

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT WELSH MINISTERS (TRANSFER OF
FUNCTIONS) ORDER 2018

Tuesday 8 May 2018

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The Committee consisted of the following Members:

Chair: SIR CHRISTOPHER CHOPE

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| † Andrew, Stuart (<i>Parliamentary Under-Secretary of State for Wales</i>) | † Kinnock, Stephen (<i>Aberavon</i>) (Lab) |
| † Antoniazzi, Tonia (<i>Gower</i>) (Lab) | † Lake, Ben (<i>Ceredigion</i>) (PC) |
| Clwyd, Ann (<i>Cynon Valley</i>) (Lab) | † Mills, Nigel (<i>Amber Valley</i>) (Con) |
| † Crabb, Stephen (<i>Preseli Pembrokeshire</i>) (Con) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Davies, Glyn (<i>Montgomeryshire</i>) (Con) | † Ruane, Chris (<i>Vale of Clwyd</i>) (Lab) |
| † Docherty, Leo (<i>Aldershot</i>) (Con) | † Stephenson, Andrew (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Evans, Chris (<i>Islwyn</i>) (Lab/Co-op) | † Whittingdale, Mr John (<i>Maldon</i>) (Con) |
| † Greening, Justine (<i>Putney</i>) (Con) | |
| † Hart, Simon (<i>Carmarthen West and South Pembrokeshire</i>) (Con) | Adam Evans, <i>Committee Clerk</i> |
| † Jones, Susan Elan (<i>Clwyd South</i>) (Lab) | † attended the Committee |

Second Delegated Legislation Committee

Tuesday 8 May 2018

[SIR CHRISTOPHER CHOPE *in the Chair*]

Draft Welsh Ministers (Transfer of Functions) Order 2018

4.30 pm

The Parliamentary Under-Secretary of State for Wales (Stuart Andrew): I beg to move,

That the Committee has considered the draft Welsh Ministers (Transfer of Functions) Order 2018.

It is a pleasure to serve under your chairmanship, Sir Christopher. The Wales Act 2017 delivered a clear devolution settlement for Wales, based on the firm foundation of a reserved powers model. The new model, which came into force on 1 April, puts in place a clearer boundary between the powers and responsibilities of this place and those of the National Assembly for Wales. Unlike in Scotland, there has never been a general transfer of Minister of the Crown functions in devolved areas to Welsh Ministers. The different history and geography of Wales, compared with Scotland, and the greater cross-border interaction mean that the transfer of functions in specific areas has been more appropriate. Such an approach makes it clear which functions have been transferred.

During the passage of the 2017 Act, the Government committed to making it clear through the Act and associated secondary legislation how the Minister of the Crown functions that remain in devolved areas will be exercised. The new schedule 3A to the Government of Wales Act 2006, which was inserted by schedule 4 to the Wales Act 2017, sets out the statutory Minister of the Crown functions in devolved areas that are exercised concurrently or jointly with Welsh Ministers. Also, a handful of so-called pre-commencement functions need to continue to be exercised solely by a Minister of the Crown. Those are set out in paragraph 11 of new schedule 7B to the Government of Wales Act.

The draft order transfers the remaining Minister of the Crown functions in devolved areas to Welsh Ministers. Many of those functions are pre-commencement functions, which Ministers of the Crown exercised before the National Assembly gained full law-making powers following the 2011 referendum. In October 2016 we published an initial list of functions that we intended to transfer. Since then we have worked closely with other Departments and the Welsh Government to identify the further functions in devolved areas that should be transferred.

The draft order is the culmination of that work, transferring functions to Welsh Ministers in a wide range of devolved areas, including health, education, agriculture and the environment. It also transfers functions to Welsh Ministers in areas such as Assembly and local government elections, teachers' pay and the community infrastructure levy, to accompany the further legislative competence devolved to the National Assembly in those areas under the 2017 Act. The order also removes the

requirement for Treasury consent from a number of functions exercised by Welsh Ministers where that requirement is no longer appropriate.

Finally, the draft order delivers on one of the commitments made in the St David's Day agreement, which my right hon. Friend the Member for Preseli Pembrokeshire so ably delivered when he was Secretary of State for Wales. The commitment was to ensure a clear understanding of the UK and Welsh Governments' respective roles in relation to civil contingencies, separating out devolved and reserved responders, and transferring co-ordinating functions for those devolved responders to Welsh Ministers. The order therefore further clarifies the boundary of responsibilities between UK Government Ministers and Welsh Ministers in relation to civil emergencies. The order makes it absolutely clear which functions have been transferred to Welsh Ministers, thereby delivering a clearer boundary between the responsibilities of UK Ministers and those of Welsh Ministers.

In drawing up the draft order, my officials worked closely with colleagues across Whitehall and counterparts in the Welsh Government. I am pleased that the First Minister of Wales has approved it. I commend it to the Committee.

4.34 pm

Chris Ruane (Vale of Clwyd) (Lab): It is a great honour to serve under your chairmanship, Sir Christopher, on this important matter. The draft order continues the long process—too long a process, some would say—of devolving powers from London to Cardiff over the past 21 years. I am sure that the Minister will be delighted to hear that we will not oppose these measures, which will ensure greater devolution to Wales.

Labour is the party of devolution. I was proud to play my full part in the devolution referendum in 1997 as the north Wales campaign co-ordinator. I was proud to vote for the Government of Wales Act 1998 and campaign for additional powers in the successful referendum in 2011. These powers have been a long time coming and it is a privilege to be on this Committee today when these powers will be tidied up and finally devolved.

Susan Elan Jones (Clwyd South) (Lab): Many members of the Committee will be intrigued to see measures such as the Conservation of Seals Act 1970 included. We now know that the seals of Wales will be fully devolved.

Chris Ruane: Labour seals.

Susan Elan Jones: Indeed. One of the things that strikes me about the draft order is the number of references to agriculture. Does my hon. Friend agree that, as we come to the post-Brexit era, it makes more and more sense for measures relating to agriculture to be decided by our devolved Government in Wales?

Chris Ruane: Absolutely. Agriculture in Wales pre and post Brexit is a top priority. Some 58% of farmers in Wales voted to leave the EU because of the promises that the funds they received on a regular basis from Brussels to the farm gate would be secure. Now they find that will not be the case.

The order represents an important change in the devolution settlement. Although the majority of the functions in it are relatively minor, their transfer to Welsh Ministers represents a significant step forward in matching the legislative competence of the Assembly with the Executive competence of Ministers. What the order does not do, as Labour argued consistently through the passage of the 2017 Act, is create the clarity that the opportunity of a new Wales Act could have provided. The whole period following the Silk Commission's conclusions has been a missed opportunity by the Conservatives to put Wales on a stable and sustainable footing, consolidate all existing legislation and provide proper alignment.

On this journey, we had the debacle of the St David's Day process, where the Tories could not get anyone to agree with them, yet persisted in calling it an agreement prior to the initial draft Wales Bill being published in 2016. The 2016 draft Bill was so universally loathed by politicians, academics and lawyers alike that significant changes had to be made before the Bill was introduced in Parliament the following year. We welcome those changes.

The Welsh Labour Government reluctantly recommended a legislative consent motion to the Assembly in 2017—not because the Wales Bill was perfect, but because it represented another step along the road towards the clarity that Wales deserves. That is where this TFO—transfer of functions order—comes in. As I said, it goes some way towards aligning the legislative competence of the National Assembly with the Executive competence of Welsh Ministers.

Of the 47 articles in the transfer order, there are three areas of significance: teachers' pay and conditions, civil contingencies and elections. On teachers' pay and conditions, we note the later date of 30 September 2018 for those coming into force. This, I understand, was at the Welsh Government's request and is to ensure the smoothest possible transition for teachers in Wales when the new school year starts. I thank the Government for listening and for making the amendments proposed by Welsh Ministers.

The transfer of functions to Welsh Ministers in relation to civil contingencies should provide clarity for all those who deal day to day with emergency planning. We believe that will make for a better service response for the public and it is to be welcomed. I recently met the chief fire officer for north Wales, Simon Smith, to discuss fire issues and emergency planning. I pay tribute to all those who protect us in emergency planning and civil contingencies, including the police, fire services, ambulance services, local authorities, the coastguard and the NHS. I am sure they will be pleased with the joined-up approach that we are discussing today.

With respect to elections, we note that the functions will be transferred on a different basis from the other provisions in the TFO. Instead of listing the specific provisions to be transferred, the TFO provides that all functions in certain election-related enactments will be transferred, but only in so far as those functions fall within the legislative competence of the National Assembly. That appears to introduce some uncertainty: it is not exactly clear which functions have been transferred, making the TFO slightly difficult to navigate. We understand that the Welsh Government offered an alternative draft to the UK Government that would have addressed that point. Perhaps the Minister can explain to the Committee

why it was thought necessary to proceed on the basis of what we have before us. Why did they not accept the Welsh Government's proposals?

The final issue is Milford Haven port. The UK Government have compounded their determination to keep control of the port. Will the Minister confirm that they have no plans to privatise the port and will work with the Welsh Government to ensure its continued significant contribution to the economy of west Wales at this significant time, with Brexit looming large over us all?

The transfer of functions is generally to be welcomed. We will not divide the Committee, but I would appreciate if the Minister could shed some light on those issues.

4.41 pm

Stephen Crabb (Preseli Pembrokeshire) (Con): Following various threats and encouragements from people around me, I will keep my contribution brief. I do not intend to say anything about the background process or the legislation we passed that has led to the order we are discussing this afternoon, but there is one item in the order that I would draw the Minister's attention to.

Article 39 transfers ministerial functions on teachers' pay and conditions under the Education Act 2002. The hon. Member for Vale of Clwyd alluded to this provision as one of the most significant in the draft order. It was also probably the most contentious part of the discussions we had in the run-up to the St David's Day agreement in 2015. The hon. Gentleman made some quite churlish remarks about the nature of the agreement, or lack of it. The truth is that when it came to teachers' pay and conditions, the biggest resistance to devolution came from Labour Members—specifically, from the hon. Member for Pontypridd (Owen Smith). The concern he raised at that time, which was quite legitimate, was whether devolving teachers' pay and conditions to Cardiff is a step towards breaking up unified national pay scales for teachers across England and Wales.

That is not just a theoretical point; the issue is very much live at the moment, particularly among supply teachers. A number of supply teachers in my constituency have contacted me about what they feel are the differential rates of pay they get for working in England and working in Wales, and the fact that they do not get access to the teachers' pension service. They believe that the agency system that the Welsh Government's national procurement strategy has set up to govern the way the teaching supply industry works in Wales does not work in the best interests of teachers. Does the Minister believe that this transfer of functions will give Welsh Ministers in Cardiff all the powers they need to address the problem that has emerged in the devaluing of supply teachers, with underpayment leaving them feeling worthless?

4.43 pm

Stuart Andrew: I thank all hon. Members for their contributions. I welcome the fact that the Opposition support the order. The order delivers on our commitment to transfer the remaining Minister of the Crown functions to Welsh Ministers and provides the clarity I have referred to.

On teachers' pay, I am glad that the hon. Member for Vale of Clwyd said that we have listened. That is the approach that we have tried to take: careful consideration of all of the issues that needed to be looked at in

[Stuart Andrew]

great detail. I pay tribute to people right across UK Government Departments and in the Welsh Government for the significant work they have done.

My right hon. Friend the Member for Preseli Pembrokeshire gives valuable insight and I am glad that he was able to contradict the picture of what happened in the discussions on the 2017 Act. On his point about powers, they are absolutely going to the Welsh Government, and it will be for them to come up with the plans and policies that they want on teachers' pay. That responsibility will lie with the Welsh Government.

Ben Lake (Ceredigion) (PC): The draft order transfers a wide range of functions to Welsh Ministers, particularly in relation to agriculture and the environment. We still do not know what the specific consequences of clause 11 of the European Union (Withdrawal) Bill will be. Are there any functions in the draft order that may need to be retracted once the regulations in that clause are made clearer? If so, what will be the scrutiny procedure for bringing back any of the functions that are being transferred today?

Stuart Andrew: Of course, these are the particular functions that we have identified at the moment. Clause 11 of the withdrawal Bill is a totally different issue. If any more powers need to be transferred to the Welsh Government, we will bring another order before the House so that they can be considered properly.

The hon. Member for Vale of Clwyd also mentioned civil contingencies, and he is absolutely right to point out the joint approach that has taken place. I join him in

paying tribute to all those who work in the emergency services and keep us safe. They do a superb job. The clarity that we will now have in the management and planning of those will be welcomed right across the board.

On elections, the draft order makes clear the areas of election law to which the electoral functions that are being transferred will apply. It made sense to do that in this way, because the draft order would otherwise have become quite an unwieldy document. We felt that this was the best way to take this forward, and it means that it is now very clear that the functions for elections to local government and to the Welsh Assembly are now with the Welsh Government.

Chris Ruane: And Milford Haven?

Stuart Andrew: Milford Haven is a reserved trust under the 2017 Act, and policies concerning it are therefore a matter for the UK Government and Parliament, not the draft order. The hon. Member for Vale of Clwyd asked about its future. I cannot at this stage give any information on its future, but I will happily write to him on that.

I thank members of the Committee for considering the draft order. It is an historic day. The transfer of these functions brings a lot of clarity about the responsibilities of the Welsh Government and those of the UK Government.

Question put and agreed to.

4.48 pm

Committee rose.