedd may wish to legislate for.

Also, in respect of the Fisheries Act 2020, this carve-out from the consent requirement does not apply to the removal of a Minister of the Crown function to regulate British fishing boats, excluding Welsh fishing boats, in Welsh waters. That is consistent with the protections for the Secretary of State's wider concurrent functions to regulate fishing boats of a devolved Administration outside that Administration's waters. DEFRA has committed to carrying out a review of concurrent fisheries functions to consider whether those arrangements are still appropriate.

Many of the concurrent functions that have been established through the specified enactments provide that the relevant Secretary of State can only exercise them with the consent of the Welsh Ministers. A number also require the Welsh Ministers to consult or seek consent of a Minister of the Crown before exercising them.

Restrictions in paragraph 8(1)(c) of schedule 7B provide that the Senedd cannot confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority without the consent of the UK Government. The ability of Welsh Ministers to give consent to the Secretary of State, as well as requirements to consult or seek the consent of a Minister of the Crown, constitute a function in relation to a reserved authority. As a result, the order also provides that the restrictions do not apply when the Senedd seek to remove a concurrent function of a Minister of the Crown established through the specified enactments.

The Government believe that it is appropriate that the relevant Minister is informed of plans to remove their functions. As such, under the provisions of the order, the Welsh Government must consult the relevant UK Government Minister before a Senedd Bill can remove such a function.

The order also makes changes to the consent arrangements in relation to the Controller of Plant Variety Rights. As we all know, that is the UK body responsible for administering UK plant breeders' rights. Intellectual property as it relates to plant varieties is a devolved matter. However, as that body operates on a UK-wide basis and therefore undertakes functions for England, Scotland and Northern Ireland which are outside the Senedd's competence, it is classed as a reserved authority under the Welsh devolution settlement.

As I have already noted, schedule 7B to the Government of Wales Act 2006 places restrictions on the Senedd's ability to impose, modify or remove functions of reserved authorities without the consent of the UK Government. However, there are a small number of reserved authorities that are carved out of the consent requirements, because they exercise a mix of devolved and reserved functions. These include the Electoral Commission and the Food Standards Agency. In the light of the devolution boundary in this area, it is appropriate that the Senedd are able to modify the devolved functions of the Controller of Plant Variety Rights without needing the consent of a UK Government Minister. Therefore, the order adds the controller to the list of mixed-function authorities.

The order is the result of significant positive engagement between both Governments and it has been laid before the Senedd for their approval.

2.40 pm

**Stephen Doughty** (Cardiff South and Penarth) (Lab/Co-op): Diolch, Cadeirydd. Thank you, Mrs Miller. It is a pleasure to serve under your chairpersonship.

I start by apologising on behalf of my hon. Friend the Member for Merthyr Tydfil and Rhymney (Gerald Jones), who would normally have spoken for the Opposition on this statutory instrument. Tragically, he lost his father in the past few days. I send condolences on behalf of all Committee members today and I thank the Minister for his kind comments.

From the outset, I want to be clear that Labour supports this statutory instrument and we note the debate that has already been held on it in the other place. This is, of course, a necessary instrument that will correct deficiencies that have arisen as a result of the UK's exit from the European Union, as well as a number of drafting errors. And importantly for proper devolution, the order will remove restrictions on the Senedd's legislative competence. This will ensure that there is a clear division in that legislative competence and that the Welsh Government will not have to rely on the UK Government to legislate on their behalf, whether or not they wanted them to, as was permitted to occur consensually and temporarily for the limited purpose of correcting the statute book in the devolved areas as a result of the UK leaving the EU.

Of course, as the Minister has explained, the order arises out of a quirk in the way that the Wales Act 2017 amended the Government of Wales Act 2006, relating to new concurrent powers, where either Welsh Ministers or UK Ministers can make changes to devolved law. That was extremely rare, so the provisions in the Government of Wales Act 2006 say that if UK primary legislation gives concurrent powers to UK Ministers in areas of devolved competence, the Senedd can only legislate to remove them with the consent of UK Ministers. However, in Scotland and Northern Ireland, the legislatures could use new legislation to remove concurrent powers, provided of course that they related only to devolved competence, without such consent.

The Minister has referred to the number of important areas that are covered in this order relating to plant varieties, direct payments to farmers, the Coronavirus Act 2020, Agriculture Act 2020, Fisheries Act 2020, the Trade Bill, the Environment Bill and other measures. Those are obviously important corrections to make.

However, with the volume of secondary legislation that was needed to deal with Brexit, the UK Government proposed and the devolved Administrations agreed that concurrent powers made sense in a large number of areas, so that Parliament could make correcting statutory instruments with the consent of the devolved Administrations.

I understand that there was an agreement previously, in 2017 or 2018, that when the process of primary legislation related to Brexit was coming to an end, there would be further secondary legislation so that the Senedd got back the competence and role that they rightly have. I know that the reports by the Senedd's Legislation, Justice and Constitution Committee also examined this matter in detail and made a number of recommendations.



[Stephen Doughty]

Legislative competence for the Senedd will be properly held by the Senedd, and should there be need for any further corrections arising from the UK leaving the EU, then it should be the Welsh Government that legislate to make those corrections.

The United Kingdom functions, of course, as an effective family of nations, precisely because of the demarcation of legislative competencies that allows for our national legislatures and Governments to adequately represent the citizens who have elected them. I am pleased that the order reinforces that demarcation, after some of the blurring of the lines that we have seen, and so we are very happy to support this statutory instrument.

However, as was referred to by my noble Friends in the other place, I want to commend more than just the contents of this order; I also commend the way in which it has been brought forward. This is a rare example of the UK Government working constructively with the Welsh Government to support the devolution settlement and it has been positive to see the practical steps that have been taken in relation to this measure, even during the very tumultuous and complex legislative process that we have been through.

I hope that this is the start of more grown-up politics from the current Conservative Government relating to devolution. Governments from different nations, even when they are headed by parties of different colours, can work together, as opposed to some of the instances that we have seen, whether it is on furlough, the United Kingdom Internal Market Act 2020 or on other matters. I hope that the Minister can reassure us that this statutory instrument will lead to a further collaborative approach from the UK Government on other constitutional issues that need resolving.

The Minister and I do not agree on very much when it comes to policy, but we do believe in the clear benefits of working together in this Union. I hope that we will see a welcome change from the UK Conservative Government in taking this approach, because, as I said, we have seen some very unfortunate developments relating to the United Kingdom Internal Market Act 2020 and other matters. We need to see more of this type of sensible, pragmatic, mature co-operation, rather than some of the stuff that we have seen going on in other respects, which, rightly, the Welsh Government are now challenging the UK Government over.

I have a few minor questions to ask. First, can the Minister confirm that, if any further corrections are needed as a consequence of our EU exit, the Welsh Government will be able to legislate to make such corrections? Secondly, given that the Environment Bill and indeed the Trade Bill are still going forward through the House, can he explain how any issues arising from those will be dealt with? Thirdly, can he confirm whether there will be any further orders of this nature related to these matters, or whether it will now be for the Welsh Government to resolve them and for the two Governments to work constructively to ensure there is not confusion in what is a very complex area?

I think reference was made in the other place to the deep complexities of the constitutional legislation relating to devolution in this country, and we do not want to create confusion and an undue bureaucracy, so it is important that these matters are clarified. However, with that, we are very happy to support the order.

**The Chair:** I also add my condolences to those expressed to Gerald Jones, the hon. Member for Merthyr Tydfil and Rhymney.

2.46 pm

**Ben Lake** (Ceredigion) (PC): It is a pleasure to serve under your chairmanship, Mrs Miller, and thank you for calling me to contribute a few very brief remarks this afternoon. I begin by expressing my very sincere condolences to the hon. Member for Merthyr Tydfil and Rhymney (Gerald Jones); I hope the hon. Member for Cardiff South and Penarth will pass those sentiments on to him and his family.

I echo many of the points that have already been made this afternoon. The co-operation between the UK and Welsh Governments represented by this order is to be welcomed. I urge the UK Government to reflect on what can be achieved, I suppose, when working with the devolved Governments. The hon. Member for Cardiff South and Penarth referred to the example of the United Kingdom Internal Market Act 2020; I would argue that perhaps that is an example of what not to do, and this order is an example of what to do.

We will not oppose this order, but I would be grateful if the Minister could offer some clarification on a few points. In a letter sent to the Chair of the Senedd's Legislation, Justice and Constitution Committee back in January, the Counsel General Jeremy Miles stated that the Welsh Government are in discussions with the UK Government on bringing forward a further Order in Council under section 109 of the Government of Wales Act 2006, to make equivalent provision for concurrent functions under the European Union (Future Relationship) Act 2020. I ask the Minister to clarify what progress has been made in that regard and whether the discussions have touched upon the question of future-proofing.

By future-proofing, I mean placing provisions in any proposed new order to carve out concurrent functions created under all future Acts of the UK Parliament. Of course, given when the Government of Wales Act 2017 was introduced, it would have been impossible to envisage that a significant number of additional concurrent functions would have been created. As such, it might be reasonable to explore ways of future-proofing any new order in that regard.

Turning briefly to the carve-outs in the order under discussion, they apply only where the Senedd seek to remove the function of a Minister of the Crown, but I wonder whether the Minister can help me in explaining this: in a scenario whereby a Senedd wish to modify those functions, will these consent requirements still apply? In particular, I seek clarification on whether his counterparts in the Senedd have raised any concerns that the Welsh Government will still require consent to modify concurrent functions.

Finally, the Minister and the Opposition spokesperson mentioned the Fisheries Act 2020. As Baroness Bloomfield of Hinton Waldrist told Peers in the other place, the Environment, Food and Rural Affairs Committee has committed to undertake a further review of the concurrent fisheries functions. I welcome the Minister's comments that progress is being made on that.

May I also ask what further consideration has been given to the Environment Bill and whether there will be a need for any further carve-outs in that regard? I would appreciate it if the Minister could update the Committee

on what progress, if any, has been made to date and, if not, what he foresees the way forward being on the Environment Bill. I am grateful to you for allowing me to speak, Mrs Miller. Again, my sincere condolences to the hon. Member for Merthyr Tydfil and Rhymney. Diolch.

2.50 pm

**David T. C. Davies:** I have tried to take note of the five or six questions, two of which are similar. First, I believe the Environment Bill will need to have similar amendments made to it. I believe the Trade Bill is covered by this order, so it will not require amendments.

I have not been approached by anyone in the Welsh Government about further corrections, but it would be foolish of me to say that they will not be needed, and no further corrections will be found. All I can offer is a commitment that I would expect and assume that as and when further corrections or inconsistencies come to light—emerge is the word used by officials—or emerge, I am sure the Government will share the same commitment to wanting to change them as they have shown today. I think that answers the questions.

The order makes a number of amendments to schedules 7A and 7B to the Government of Wales Act 2006. It will enable the Senedd to remove concurrent powers, established in specific enactments without needing the agreement of the UK Government. In doing so, it directly deals with the concerns raised by the Welsh Government. It clarifies schedules by removing references that are no longer relevant following EU exit and provides for a number of corrections where necessary.

In answer to the final point made by the hon. Member for Cardiff South and Penarth, with whom I have worked for many years and respect greatly, I do not know whether to entirely agree or disagree with him about the grown-up arrangement between the two Governments. I wish that people who sometimes see the arguing between the UK Government and Welsh Government would come to rooms like this and see what goes on behind the scenes. Too often, we hear about what has gone on in the Chamber and the heat sometimes generated there, when the reality of our partnership and working together can be demonstrated in situations such as we have had this afternoon.

I genuinely say to the hon. Gentleman that the Secretary of State for Wales and I do want a grown-up relationship with the Welsh Government. It has not always been as good as it could have been. Dare I suggest in this Committee that perhaps the fault has not always lain on our side? We desperately want to have that relationship with the Welsh Government. I welcome any support he can give to that or any encouragement that he can give to our friends in Cardiff Bay on that point.

I welcome the productive work that has taken place between our two Governments in preparation for this order and I commend it to the Committee.

*Question put and agreed to.*

2.53 pm

*Committee rose.*

