



House of Commons
Welsh Affairs Committee

**Proposed National
Assembly for Wales
(Legislative
Competence) (Housing)
Order 2009, relating to
Domestic Fire Safety:
Government Response
to the Committee's
Second Report**

**Fourth Special Report of Session
2009–10**

*Ordered by the House of Commons
to be printed 4 February 2010*

HC 305
Published on 10 February 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.

Fourth Special Report

The Committee published its Second Report of session 2009-10 *The proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009*, on 18 December 2009. The response from the Secretary of State for Wales was received on 29 January 2010 and is published as an Appendix to this Special Report. The Order was published in draft form as The National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010 and laid before Parliament by the Secretary of State on 28 January 2010. The draft Order, together with an Explanatory Memorandum, are also published as Appendices to this Special Report.

Appendices

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

Yesterday, I laid the draft National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010 for approval by resolution of the House.

The LCO relates to domestic fire safety, and was approved by the National Assembly on 27 January. This backbench LCO was brought forward by Ann Jones AM, and is endorsed by the Welsh Assembly Government.

I would like to thank the Welsh Affairs Select Committee for undertaking a thorough and effective inquiry into the proposed Order. I was pleased to note the Committee concluded that there is clear support for it

The Committee recommended that the proposed LCO be amended so that the term “new” or “newly” appears in all definitions of “new residential premises”. The Lords Constitution Committee recommended in similar terms. The draft Order has been amended to reflect this recommendation.

The Committee also considered that the name of the LCO should reflect and communicate its contents and should not be dictated by the field in Schedule 5 into which it is placed. Similarly, the Lords Constitution Committee suggested that the matter could be placed under Field 7 (fire and rescue services and promotion of fire safety) rather than Field 11 (housing).

The drafting of the LCO has been carefully considered by Ann Jones, the Welsh Assembly Government and the UK Government in light of the Committees’ suggestion. Whilst there is a case for inserting the matter into Field 7, we considered that it is best placed in Field 11, the housing field, because the scope of the matter applies solely to new residential premises. However, the title of the LCO has been modified to reflect the fact that it relates both to housing and fire safety.

A few other minor changes have been made to the draft Order to clarify its meaning and achieve greater consistency with the evolving approach to the drafting of Schedule 5. In particular, the opening words of Matter 11.1 now refer to the “provision of automatic fire suppression systems” rather than to “provision for and in connection with a requirement” that such systems be installed. The other minor changes are:-

- The heading “Interpretation of this Matter” has been removed and instead the definition of “new residential premises” is now preceded by the words “In this matter....”
- In paragraph (d) of that definition “incorporation” has been replaced by “amalgamation” which we consider to be a more appropriate description. “Physical” has been removed from paragraphs (c) and (d) as redundant drafting.

Finally, the Committee noted the delay in bringing forward this Order in the context of discussions about the planned transfer of building regulations. I fully endorse the Committee’s conclusion that such delays should not reoccur. You will be aware of improvements in the LCO process which the Government and the Welsh Assembly Government have put in place, and which has resulted in LCOs coming forward much faster for pre-legislative scrutiny. I have read with interest your Committee’s report on its review of the LCO process, which recommends further improvements to the process, and will respond in due course.

I enclose a copy of the draft Order and the Explanatory Memorandum.

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

Rt Hon Peter Hain MP
Secretary of State for Wales

29 January 2010

The National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) 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.

DRAFT STATUTORY INSTRUMENTS

2010 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010

Made - - - - *****

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the *** day of ***

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 and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010 and shall come into force on the day after the day on which it is made.

Amendments to Schedule 5 to the Government of Wales Act 2006

2.—(1) Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In field 11 (housing) insert—

⁽¹⁾ 2006 c. 32.

“Matter 11.1

The provision of automatic fire suppression systems in new residential premises.

In this matter “new residential premises” means—

- (a) premises newly constructed for residential use;
- (b) premises newly converted to residential use;
- (c) premises converted to use as one or more new residences by subdivision of one or more existing residences; and
- (d) premises converted to use as one or more new residences by amalgamation of one or more existing residences.”

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”). The effect of the Order is to extend the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in 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 a new matter 11.1 into field 11 (housing) in Part 1 of Schedule 5 to the 2006 Act. Matter 11.1 is about the provision of automatic fire suppression systems in new residential premises (including existing residential premises that are sub-divided or amalgamated so as to convert them to use as one or more new residences).

A full regulatory impact assessment has not been carried out 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) (Housing) (Fire Safety) 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, brought forward by Ann Jones AM, provides the National Assembly for Wales with legislative competence in relation to the provision of automatic fire suppression systems in new residential premises.

2.2 The Order inserts one matter into field 11 (Housing) in Part 1 of Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”).

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

None

4. Legislative Context

4.1 The constitutional context to the Order is set out by the Government of Wales Act (“the 2006 Act”) and the UK Government’s policy, contained in the White Paper “Better Government for Wales”. 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. Matters may be added to the fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament in relation to matters, subject to the limitations provided for in the 2006 Act. An Order in Council under section 95 of the 2006 Act is referred to as a Legislative Competence Order or LCO in this memorandum.

4.2 The LCO confers further legislative competence on the National Assembly for Wales in the field of Housing (field 11 within Schedule 5 to the 2006 Act). New legislative competence in respect of the specified “Matter” will enable the Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures. These Measures will be subject to thorough scrutiny and approval by the Assembly.

4.3 The current legislative framework for fire safety in new residential premises in Wales is provided by the Building Regulations 2000 (as amended) made under the Buildings Act 1984 together with volume 1 of the associated Approved Document B

(Fire Safety)². There is no current requirement in the Building Regulations to provide automatic fire suppression systems in new residential premises.

4.4 The National Assembly for Wales does not currently have the legislative competence to require or encourage the use of automatic fire suppression systems. The making and amending of Building Regulations are currently functions of a Minister of the Crown, and are to be transferred to the Welsh Ministers at the end of 2011³.

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 as it amends provisions which define the scope of the Assembly's legislative competence. Section 94 of the 2006 Act provides that a provision of an Assembly Measure is outside the Assembly's legislative 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). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.

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) (Housing) (Fire Safety) Order 2010 are compatible with the Convention rights"

7. Policy background

7.1 On 26 June 2007 Ann Jones won the ballot of Assembly Members wishing to bring forward a proposed Legislative Competence Order. On 10 October 2007 the National Assembly for Wales agreed that Ann Jones may lay a proposed Order, to give effect to the outline proposed Order which she had provided on 26 June. Following pre-legislative scrutiny of the proposed Order by the National Assembly for Wales and committees of both Houses of Parliament, some wording changes have been made to the Order (see paragraphs 8.3 to 8.13 below).

² Building Regulations 2000 Approved Document B (Fire Safety) – Vol.1 Dwelling Houses (2006 Edition).

³ By virtue of the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 (S.I. 2009/3019).

Fire Deaths in Wales

7.2 Across Wales an average of 20 people lose their lives to fire each year. About 80% of fire related deaths and injuries occur in the home. In the year to March 2009, there were 12 deaths in accidental fires and 442 fire related injuries in dwellings in Wales. In addition there were 2 deaths and 98 fire related injuries from deliberate fires in dwellings in Wales⁴. The following rationale for the LCO has been provided by Ann Jones AM.

Rationale

7.3 The purpose of providing automatic fire suppression systems in new residential premises is to reduce the incidence of death and injury from fires in new build housing in Wales. A requirement to fit such systems in all new residential premises would be a preventative measure, so that people could get out of their homes in the event of a fire occurring. It would also reduce the risk to fire fighters who are called to deal with domestic fires.

7.4 Evidence suggests that certain population groups are more at risk from domestic fires. Research carried out by the Department of Communities and Local Government has identified groups who are more at risk of fire than the general population⁵. According to this research, the vulnerable groups tend towards lower income/deprived demographic groups, specifically:

- Single middle aged people, who drink and smoke at home (aged 40-59 male bias)
- Female single parents
- Very elderly
- Disabled/impaired
- Young people (16-24) – including students

7.5 The Welsh Assembly Government of the First Assembly established a Community Fire Safety Working Group. The remit of the Group was to examine the scope for widespread adoption in Wales of Hard Wired Smoke Detectors in Social Housing; the installation of domestic sprinkler systems and their extension to other multiple occupational public buildings and to examine options for managing and

⁴ Welsh Assembly Government, Statistical Directorate, Fire Statistics Monitor, Quarter 1 2009.

⁵ Department of Communities & Local Government, Research Bulletin No 9 - Learning Lessons from Real Fires: Findings from Fatal Fire Investigation Reports, July 2006

controlling the incidence of arson. The Group's report *Wired for Safety*⁶ was published in October 2001 and recommended that the National Assembly should amend its Development Quality Requirements so that all new social housing in Wales should have domestic sprinkler systems installed during construction. It also recommended that the Assembly should look to enforce a requirement for sprinklers in new schools, student halls of residence, nurses homes and residential homes.

Costs associated with domestic fires

7.6 In 2004, the total economic cost of fire in the UK was estimated at £7.03bn, equivalent to approximately 0.78% of the gross value added of the economy⁷.

7.7 Based on the Welsh share of the total number of fires in England and Wales for the twelve months ending 30 September 2006, the total economic cost of fires in Wales can be estimated to be about £408 million per annum.

7.8 The cost of fire in domestic buildings remains one of the largest contributors to the total economic cost of fire, accounting for 28% of the overall cost.

7.9 The average cost of a domestic fire is estimated at £24,900, of which approximately £14,600 is accounted for by the economic cost of injuries and fatalities and £7,300 is due to property damage.

7.10 The estimates include healthcare costs as a direct consequence of fires (but not emotional suffering and health care costs related to fire-fighter injuries incurred during training).

7.11 The ubiquitous nature of the threat from fire is often overlooked as deaths and injuries occur sporadically and therefore do not have the same impact as a collective tragedy. This also affects people's views on the economic consequences of fire which are not viewed collectively.

The benefits of fitting fire sprinkler systems in domestic properties

7.12 Sprinklers have been incorporated in buildings for some considerable time and were originally seen and developed as a means of reducing fire losses to property and contents. Over recent years there has been a growing recognition of their use as a means to contributing to life safety which is now recognised in current UK guidance to the Building Regulations⁸.

7.13 Evidence gathered worldwide shows that while sprinklers are primarily intended to contain or control fires in a number of cases people in the room of origin of a fire

⁶ Community Fire Safety Working Group, *Wired for Safety*, October 2001

⁷ Department of Communities & Local Government, *The Economic Cost of Fire: Estimates for 2004*, April 2006.

⁸ Department of Communities & Local Government, *Approved Document B (Fire safety) – Volume 1: Dwelling houses* (2006 Edition).

have survived as a result of the effectiveness of the sprinkler system. There are no cases on record where multiple fire deaths have occurred in buildings with working sprinkler systems.

7.14 A report⁹ published in the USA in 2009 by the National Fire Protection Association concluded that in residential properties where wet pipe sprinklers are fitted:

- The death rate per fire is lower by an estimated 76 per cent;
- The cost of direct property damage is 63 per cent lower
- 96 per cent of reported structure fires have flame damage confined to the room of origin (all types of sprinklers) compared to 76 per cent when no automatic extinguishing system is present.

7.15 A recent study¹⁰ by the US National Institute of Standards and Technology concludes that sprinklers in single family residential units make very good economic sense in terms of the return on investment.

7.16 In other parts of the world where the fitting of fire sprinkler systems has become a statutory requirement there have been dramatic reductions in the number of deaths caused by domestic fires. For example in the city of Vancouver where byelaws have been introduced, in 1972-1974 the number of deaths per 100,000 population was just under 7 per year. By the period 1992-1998 the number of deaths per 100,000 population had fallen to 0.6, as a result of the mandatory sprinkler regulations¹¹.

7.17 The most comprehensive study into the effectiveness of residential fire sprinklers to date was carried out by the Rural/Metro Fire Department, Scottsdale, Arizona. In June 1985, the City of Scottsdale passed an 'Ordinance' that required all new flatted and commercial structures built after 5 July 1985 to be fitted with a fire sprinkler system and all new single family residences built after 1 January 1986 to be able to accommodate fire sprinklers.

7.18 In 1997 the Rural/Metro Fire Department, Scottsdale published Saving Lives, Saving Money: Automatic Fire Sprinklers: A 10 Year Study which analysed the impact of the Ordinance¹².

7.19 The Scottsdale study included a review of 109 fires that occurred in sprinklered structures, 44 of those being residential structures. In more than 90 percent of these incidents, one or two sprinkler heads controlled the fires, and the average amount of

⁹ National Fire Protection Association, U.S. experience with sprinklers and other automatic fire extinguishing equipment, January 2009.

¹⁰ U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Benefit-Cost Analysis of Residential Fire Sprinkler System, September 2007

¹¹ Building Research Establishment, Effectiveness of sprinklers in residential premises, February 2004.

¹² Saving Lives, Saving Money Automatic Fire Sprinklers A 10 Year Study, Scottsdale, Arizona, 1997

water used to suppress each fire was 209 gallons compared to 3,290 gallons estimated for manual suppression in residential properties. It was considered that 8 lives were saved over the period as a direct result of the installation of fire sprinkler systems, 4 of these in residential properties, and that up to \$25.4m was saved based on the total potential loss due to fire in sprinklered residential properties.

7.20 Fire sprinklers are only activated when the temperature in the room in which a fire is burning exceeds the preset temperature of the sprinkler head - normally 68 degrees centigrade. Sprinklers operate as individual heat sensors - meaning that water is only released in the area where there is a fire. Often, in a room with two sprinkler heads only one actually operates. The amount of water used by a sprinkler system is far less than that used by the fire service because the fire is tackled at a very early stage. Fire fighters are on average likely to arrive at least 10 minutes after a fire has started meaning that more water is required and the risk to a fire fighter's life is much greater. Data collected over 30 years suggest that the chances of a sprinkler head malfunctioning are extremely remote, perhaps no more than 1 in 16 million.

Costs of domestic fire sprinkler systems

7.21 The main cost associated with fire sprinkler systems is the capital cost of installation. There are also on-going maintenance costs.

7.22 The cost for most new homes is estimated to be about 1% to 2% of the total cost of construction¹³. Annual maintenance costs are between £75 and £150 per annum¹⁴. The installation of fire sprinklers will usually permit the introduction of design freedoms that can reduce building costs and allow innovative designs such as open plan homes. Other benefits might include reduced construction costs where sprinklers permit the elimination of costly fire rated doors or other structural elements.

Scope

7.23 The draft LCO would confer legislative competence on the National Assembly for Wales to enable the Assembly to legislate about the provision of automatic fire suppression systems in new residential premises. This could include a requirement that such systems are fitted in all of the following:

- Newly built residential premises including flats/apartments.
- Existing residential premises that are either subdivided or amalgamated so as to convert them to use as one or more new residences. For example the conversion of single dwellings to Houses in Multiple Occupation, the conversion of single premises into

¹³ Building Research Establishment, Effectiveness of sprinklers in residential premises, February 2004

¹⁴ British Automatic Sprinkler Association, Use and Benefits of Incorporating Sprinklers in Buildings and Structures, January 2006

flats or the conversion of two adjoining premises into a single residence. The definition includes any existing or newly created common areas that may be in these premises, such as stairways.

- Existing buildings that are converted from a non residential use to a residential use (e.g. office space converted to flats).

7.24 A Measure could more particularly specify the premises to which the Measure would apply. It could also specify in more detail the type of equipment to be installed, the standards to be met by any equipment, arrangements for maintenance and any system for enforcement. Alternatively, a Measure could confer power on the Welsh Ministers to specify the types or standards of equipment, the arrangements for maintenance or the nature of any enforcement regime. But it could not require retrospective fitting of automatic fire suppression systems to existing residential premises.

Exceptions

7.25 There are no specific exceptions to this Matter, but the general exceptions to the National Assembly's competence set out in Part 2 of Schedule 5 to the Government of Wales Act 2006 would apply.

Minister of the Crown functions

7.26 This draft Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Parts 2 and 3 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter the functions of a 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 Department will be consulted and agreement sought to any proposals to change or modify these functions. The making and amending of the Building Regulations are functions of a Minister of the Crown that are derived from the Building Act 1984 and are not affected by the Draft LCO. The functions of making and amending of Building Regulations are to be transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 from 31 December 2011.

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 LCO following pre-legislative scrutiny

8.3 The proposed Order was laid in the National Assembly on 20 February 2008 and an Assembly Committee, the Proposed Domestic Fire Safety LCO Committee ('the LCO Committee') was established to scrutinise it. On 11 June 2008 the LCO Committee report was laid¹⁵.

8.4 The Committee concluded:

We recommend that the proposed Order be amended to remove the interpretation provisions for the terms 'new residential premises' and 'sprinkler system', and that appropriate interpretation provisions should be considered as part of any future Measure(s).

However, if the Member in charge is not minded to agree with this recommendation, our views on the individual interpretation provisions are as follows:

In relation to the term 'new residential premises', we consider the term as currently provided for in the proposed Order is sufficiently clearly drawn and we are therefore content with this term and its interpretation.

In relation to the term 'sprinkler system', we are persuaded by the evidence we have received that this term should be amended and consider that 'automatic fire suppression system' would be a more appropriate term, and we so recommend.

In relation to the inclusion of a reference to the British Standard (BS) 9251:2005 on the face of the proposed Order, we accept the Member in charge's argument that including such a reference could adversely affect the Assembly's future ability to legislate in this area should that standard be amended and, as such, we consider a reference to the relevant British Standard would be more appropriately dealt with in legislation arising out of the Proposed Order. We are therefore content that the proposed Order makes no reference to BS 9251:2005¹⁶.

8.5 Ann Jones decided to retain the interpretation provisions for the term "new residential premises". This interpretation is necessary to make it clear that "new residential premises" means not only new build housing, but also premises that are converted to residential use and existing residential premises that are subdivided or amalgamated into one or more new residences. Parts (c) and (d) of the interpretation

¹⁵ Proposed Domestic Fire Safety LCO Committee, *National Assembly for Wales (Legislative Competence) (No. 7) Order 2008*, Committee Report, June 2008

¹⁶ Proposed Domestic Fire Safety LCO Committee, *National Assembly for Wales (Legislative Competence) (No. 7) Order 2008*, Committee Report, June 2008

were reworded so that it was clear that the competence applies to all parts of existing residential premises that are converted, including any common areas.

8.6 Ann Jones accepted all the Committee's other recommendations in full, including that "automatic fire suppression system" is a more appropriate term than "sprinkler system" and that no further interpretation of this revised term is necessary in the Order.

8.7 At present an "automatic fire suppression system" is most likely to be a water based fire sprinkler system, but the term "automatic fire suppression system" is used to ensure that the competence of the Assembly and a subsequent Measure could permit other types of system which may be just as effective. The LCO Committee heard evidence that in future some medium other than water, such as gas or foam may be technically feasible for the suppression of fire in a domestic setting.

8.8 The proposed Order was amended accordingly and presented for pre legislative scrutiny to the House of Commons Welsh Affairs Select Committee and the House of Lords Constitution Select Committee by the Secretary of State for Wales in October 2009.

8.9 The House of Lords Constitution Select Committee wrote to the Secretary of State about the proposed Order on 5 November 2009¹⁷ and the Welsh Affairs Select Committee reported on the proposed Order on 15 December 2009¹⁸.

8.10 The Welsh Affairs Select Committee concluded that the purpose of the proposed Order is clear, is consistent with the existing powers of the National Assembly for Wales and that the use of the Legislative Competence Order procedure is the best available route in this instance.

8.11 Both Committees recommended that the term "new" or "newly" should be included in all definitions of "new residential premises" in the LCO. Ann Jones accepted this recommendation which is reflected in the wording of the Matter set out in the draft LCO. This change does not affect the original scope or purpose of the Order.

8.12 The House of Lords Constitution Select Committee also suggested that although inclusion of the Matter in Field 11 (Housing) is possible, it could be more appropriate to move the Matter to Field 7 (fire and rescue services and the promotion of fire safety). This issue was also discussed by the Welsh Affairs Select Committee. Having considered the issue carefully, Ann Jones decided to retain the Matter in Field 11. Whilst there is a case in favour of inserting the Matter in Field 7, it is considered that Field 11 is

¹⁷ <http://www.parliament.uk/documents/upload/LettertoHainMP051109.doc>

¹⁸ House of Commons Welsh Affairs Committee, *Proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009, relating to Domestic Fire Safety*, Second Report of Session 2009–10, HC 142, 18 December 2009.

more appropriate because the scope of the Matter applies solely to new residential premises. The title of the draft LCO has however been revised in accordance with the views of the Welsh Affairs Committee that a reference to “Fire Safety” would improve public understanding of the effect of the LCO.

8.13 Other minor modifications have been made to the draft LCO to clarify its meaning and achieve greater consistency with the evolving approach to the drafting of Schedule 5. In particular, the opening words of Matter 11.1 now refer to the “provision of automatic fire suppression systems” rather than to “provision for and in connection with a requirement” that such systems be installed. This is slightly broader than the proposed Order, since it does not limit the Assembly to requiring that automatic fire suppression systems are provided, but remains consistent with the objectives identified by Ann Jones. The redundant word “physical” has also been removed from sub-paragraphs (c) and (d) of the definition of “new residential premises”. The word “converted” already makes it clear (in those sub-paragraphs and also in sub-paragraph (b)) that some degree of physical adaptation must be involved in creating the new residential premises before a Measure can impose duties under the new Matter.

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. When bringing forward any proposed Assembly Measures as a result of the legislative competence this Order confers, the Welsh Assembly Government or the Assembly Member proposing the Measure would prepare a Regulatory Impact Assessment.

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 Order amends Schedule 5 to the Government of Wales Act 2006, with footnotes indicating the source of previous amendments.

Text to be inserted by this Order is shown in bold.

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Matter 1.1¹⁹

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.

Field 2: ancient monuments and historic buildings

Field 3: culture

¹⁹ 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 4: economic development

Field 5: education and training

Matter 5.1²⁰

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 5.4A²¹

The regulation of

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

Matter 5.5²²

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).

²⁰ 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).

²¹ Matter 5.4A was inserted by section 149(1) and (2) of the Education and Skills Act 2008 (c.25).

²² 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 5.10*²³

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 5.11*²⁴

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

²³ 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)

²⁴ Matters 5.11-5.14 were inserted by section 27(2) of the Further Education and Training Act 2007 (c.25).

Matter 5.12

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 5.15*²⁵

The inspection of

- (za) schools;
- (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*²⁶

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*²⁷

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.

²⁵ 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).

²⁶ 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).

²⁷ 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).

*Matter 5.18*²⁸

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.

*Interpretation of this field*²⁹

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.

²⁸ 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).

²⁹ 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).

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.

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

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

Field 8: food

Field 9: health and health services

Matter 9.1³⁰

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;

³⁰ 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).

“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 10.1*³¹

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

Matter 11.1

The provision of automatic fire suppression systems in new residential premises.

In this matter “new residential premises” means—

- (a) premises newly constructed for residential use;**
- (b) premises newly converted to residential use;**
- (c) premises converted to use as one or more new residences by subdivision of one or more existing residences; and**

³¹ Matter 10.1 and the interpretation provisions for field 10 were inserted by section 122 of the Local Transport Act 2008 (c. 26), and matter 10.1 was amended by article 2(7)(a) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006). See also section 123 of the Local Transport Act 2008.

- (d) **premises converted to use as one or more new residences by amalgamation of one or more existing residences.**

Field 12: local government

*Matter 12.1*³²

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.

“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,

³² 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.

- (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 12.6*³³

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.

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.

³³ Matters 12.6 and 12.7 were inserted by section 33 the Local Democracy, Economic Development and Construction Act 2009 (c. 20).

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*³⁴

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*³⁵

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.

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.

³⁴ 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).

³⁵ 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 15.6

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 15.9*³⁶

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 field*³⁷

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;

³⁶ 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).

³⁷ 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).

“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*³⁸

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.

³⁸ 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).

*Matter 16.2*³⁹

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.

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;

³⁹ Matters 16.2 and 16.3 were inserted by section 310 of the Marine and Coastal Access Act 2009 (c. 23).

“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 conditions 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 18.1⁴⁰

Provision for and in connection with

- (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.

⁴⁰ Matters 18.1-18.3 and interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (c. 29).

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 RESTRICTIONS⁴¹

*Exceptions to matters*⁴²

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

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.
- (2) Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used (apart from regulation relating to matter 10.1).
- (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
- (15) Shipping, apart from financial assistance for shipping services to, from or within Wales.

⁴¹ 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).

⁴² 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).

- (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 those used or required wholly or mainly for communications between places in Wales.

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.

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*⁴³

- 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

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

⁴³ Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 3.

- 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 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 2⁴⁴

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.

⁴⁴ 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).

*Police Areas*⁴⁵

- 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.

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.

⁴⁵ 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).

*Data Protection Act 1998*⁴⁶

- 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.

⁴⁶ 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).