



House of Commons
Welsh Affairs Committee

**The National Assembly
for Wales (Legislative
Competence)
(Environment) Order
2009: Government
Response to the
Committee's Twelfth
Report of Session 2008-
09**

**Second Special Report of Session
2009-10**

*Ordered by the House of Commons
to be printed 7 January 2010*

HC 243
Published on 18 January 2010
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

Current membership

Dr Hywel Francis MP (*Labour, Aberavon*) (Chairman)
Mr David T.C. Davies MP (*Conservative, Monmouth*)
Ms Nia Griffith MP (*Labour, Llanelli*)
Mrs Siân C. James MP (*Labour, Swansea East*)
Mr David Jones MP (*Conservative, Clwyd West*)
Mr Martyn Jones MP (*Labour, Clwyd South*)
Rt Hon Alun Michael MP (*Labour and Co-operative, Cardiff South and Penarth*)
Mr Albert Owen MP (*Labour, Ynys Môn*)
Mr Mark Pritchard MP (*Conservative, The Wrekin*)
Mr Mark Williams MP (*Liberal Democrat, Ceredigion*)
Mr Hywel Williams MP (*Plaid Cymru, Caernarfon*)

Powers

The committee is one of the Departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

Committee staff

The current staff of the Committee is Dr Sue Griffiths (Clerk), Alison Groves (Second Clerk), Anwen Rees (Inquiry Manager), Christine Randall (Senior Committee Assistant), Annabel Goddard (Committee Assistant), Tes Stranger (Committee Support Assistant) and Rebecca Jones (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Welsh Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6189 and the Committee's email address is welshcom@parliament.uk.

Second Special Report

The Committee published its Twelfth Report of Session 2008-09 *The National Assembly for Wales (Legislative Competence) (Environment) Order 2009* on 28 July 2009. The Secretary of State for Wales wrote a letter to the Chairman of the Committee on 15 December 2009 which is published as an Appendix to this Special Report. The draft Order *The National Assembly for Wales (Legislative Competence) (Environment) Order 2010*, together with an Explanatory Memorandum, is also published as an Appendix to this Special Report.

Appendices

Letter from the Secretary of State for Wales to the Chairman of the Committee

I am writing to set out the response of the UK Government and the Welsh Assembly Government to the Welsh Affairs Committee's report on the proposed Environment Order. The draft Order was laid before Parliament on 2 December, and I would like to apologise sincerely for not writing to you then. This was due to an administrative oversight.

I would first like to thank the Committee for undertaking such a valuable scrutiny of this complex Order, and for producing a forward thinking report on the wide-ranging nature of the competence sought. Both the UK Government and Welsh Assembly Government have considered the report very carefully, in tandem with the findings of the National Assembly's scrutiny.

I agree with the Committee's conclusion that the National Assembly for Wales should be able to legislate on waste management, pollution and nuisance, and believe that the draft LCO responds appropriately to the recommendations made.

Your Committee recognised that the many exceptions in the proposed Order reflects the complexity of this field of legislation, and noted that LCOs should be drafted with the aims of clarity and simplicity in mind. It also recommended that floating exceptions not directly related to the matters in an LCO should not become common practice and, likewise, carve-outs of legislative competence from exceptions should be kept to a minimum in future legislation and any in this LCO that are not strictly necessary should be removed. The Lords Constitution Committee endorsed this view following its scrutiny of the LCO, and I am writing separately to the Chairman of that Committee to respond to its report.

A number of changes have been made in the draft LCO to respond to both Committees' recommendations, making the Order more succinct and easier to understand, clarifying what is in and out of scope and removing unnecessary duplication in the drafting.

First, the scope of Matter 6.1 in the proposed LCO is now covered by two Matters, with new Matter 6.2 dealing with waste collected, managed or treated on land and disposed of in the sea. This change makes clearer what legislative competence is being conferred and which fixed exceptions relate to each matter. It has also removed the need for the LCO to

use a different definition of “Wales” from that which is generally used in the Government of Wales Act 2006 (the “2006 Act”). We have therefore removed the definition of Wales set out in Article 2 of the proposed Order, which risked causing unnecessary confusion and attracted criticism from the National Assembly Legislation Committee.

Second, the Committee noted that the extensive use of exceptions in the LCO reflects the complexity of this field of legislation. However, it rightly pointed to the need to review the exceptions with a critical eye to establish whether any duplicate existing restrictions in the 2006 Act. Having done so we have revised a number of the exceptions. For example, the fixed exception in the proposed LCO covering provision made by health and safety regulations has been deleted and a more focused exception on *regulating the control of major accident hazards* is inserted in its place. The new exception does not merely duplicate the “functions of a Minister of the Crown” restriction in the 2006 Act (as the Committee felt that the previous exception did) but excludes a specific policy area which remains the responsibility of the UK Government. The *regulation of electricity activities* has also been deleted as a fixed exception because it overlapped with the floating exception on electricity which the LCO inserts into Schedule 5 of the 2006 Act.

Third, the Welsh Affairs Committee and the National Assembly Legislation Committee both pointed out the need for care and consistency in the approach taken to defining terms between and within Matters. I agree the need to ensure that definitions are not included unnecessarily, and that this LCO should include only those definitions which are essential to define the competence accurately. With this recommendation in mind, the following definitions have been removed from the draft Order:

- agricultural or forestry tractor;
- non-road mobile machinery;
- renewable energy;
- transport fuel; and
- vessel.

A number of minor drafting changes have also been made to some exceptions and definitions, including the exception dealing with carbon capture and storage and the definition of offshore energy installation.

Finally, the Committee felt that the Explanatory Memorandum accompanying the LCO did not convey clearly the legislative competence being conferred. The enclosed Memorandum has been substantially revised in order to explain better the changes that the LCO makes. More generally, the Committee pointed to the need for better explanations of what each LCO would do and the changes it would make, and of the legislative competence the National Assembly has. The Lords Constitution Committee commented in similar terms, and the Welsh Assembly Government is currently exploring how this would best be done.

I enclose a copy of the draft Order and the Explanatory Memorandum. I hope that both Houses will debate the draft Order early in the New Year.

I am copying this letter to Lord Goodlad, Chairman of the Lords Constitution Committee.

The National Assembly for Wales (Legislative Competence) (Environment) Order 2010

Draft Order laid before Parliament under section 95(5) of the Government of Wales Act 2006, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Environment) Order 2010

Made

2010

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the day of 2010

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(1) a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation, commencement and interpretation

1.—(1) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Environment) Order 2010.

(2) This Order shall come into force on the day after the day on which it is made.

(3) In this Order “the 2006 Act” means the Government of Wales Act 2006.

Amendments relating to the field of environment

2. In field 6 (environment) of Part 1 of Schedule 5 to the 2006 Act insert—

“*Matter 6.1*

Preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include—

¹ 2006 c.32.

- (a) regulation of any activity in the sea;
- (b) regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).

See below for further provision about what this matter does not include.

Matter 6.2

Disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of the following activities—

- (a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;
- (b) depositing any explosive substance or article in the sea or on or under the seabed;
- (c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.

See below for further provision about what this matter does not include.

Matter 6.3

Protecting or improving the environment in relation to pollution.

This matter does not include—

- (a) regulating the composition and content of fuel used in—
 - (i) a means of transport,
 - (ii) non-road mobile machinery, or
 - (iii) an agricultural or forestry tractor;
- (b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;
- (c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;
- (d) provision of financial support in connection with—
 - (i) the production of renewable energy for consumption in transport, or
 - (ii) the use of that energy in transport,including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.
- (e) regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.

See below for further provision about what this matter does not include.

Matter 6.4

Protecting or improving the environment in relation to nuisances.

This matter does not include—

- (a) imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose;
- (b) removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove;
- (c) regulation of the emission of smoke, artificial light or noise from military premises;
- (d) regulation of gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities;
- (e) regulation of oil and gas exploration and exploitation in the sea;
- (f) regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

Not included in matters 6.1, 6.2, 6.3 and 6.4

Matters 6.1, 6.2, 6.3 and 6.4 do not include any of the following—

- (a) regulation concerning the control of major accident hazards involving dangerous substances (this exception is to be interpreted in accordance with Council Directive 96/82/EC(2) and it relates only to activity within the scope of that Directive);
- (b) regulation of the decommissioning of offshore energy installations and related infrastructure.

Not included in matters 6.1 and 6.2

Matters 6.1 and 6.2 do not include any of the following—

- (a) regulation of decommissioned explosives that are outside the scope of the Waste Directive by virtue of Article 2(1)(b)(v) of the Waste Directive and are or have been—
 - (i) held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
 - (ii) held by or for the purposes of visiting forces;
- (b) regulation of radioactive material that is at military premises;
- (c) regulation of the capture, conveyance or disposal of carbon dioxide as part of relevant carbon capture and storage.

Not included in matters 6.3 and 6.4

Matters 6.3 and 6.4 do not include any of the following—

- (a) regulation of the contained use of genetically modified organisms;
- (b) regulation of the following activities in the sea—
 - (i) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;
 - (ii) scuttling any vessel or floating container;
 - (iii) constructing, altering or improving works in or over the sea or on or under the seabed;

² O.J. No. L10, 14.1.1997, pp. 13-33. The scope of the Directive was extended by Directive 2003/105/EC of the European Parliament and of the Council (O.J. No. L345, 31.12.2003, pp 97-105). There have been other amendments which are not relevant to this Order. Back [2]

- (iv) using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;
 - (v) dredging;
 - (vi) depositing or using any explosive substance or article in the sea or on or under the seabed;
 - (vii) incinerating any substance or object on any vehicle, vessel, marine structure or floating container;
- (c) marine licensing under Part 4 of the Marine and Coastal Access Act 2009³.

Meaning of “pollution”

In this field “pollution” means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.

For the purposes of this definition “air” includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

Meaning of “nuisance”

In this field “nuisance” means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution.

Meaning of “relevant defence” and “relevant exclusion”

In matter 6.4, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance (“the unlawful nuisance”)—

“relevant defence” means statutory removal (however expressed, and whether conditional or not) of the civil or criminal liability in respect of an act, omission or state of affairs that is within the scope of the unlawful nuisance;

“relevant exclusion” means statutory exclusion (however expressed, and whether conditional or not) of an act, omission or state of affairs from the scope of the unlawful nuisance.

In those definitions, a reference to the scope of the unlawful nuisance is a reference to the class of acts, omissions and states of affairs that constitutes the unlawful nuisance.

Other interpretation of this field

In this field—

“electricity activity” means any of the following—

- (a) generating electricity at a generating station whose construction, extension or operation requires—
 - (i) the consent of the Secretary of State, or
 - (ii) the authority of an order granting development consent under the Planning Act 2008⁴;
- (b) transmitting, distributing or supplying electricity;

³ 2009 c.23.

⁴ 2008 c. 29. See Part 4 for the requirement for development consent.

and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity;

“electronic communication” means a communication transmitted—

- (a) by means of an electronic communications network, or
- (b) by other means but while in an electronic form;

“electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
 - (i) apparatus comprised in the system,
 - (ii) apparatus used for the switching or routing of the signals, and
 - (iii) software and stored data;

“energy nuisance” means a nuisance that relates to electricity activities, gas activities, oil activities, or infrastructure that is necessary for carrying out any such activities;

“environmental harm” means any of the following—

- (a) harm to the health of humans and other living organisms;
- (b) harm to the quality of the environment, including—
 - (i) harm to the quality of the environment taken as a whole,
 - (ii) harm to the quality of the air, water or land, and
 - (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;
- (c) offence to the senses of human beings;
- (d) damage to property;
- (e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;

“gas activity” means storing, conveying or supplying gas, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“marine structure” means a platform or other artificial structure at sea, other than a pipeline;

“military premises” means premises which are—

- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
- (b) occupied by or for the purposes of visiting forces;

“offshore energy installation” means any of the following installations that are maintained in the sea or on the foreshore or other land intermittently covered with water, and that are not connected with dry land by a permanent structure providing access at all times and for all purposes—

- (a) installations used for oil activities, gas activities or for the exploration or exploitation of gas or oil;
- (b) carbon dioxide storage installations;
- (c) renewable energy installations;

“oil activity” means storing, conveying or supplying oil, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“relevant carbon capture and storage” means the capture and underground disposal of carbon dioxide by a method in which the carbon dioxide is captured at the place of its production and conveyed for disposal by pipeline directly from the place of production to a place of underground disposal;

“relevant territorial waters” means the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Wales is measured; but any order made under section 104(4)(a) of the Water Resources Act 1991(5) for the purposes of Part 3 of that Act in relation to an area of the territorial sea adjacent to Wales also applies for the purposes of determining what are relevant territorial waters for the purposes of this field;

“sea” means (except where the context otherwise requires) the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;

“statutory” means arising by virtue of an Act;

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;

“Waste Directive” means Directive 2006/12/EC(6) of the European Parliament and of the Council of 5 April 2006 on waste, as it was originally adopted.

An order or an Order in Council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.”.

Amendments to Part 2 of Schedule 5 to the 2006 Act

3.—(1) Paragraph A1(7) of Part 2 of Schedule 5 to the 2006 Act is amended in accordance with this article.

(2) Before the heading “*Highways and transport (field 10 of Part 1)*” insert—

“*Economic development (field 4 of Part 1)*”

(1) Generation of electricity at generating stations whose construction, extension or operation requires—

(a) the consent of the Secretary of State, or

(b) the authority of an order granting development consent under the Planning Act 2008,

and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity.

(2) Transmitting, distributing or supplying electricity.

(3) Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

(4) Nuclear energy and nuclear installations, including—

(a) nuclear safety, and

(b) liability for nuclear occurrences,

but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965.(8)”.

⁵ 1991 c. 57.

⁶ O.J. No. L 114, 27.4.2006, pp. 9-21.

⁷ This paragraph was inserted by article 2(9) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

(3) Under the heading “*Highways and transport (field 10 of Part 1)*”—

(a) after paragraph (1) insert—

“(1A) Road freight transport services, including goods vehicles operating licensing.”;

(b) for paragraph (2) substitute—

“(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—

(a) regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment, and

(b) regulation relating to matter 10.1.

For the purpose of this paragraph, “relevant vehicles” means motor vehicles, mobile machinery and agricultural and forestry tractors.”;

(c) after paragraph (14) insert—

“(14A) Aviation, air transport, airports and aerodromes, apart from—

(a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,

(b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and

(c) regulation of the use of aircraft carrying animals for the purpose of protecting—

(i) human health, apart from the health of persons in aircraft,

(ii) animal, fish or plant health, or

(iii) the environment.”;

(d) for paragraph (15) substitute—

“(15) Shipping, apart from—

(a) financial assistance for shipping services to, from or within Wales, and

(b) regulation of the use of vessels carrying animals for the purposes of protecting—

(i) human health, apart from the health of persons on vessels,

(ii) animal, fish or plant health, or

(iii) the environment.”;

(e) for paragraph (18) substitute—

“(18) Harbours, docks, piers and boatslips, apart from—

(a) those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and

(b) regulation for the purposes of protecting human, animal, fish or plant health or the environment.

(19) Carriage of dangerous goods, including transport of radioactive material.”.

⁸ 1965 c.57. There have been amendments to section 1 of this Act, which restricts certain nuclear installations to licensed sites.

(4) After the exceptions listed under the heading “*Social Welfare (field 15 of Part 1)*” insert

“*Water and flood defence (field 19 of Part 1)*”

(1) Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.

(2) Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991(9), apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.”.

Clerk of the Privy Council

⁹ 1991 c.56. Amendments to provide for the licensing of water suppliers other than water undertakers were made by the Water Act 2003 (c. 37), section 56 and Schedule 4, paragraphs 1-3.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act.

Article 2 inserts matters 6.1, 6.2, 6.3 and 6.4 into field 6 (environment) of Part 1 of Schedule 5 to the 2006 Act. It also inserts interpretation provisions into that field.

Matter 6.1 is about preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include regulation of—

- (a) activity in the sea, or
- (b) the provision of postal services.

Matter 6.2 is about disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of specified marine activities.

Regulation of the following is excepted from both matters 6.1 and 6.2—

- (a) decommissioned explosives held for military purposes,
- (b) radioactive material at military premises, and
- (c) large-scale carbon capture and storage.

Matter 6.3 is about protecting or improving the environment in relation to pollution.

This matter does not include—

- (a) regulating the composition and content of transport fuel;
- (b) specified obligations on persons who supply transport fuel;
- (c) specified matters relating to renewable energy and transport;
- (d) regulation of oil and gas exploration in certain parts of the sea.

Matter 6.4 is about protecting or improving the environment in relation to nuisances.

This matter does not include—

- (a) specified matters relating to criminal and civil liability for energy nuisances (apart from specified matters within the powers of the Welsh Ministers);
- (b) regulation of smoke, artificial light or noise from military premises;
- (c) regulation of oil and gas activities and oil and gas exploration and exploitation in the sea;
- (d) regulation of electronic communications and their networks;

Regulation of the following is excepted from both matters 6.3 and 6.4—

- (a) contained use of genetically modified organisms;
- (b) specified activities in the sea, and
- (c) marine licensing under Part 4 of the Marine and Coastal Access Act 2009.

The following are excepted from matters 6.1, 6.2, 6.3 and 6.4—

- (a) regulation concerning the control of major accident hazards;

(b) regulation of the decommissioning of offshore energy installations and related infrastructure.

Article 3 amends Part 2 of Schedule 5 to the 2006 Act to make provision for exceptions that apply to all matters in Part 1 of Schedule 5. This article substitutes a number of existing exceptions in Part 2 (inserted by the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (SI 2009/3006) that are grouped in the field of highways and transport. It also inserts new exceptions into that group and creates new groups of exceptions in the fields of economic development and water and flood defence. The substituted exceptions and the new exceptions touch upon matters inserted by this Order.

A full regulatory impact assessment has not been prepared for this Order since the effect of this Order is only to confer competence on the National Assembly for Wales to legislate.

Explanatory Memorandum To The National Assembly For Wales (Legislative Competence) (Environment) Order 2010

1. This explanatory memorandum has been prepared by The Wales Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order provides the National Assembly for Wales with legislative competence which will enable it to pass Assembly Measures in relation to waste, pollution and nuisances. It does so by inserting four new 'matters' into field 6 (Environment) in Part 1 of Schedule 5 to the Government of Wales Act 2006 ("the 2006 Act"), along with interpretation provisions and 'fixed exceptions' which apply to one or more of those matters. The Order also sets out a number of general or 'floating' exceptions to the Assembly's legislative competence, which apply to all of the matters set out in Part 1 of Schedule 5.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 The Welsh Assembly Government has significant executive powers and secondary legislative competence across a wide range of legislation relating to the environment. In relation to the scope of the powers within the Order, Welsh Ministers have very broad powers that have been devolved from a number of sources. The key sources of these powers are as follows.

4.2 The Control of Pollution Act 1974 and Control of Pollution (Amendment) Act 1989 provide powers in relation to waste carriage and disposal, water pollution, noise pollution, atmospheric pollution and public health.

4.3 The Food and Environmental Protection Act 1985 gives the Welsh Ministers powers to control the dumping of waste in the territorial sea adjacent to Wales.

4.4 The Local Government Acts of 1988 and 1999 provide further powers in relation to setting statutory recycling and composting targets.

4.5 The Environmental Protection Act 1990 provides Welsh Ministers with broad powers in relation to integrated pollution control and integrated air pollution control; statutory nuisances and clean air; contaminated land; waste; and litter.

4.6 Under the Water Industry Act and Water Resources Act 1991, the Welsh Ministers have the functions of regulating water quality and wholesomeness, and preventing and controlling water pollution, in relation to Wales.

4.7 The Clean Air Act 1993 confers powers on the Welsh Ministers in relation to certain types of emission into the air.

4.8 The Environment Act 1995 provides Welsh Ministers with powers to give directions and guidance to the Environment Agency with regard to how the Agency carries out its wide-ranging functions in Wales, which include pollution control, waste and contributing to the achievement of sustainable development.

4.9 Pollution Prevention and Control Act 1999 is a key piece of legislation which provides powers for Welsh Ministers to make subordinate legislation regulating any kind of polluting activities, or to prevent or control emissions capable of causing any pollution.

4.10 The Anti-Social Behaviour Act 2003 provides powers relating to graffiti.

4.11 The Clean Neighbourhoods and Environment Act 2005 provides key executive powers in relation to local environmental quality, in relation to noise and in relation to Site Waste Management Plans.

4.12 The Welsh Ministers also have considerable powers under Designation Orders, designating them for the purposes of implementing European law. Some of the key Designations are:

- the European Communities (Designation) (No. 3) Order 2000 (SI No 2812) (Designation in relation to air quality);
- the European Communities (Designation) (No. 2) Order 2003 (SI No. 1246) (Designation in relation to urban and industrial waste water);
- the European Communities (Designation) (No. 4) Order 2003 (SI No. 2901) (Designation in relation to water resources);
- the European Communities (Designation) (No. 7) Order 2004 (SI No. 3328) (Designation in relation to water quality);
- the European Communities (Designation) Order 2004 (SI No. 706) (Designation in relation to environmental noise);
- the European Communities (Designation) Order 2005 (SI No. 850) (Designation for “measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste”); and
- the European Communities (Designation) Order 2007 (SI No. 193) (Designation in relation to land contamination).

4.13 The above paragraphs describe some of the key executive powers that Welsh Ministers have in relation to the environment. However, the Welsh Ministers’ powers

in relation to these subject areas are broad and the above list is by no means exhaustive.

4.14 Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision) in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act.

4.15 Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or an Order in Council which has first been approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, by seeking an Order in Council.

4.16 The Order confers legislative competence on the National Assembly for Wales, in the field of environment (field 6). The text of Schedule 5, with the amendments made by this Order set out in bold, is at the end of this explanatory memorandum. An Order in Council under section 95 of the Act is referred to as a Legislative Competence Order (LCO) in this memorandum.

5. Territorial Extent and Application

5.1 Although this instrument extends to the whole of the United Kingdom, its practical application is limited to Wales.

5.2 Section 94 of the 2006 Act imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly's legislative competence. A provision is outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). For these purposes, section 158 of the 2006 Act defines "Wales" as extending out to the seaward boundary of the territorial sea (12 nautical miles from the coastal baselines from which the territorial sea is measured, for domestic and international law purposes). There are limited exceptions for certain kinds of ancillary provisions, for example a provision appropriate to make the provisions of the Measure effective, or a provision enabling other provisions of the Measure to be enforced, or making consequential amendments to other legislation.

5.3 The limitation relating to functions other than in relation to Wales prevents the Assembly from passing any Measure conferring on the Welsh Ministers, Welsh local authorities or any other public authority, functions which relate other than to Wales. For further discussion of the geographical scope of the competence conferred by this LCO, see paragraphs 8.4 to 8.10.

6. European Convention on Human Rights

Wayne David MP, Parliamentary Under Secretary of State for Wales, has made the following statement:

“In my view the provisions of The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 are compatible with the Convention rights”

7. Policy background

7.1 This LCO provides the National Assembly with competence in relation to waste, pollution and nuisances. The Welsh Assembly Government's vision, as set out in the One Wales Programme of Government, is of a truly sustainable environment and the Welsh Assembly Government is pursuing a number of specific actions and policies in order to realise this vision. The Environment is a long-devolved policy area and was one of the Fields listed in the Government of Wales Act 1998 within which Ministerial functions were transferred from the Secretary of State for Wales to the Assembly at its inception. In addition, further executive functions have been devolved to Welsh Ministers in subsequent Acts of Parliament. The LCO provides legislative competence for the National Assembly in areas where executive competence is already held by Welsh Ministers. This would enable the Welsh Assembly Government to propose legislation supporting the delivery of its vision. This was one of the very first LCOs brought forward by the Welsh Assembly Government and is an integral part of its legislative programme.

7.2 The Welsh Assembly Government's overall approach to waste, pollution and local environmental quality is set out in a number of strategic policy documents. The key overarching document is the Welsh Assembly Government's Sustainable Development Scheme, which is of particular relevance to the scope of the powers in the Order. Section 79 of the 2006 Act places a duty on Welsh Ministers to prepare a scheme setting out how they propose, in the exercise of their functions, to promote sustainable development. In May 2009, the Welsh Assembly Government launched its revised Sustainable Development Scheme entitled 'One Wales: One Planet' setting out the Welsh Assembly Government's vision of a sustainable Wales and establishing sustainable development as the central organising principle for policy development and implementation. The revised scheme sets out that in order to achieve this goal over a generation, the total resources currently used to sustain our lifestyles need to be reduced by two thirds. This includes radically reducing our use of carbon-based energy by 80-90%, resulting in a similar reduction in greenhouse gas emissions; having a radically different approach to waste management and moving towards a zero waste nation; and organising the way we live and work so we can travel less by car. This LCO provides legislative powers to the National Assembly that will enable the Welsh Assembly Government to propose legislation which will be a vital tool in helping to deliver the vision set out in the Sustainable Development Scheme.

7.3 The Sustainable Development Scheme sets out the Welsh Assembly Government's broad approach, across the full range of its responsibilities, toward realising the vision of a sustainable Wales. The Environment Strategy for Wales (2006) builds on the Sustainable Development Scheme's aspirations by providing more detail on the Welsh Assembly Government's long term strategy for the environment of Wales. The Environment Strategy sets the direction for the next 20 years and establishes the framework to achieve an environment which is clean, bio-diverse healthy, and valued by the people of Wales. It is supported by a series of action plans and a policy map setting out the key actions that are being taken to deliver its outcomes. There are a number of key outcomes and actions that are relevant to the scope of the LCO.

7.4 In relation to waste management, the Environment Strategy emphasises that achieving a more sustainable pattern of consumption and production will help reduce the impact that economic activity has on the environment. The Strategy sets out a range of outcomes which the Welsh Assembly Government will work towards, including minimising the amount of waste generated in Wales; accepting the principle of 'reduce, reuse and recycle' across government, business, industry and home life; ensuring appropriate waste management facilities are in place to minimise landfill; and encouraging business to produce designed products that require fewer resources and ensure minimal waste.

7.5 The Environment Strategy also aims to minimise pollution and reduce its impact on the environment and on health. Outcomes which the Welsh Assembly Government is working towards include reducing air pollution, leading to increased life expectancy; and maintaining and enhancing the quality of groundwater, rivers, lakes and coastal waters.

7.6 In relation to local environmental quality, the Environment Strategy notes the Welsh Assembly Government's aim of securing places where quality of life is not negatively affected by environmental nuisances. The Assembly Government is working to minimise environmental nuisances such as litter, flytipping, graffiti, dog fouling, fly-posting, noise pollution and light pollution.

7.7 Supplementing the Environment Strategy's approach in relation to waste management is the Welsh Assembly Government's long term framework for waste management and resource efficiency, set out in 'Wise About Waste – The National Waste Strategy for Wales' (2002). The National Waste Strategy provides further detail on how the Welsh Assembly Government will work in partnership with others to move Wales from an over-reliance on landfill to more sustainable waste management by limiting the amount of waste produced and managing it more effectively, recycling and composting far more and finally disposing safely the waste that cannot be recycled or composted. 'Wise About Waste' was recently reviewed and a revised Waste Strategy 'Towards Zero Waste' was issued for consultation in April 2009. It sets out the long term aims for waste management and resource efficiency. By taking a 'zero waste' approach, the aim is to produce no waste in the long term (by 2050) by designing

products and services that reduce or reuse waste as far as possible, and developing a local and highly skilled economy for waste management and resource efficiency.

Rationale

7.8 Many of the key actions in relation to household, commercial and industrial waste management in Wales arise from targets set in the 'Wise about Waste' Strategy, to be updated by the 'Towards Zero Waste' strategy. For example, the Welsh Assembly Government funds local authority household waste recycling via the Sustainable Waste Management Grant and the Regional Capital Access Fund. In 2009/10, the budget for this is £67m. There is also funding (£3.5m in 2009/10) allocated on a competitive basis for the provision of strategically important infrastructure. The Welsh Assembly Government also funds a number of service providers who provide a diverse range of advice and support to the general public, business, public sector and the community sector. These include agencies such as Envirowise, WRAP, Wise about Waste and Cylch.

7.9 In relation to pollution, the Welsh Assembly Government has been working in partnership with Defra and the Environment Agency to take forward the Environmental Permitting Programme (EPP). The EPP aims to reduce the burden of industrial regulation on both regulated businesses and the Environment Agency without reducing effective regulation of human health or the environment. With reference to environmental water quality, the Welsh Assembly Government issues detailed guidance to the Environment Agency to meet a number of European Community Directives, most notably the Water Framework Directive. The key actions to make improvements to water quality are found in the Environment Strategy for Wales, specifically that diffuse pollution (pollution from more than one source) is better understood, and action is taken to reduce and manage it. Much of the regulatory work in relation to pollution control and waste management is undertaken by the Environment Agency, to which the Welsh Assembly Government will be providing approximately £23m grant funding in 2009-10. The Welsh Assembly Government has a general power of direction over the Environment Agency in relation to Wales.

7.10 With regard to local environment quality, the Welsh Assembly Government issued detailed guidance in 2008 on the powers contained in the Clean Neighbourhoods and Environment Act 2005, to help community and town councils decide whether to make use of the powers under the Act. These include powers for community and town councils to take legal action against those that litter, flypost or graffiti in their areas. The 'Tidy Towns' initiative, a One Wales commitment, was launched in April 2008, and is supported by an annual fund of £4 million. Funding is available to local authorities where there is evidence that they have worked with local communities, voluntary organisations and other key stakeholders to improve the quality of their local environment.

7.11 These activities have contributed to the Welsh Assembly Government making clear progress in relation to the overall goal of sustainable development. The latest Sustainable Development Indicators report by the Welsh Assembly Government, published in August 2008, shows clear improvements in 15 of the 39 areas measured and includes improvements in environment-related indicators such as biodiversity conservation (the status of Biodiversity Action Plan species); air quality, both urban and rural; river quality; waste (waste arising by disposal); household waste (recycled or composted); sustainable water and greenhouse gas emissions. The 'State of the Environment' bulletin, also published in 2008, summarises the latest information on the indicators that monitor progress against the Environment Strategy. The bulletin highlighted that there had been an improvement in over half of the indicators that have been defined and where information exists, including in relation to both waste management and pollution.

7.12 The primary purpose of the LCO is therefore to provide the National Assembly with legislative competence which reflects a number of Welsh Ministers' already devolved executive functions. This will in turn enable Welsh Ministers to propose legislation to the Assembly, in the form of Measures. In this way, providing the Assembly with these powers to consider legislating enables a more joined up approach to policy development and improvement. As previously noted in paragraphs 4.1 – 4.12, Welsh Ministers already have wide-ranging executive powers in relation to waste, pollution and local environmental quality. However, these executive powers tend to be, by their very nature, piecemeal and currently the National Assembly has no power to alter the legislative framework within which Welsh Ministers operate. Legislative competence for the National Assembly will enable Welsh Ministers to adopt a more strategic approach to tackling critical challenges in relation to the environment by proposing legislation for consideration by the Assembly. Any Measures will be subject to thorough scrutiny and approval by the Assembly.

7.13 Closely linked to the need for a more holistic and coherent approach to legislation is the fact that the Welsh Assembly Government has a distinct and clearly defined policy agenda in relation to environmental policy. The Welsh Assembly Government undertakes a wide range of activities and initiatives supporting environmental improvement, and creating a sustainable environment is one of the key aims of the One Wales Programme of Government. In particular, One Wales commits the Welsh Assembly Government to use legislation to strengthen recycling targets and to provide better and more coordinated support in relation to waste management. As noted in paragraphs 7.1 – 7.7, the broad policy commitments set out in One Wales are supported by key Assembly Government strategic documents in this policy area, namely the Sustainable Development Scheme, the Environment Strategy and the Waste Strategy.

7.14 Legislative competence for the National Assembly will also enable Welsh Ministers to propose legislation to address new and significant challenges in relation to the environment. A key challenge, and a headline indicator for the Welsh Assembly Government's sustainable development aspirations, is to reduce Wales' ecological

footprint. The ecological footprint is an indicator of the total environmental burden that is placed on the planet and represents the area of land needed to provide the raw materials, energy and food, as well as absorb pollution and waste created – in this case by the Welsh population. Wales' ecological footprint was first calculated using 2001 data and Wales is the first country to recalculate its footprint using 2003 data. The most recent report shows that the Welsh footprint has increased at an average rate of 1.5% per year between 1990 and 2003 – a trend that is replicated elsewhere in the UK. Although the report has confirmed that Wales' ecological footprint is the lowest of the four countries of the UK, it is still at an unsustainably high level and more needs to be done.

7.15 Another important challenge faced by the Welsh Assembly Government, and a commitment in the One Wales Programme of Government, is the implementation of a citizen-centred model of improving public services, drawing on the Beecham Review of Local Service Delivery (2006). The Welsh Assembly Government has put in place a challenging programme to deliver efficient, effective, citizen centred public services. Securing improved waste management, improving local environmental quality standards and safeguarding the environment and human health from pollutants are key elements of providing better quality public services to the citizens of Wales. It is important that the Assembly and the Welsh Assembly Government have available the appropriate policy tools, including legislation via Measures, to help address these challenges.

Scope

7.16 The approach taken with regard to this LCO is for legislative competence to reflect the current boundaries of what are devolved and non-devolved issues.

7.17 The LCO inserts four Matters into Field 6: environment of Schedule 5 to the 2006 Act, to enable the Assembly to legislate on these issues by way of Assembly Measures.

Matter 6.1 – Waste

7.18 Matter 6.1 provides the Assembly with legislative competence in relation to the prevention, reduction, collection, management, treatment or disposal of waste. This will enable the Assembly to legislate on waste matters across all sectors in order to increase recycling and improve sustainable waste management in Wales. The scope of the Matter does not include the regulation of any activity in the sea (this is also dealt with in paragraph 7.24, under the heading “Fixed Exceptions”). The sea, in this context, means the area of sea adjacent to Wales, out as far as the seaward boundary of the territorial sea. (For more detail on the meaning of “Wales” and “the sea” in this context, see paragraph 8.9.)

Matter 6.2 – Waste in the sea

7.19 Matter 6.2 provides competence in relation to the disposal of waste in the sea, where that waste has been collected, managed or treated on land. This will enable the Assembly to legislate in relation to waste that has been disposed of from land into the sea. (For the meaning of “the sea”, see paragraphs 7.18 and 8.9.)

Matter 6.3 – Pollution

7.20 Matter 6.3 provides legislative competence for the protection or improvement of the environment in relation to pollution. The LCO uses a broad definition of “pollution” modelled on that in the Pollution Prevention and Control Act 1999. This will enable the Assembly to legislate to strengthen pollution controls.

Matter 6.4 – Nuisance

7.21 Matter 6.4 provides legislative competence for the protection or improvement of the environment in relation to nuisances. This will enable the Assembly to legislate in relation to nuisances and local environmental quality. “Nuisances” are defined, for the purposes of the competence, as acts or omissions affecting any place, or states of affairs in any place, which may impair or interfere with the amenity of the environment or any legitimate use of the environment. The definition of “Nuisance” does not, however, include an act, omission or state of affairs that constitutes pollution.

Exceptions

7.22 As stated above, the legislative competence provided by this LCO broadly reflects current executive powers of Welsh Ministers. The LCO therefore includes a number of exceptions to the legislative competence, largely reflecting non-devolved areas of policy relevant to waste or environmental protection which are the responsibility of the UK Government and where the Welsh Ministers do not have significant functions. Most exceptions in this LCO fall within the general areas of energy, defence, transport and marine policy, and are necessary because the Matters are so broad that it could be interpreted as enabling the Assembly to legislate for a purpose that was not meant to be included within the competence being conferred. The exceptions therefore seek to provide clarity over the extent of the competence that the Assembly is acquiring in this LCO.

7.23 The LCO contains “fixed exceptions” which apply only to the individual Matters, or a number of specific Matters. The relevant fixed exceptions are described at paragraphs 7.24 to 7.47. There are also “floating exceptions” which apply to all Matters set out in Schedule 5 to GOWA 2006. These are listed in part 2 of Schedule 5, as amended by the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (SI No. 3006). The Environment LCO adds to that list of floating exceptions, as set out at paragraphs 7.48 to 7.50 of this Memorandum.

Fixed Exceptions

Exceptions from Matter 6.1 (Waste) alone

7.24 Matter 6.1 does not include the regulation of any activity in the sea. (For the meaning of the “sea” in this context, see paragraphs 7.18 and 8.9.)

7.25 This Matter also does not include the regulation of the provision of postal services by persons licensed by the Postal Services Commission. Regulatory arrangements for postal services are set out in the Postal Services Act 2000. These arrangements have not been devolved in Wales. The effect of this exception is that a Measure provision would be outside competence, and of no effect in law, if it sought to address a waste issue by regulating the provision of postal services by a person who holds a licence from the Postal Services Commission authorising them to convey letters from one place to another. A Measure provision under the competence provided by Matter 6.1 could however deal with unaddressed material being delivered to premises, provided that the persons delivering it are not regulated by the Postal Services Commission.

Exceptions from Matter 6.2 (Waste in the sea) alone

7.26 The regulation of certain activities in the sea adjacent to Wales is excluded from Matter 6.2. (For the meaning of the “sea” in relation to this Matter, see paragraphs 7.18 and 8.9.) Regulatory arrangements in relation to the marine environment, and the conferral of additional executive powers on Welsh Ministers, are dealt with in the Marine and Coastal Access Act 2009, which proceeded in parallel with the proposed LCO. The Act provides Welsh Ministers with a range of licensing and regulatory powers in relation to the sea adjacent to Wales, including powers to prescribe further activities to be subject to regulation.

Exceptions from Matter 6.3 (Pollution) alone

7.27 Matter 6.3 excludes a number of topics concerned with transport fuel. The first is the regulation of the composition and content of fuel used in a means of transport, in non-road mobile machinery or in an agricultural or forestry tractor. Section 30 of the Clean Air Act 1993 allows the Secretary of State to impose requirements as to the composition and content of any fuel used in motor vehicles and this function has not been transferred to Welsh Ministers. The effect of this exception is that a Measure provision would be outside competence, and of no effect in law, if it sought – under the guise of addressing pollution - to regulate the composition and content of fuel used in a means of transport, non-road mobile machinery or an agricultural or forestry tractor.

7.28 Also excluded from competence are obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel. In the current renewable transport fuel obligation, this is evidence of the volume of renewable fuel supplied. Welsh Ministers do not have

specific powers in relation to the renewable transport fuel obligation. The effect of this exception is that a Measure provision based on the competence afforded by Matter 6.3 could not be used to change the renewable transport fuel obligation.

7.29 Taking account of the fact that transport is likely to be powered not only by renewable fuel but also by renewable energy in other forms such as electricity, the Order also excludes from competence the making of provisions regarding the proportion of renewable energy consumed in transport, including the imposition of sustainability requirements in relation to renewable energy. Welsh Ministers do not have any specific powers in relation to this policy area. The practical effect of this exception is that a Measure provision relating to the competence afforded by Matter 6.3 could not lawfully impose specific proportions of renewable energy to be consumed in transport, or lay down the criteria to determine whether a form of renewable energy could be counted towards an energy obligation or target.

7.30 The provision of financial support in connection with the production or use of renewable energy for consumption in transport, including the imposition of sustainability requirements as a condition for financial support, is excluded. Welsh Ministers do not have any specific powers in relation to this policy area, although they have a wide power under section 60 of the 2006 Act which allows them to fund projects that promote or improve the environmental well-being of Wales. The effect of this exception is that the competence afforded by Matter 6.3 would not allow the Assembly to legislate on the subject of the provision of financial support in connection with the production of renewable energy for consumption in transport or with the use of that energy in transport. So, for example, the Assembly would not be able to lay down, in a Measure, sustainability criteria for receipt of such support.

7.31 The regulation of oil and gas exploration and exploitation is excluded from competence in relation to the outermost 9 miles of the territorial sea adjacent to Wales. The exception reflects the fact that Welsh Ministers do not currently have powers to regulate in relation to pollution from oil and gas exploration and exploitation in that part of the sea, although they do have these powers in the area extending out as far as the first 3 miles of the territorial sea adjacent to Wales, under the Pollution Prevention and Control Act 1999. The Assembly's competence will therefore mirror the Welsh Ministers' power in this regard.

Exceptions from Matter 6.4 (Nuisance) alone

7.32 Competence under Matter 6.4 does not include the ability to impose criminal or civil liability for nuisances arising from electricity, gas or oil activities (as defined in the LCO) or related infrastructure where there is a statutory authority for the act, omission or state of affairs that constitutes that nuisance.

7.33 Likewise excluded from competence are defences or other forms of exemption from civil or criminal liability for nuisance where those defences or exemptions are created by

statute and the nuisance in question relates to electricity, gas or oil activities or infrastructure.

7.34 Taken together, these exceptions mean that the Assembly will not have competence to make someone liable for a nuisance arising from a defined energy activity, where, at the moment, the law protects that person.

7.35 Both exceptions are disapplied where the Welsh Ministers have the power to impose the relevant liability or to remove the defence in question.

7.36 So, for instance, the Assembly could not legislate so as to designate as nuisances gas pipe-lines which had been authorised by the Secretary of State under statute; nor could the Assembly impose a liability to compensate people who were affected by such a pipe-line. However, if the Welsh Ministers currently have the power to impose liability in specific circumstances, despite the existence of a statutory authorisation for the activity, the Assembly will have the corresponding legislative competence.

7.37 The regulation of the emission of smoke, artificial light and noise from military establishments is excluded from Matter 6.4. Smoke, light and noise from those establishments are exempted from Welsh Ministers' regulatory powers under the Environmental Protection Act 1990 in relation to statutory nuisances. The effect of the exception is that the Assembly could not lawfully make a Measure provision using the competence afforded by Matter 6.4 targeting smoke nuisance, light nuisance or noise nuisance caused by military premises.

7.38 The regulation of oil and gas activities, other than those activities carried out by an individual for their domestic purposes, is excluded from competence in relation to this particular Matter. Welsh Ministers do not currently have any specific powers to regulate nuisances caused by oil or gas supply etc. The effect of this exception is that a Measure provision under the competence afforded by Matter 6.4 could not address oil or gas activities, or related infrastructure, on the basis that they constituted nuisances. So, again, the Assembly would not be able to legislate in a way that inhibited the laying of large-scale gas or oil pipe-lines on the basis that they affected amenity or legitimate uses of the environment. But a Measure could legislate in relation to nuisances caused by oil or gas activities carried out by an individual for their domestic purposes.

7.39 The regulation of oil and gas exploration and exploitation is excluded from Matter 6.4 in relation to the sea adjacent to Wales. Welsh Ministers do not have any powers to regulate nuisances in relation to oil and gas exploration and exploitation in the sea adjacent to Wales. (The position is different with regard to pollution, which is dealt with above.) This has therefore been excluded from the competence to be conferred on the Assembly under Matter 6.4. The effect of this exception is that a Measure provision would be outside the competence afforded by Matter 6.4 if it sought to regulate nuisances arising from oil and gas exploration and exploitation in relation to the sea adjacent to Wales – for instance, the effect of an oil platform on visual amenity.

7.40 The regulation of electronic communication and networks is outside legislative competence in relation to this particular Matter. Telecommunications is a non-devolved policy area. The effect of this exception is that a Measure provision using the competence afforded by Matter 6.4 could not lawfully define aspects of electronic communications and networks as nuisances and regulate them as such.

Exceptions from all four Matters inserted by this LCO

7.41 Regulation concerning the control of major accident hazards involving dangerous substances is excluded from all four Matters. This exception is to be interpreted in accordance with Council Directive 96/82/EC (as amended by Directive 2003/105/EC) and it relates only to activity within the scope of that Directive. The specific power to implement the Directive has not been devolved to the Welsh Ministers. The exception means that it would be outside competence for an Assembly Measure to make provision, the purpose of which was to provide for the control of major accident hazards involving dangerous substances, rather than for a purpose within competence, such as the protection of the environment in relation to pollution.

7.42 The decommissioning of offshore energy installations and related infrastructure is excluded from all Matters. Offshore petroleum, renewable energy and carbon storage installations are subject to existing decommissioning regimes established by UK legislation - the Petroleum Act 1998, the Energy Act 2004 and the Energy Act 2008. The effect of this exception is that an Assembly Measure could not make provision, under the competence conferred by any of the four Matters, the purpose of which was to regulate waste, pollution or nuisances arising from the decommissioning of offshore energy installations and related infrastructure.

Exceptions from Matters 6.1 and 6.2

7.43 The regulation of decommissioned explosives, in relation to military activities, is also excluded from this Matter. Decommissioned explosives are excluded from the Waste Framework Directive (Directive 2006/12/EC) and the Welsh Ministers' powers in relation to waste under the Environmental Protection Act 1990 reflect this exclusion. This means that a Measure provision drawing on the competence provided by Matter 6.1 or Matter 6.2 could not lawfully be directed at regulating the treatment of decommissioned explosives resulting from military activities.

7.44 The regulation of radioactive material at military premises is excluded from the scope of these Matters. This exception reflects the fact that Welsh Ministers do not have powers in relation to radioactive waste at military establishments. Radioactive waste at such establishments is excluded from the provisions of the Radioactive Substances Act 1993. Similarly, the broad 'floating' exception for nuclear installations (see paragraph 7.50), means that radioactive waste at those premises, or higher-level radioactive waste moved from those premises, is not within competence. But radioactive waste not at

military establishments or nuclear installations is within the competence afforded by Matter 6.1, and the Assembly would be able to make Measure provisions under this competence about radioactive waste from normal household, commercial or industrial waste, as well as the disposal of very low level radioactive waste moved from nuclear licensed sites.

7.45 The regulation of relevant Carbon Capture and Storage (CCS) is excluded from Matters 6.1 and 6.2. “Relevant” refers to the situation where carbon dioxide, once captured, is conveyed for disposal by pipe-line directly from the place of production to a place of underground disposal. This type of arrangement is likely to apply only to large-scale CCS. Under the Energy Act 2008, the disposal of CO₂ in the territorial sea adjacent to Wales requires a licence from the Secretary of State. Welsh Ministers currently have no specific powers in relation to carbon capture and storage, although they have wide powers in relation to pollution, which enable them to address greenhouse gases such as CO₂, and general licensing powers relating to deposits in the sea. Moreover, CCS is at an embryonic stage and the regulatory arrangements for the full range of CCS activities (including those involving storage under land) have yet to be defined. The practical effect of this exception would be that a Measure provision which attempted to regulate the specified aspects of large-scale CCS (capture, conveyance and disposal) would be outside the competence conferred by the LCO. But this exception would not prevent a Measure provision from dealing with the waste aspects of CCS activities which fall outside the definition of relevant CCS, or with preventing pollution from CCS activities.

Exceptions from Matters 6.3 and 6.4

7.46 The regulation of the contained use of genetically modified organisms (GMOs) is excluded from both Matters. This reflects the fact that the Welsh Ministers do not have executive powers in this regard. They do have the power to regulate environmental harm from the release of GMOs under Part VI of the Environmental Protection Act 1990, but the regulation of the contained use of GMOs is led by the Health and Safety Executive, operating on a UK-wide basis under the terms of the Health and Safety at Work etc. Act 1974. This exception relates only to the handling or use of GM organisms in research laboratories and similar contained use facilities. The effect of the exception is that the Assembly could not seek to regulate the contained use of GMOs under the guise of addressing pollution or nuisances.

7.47 The licensing regime established under Part 4 of the Marine and Coastal Access Act 2009 is excluded from legislative competence afforded by Matters 6.3 and 6.4. This exception reflects the fact that regulatory arrangements in relation to the marine environment, and the conferral of additional executive powers on Welsh Ministers, are set out in the provisions of the Act. They provide Welsh Ministers with a range of licensing and regulatory powers in relation to the sea adjacent to Wales, including powers over additional topics. This exception will ensure the integrity of the arrangements agreed between the Welsh Assembly Government and the UK Government, and approved by Parliament.

Floating Exceptions

Exceptions in Paragraph A1 of Part 2 of Schedule 5 to the Government of Wales Act 2006

7.48 The LCO adds a number of exceptions to paragraph A1 of Part 2 of Schedule 5 to the 2006 Act. Section 94 of the 2006 Act, as amended by the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009, makes clear that a provision of an Assembly Measure is not within competence if it falls within any of the exceptions listed in that paragraph. These exceptions apply to all Matters within Schedule 5, not just to the Matters under the Environment Field. The floating exceptions contained in the Environment LCO have been included on the basis that they are directly relevant to the Matters in the LCO.

7.49 The LCO also amends a number of the exceptions already listed in paragraph A1 of Part 2 of Schedule 5 to the 2006 Act.

7.50 The exceptions to be added to Schedule 5 or amended by this Order are set out below.

Economic Development (Field 4)

- The generation of electricity from a generating station whose construction, extension or operation requires the consent of the Secretary of State or the authority of an order granting development consent under the Planning Act 2008.
- The transmission, distribution and supply of electricity
- Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.
- Nuclear energy and nuclear installations, including nuclear safety and liability for nuclear occurrences. This exception does not include the disposal of very low level radioactive waste from nuclear licensed sites.

Highways and Transport (Field 10)

- Road freight transport services, including goods vehicles operating licensing. This exception does not include the regulation of use of vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment.
- The LCO amends the exception relating to the regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions

under which relevant vehicles may be so used. The amendment excludes from the exception (i.e. preserves the Assembly's existing competence in relation to) the regulation of the use of relevant vehicles carrying animals, where such regulation is for the purposes of protecting human, animal, fish or plant health or the environment. It also preserves the Assembly's existing competence in relation to Matter 10.1 (which deals with road charging schemes).

- Aviation, air transport, airports and aerodromes. There are three carve-outs from this exception. Firstly, the exception does not prevent the Assembly from legislating, where it has competence to do so, in relation to the provision of financial assistance to providers or proposed providers of air transport services or airport facilities or services. Secondly, the exception does not prevent the Assembly from legislating, where it has competence to do so, on strategies by the Welsh Ministers or local or other public authorities about the provision of air services. Thirdly, the exception does not remove from the Assembly's competence the ability to regulate the use of aircraft carrying animals, where that regulation is for the purpose of protecting human, animal, fish or plant health (other than the health of persons in aircraft) or the environment.
- Shipping. There are two carve-outs from this exception. Firstly, the exception does not prevent the Assembly from legislating, where it has competence to do so, in relation to the provision of financial assistance for shipping services to, from or within Wales. Secondly, the exception does not remove from the Assembly's competence the ability to regulate the use of vessels for the purposes of protecting human, animal, fish or plant health (other than the health of persons on ships) or the environment.
- Harbours, docks, piers and boatslips. There are two carve-outs from this exception. Firstly, the exception does not prevent the Assembly from legislating, where it has competence to do so, in relation to harbours, docks, piers or boatslips that are used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of these purposes). Secondly, the exception does not remove from the Assembly's competence the ability to legislate for the purposes of protecting human, animal, fish or plant health or the environment.
- The carriage of dangerous goods, including the transport of radioactive material.

Water and Flood Defence (Field 19)

- The appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.
- The licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed

activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.

Minister of the Crown functions

7.51 By virtue of Part 2 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter the functions of the Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions the appropriate UK Government Departments will be consulted and agreement sought.

8. Consultation Outcome

8.1 There has been no consultation on this Order. However, it has been subject to pre-legislative scrutiny in both the National Assembly for Wales and Parliament, and submissions of evidence were invited as part of the inquiries.

8.2 Any Assembly Measure brought forward as a result of the legislative competence conferred by this instrument would usually first be subject to consultation. Assembly Measures are a matter for the National Assembly for Wales to consider.

Changes to the Order following pre-legislative scrutiny

8.3 A number of changes have now been made to the LCO as a result of pre-legislative scrutiny by the National Assembly for Wales' Legislation Committee No.4, the House of Commons Welsh Affairs Select Committee and the House of Lords Constitution Committee. The Committees published their reports on 19 June, 28 July and 16 October 2009 respectively. A number of the recommendations were concerned with making the LCO easier to understand, providing greater clarity about what is within or outside the National Assembly's competence and avoiding unnecessary duplication in the drafting of the LCO. The following changes have therefore been made in order to respond to the recommendations of these Committees.

Re-structuring of the original Matter 6.1 into two Matters where 6.2 is in relation to waste collected etc on land and disposed of in the sea

8.4 The proposed Environment LCO for pre-legislative scrutiny inserted a separate definition of 'Wales' for use throughout Field 6 of Schedule 5 to the 2006 Act – the Environment Field. This definition drew on the definition of 'Wales' in the Interpretation Act 1978, which equates, broadly speaking, to the landmass of Wales.

8.5 This contrasted with the usual interpretation of the term 'Wales' within Schedule 5 to the 2006 Act. This is the meaning set out in section 158(1) of the 2006 Act, which includes the sea adjacent to Wales as far as the outer boundary of the territorial sea, as well as the landmass of Wales.

8.6 The use of different definitions was a drafting device intended to reflect the agreement reached with the UK Government, in the context of the Marine and Coastal Access Act 2009 that the competence conferred by Matter 6.1 would not extend to the sea.

8.7 However, during pre-legislative scrutiny, the existence of two definitions applying to different parts of the same Schedule was identified as being a potential source of confusion.

8.8 The LCO provides an alternative way of dealing with this issue, i.e. by having one Matter (Matter 6.1) which deals with waste on land (by specifically excluding the regulation of any activity in the sea) and a second Matter (Matter 6.2) which deals only with the disposal of waste in the sea, where that waste has been collected etc on the land.

8.9 The effect is that there is no need to refer to 'Wales' within either Matter and there is no need for the term 'Wales' to be specifically defined in the Order. The interpretation of 'Wales' set out in section 158(1) of the 2006 Act will continue to apply to all Fields in Schedule 5 to the Act, except where the context otherwise requires. The definition of the "sea" in the Order is one such context. That definition is: "the sea adjacent to Wales out as far as the seaward boundary of the territorial sea". In this context, "Wales" must, logically, mean "Wales" as defined in the Interpretation Act 1978, rather than the 2006 Act. The Interpretation Act definition of "Wales" comprises the landmass of Wales down to the seaward limits of local authority jurisdiction. Thus references to "the sea" mean all of the sea between those limits and the outer boundary of the territorial sea.

8.10 As a result of the changes there have also been some consequential amendments to the way in which the Matters and the exceptions are presented.

Exception for the generation of electricity

8.11 The proposed Environment LCO for pre-legislative scrutiny included a fixed exception from Matter 6.4 (which was then Matter 6.3), excepting amongst other things, "the regulation of electricity activities" from the competence to be conferred on the Assembly by this Matter. This fixed exception was highlighted by the National Assembly's Legislation Committee No. 4 as duplicating the floating exceptions on the generation, transmission, distribution and supply of electricity, to be inserted under the Field 4 heading as amendments to paragraph A1 of Part 2 of Schedule 5. Therefore to avoid any duplication and simplify the Order, the fixed exception under Matter 6.4 has been amended to remove the reference to the "regulation of electricity activities".

Exception for health and safety regulation

8.12 The proposed LCO included an exception from all three Matters for provision made by health and safety regulation. The purpose of that exception was to exclude the

control of major accident hazards from the Assembly's competence. These hazards are regulated for purposes relating to health and safety and the environment, and remain the responsibility of the UK Government (although the Welsh Ministers do have functions in relation to planning aspects). This has now been amended to clarify the meaning of the exception. The result is an exception, from all four Matters, for regulation concerning the control of major accident hazards involving dangerous substances. This exception is to be interpreted in accordance with Council Directive 96/82/EC (as amended by Directive 2003/105/EC) and it relates only to activity within the scope of that Directive (see paragraph 7.41 above).

Definitions

8.13 Both the National Assembly for Wales Legislation Committee No.4 and the Welsh Affairs Committee recommended that the LCO should contain only those definitions that were necessary to define the competence afforded by this Order. In order to provide further simplification the following definitions have therefore been removed:

- Agricultural or forestry tractor
- Non-road mobile machinery
- Renewable energy
- Transport fuel
- Vessel

Additionally, the definition of 'off-shore energy installation' has been simplified in a minor way.

8.14 A number of other changes have been made to the text of the Order which were identified following pre-legislative scrutiny. These are detailed below.

- Exception for decommissioning of offshore activities – The proposed LCO included fixed exceptions under all three Matters. In the earlier version of the Order this was represented as being an exception under Matter 6.1 and separately as an exception under Matters 6.2 and 6.3. The LCO has now been amended to correct this presentational issue and to list these exceptions together, applying to all four Matters.
- Carbon Capture and Storage – There has been a small change to the wording of the exception relating to carbon capture and storage. The exception previously provided that Matter 6.1 “does not include regulation of the capture, conveyance AND disposal of carbon dioxide as part of relevant carbon capture and storage” (emphasis added). An amendment has been made to replace "and" with "or", to read "capture, conveyance OR disposal...". This seeks to ensure that the exception captures regulation relating only to one or two of the three components of the process, provided that those components are part of the overall process of “relevant carbon capture and storage”. Due to the changes in the way the

competence over waste is now dealt with, this exception now applies to both Matter 6.1 and Matter 6.2.

9. Guidance

No guidance has been, or will be, issued in relation to this Order. This Explanatory Memorandum explains the scope and policy context of matters included in the Order.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it only confers legislative competence on the National Assembly for Wales, and so has no impact on business, charities or voluntary bodies. The Welsh Assembly Government would prepare a Regulatory Impact Assessment when bringing forward any proposed Assembly Measures as a result of the legislative competence this Order confers.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

This Order confers legislative competence on the National Assembly for Wales. The monitoring or review of any Assembly Measures brought forward as a result of this legislative competence is primarily a matter for the Welsh Assembly Government and/or the National Assembly for Wales.

13. Contact

Queries about the content of the instrument or this memorandum should be addressed to Geth Williams (Tel: 020 7270 0554 or email geth.williams@walesoffice.gsi.gov.uk).

James George (Tel: 029 2089 8484 or email james.george@walesoffice.gsi.gov.uk) can answer legal queries about the instrument.

Annex A

This annex shows how this proposed order would amend Schedule 5 to the Government of Wales Act 2006, with footnotes indicating the source of previous amendments.

Text shown in bold is proposed to be added as a result of this order.

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Matter 1.1¹⁰

The red meat industry, in relation to–

- (a) increasing efficiency or productivity in the industry;
- (b) improving marketing in the industry;
- (c) improving or developing services that the industry provides or could provide to the community;
- (d) improving the ways in which the industry contributes to sustainable development.

Interpretation of this field

In this field “the red meat industry” means all of the activities comprised in–

- (a) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
- (b) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

For the purposes of this definition –

“cattle” means bovine animals, including bison and buffalo;

“pigs” means porcine animals, including wild boar and other feral pigs.

¹⁰ Matter 1.1 and the interpretation provision for field 1 were inserted by the National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009 (S.I. 2009/1758).

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

*Matter 5.1*¹¹

Provision about the categories of school that may be maintained by local education authorities.

Matter 5.2

Provision about the establishment and discontinuance of schools maintained by local education authorities, their change from one category to another and their alteration in other respects.

Matter 5.3

Provision about the admission of pupils to schools maintained by local education authorities.

Matter 5.4

Provision about the curriculum in schools maintained by local education authorities.

*Matter 5.4A*¹²

The regulation of

- (a) schools that are not maintained by local education authorities;
- (b) relevant independent educational institutions.

*Matter 5.5*¹³

Provision about school attendance, the behaviour of pupils at school, school discipline and the exclusion of pupils from school (including the duties of parents in connection with those matters).

¹¹ Matters 5.1-5.4 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

¹² Matter 5.4A was inserted by section 149(1) and (2) of the Education and Skills Act 2008 (c.25).

¹³ Matters 5.5-5.9 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

Matter 5.6

Provision about the making arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education.

Matter 5.7

Provision about entitlement to primary, secondary and further education and to training.

Matter 5.8

Provision about the provision of services that are intended to encourage, enable or assist people

- (a) to participate effectively in education or training,
- (b) to take advantage of opportunities for employment, or
- (c) to participate effectively in the life of their communities.

Matter 5.9

Provision about food and drink provided on school premises or provided for children at a place where they receive education or childcare.

Matter 5.10¹⁴

Arrangements for persons to travel to and from the places where they receive education or training.

This matter applies to

- (a) persons receiving nursery, primary, secondary or further education or training;
- (b) persons described in matter 5.17 receiving higher education.

Matter 5.11¹⁵

Provision for and in connection with securing the provision of facilities for post-16 education or training.

Matter 5.12

¹⁴ Matter 5.10 was inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), and amended by article 2(2) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and article 6(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order (S.I. 2008/3132)

¹⁵ Matters 5.11-5.14 were inserted by section 27(2) of the Further Education and Training Act 2007 (c.25).

Provision for and in connection with the establishment and dissolution of

- (a) institutions concerned with the provision of further education, and
- (b) bodies that conduct such institutions,

including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.

Provision about

- (a) the conduct and functions of such institutions and bodies that conduct such institutions;
- (b) the property, rights and liabilities of such institutions and bodies that conduct such institutions;
- (c) property held by any person for the purposes of such an institution;
- (d) the governance and staff of such institutions

Matter 5.13

Provision for and in connection with securing collaboration

- (a) between bodies that conduct institutions concerned with the provision of further education, or
- (b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,

including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.

Matter 5.14

The provision of financial resources for and in connection with

- (a) education or training provided by institutions concerned with the provision of further education;
- (b) post-16 education or training provided otherwise than by such institutions;
- (c) the carrying out of research relating to education or training falling within paragraph (a) or (b).

Matter 5.15¹⁶

The inspection of

- (za) schools;

¹⁶ Matter 5.15 was inserted by section 27(2) of the Further Education and Training Act 2007 (c.25) and amended by section 149(1), (3) and (4) of the Education and Skills Act 2008 (c.25).

- (zb) relevant independent educational institutions;
- (a) education or training provided by institutions concerned with the provision of further education
- (b) pre-16 education or training, or post-16 education or training, provided otherwise than by institutions within paragraphs (za) to (a);
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.

*Matter 5.16*¹⁷

The provision of advice and information in connection with, and the carrying out of studies in relation to

- (a) pre-16 education or training;
- (b) post-16 education or training;
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.

*Matter 5.17*¹⁸

Education and training for

- (a) persons who have a greater difficulty in learning than the majority of persons of the same age as those persons;
- (b) persons who have, or have had
 - (i) a physical or mental impairment, or
 - (ii) a progressive health condition (such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment.

*Matter 5.18*¹⁹

The provision of any of the following for children or young persons

- (a) facilities for social or physical training;
- (b) educational activities.

In this matter “children” and “young persons” have the same meaning as in field 15.

¹⁷ Matter 5.16 was inserted by section 27(2) of the Further Education and Training Act 2007 (c. 25) and amended by section 149(1) and (5) of the Education and Skills Act 2008 (c. 25).

¹⁸ Matter 5.17 was inserted by article 2(3) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and amended by article 6(b) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

¹⁹ Matter 5.18 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

*Interpretation of this field*²⁰

In this field

“nursery education” means education suitable for children who have not attained compulsory school age;

“post-16 education” means

- (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
- (b) organised leisure-time occupation connected with such education;

“post-16 training” means

- (a) training suitable to the requirements of persons who are above compulsory school age, and
- (b) organised leisure-time occupation with such training

“pre-16 education or training” means education or training suitable to the requirements of persons who are of or below compulsory school age;

“relevant independent educational institution” means an institution other than a school which

- (a) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
- (b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if

- (a) it provides education for the person, and
- (b) the education does not amount to full-time education.

References in this field to an institution concerned with the provision of further education are references to an educational institution, other than a school or an institution within the higher education sector (within the meaning of the Further and Higher Education Act 1992), that is conducted (whether or not exclusively) for the purpose of providing further education.

²⁰ Interpretation provisions for field 5 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), section 27(3) of the Further Education and Training Act 2007 (c. 25), article 2(4) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and section 149(1) and (6) of the Education and Skills Act 2008 (c. 25).

Expressions used in this field and in the Education Act 1996 have the same meaning in this field as in that Act.

Field 6: environment

Matter 6.1

Preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include—

- (a) regulation of any activity in the sea;**
- (b) regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).**

See below for further provision about what this matter does not include.

Matter 6.2

Disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of the following activities—

- (a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;**
- (b) depositing any explosive substance or article in the sea or on or under the seabed;**
- (c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.**

See below for further provision about what this matter does not include.

Matter 6.3

Protecting or improving the environment in relation to pollution.

This matter does not include—

- (a) regulating the composition and content of fuel used in—
 - (i) a means of transport,**
 - (ii) non-road mobile machinery, or**
 - (iii) an agricultural or forestry tractor;****

- (b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;
- (c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;
- (d) provision of financial support in connection with—
 - (i) the production of renewable energy for consumption in transport, or
 - (ii) the use of that energy in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.
- (e) regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.

See below for further provision about what this matter does not include.

Matter 6.4

Protecting or improving the environment in relation to nuisances.

This matter does not include—

- (a) imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose;
- (b) removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove;
- (c) regulation of the emission of smoke, artificial light or noise from military premises;
- (d) regulation of gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities;
- (e) regulation of oil and gas exploration and exploitation in the sea;
- (f) regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

Not included in matters 6.1, 6.2, 6.3 and 6.4

Matters 6.1, 6.2, 6.3 and 6.4 do not include any of the following—

- (a) regulation concerning the control of major accident hazards involving dangerous substances (this exception is to be interpreted in accordance with Council Directive 96/82/EC and it relates only to activity within the scope of that Directive);
- (b) regulation of the decommissioning of offshore energy installations and related infrastructure.

Not included in matters 6.1 and 6.2

Matters 6.1 and 6.2 do not include any of the following—

- (a) regulation of decommissioned explosives that are outside the scope of the Waste Directive by virtue of Article 2(1)(b)(v) of the Waste Directive and are or have been—
 - (i) held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
 - (ii) held by or for the purposes of visiting forces;
- (b) regulation of radioactive material that is at military premises;
- (c) regulation of the capture, conveyance or disposal of carbon dioxide as part of relevant carbon capture and storage.

Not included in matters 6.3 and 6.4

Matters 6.3 and 6.4 do not include any of the following—

- (a) regulation of the contained use of genetically modified organisms;
- (b) regulation of the following activities in the sea—
 - (i) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;
 - (ii) scuttling any vessel or floating container;
 - (iii) constructing, altering or improving works in or over the sea or on or under the seabed;
 - (iv) using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;
 - (v) dredging;
 - (vi) depositing or using any explosive substance or article in the sea or on or under the seabed;
 - (vii) incinerating any substance or object on any vehicle, vessel, marine structure or floating container;

- (c) marine licensing under Part 4 of the Marine and Coastal Access Act 2009.

Meaning of “pollution”

In this field “pollution” means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.

For the purposes of this definition “air” includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

Meaning of “nuisance”

In this field “nuisance” means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution.

Meaning of “relevant defence” and “relevant exclusion”

In matter 6.4, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance (“the unlawful nuisance”)—

“relevant defence” means statutory removal (however expressed, and whether conditional or not) of the civil or criminal liability in respect of an act, omission or state of affairs that is within the scope of the unlawful nuisance;

“relevant exclusion” means statutory exclusion (however expressed, and whether conditional or not) of an act, omission or state of affairs from the scope of the unlawful nuisance.

In those definitions, a reference to the scope of the unlawful nuisance is a reference to the class of acts, omissions and states of affairs that constitutes the unlawful nuisance.

Other interpretation of this field

In this field—

“electricity activity” means any of the following—

- (a) generating electricity at a generating station whose construction, extension or operation requires—
- (i) the consent of the Secretary of State, or
 - (ii) the authority of an order granting development consent under the Planning Act 2008;

- (b) transmitting, distributing or supplying electricity;
and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity;

“electronic communication” means a communication transmitted—

- (a) by means of an electronic communications network, or
- (b) by other means but while in an electronic form;

“electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
 - (i) apparatus comprised in the system,
 - (ii) apparatus used for the switching or routing of the signals, and
 - (iii) software and stored data;

“energy nuisance” means a nuisance that relates to electricity activities, gas activities, oil activities, or infrastructure that is necessary for carrying out any such activities;

“environmental harm” means any of the following—

- (a) harm to the health of humans and other living organisms;
- (b) harm to the quality of the environment, including—
 - (i) harm to the quality of the environment taken as a whole,
 - (ii) harm to the quality of the air, water or land, and
 - (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;
- (c) offence to the senses of human beings;
- (d) damage to property;
- (e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;

“gas activity” means storing, conveying or supplying gas, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“marine structure” means a platform or other artificial structure at sea, other than a pipeline;

“military premises” means premises which are—

- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or**
- (b) occupied by or for the purposes of visiting forces;**

“offshore energy installation” means any of the following installations that are maintained in the sea or on the foreshore or other land intermittently covered with water, and that are not connected with dry land by a permanent structure providing access at all times and for all purposes—

- (a) installations used for oil activities, gas activities or for the exploration or exploitation of gas or oil;**
- (b) carbon dioxide storage installations;**
- (c) renewable energy installations;**

“oil activity” means storing, conveying or supplying oil, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“relevant carbon capture and storage” means the capture and underground disposal of carbon dioxide by a method in which the carbon dioxide is captured at the place of its production and conveyed for disposal by pipeline directly from the place of production to a place of underground disposal;

“relevant territorial waters” means the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Wales is measured; but any order made under section 104(4)(a) of the Water Resources Act 1991 for the purposes of Part 3 of that Act in relation to an area of the territorial sea adjacent to Wales also applies for the purposes of determining what are relevant territorial waters for the purposes of this field;

“sea” means (except where the context otherwise requires) the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;

“statutory” means arising by virtue of an Act;

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;

“Waste Directive” means Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, as it was originally adopted.

An order or an Order in Council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.

Field 7: fire and rescue services and promotion of fire safety

Field 8: food

Field 9: health and health services

Matter 9.1²¹

Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales.

Interpretation of this field

In this field

“the health service in Wales” means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006;

“illness” has the same meaning as in the Act;

“patient” has the same meaning as in the Act;

“personal injury” includes any disease and any impairment of a person’s physical or mental health;

“qualifying liability in tort” means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis or illness or the care or treatment of any patient.

Field 10: highways and transport

Matter 10.1²²

²¹ Matter 9.1 and the interpretation provisions for field 9 were inserted by article 3(3) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

²² Matter 9.1 and the interpretation provisions for field 9 were inserted by article 3(3) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

Provision for and in connection with

- (a) the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;
- (b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

Interpretation of this field

In this field

“motor vehicle” has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) applies as it applies for the purposes of the Road Traffic Acts; “road” has the same meaning as in the Road Traffic Regulation Act 1984; “Welsh trunk road” means a road for which the Welsh Ministers are the traffic authority (within the meaning of section 121A of the Road Traffic Regulation Act 1984).

Field 11: housing

Field 12: local government

Matter 12.1²³

Provision for and in connection with

- (a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (b) the establishment of councils for new principal areas and the abolition of existing principal councils.

“Principal area” means a county borough or a county in Wales, and a “principal council” means a council for a principal area.

Matter 12.2

Provision for and in connection with

- (a) the procedure for the making and coming into force of byelaws, and
- (b) the enforcement of byelaws.

²³ Matters 12.1-12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 235 and Schedule 17.

“Byelaws” means those of a class which may be confirmed by the Welsh Ministers (but the provision which may be made includes provision to remove a requirement of confirmation).

Matter 12.3

Any of the following

- (a) the principles which are to govern the conduct of members of relevant authorities,
- (b) codes of conduct for such members,
- (c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),
- (d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct including in particular
 - (i) the investigation and adjudication of such allegations and reports on the outcome of investigations,
 - (ii) the action that may be taken where breaches are found to have occurred,
- (e) codes of conduct for employees of relevant authorities.

For the purposes of this matter

“relevant authority” has the same meaning as in Part 3 of the Local Government Act 2000, except that other than in paragraph (d) it does not include a police authority,

“member” includes a co-opted member within the meaning of that Part.

Matter 12.4

Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental wellbeing of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with functions of a public nature.

Matter 12.5

Provision for and in connection with

- (a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,

- (b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and
- (c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are “relevant Welsh authorities”

- (a) a county council, county borough council or community council in Wales,
- (b) a National Park authority for a National Park in Wales,
- (c) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
- (d) a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales,
- (e) a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.

Matter 12.6²⁴

Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements.

This matter does not include—

- (a) direct elections to executives of principal councils, or
- (b) the creation of a form of executive requiring direct elections.

For the purposes of this matter—

- (a) “executive arrangements” has the same meaning as in Part 2 of the Local Government Act 2000;
- (b) “principal council” means a county or county borough council;
- (c) “direct elections” means elections by local government electors (within the meaning of section 270(1) of the Local Government Act 1972).

Matter 12.7

Committees of principal councils with functions of—

- (a) review or scrutiny, or
- (b) making reports or recommendations.

²⁴ Matters 12.6 and 12.7 will be inserted by section 33 the Local Democracy, Economic Development and Construction Act 2009 (c. 20), which comes into force on 12 January 2010.

This matter does not include committees under section 19 of the Police and Justice Act 2006 (crime and disorder committees).

For the purposes of this matter “principal council” means a county or county borough council.

Field 13: National Assembly for Wales

Matter 13.1

Creation of, and conferral of functions on, an office or body for and in connection with investigating complaints about the conduct of Assembly members and reporting on the outcome of such investigations to the Assembly.

Matter 13.2

Conferral of functions on the Assembly Commission for and in connection with facilitating the exercise by the Assembly of its functions (including the provision to the Assembly of the property, staff and services required for the Assembly’s purposes).

Matter 13.3

Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister.

Matter 13.4

Provision for and in connection with the creation and maintenance of a register of interests of Assembly members and the Counsel General.

Matter 13.5

Provision about the meaning of Welsh words and phrases in-

- (a) Assembly Measures
- (b) subordinate legislation made under Assembly Measures and
- (c) subordinate legislation not so made but made by the Welsh Ministers, the First Minister or the Counsel General.

Matter 13.6

Provision for and in connection with the procedures for dealing with proposed private Assembly Measure, including, in particular

- (a) procedures for hearing the promoters of, and objectors, to proposed private Assembly Measures,
- (b) the persons who may represent such promoters and objectors, and the qualifications that such persons must possess,
- (c) the imposition of fees for and in connection with the promotion of proposed private Assembly Measures, and
- (d) the assessment of costs incurred in connection with proposed private Assembly Measures.

*Field 14: public administration**Field 15: social welfare**Matter 15.1*²⁵

Charges levied by local authorities for social care services provided or secured by them and payments in respect of individuals with needs relating to their well-being so that they, or any other person, may secure social care services to meet those needs.

This matter does not include charges and payments for residential care.

*Matter 15.2*²⁶

Functions of public authorities relating to

- (a) safeguarding children from harm and neglect;
- (b) safeguarding and promoting the well-being of vulnerable children;
- (c) reducing inequalities in well-being between children or young persons.

This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.

Matter 15.3

Adoption services and special guardianship support services.

²⁵ Matter 15.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785), and amended by article 3(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132) and by article 2(2) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

²⁶ Matters 15.2-15.8 were inserted by article 3(b) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

Matter 15.4

Fostering.

Matter 15.5

Social care services for any of the following

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after
 - (i) who have attained the age of 25, and
 - (ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

Matter 15.6

Co-operation and arrangements to safeguard and promote the well-being of children or young persons,

This matter applies to co-operation by, and arrangements made by,

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;
- (b) police authorities and chief officers of police for police areas in Wales;
- (c) the British Transport Police Authority;
- (d) local probation boards for areas in Wales;
- (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and the 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
- (f) youth offending teams for areas in Wales;
- (g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
- (h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

Matter 15.7

Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

Matter 15.8

Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; the functions of such an office or body, including in particular

- (a) reviewing the effect on children or young persons of the exercise by any persons of functions related to their well-being;
- (b) reviewing and monitoring
 - (i) advocacy services;
 - (ii) arrangements for dealing with complaints and representations made by, or on behalf of, children or young persons in respect of persons with functions related to their well-being or persons providing them with social care services;
- (c) examining cases of particular children or young persons;
- (d) considering, and making representations about, any matter affecting the well-being of children or young persons.

Matter 15.9²⁷

Supporting the provision of care by carers and promoting the well-being of carers.

This matter includes (but is not limited to) social care services to help carers.

In this matter “carers” means individuals who provide or intend to provide a substantial amount of care on a regular basis for—

- (a) a child with a physical or mental impairment, or
- (b) an individual aged 18 or over,

but it does not include individuals who provide or intend to provide care—

- (a) by virtue of a contract of employment or other contract with any person, or
- (b) as a volunteer for a body (whether or not incorporated).

Interpretation of this field²⁸

²⁷ Matter 15.9 was inserted by article 2(3) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

²⁸ Interpretation provisions for field 15 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785), replaced by article 3 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132), and amended by article 2(4) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

In this field

“children” means persons who have not attained the age of 18;

“development” means physical, intellectual, emotional, social or behavioural development;

“health” means physical or mental health;

“local authorities” means the councils of counties or county boroughs in Wales;

“persons formerly looked after” means persons who, at any time before attaining the age of 18

- (a) have been in the care of a public authority, or
- (b) have been provided with accommodation by a public authority in order to secure their well-being;

“public authorities” means each public authority within the meaning of section 6 of the Human Rights Act 1998, apart from courts or tribunals;

“social care services” means any of the following provided in connection with the well-being of any person: residential or non-residential care services; information, advice, counselling or advocacy services; financial or any other assistance;

“vulnerable children” means children

- (a) who are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of social care services,
- (b) whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of social care services,
- (c) who have a physical or mental impairment,
- (d) who are in the care of a public authority, or
- (e) who are provided with accommodation by a public authority in order to secure their well-being;

“well-being”, in relation to individuals, means well-being so far as relating to any of the following

- (a) health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;

- (e) social and economic well-being;
- (f) securing their rights;

“young persons” means persons who have attained the age of 18 but not the age of 25.

Field 16: sport and recreation

*Matter 16.1*²⁹

The provision of recreational facilities and activities for children or young persons.

In this matter “children” and “young persons” have the same meaning as in field 15.

*Matter 16.2*³⁰

The establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys.

This matter does not include—

- (a) enabling the public to make journeys by mechanically propelled vehicles (except permitted journeys by qualifying invalid carriages);
- (b) the creation of new highways (whether under the Highways Act 1980 or otherwise).

Matter 16.3

Securing public access to relevant land for the purposes of open-air recreation.

Land is relevant land if it—

- (a) is at the coast,
- (b) can be used for the purposes of open-air recreation in association with land within paragraph (a), or
- (c) can be used for the purposes of open-air recreation in association with a route within matter 16.2.

²⁹ Matter 16.1 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

³⁰ Matters 16.2 and 16.3 will be inserted by section 310 of the Marine and Coastal Access Act 2009 (c. 23), which comes into force on 12 January 2010.

In this matter the reference to land at the coast is not limited to coastal land within the meaning of section 3 of the Countryside and Rights of Way Act 2000.

Interpretation of this field

In this field—

“coast” means the coast of Wales adjacent to the sea, including the coast of any island (in the sea) comprised in Wales;

“estuarial waters” means any waters within the limits of transitional waters within the meaning of the Water Framework Directive (that is to say, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy);

“highway” has the same meaning as in the Highways Act 1980;

“public foot crossing”, in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot;

“qualifying invalid carriage” means an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970 (use of invalid carriages on highways) which complies with the prescribed requirements within the meaning of that section;

“relevant upstream waters”, in relation to a river, means the waters from the seaward limit of the estuarial waters of the river upstream to the first public foot crossing;

“sea” includes the relevant upstream waters of a river;

and a journey by a qualifying invalid carriage is a permitted journey if the carriage is being used in accordance with the prescribed within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970.

Field 17: tourism

Field 18: town and country planning

Matter 18.1³¹

Provision for and in connection with

³¹ Matters 18.1 – 18.3 and interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (c. 29).

- (a) plans of the Welsh Ministers in relation to the development and use of land in Wales, and
- (b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Matter 18.2

Provision for and in connection with the review by local planning authorities of matters which may be expected to affect

- (a) the development of the authorities' areas, or
- (b) the planning of the development of the authorities' areas.

Matter 18.3

Provision for and in connection with

- (a) plans of local planning authorities in relation to the development and use of land in their areas, and
- (b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Interpretation of this field

In this field

“local planning authority” in relation to an area means

- (a) a National Park authority in relation to a National Park in Wales;
- (b) a county council in Wales or a county borough council, in any other case;

“Wales” has the meaning given by Schedule 1 to the Interpretation Act 1978.

Field 19: water and flood defence

Field 20: Welsh language

PART 2

EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS³²

Exceptions to matters³³

A1 These are the exceptions mentioned in section 94(4)(a) and (7)

Economic development (field 4 of Part 1)

(1) Generation of electricity at generating stations whose construction, extension or operation requires—

- (a) the consent of the Secretary of State, or**
- (b) the authority of an order granting development consent under the Planning Act 2008,**

and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity.

(2) Transmitting, distributing or supplying electricity.

(3) Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

(4) Nuclear energy and nuclear installations, including—

- (a) nuclear safety, and**
- (b) liability for nuclear occurrences,**
but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965.

Highways and transport (field 10 of Part 1)

(1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

(1A) Road freight transport services, including goods vehicles operating licensing.

(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—

- (a) regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment, and**
- (b) regulation relating to matter 10.1.**

³² The heading to Part 2 was substituted by article 2(8) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

³³ Paragraph A1 was inserted by article 2(9) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

For the purpose of this paragraph, “relevant vehicles” means motor vehicles, mobile machinery and agricultural and forestry tractors.

- (3) Road traffic offences.
- (4) Driver licensing.
- (5) Driving instruction.
- (6) Insurance of motor vehicles.
- (7) Drivers' hours.
- (8) Traffic regulation on special roads (apart from regulation relating to matter 10.1).
- (9) Pedestrian crossings.
- (10) Traffic signs (apart from the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000 for purposes relating to matter 10.1).
- (11) Speed limits.
- (12) Public service vehicle operator licensing.
- (13) Provision and regulation of railway services, apart from financial assistance which—
 - (a) does not relate to the carriage of goods,
 - (b) is not made in connection with a railway administration order, and
 - (c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.
- (14) Transport security.
- (14A) Aviation, air transport, airports and aerodromes, apart from—**
 - (a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,**
 - (b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and**
 - (c) regulation of the use of aircraft carrying animals for the purpose of protecting—**
 - (i) human health, apart from the health of persons in aircraft,**
 - (ii) animal, fish or plant health, or**
 - (iii) the environment.**
- (15) **Shipping, apart from—**
 - (a) financial assistance for shipping services to, from or within Wales, and**
 - (b) regulation of the use of vessels carrying animals for the purposes of protecting—**
 - (i) human health, apart from the health of persons on vessels,**
 - (ii) animal, fish or plant health, or**
 - (iii) the environment.**

- (16) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.
- (17) Technical and safety standards of vessels.
- (18) **Harbours, docks, piers and boatslips, apart from—**
 - (a) **those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and**
 - (b) **regulation for the purposes of protecting human, animal, fish or plant health or the environment.**
- (19) **Carriage of dangerous goods, including transport of radioactive material.**

Social welfare (field 15 of Part 1)

- (1) Child Support.
- (2) Child trust funds, apart from subscriptions to such funds by
 - (a) a county council or county borough council in Wales, or
 - (b) the Welsh Ministers.
- (3) Tax credits.
- (4) Child benefit and guardian's allowance.
- (5) Social security.
- (6) Independent living funds.
- (7) Motability.
- (8) Vaccine damage payments.
- (9) Intercountry adoption, apart from adoption agencies and their functions, and functions of the "Central Authority" under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.
- (10) The Children's Commissioner established under the Children Act 2004.
- (11) Family law and proceedings apart from
 - (a) welfare advice courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
 - (b) Welsh family proceedings officers.
- (12) Welfare foods.

Water and flood defence (field 19 of Part 1)

- (1) **Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.**
- (2) **Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.**

General Restrictions

Functions of Ministers of the Crown

- 1 (1) A provision of an Assembly Measure cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a Minister of the Crown.

(2) A provision of an Assembly Measure cannot confer or impose, or confer power by subordinate legislation to confer or impose, any function on a Minister of the Crown.

Criminal Offences

- 2 (1) A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable
 - (a) on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
 - (b) on conviction on indictment, with a period of imprisonment exceeding two years.
- (2) In sub-paragraph (1) “the prescribed term” means
 - (a) where the offence is a summary offence, 51 weeks, and
 - (b) where the offence is triable either way, twelve months.

*Police Areas*³⁴

- 2A A provision of an Assembly Measure cannot make any alteration in police areas.

Enactments other than this Act

- 3 A provision of an Assembly Measure cannot make modification of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below

³⁴ Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 23 and Schedule 17, paragraphs 1 and 3

TABLE

<i>Enactment</i>	<i>Provisions protected from modification</i>
European Communities Act 1972 (c. 68)	The whole Act
Data Protection Act 1998 (c.29)	The whole Act
Government of Wales Act 1998 (c. 38)	Sections 144(7), 145, 145A and 146A(1)
Human Rights Act 1998 (c. 42)	The whole Act
Civil Contingencies Act 2004 (c. 36)	The whole Act
Re-Use of Public Sector Information Regulations 2005 (S.I. 2005/1505)	The whole set of Regulations

- 4 A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any provision of an Act of Parliament other than that this Act which requires sums required for the repayment of, or the payment of interest on, amounts borrowed by the Welsh Ministers to be charged on the Welsh Consolidated Fund.
- 5 A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General.

This Act

- 6 (1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
- (2) Sub-paragraph (1) does not apply to sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54 and 156(2) to (5).
- (3) Sub-paragraph (1) does not apply to any provision
- (a) making modifications of so much of any enactment as is modified by this Act, or
 - (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Assembly Measure.

PART 3

EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2³⁵

Interpretation

6Z In this Part “general restrictions in Part 2” means paragraphs 1 to 6 of Part 2.

Functions of Ministers of the Crown

7 The general restrictions in Part 2 do not prevent a provision of an Assembly Measure removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of a Minister of the Crown if the Secretary of State consents to the provision.

Police Areas³⁶

7A The general restrictions in Part 2 do not prevent a provision of an Assembly Measure making an alteration to the boundary of a police area in Wales if the Secretary of State consents to the provision

Comptroller and Auditor General

8 The general restrictions in Part 2 do not prevent a provision of an Assembly Measure modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General if the Secretary of State consents to the provision.

Restatement

9 The general restrictions in Part 2 do not prevent a provision of an Assembly Measure

- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
- (b) repealing or revoking any spent enactment, or conferring power by subordinate legislation to do so.

³⁵ The heading for Part 3 was substituted, paragraph 6Z was inserted, and the opening words of paragraphs 7 to 11 were substituted, by article 2(10) to (12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006)

³⁶ Paragraph 7A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 4; and amended by article 2(12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

Subordinate legislation

- 10 The general restrictions in Part 2 do not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes
- (a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
 - (b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
 - (c) applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

Data Protection Act 1998³⁷

- 11 The general restrictions in Part 2 do not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, section 31(6) of the Data Protection Act 1998 so that it applies to complaints under any Assembly measure relating to matter 9.1 in Part 1.

³⁷ Paragraph 11 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), and amended by article 2(12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).