



House of Commons  
Welsh Affairs Committee

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**The Proposed  
Legislative  
Competence Order  
relating to School  
Governance:  
Government Response  
to the Committee's  
Seventh Report**

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

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## 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](http://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](http://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

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## Sixth Special Report

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The Committee published its Seventh Report of Session 2009-10, *The Proposed Legislative Competence Order relating to School Governance* on 9 February 2010. The Secretary of State for Wales wrote a letter to the Chairman of the Committee on 24 February 2010 which is published as an Appendix to this Special Report. The draft Order *The National Assembly for Wales (Legislative Competence) (Education) Order 2010* together with an Explanatory Memorandum, are also published as Appendices to this Special Report.

## Appendices

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

I have today laid the draft National Assembly for Wales (Legislative Competence) (Education) Order 2010 before Parliament for approval by both Houses.

I would like to thank the Welsh Affairs Committee for undertaking a thorough and effective inquiry into the proposed Order. I am pleased that the Committee concluded in its report that it is right to grant legislative powers in relation to school governance to the National Assembly for Wales.

The Committee considered the scope of the proposed LCO in relation to staffing and school finance, and noted that the proposed LCO and Explanatory Memorandum (EM) could be clearer in this respect. A new annex, Annex A, has been inserted into the EM to explain what is within scope of the LCO in respect to staffing and finance.

The Committee also recommended that consideration be given to amending Matter 5.2A so that “it is clear on its own terms as to the exclusion of teachers’ pay and conditions and the inclusion of those staffing and funding matters that are a normal function of governors’. The Welsh Assembly Government has carefully considered this recommendation and concluded that any amendment to Matter 5.2A is unnecessary and could cause confusion, especially when compared with the competence conferred by Matter 5.12. However, the Explanatory Note to the LCO has been amended to make clear that an Assembly Measure made as a result of this LCO could not, for example, provide for amendment of the provisions of the School Teachers Pay and Conditions Document.

In relation to Matter 5.2(C), the Committee recommended that the wording be reviewed to ensure that local authority functions other than education and training are not within scope. The Matter has been amended to make clear that bodies can be established to carry out education and training activities and/or to carry out education functions of local authorities. References to the ‘education functions of the local authority’ have been inserted as a consequence both of this recommendation, and in anticipation of an Order being made under section 162 of the Education and Inspections Act 2006 (this provision confers a power on the Secretary of State to repeal, by Order, references to a “local education

authority“ and replace it with “local authority”). The Lords Constitution Committee highlighted the need to include a transitory reference on the face of the LCO in relation to such an Order. Local authority education functions also encompass training, and so a specific reference to training on the face of the LCO is not necessary. The Welsh Assembly Government is satisfied that the wording in the draft LCO, as amended, is sufficiently clear and explicit.

Finally, the Committee suggested that consideration be given to changing the word ‘involvement’ to ‘participation’ in Matter 5.2(C)(b). Careful consideration has been given to this recommendation but the Welsh Assembly Government has concluded that it is unnecessary to change the word. Involvement is a term that is commonly used in legislation. In addition, it would allow a Measure to make provision for a body to be involved with any body established under this Matter without necessarily participating in the running of that body.

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

## The National Assembly for Wales (Legislative Competence) (Education) Order 2010

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

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### DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

## **CONSTITUTIONAL LAW**

## **DEVOLUTION, WALES**

### **The National Assembly for Wales (Legislative Competence) (Education) Order 2010**

*Made - - - -*

*Coming into force in accordance with Article 1*

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<sup>(1)</sup>, 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 sections 95(1) and 157(2) 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) (Education) Order 2010 and comes into force on the day after the day on which it is made.

#### **Amendments relating to the field of education and training**

**2.—(1)** Field 5 (education and training) of Part 1 of Schedule 5 to the Government of Wales Act 2006<sup>(2)</sup> is amended as follows.

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<sup>(1)</sup> 2006 c. 32.

<sup>(2)</sup> Matters 5.1 to 5.10 were inserted in Field 5 by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007 No. 910); Matter 5.10 was amended by the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008 No. 1036) and the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008 No. 3132). Matter 5.4A was inserted by section 149 of the Education and Skills Act 2008 (c. 25). Matters 5.11 to 5.16 were inserted by section 27 of the Further Education and Training Act 2007 (c. 25); Matters 5.15 and 5.16 were amended

(2) After Matter 5.2 insert —

*“Matter 5.2A*

Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.

*Matter 5.2B*

Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities.

*Matter 5.2C*

The following activities by persons or bodies with functions relating to schools maintained by local authorities—

- (a) establishment of bodies to do all or any of the following—
  - (i) carry out activities relating to education or training,
  - (ii) exercise education functions on behalf of local authorities;
- (b) involvement with bodies mentioned in paragraph (a).”

**Transitory provision**

**3.**—(1) During any period in which an order to which paragraph (2) below applies is not in force—

- (a) the references to “local authorities” in the Matters inserted in Field 5 of Part 1 of Schedule 5 to the Government of Wales 2006 by Article 2 of this Order are to be read as references to “local education authorities”, and
- (b) the reference to “education” in paragraph (a)(ii) of Matter 5.2C of those Matters is to be ignored.

(2) This paragraph applies to an order which—

- (a) is made under subsection (1) of section 162 of the Education and Inspections Act 2006<sup>(3)</sup> and contains provision by virtue of paragraph (a) of that subsection<sup>(4)</sup>, and
- (b) relates to Field 5 of Part 1 of Schedule 5 to the Government of Wales Act 2006.

Clerk of the Privy Council

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by section 149 of the Education and Skills Act 2008. Matter 5.17 was inserted by S.I. 2008 No. 1036; Matter 5.17 was amended by S.I. 2008 No. 3132. Matter 5.18 was inserted by S.I. 2008 No. 3132.

<sup>(3)</sup> 2006 c. 40.

<sup>(4)</sup> That paragraph confers power to replace statutory references to local education authorities with references to local authorities.

## 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”). It does this by adding new matters to the field of education and training contained within Schedule 5 to the 2006 Act. Subject to general limitations on the legislative competence of the National Assembly for Wales, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act, an Assembly Measure may make provision that relates to the matters contained in the fields set out in Schedule 5 to the 2006 Act.

Article 2 inserts Matters 5.2A to 5.2C into field 5 (education and training) of Part 1 of Schedule 5 to the 2006 Act.

Matter 5.2A comprises the conduct and governance of schools maintained by local authorities in Wales. It includes the allocation of functions, property, rights and liabilities that relate to such schools. While this aspect of the Matter would allow a Measure to transfer to new bodies functions relating to maintained schools, it would not of itself permit a Measure to alter the nature of those functions. For example, a Measure under this Matter could transfer functions of a school governing body relating to staffing, but could not otherwise change the nature of those functions. It could not, for instance, provide for amendment of the provisions of the School Teachers Pay and Conditions document.

Matter 5.2B concerns collaboration between persons and bodies responsible for schools maintained by local authorities in Wales.

Matter 5.2C is about the establishment of bodies by persons with functions relating to schools maintained by local authorities in Wales.

Article 3 contains transitory provision to take account of the fact that the Matters inserted in the 2006 Act by this Order are drafted in anticipation of the replacement of statutory references to “local education authority” with references to “local authority” by an order made under section 162 of the Education and Inspections Act 2006. In the event that such an order is not in force when this Order is made, this Order’s references to “local authorities” are to be read as references to “local education authorities” until such time as such an order is in force.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

## **Explanatory Memorandum to the draft National Assembly for Wales (Legislative Competence) (Education) 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 The primary purpose of the Order is to provide the National Assembly for Wales (“the Assembly”) with legislative competence in the field of education, relating to the conduct and governance and other matters in relation to maintained schools.

2.2 The Order inserts three matters into field 5 (education and training) of Part 1 of Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”). This would enable the Assembly to legislate in these areas by way of Assembly Measure.

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

None

### **4. Legislative Context**

4.1 Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the Assembly to legislate by Assembly Measure in relation to 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. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this memorandum. Attached at Annex B is a copy of Schedule 5 to the 2006 Act showing the legislative competence that the Assembly has acquired to date.

4.2 Matters may be inserted into the fields contained in Schedule 5 by either an Act of Parliament or a LCO. The latter route enables the Assembly to initiate the process for conferral of such competence, via a LCO.

4.3 Current law for the government of maintained schools, mainly set out in Part III, Chapter 1 of the Education Act 2002 (EA 2002), requires every maintained school in Wales to have its own governing body which is responsible for the local management of that school. This places

governing bodies in a central and critical position for the successful and efficient delivery of education in a maintained school setting. This also includes the requirement for local authorities to provide information and training for governors as they see fit to enable them to discharge their functions. Such information and training is free of charge to governors. A maintained school is one that is maintained by a local education authority (local authority). In anticipation of an Order to be made under section 162 of the Education and Inspections Act<sup>5</sup> 2006, which will replace references to local education authority with references to local authority, this Explanatory Memorandum and the LCO<sup>6</sup> refer to local authority rather than local education authority.

4.4 Current primary legislation in respect of governing bodies deals with topics which include the following:

- the constitution, functions and membership of governing bodies (principally sections 19, 20, 23 and 34 of EA 2002);
- the means by which governing bodies may collaborate or federate, including collaboration with FEIs (sections 24-26 EA 2002 and section 166 of the Education and Inspections Act 2006 (“E&I Act 2006”));
- the governing body’s responsibility for the conduct of the school and to promote high standards (sections 21 and 29B EA 2002 and section 38 of the E&I Act 2006); and
- powers to provide community facilities; to control school premises; and to determine session times; (sections 27-28; 31; 32; EA 2002 respectively).

4.5 Primary legislation also places requirements on governing bodies concerning their relationships with stakeholders, for example, by providing parents with an annual report, to hold a parents evening and have a process in place for dealing with complaints (sections 30; 33; and 29).

4.6 Complementing and supporting these core responsibilities and requirements, governing bodies also have functions in relation to innovation in schools (section 1 of the EA 2002, with sections 2-5 setting out administrative arrangements); the formation of bodies (sections 11-13 of the EA 2002); the behaviour, discipline and welfare of pupils

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<sup>5</sup> Section 162 of the Education and Inspections Act provides a power to repeal, by Order, references to a local education authority and replacing it with local authority.

<sup>6</sup> Article 3 of the LCO contains transitory provision to take account of the fact that the Matters to be inserted by the Order are drafted in anticipation of the replacement of statutory references to “local education authority” with references to “local authority”. In the event that such an order is not in force when the Order is made, the Order’s references to “local authorities” are to be read as references to “local education authorities” until such time as such an order is in force.

(section 88 of the E&I Act 2006 and section 61 SSFA 1998), including home-school agreements (section 110 SSFA 1998); consultation with pupils (Section 176 of the 2002 Act); admissions (section 43 E&I Act 2006), and further powers in the case of voluntary aided and foundation schools, where the school is the admissions authority (Part III, Chapter 1 of the SSFA 1998 (as amended) applies); religious worship (sections 70-71 SSFA 1998, as amended by section 55 E&I Act 2006); and charging (section 457 of the EA Act 1996). Voluntary and foundation school governing bodies may propose prescribed alterations to the school, closure of the school, or change of category (sections 28, 29, 30, 35 SSFA 1998).

- 4.7 Local authorities and the Welsh Assembly Government have powers of intervention in schools causing concern (Part I, Chapter IV of the SSFA 1998 as amended by Part 4 of the EA 2002 and the E&I Act 2006). These powers provide a means for local authorities and the Welsh Assembly Government to take action in schools that are failing and/or are badly managed or cause concern. The powers include the appointment of interim executive boards of appointed governors to temporarily govern schools that fall in these categories. Welsh Ministers also have powers to direct governing bodies under sections 496 and 497 of the EA 1996 (as amended), should they consider a body is acting unreasonably or is failing to discharge its duties (except in the case of a voluntary school where a local authority arrangement under section 409 EA 1996 applies), and to resolve disputes between governing bodies under section 495 of the EA 1996.
- 4.8 Section 22 of the EA 2002 covers the requirement of local authorities to provide free information and training to school governors.

## 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. Section 94 of the 2006 Act prohibits (subject to the exception in subsection (5)) 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). 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.

- 5.2 The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the Welsh Ministers, Welsh local authorities or any other public authority, functions which did not relate to Wales.

## 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) (Education) Order 2010 are compatible with the Convention rights”*

## 7. Policy background

- 7.1 Education in Wales is a long devolved policy area. In Wales, prior to the creation of the Assembly in 1999, executive powers for education were exercised by the Secretary of State for Wales. Education is also one of the fields listed in the Government of Wales Act 1998 within which functions were transferred from the Secretary of State for Wales to the Assembly at its inception. The constitutional changes made by the 2006 Act vested those powers in the Welsh Ministers, and in addition legislative competence for education and training has already been added to Field 5.<sup>7</sup> Governance of maintained schools, however, is one of the parts of education law for which the Assembly does not have competence.
- 7.2 The statutory basis for governing schools has existed in much the same form since the introduction of the Locally Managed School Model brought into being for Wales and England by the Education Reform Act 1988. Other than Pupil Referral Units, every maintained school has to have a governing body. The governing body sets the strategic direction of the school and monitors and evaluates progress. The governing body receives an individual school budget and is responsible for allocating resources in a way that it deems fit to support the strategic direction and to discharge its functions (that is its powers and duties) effectively.
- 7.3 The policy context for the Welsh Assembly Government's request for the conferral of legislative competence on the Assembly has several elements. Foremost, the Welsh Assembly Government wishes to raise standards of attainment in all schools. It has piloted a Schools Effectiveness Framework to stimulate, promote and facilitate more and better collaboration. As it expands and develops the framework will need to take increasing account of school governing bodies because governance

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<sup>7</sup> <http://www.assemblywales.org/bus-home/bus-legislation.htm>

provides the accountability mechanism within which schools operate, the means by which outcomes are monitored and evaluated; the means by which resource allocation is decided, and the responsibility for taking action to improve outcomes.

- 7.4 Secondly, the Welsh Assembly Government is committed to 14-19 Learning Pathways which is a Wales wide initiative in which all learners aged 14-19 will take part. The intention is to provide parity between vocational and academic learning. The success of 14-19 Learning Pathways very much depends on schools, further education institutions (FEIs) and other learning providers working together, sometimes with learners attending several establishments.
- 7.5 The Welsh Assembly Government encourages local authorities and FEIs to consider how provision for education and training is planned and organised so that it is effective in terms of what is offered and more efficient in how it is delivered. The number of school pupils in Wales continues to decline with a commensurate rise in surplus capacity. The Welsh Assembly Government is challenging local authorities to consider how schools are organised and how they, and others, can work together to create an effective network of providers. It is supporting these changes with capital investment under the 21<sup>st</sup> Century Programme, the aim being to have schools of the right standard in the right places.
- 7.6 The Webb Review of the Mission and Purpose of Further Education in Wales (Promise and Performance: December 2007) has emphasised the need for collaboration to be the basis for the delivery of post-14 learning in Wales. The review underlined the importance of providers working collaboratively and it highlighted the value of utilising the potential for new governance arrangements between schools and FEIs (for which the Assembly has competence under Matters 5.12 and 5.13 of Field 5, Schedule 5 to the 2006 Act). Matters inserted by this LCO would complement Matter 5.13. The Welsh Assembly Government's Skills that Work for Wales Strategy has also identified the need to transform the way the post-11 provider network operates and collaborates so as to improve effectiveness and efficiency. It pointed to the need to reshape the learning network to enable and empower providers to work in partnership in order to deliver learning provision tailored for the learner. In line with this theme of needing more and better collaboration, John Griffiths AM, the former Deputy Minister for Skills made a written statement to the Assembly on 30 April 2009 stating the Welsh Assembly Government's intention to reform governance arrangements for FEI's. A review group was established to advise on options for reform and is due to report in Spring 2010.
- 7.7 A further theme that has emerged since the creation of the Locally Managed School Model is the growing emphasis placed on children and

young people having a voice in their schools. The Welsh Assembly Government intends that the United Nations' Convention on the Rights of the Child will continue to underpin its policies. Article 12 of the UNCRC states that a child capable of forming his or her own views has the right to express those views freely in matters affecting the child. Children and young people have an interest in how schools are governed and they need an effective voice. Every school in Wales must by law have a School Council comprising pupils of all ages. In secondary schools, the School Council may nominate pupils from years 11, 12 or 13 to be associate pupil governors who may attend governing body meetings and play a part in policy formulation and decision making.

- 7.8 The Welsh Assembly Government has commissioned studies of school governance in recent years<sup>8</sup>. These have considered the quality and capability of whole school governing bodies and governor training. The evidence is that the effectiveness of governing bodies varies and the training available to governors is uneven, with weaknesses in consistency of approach, availability and take-up by governors.
- 7.9 In July 2009 the Assembly's Enterprise and Learning Committee published its report 'The Role of School Governors'. The report identified some of the issues described above about training and the effectiveness of governing bodies. Taking the Committee report and other evidence together, the Welsh Assembly Government wishes the Assembly to have the legislative means to address these issues.
- 7.10 This LCO provides the Assembly with competence in relation to school governance. The Assembly has competence for much of education law. School governance underpins and relates to how schools work and what they do. It is thus a core part of the law for education. Gaining competence for school governance and the other Matters dealt with in this LCO would therefore allow the Assembly to consider future legislation.

### Scope

- 7.11 Article 2 of the LCO inserts three Matters into field 5 (education and training) of Schedule 5 to the 2006 Act to enable the Assembly to legislate in relation to the subjects described in the Matters by way of Assembly Measures.
- 7.12 Matter 5.2A provides the Assembly with competence to legislate with respect to the conduct and governance of schools maintained by local

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<sup>8</sup> School Governance and Improvement in Wales – Universities of Birmingham and Glamorgan, 2004.

The Annual Report of Her Majesty's Chief Inspector of Education and Training in Wales 2007-08.

Local Authority Training Provision for School Governors in Wales – All Wales Centre for Governor Training and Research. 2008.

Training Provision for Governing Body Chairs - All Wales Centre for Governor Training and Research. 2007.

The Quality of Training and Support Provided by LEAs to School Governors – Estyn, 2003.

The Training of School Governors in Wales – Education Dept, University of Swansea. 2000.

authorities. With respect to governance it would, for example, allow the Assembly to legislate for the constitution and membership of governing bodies, which is currently set by Part III, Chapter 1 of the EA 2002, and for the training of governors; in short the structures for decision making and the quality of that decision making. The Assembly could pass legislation in relation to the creation (or abolition) of bodies responsible for school governance, and the allocation of functions between such bodies. The Assembly would also have the competence to legislate for how a body should manage the day to day running of a school (the conduct of a school). A governing body might be established for one or several schools.

- 7.13 Substantive changes to school finance and school staffing are not within the competence conferred by this LCO. If new models for governance arrangements were created as a result of the LCO, there would be some linked changes to the persons or bodies exercising functions relating to staffing and finance, but the LCO does not confer competence to change the substantive nature of those functions.
- 7.14 Matter 5.2B provides the Assembly with competence to legislate in relation to securing collaboration between persons or bodies with functions in relation to schools maintained by a local authority (federation of governing bodies would fall within the scope of Matter 5.2A). The Assembly already has the competence for and in connection with securing collaboration between a FEI and a school maintained by a local authority under Matter 5.13. The current provisions relating to federation and collaboration in respect of school governing bodies are found at sections 24 - 26 of the Education Act 2002.
- 7.15 Matter 5.2C provides competence for the Assembly to legislate in relation to the conferring of authority to establish a body, such as an educational body that can provide services to schools and FEI's. A body could also be established that was able to exercise education functions on behalf of local authorities. It reflects and extends (in that it allows schools to provide services to a FEI) provision in respect of governing bodies found in sections 11 and 12 of the Education Act 2002.

### **Minister of the Crown functions**

- 7.16 This LCO in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter (remove or modify) the functions of Ministers 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 to any future proposals to remove or modify those functions.

## 8. Consultation Outcome

- 8.1 There has been no consultation on this LCO. However, it has been subject to pre-legislative scrutiny in both the Assembly and Parliament, and submissions of evidence were invited as part of their 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 Assembly to consider.

### Pre-legislative Scrutiny

- 8.3 The proposed LCO was scrutinised by Legislation Committee 4 in the National Assembly for Wales, the House of Commons Welsh Affairs Committee and the House of Lords Constitution Committee.
- 8.4 The Lords Constitution Committee reported on 18 December 2009, and concluded that the proposed LCO raised no issues of constitutional principle. The Committee identified two points of detail. First, it highlighted the need to include a transitory reference on the face of the LCO in anticipation of an Order to be made under section 162 of the Education and Inspections Act 2006. A transitory provision has been included in the LCO to the effect that references to “local authority” in Schedule 5 and in the LCO mean “local education authority” until the section 162 Order is made.
- 8.5 Second, the Committee questioned the meaning of the word “governance” in the context of the LCO, and in what way it is to be distinguished from “conduct”. The Welsh Assembly Government considers that, while there may be some overlap between the two terms, there is sufficient differentiation to justify the reference to ‘conduct’. Conduct is about the ‘action or manner’ of carrying out a proceeding or business and the management and handling of an issue. Governance is more directed towards the methods and processes employed for controlling the activities of a school but not what the activities are.
- 8.6 Legislation Committee 4 published their report on 27 January 2010 and the Welsh Affairs Committee on 9 February 2010. Both Committees considered the scope of the proposed LCO in relation to staffing and school finance, and noted that the proposed LCO and EM could be clearer in this respect. Annex A to this memorandum explains what is within scope of the LCO in respect to staffing and finance.

- 8.7 The Welsh Affairs Committee also recommended that consideration be given to amending Matter 5.2A so that “it is clear on its own terms as to the exclusion of teachers’ pay and conditions and the inclusion of those staffing and funding matters that are a normal function of governors’.<sup>9</sup> The Welsh Assembly Government has carefully considered this recommendation and concluded that any amendment to Matter 5.2A is unnecessary and could cause confusion, especially when compared with the competence conferred by Matter 5.12. However, the Explanatory Note to the LCO has been amended to make clear that an Assembly Measure made as a result of this LCO could not, for example, provide for amendment of the provisions of the School Teachers Pay and Conditions Document.
- 8.8 The Assembly’s Legislative Committee 4 recommended inserting the words “but not limited to” after “including” in Matter 5.2A. This recommendation has been carefully considered. The Welsh Assembly Government has concluded that inserting additional wording is unnecessary; the current wording does not imply that ‘conduct and governance’ is limited solely to allocating the functions, property, rights and liabilities relating to schools maintained by local authorities. Inserting the words ‘*but not limited to*’ simply to qualify the word “including” rather than for an interpretative reason, could be unhelpful because it would imply that the competence would otherwise be so limited.
- 8.9 Both Committees were content with the wording of Matter 5.2B.
- 8.10 In relation to Matter 5.2(C), the Welsh Affairs Committee recommended that the wording be reviewed to ensure that local authority functions other than education and training were not within scope. The Matter has been amended to make clear that bodies can be established to carry out education and training activities and/or to carry out education functions of local authorities. References to the ‘education functions of the local authority’ have been inserted as a consequence both of this recommendation, and in anticipation of an Order being made under section 162 of the Education and Inspections Act<sup>10</sup> 2006 (see paragraph 4.3). Local authority education functions also encompass training. Consequently, the Welsh Assembly Government is satisfied that the definition used in this Matter is sufficiently clear and explicit.
- 8.11 The Welsh Affairs Committee suggested that consideration should be given to changing the word ‘involvement’ to ‘participation’ in Matter

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<sup>9</sup> Page 22, para 5 of the Welsh Affairs Committee Seventh Report of Session 2009-10 “The proposed Legislative Competence Order relation to School Governance; HC274

<sup>10</sup> Section 162 of the Education and Inspections Act provides a power to repeal, by Order, references to a local education authority and replacing it with local authority.

5.2(C)(b). Careful consideration was given to this recommendation but the Welsh Assembly Government has concluded that it is unnecessary to change the word. Involvement is a term that is commonly used in legislation. In addition, it would allow a Measure to make provision for a body to be involved with the body established under this Matter without necessarily participating in the running of that body.

## **9. Guidance**

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

## **10. Impact**

A Regulatory Impact Assessment has not been prepared for this instrument as it only confers legislative competence on the Assembly, 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 LCO confers.

## **11. Regulating small business**

This legislation does not apply to small business.

## **12. Monitoring & review**

This LCO confers legislative competence on the Assembly. 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 Assembly.

## **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](mailto:geth.williams@walesoffice.gsi.gov.uk))

Susan Olley (Tel: 029 2089 8568 or email [susan.olley@walesoffice.gsi.gov.uk](mailto:susan.olley@walesoffice.gsi.gov.uk)) can answer legal queries about the instrument.

## **Legislative Competence Order relating to the conduct & governance and other matters in relation to maintained schools.**

### **Staffing and Finance**

#### **Introduction**

This Annex provides an explanation of what is within the scope of the LCO; what is out of the scope of the LCO given that devolved powers already exist within Schedule 5, Field 5 of GOWA 2006; and why those powers are not being sought via this LCO.

#### **Within scope of the LCO**

This LCO would enable the National Assembly for Wales to consider legislation in relation to the quality of governance for a maintained school and also the system of governance, including who is to exercise the whole range of statutory functions that relate to maintained schools. Functions mean statutory powers and duties that are undertaken a part of the governance role within schools.

The scope of the LCO has been drafted to encompass the whole of the school governance framework, within which school governors currently operate, and persons are held to account. In relation to school governing bodies this would mean the processes and systems of governing bodies and governors, and the way and manner in which they conduct themselves and discharge their roles, duties and responsibilities.

This includes setting the strategic framework for the school by setting aims and objectives, together with the policies and targets to achieve them. The current School Government (Terms of Reference) (Wales) Regulations 2000 and associated guidance in Circular NAFW 34/2000 gives further advice on the existing roles and responsibilities of school governors and governing bodies. It also includes responsibility for forming committees to deal with the appointment and dismissal of staff (including redundancies); dealing with staff capability and staff grievance matters; and managing the delegated budget effectively i.e., not going into a deficit

#### **Existing competence that the LCO complements**

The National Assembly for Wales already has extensive competence for education within Field 5 of Schedule 5 to the Government of Wales Act 2006. In summary, these include the following in relation to schools maintained by a local authority:

- Categories of schools

- The establishment and discontinuance of schools or their change from one category to another
- Admissions of pupils to schools
- Curriculum provided in maintained schools
- School attendance, behaviour of pupils at school, pupils' discipline and exclusion of pupils
- Provision of education for pupils who have been excluded from school
- Entitlement to primary, secondary (and further) education and training
- Provision of food and drink provided on school premises
- Travel arrangements for nursery, primary, secondary (and FE) to and from school.

### **What powers are not being sought via this LCO?**

The LCO excludes staffing issues and the apportionment and allocation of funding to schools.

### **Staffing**

Teachers' pay and conditions and other issues, as set out in the "School Teachers Pay and Conditions Document 2009" and guidance on "School Teachers' Pay and Conditions", are not devolved to Wales.

The Secretary of State for Children, Schools and Families has responsibility for determining these matters for England and Wales and for issuing guidance to schools and local authorities who are required to have regard to the statutory guidance. The 2009 Document sets out the framework for issues such as:

- Pay and allowances for head teachers, leadership groups, teachers and class room assistants;
- Conditions of employment for all heads, deputies, assistant heads and teaching staff; and
- Framework of professional standards

However, governing bodies do have some flexibility and discretion to determine specific pay ranges for their school and head teacher within the agreed framework, but they cannot amend or alter the framework or work outside it.

The functions that governing bodies currently exercise in relation to staffing will remain the same; a Measure made under this LCO cannot substantively amend the law on staffing by changing a function. However, a Measure would be able to "re-allocate" a "staffing" function to another person or body within the education system.

## **Financing of Schools**

The Welsh Assembly Government is committed to delegating funding to local authorities (LAs) as they are best placed to determine local priorities. LAs in Wales receive their funding via the Revenue Support Grant (RSG) and they determine how much of that is earmarked for education. LAs also determine the budget for each school using an agreed formula and delegate that funding to the governing body to manage.

But the delegation of the RSG from the Welsh Assembly Government to LAs, and LAs determination of how much is earmarked for education and subsequently for each school are LA functions and are not therefore within the scope of the LCO.

The functions that governing bodies currently exercise in relation to finance will remain the same; a Measure made under this LCO cannot substantively amend the law on school finance by changing a function. However, a Measure would be able to “re-allocate” a “finance” function to another person or body within the education system.

## **Conclusion**

In summary the LCO has been drafted to ensure issues which are linked to roles and responsibilities of governors are included, but existing devolved and non-devolved powers for staffing and finance are unaffected.

**Annex B**

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 1.1<sup>1</sup>*

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 –

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<sup>1</sup> 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).

“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*

*Field 4: economic development*

*Field 5: education and training*

*Matter 5.1<sup>2</sup>*

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 5.2A*

**Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.**

*Matter 5.2B*

**Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities.**

*Matter 5.2C*

**The following activities by persons or bodies with functions relating to schools maintained by local authorities—**

- (a) establishment of bodies to do all or any of the following—**
  - (i) carry out activities relating to education or training,**
  - (ii) exercise education functions on behalf of local authorities;**
- (b) involvement with bodies mentioned in paragraph (a).**

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<sup>2</sup> 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).

*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*<sup>3</sup>

The regulation of—

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

*Matter 5.5*<sup>4</sup>

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).

*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.

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<sup>3</sup> Matter 5.4A was inserted by section 149(1) and (2) of the Education and Skills Act 2008 (c.25).

<sup>4</sup> 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 5.9*

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*<sup>5</sup>

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*<sup>6</sup>

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

*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

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<sup>5</sup> 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 2008 (S.I. 2008/3132).

<sup>6</sup> Matters 5.11-5.14 were inserted by section 27(2) of the Further Education and Training Act 2007 (c.25).

*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<sup>7</sup>*

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<sup>8</sup>*

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;

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<sup>7</sup> 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).

<sup>8</sup> 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).

(d) services of the kinds mentioned in matter 5.8.

*Matter 5.17<sup>9</sup>*

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<sup>10</sup>*

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<sup>11</sup>*

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

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<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 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).

“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.

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<sup>12</sup>*

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.

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<sup>12</sup> Matters 6.1 – 6.4 and interpretation provisions for field 6 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248).

*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 9.1*<sup>13</sup>

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.

*Matter 9.2*<sup>14</sup>

Assessment of mental health and treatment of mental disorder.

This matter does not include any of the following —

- (a) subjecting patients to —
  - (i) compulsory attendance at any place for the purposes of assessment of treatment
  - (ii) compulsory supervision, or
  - (iii) guardianship;
- (b) consent to assessment or treatment;
- (c) restraint;
- (d) detention.

<sup>13</sup> 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).

<sup>14</sup> Matter 9.2 and the interpretation of “mental disorder” were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 (S.I. 2010/236).

For the purpose of this matter, “treatment of mental disorder” means treatment to alleviate, or prevent a worsening of, a mental disorder or one or more of its symptoms or manifestations; and it includes (but is not limited to) nursing, psychological intervention, habilitation, rehabilitation and care.

*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;

“mental disorder” means any disorder or disability of the mind, apart from dependence on alcohol or drugs;

“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 10.1*<sup>15</sup>

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—

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<sup>15</sup> 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.

“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 12.1<sup>16</sup>*

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),

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<sup>16</sup> 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 paragraphs 1 and 2.

- (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 12.6<sup>17</sup>*

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.

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<sup>17</sup> 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*<sup>18</sup>

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*<sup>19</sup>

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.

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<sup>18</sup> 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).

<sup>19</sup> 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*<sup>20</sup>

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).

*Matter 15.10*<sup>21</sup>

Social care services connected to mental health.

This matter does not include the independent mental capacity advocacy services established by Part 1 of the Mental Capacity Act 2005.

*Interpretation of this field*<sup>22</sup>

In this field—

“advocacy services” means services providing assistance (by way or representation or otherwise) in connection with the well-being of any person;

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

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

<sup>20</sup> 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).

<sup>21</sup> Matter 15.10 and the interpretation of “advocacy services” were inserted by article 3 of the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 (S.I. 2010/236).

<sup>22</sup> 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).

“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*<sup>23</sup>

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*<sup>24</sup>

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;

<sup>23</sup> 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).

<sup>24</sup> Matters 16.2 and 16.3 were inserted by section 310 of the Marine and Coastal Access Act 2009 (c. 23).

“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 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 18.1*<sup>25</sup>

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.

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<sup>25</sup> Matters 18.1-18.3 and interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (c. 29).

*Matter 18.2*

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**Matter 20.1<sup>26</sup>*

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

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<sup>26</sup> Matters 20.1 – 20.2 and the interpretation provision for field 20 were inserted by article 3 of the National Assembly for Wales (Legislative Competence)(Welsh Language) Order 2010 (S.I. 2010/245).

- (a) public authorities;
- (b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;
- (c) persons providing services to the public established by an enactment;
- (d) persons established by prerogative instrument—
  - (i) to advance learning and knowledge by teaching or research or by developing or awarding qualifications;
  - (ii) to collect, preserve or provide access to recorded knowledge or to objects and things which further understanding;
  - (iii) to support, improve, promote or provide access to heritage, culture, sport or recreational activities;
  - (iv) engaged in promoting a wider knowledge and representing the interests of Wales to other countries;
  - (v) engaged in central banking;
- (e) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- (f) persons providing services to the public who receive public money amounting to £400,000 or more in a financial year;
- (g) persons overseeing the regulation of a profession, industry or other similar sphere of activity;
- (h) providers of social housing;
- (i) persons providing the public with the following kinds of services or with other services which relate to any of those services—
  - (i) gas, water or electricity services (including supply or distribution);
  - (ii) sewerage services (including disposal of sewage);
  - (iii) postal services and post offices;
  - (iv) telecommunications services;
  - (v) education, training (where the provider receives public money for its provision), or career guidance, and services to encourage, enable or assist participation in education, training or career guidance;
  - (vi) bus and railway services;
  - (vii) services to develop or award educational or vocational qualifications;
- (j) persons opting or agreeing to be subject to the imposition of the duties.

With regard to imposing duties in relation to paragraph (b), this matter only includes duties in respect of services to the public provided under an agreement, or in accordance with arrangements, made with a public authority.

A person who receives public money amounting to £400,000 or more in a financial year does not fall within paragraph (f) unless—

- (a) that person also received public money in a previous financial year, or
- (b) a decision has been made that that person will receive public money in a subsequent financial year.

With regard to imposing duties in relation to paragraph (i)—

- (a) this matter only includes duties in respect of the services and the other related services mentioned, and
- (b) in respect of the related services, this matter does not include the provision of related services in a shop, other than post office counter services and the sale of tickets or provision of timetables for bus and railway services.

This matter does not include imposing duties about broadcasting.

This matter does not include imposing duties on a person (other than on a Welsh language authority) unless there is a means for that person to challenge those duties, as they apply to that person, on grounds of reasonableness and proportionality.

#### *Matter 20.2*

Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).

#### *Interpretation of this field*

In this field—

“broadcasting” means the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms;

“bus service” means a scheduled service, by public service vehicle (within the meaning of section 1 of the Public Passenger Vehicles Act 1981, for the carriage of passengers at separate fares, other than a service—

- (a) for which the whole capacity of the vehicle has been purchased by a charterer for the charterer’s own use or for resale;
- (b) which is a journey or trip organised privately by any person acting independently of the vehicle operator; or

- (c) on which the passengers travel together on a journey, with or without breaks and whether or not on the same day, from one or more places to one or more places and back;

“enactment” includes any future enactment;

“shop” means any premises where the sale of goods is the principal trade or business carried on;

“postal services” means the service of conveying letters, parcels, packets or other articles from one place to another by post and the incidental services of receiving, collecting, sorting and delivering such articles;

“public authority” means each public authority within the meaning of section 6 of the Human Rights Act 1998;

“public money” means—

- (a) moneys made available directly or indirectly by—
  - (i) the National Assembly for Wales;
  - (ii) the Welsh Ministers;
  - (iii) Parliament;
  - (iv) Ministers of the Crown; or
  - (v) an institution of the European Communities;
- (b) moneys provided by virtue of any enactment;

“telecommunications service” means any service that consists of providing access to, or facilities for making use of, any system which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical, magnetic or electro-magnetic energy (including the apparatus comprised in the system), but does not include broadcasting, radio, or television.

“Welsh language authority” means a person upon whom an enactment confers or imposes functions of—

- (a) imposing or enforcing on other persons duties relating to the Welsh language,
- (b) determining the duties relating to the Welsh language that are imposed on other persons, or
- (c) deciding challenges to the duties relating to the Welsh language that are imposed on other persons.

## PART 2

EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS<sup>27</sup>*Exceptions to matters*<sup>28</sup>

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—

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<sup>27</sup> 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).

<sup>28</sup> 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) Amendments to this paragraph were inserted by article 3 of the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248).

- 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.

- (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) Shipping, apart from financial assistance for shipping services to, from or within Wales.
  - (17) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.
  - (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*<sup>29</sup>

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

#### *Enactments other than this Act*

- 2 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—

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<sup>29</sup> Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 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

- 3 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.
- 4 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*

- 5 (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—<sup>30</sup>
- (a) sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78 and 156(2) to (5); or
- (b) paragraph 8(3) of Schedule 2.
- (3) Sub-paragraph (1) does not apply to any provision—

<sup>30</sup> This provision was inserted by article 4 of the National Assembly for Wales (Legislative Competence)(Welsh Language) Order 2010 (S.I. 2010/245).

- (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 make under, an Assembly Measure.

### PART 3

#### EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2<sup>31</sup>

##### *Interpretation*

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

##### *Functions of Ministers of the Crown*

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- a. Part 2 does 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.
- b. Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be made enforceable against Ministers of the Crown by means of criminal offences.<sup>32</sup>

##### *Police Areas*<sup>33</sup>

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

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<sup>31</sup> 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).

<sup>32</sup> This provision was inserted by article 5 of the National Assembly for Wales (Legislative Competence)(Welsh Language) Order 2010 (S.I. 2010/245).

<sup>33</sup> 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).

*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.

*Data Protection Act 1998<sup>34</sup>*

- 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.

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<sup>34</sup> 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).