

EXPLANATORY MEMORANDUM TO
THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE
COMPETENCE) (SOCIAL WELFARE) ORDER 2009

2009 No. 3010

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

2. Purpose of the instrument

2.1 This instrument adds to the legislative competence of the National Assembly for Wales. It does so by amending Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”), which sets out the matters in relation to which the National Assembly for Wales (“the Assembly”) may pass Assembly Measures, restrictions on the Assembly’s legislative competence, and exceptions to those restrictions.

2.2 This draft Order amends Part 1 of Schedule 5 by inserting a matter into field 15 (Social Welfare) to allow the National Assembly to legislate to support the provision of care by carers and to promote their well-being.

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

None

4. Legislative Background

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

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

- 4.3 The draft Order would confer further legislative competence on the National Assembly for Wales, in the field of Social Welfare (field 15).

5. Territorial Extent and Application

Although this instrument extends to the whole of the United Kingdom its practical application is limited to Wales as it amends provisions which will define the scope of the Assembly's legislative competence.

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) (Social Welfare) Order 2009 are compatible with the Convention rights”

7. Policy background

- 7.1. Carers are at the heart of 21st Century families and communities. In a changing society most people are living longer, many are developing long-term conditions and the vast majority have rising aspirations about their quality of life. Consequently, an increasing number of people will find themselves fulfilling caring responsibilities.
- 7.2. Many people, mainly women, are now balancing work, childcare and caring for an ageing parent. Increasing numbers of older people often care for their partner while providing childcare for grandchildren and parents of children with complex needs, and know they will be “lifetime” carers. The positive shift to independent living and care at home, away from institutionalisation, will continue to require a greater contribution from carers. At the same time families are now frequently scattered across the world, couples are struggling to retain a positive work life balance and in an ageing society some older people are left isolated with little or no support from family or friends.
- 7.3. Unpaid carers currently provide around 70% of care in the community and forecast demographic changes suggest that the pool of potential carers relative to numbers needing care is likely to decrease over the medium term. With an increasing life expectancy for those in need of care, it cannot be assumed that their carers will be able and willing to sustain their caring role over a longer period without help and support. There are also clear signs that informal care to older people by their adult children is unlikely to keep pace with demand, due to underlying demographic trends, a trend that is reflected across the UK (see for example “Informal Care for Older People Provided by Their Adult Children: Projections of Supply and Demand to 2041” in England, PSSRU Discussion Paper 2515) but is likely to be particularly acute in

those parts of Wales where present reliance on informal carers is highest.

- 7.4. Many of the issues affecting carers and carers' services in Wales are common across the UK, and in putting together this proposal the Welsh Assembly Government has taken note of the extensive consultations undertaken across the UK as part of the development of the UK Government's strategy "Carers at the heart of 21st century families and communities" and the evidence and analysis reflected in this report. However, the 2001 Census across England and Wales shows that Wales has a higher proportion of carers than any English region (11.7 per cent or 341,000 carers), the highest proportion of people with limiting long-term illness (23.3 per cent) and a level of permanent sickness and disability in the economically inactive population aged 16-74, which is higher than any region of England at 9.2 per cent. These figures alone suggest that a singular holistic approach may be necessary and appropriate to tackling the intensity of these issues in Wales.
- 7.5. The Welsh Assembly Government's *Carers Strategy for Wales Action Plan 2007* recognised the need to mitigate the effects of these demographic changes, and foresaw that these changes including trends towards more dispersed families could require a range of measures designed to support carers in their caring role and help them maintain their own health and well being. The 2007 Action Plan will be reviewed in 2009. Detailed proposals for measures will be informed by the outcomes of this review of the Wales strategy.
- 7.6. The current legislative framework in relation to carers focuses mainly on statutory authorities' powers and duties. It includes:
- **Disabled Persons (Services, Consultation and Representation) Act 1986**

This requires local authorities to have regard to the ability of the carer to provide or continue to provide care when deciding what services to provide to the disabled person.
 - **Carers (Recognition and Services) Act 1995**

This contains the core statutory responsibilities and requires local authorities to carry out an assessment of a carer's ability to provide and to continue to provide care, if the carer requests this, at the time of the assessment of the person they care for.
 - **Carers and Disabled Children Act 2000**

This extends the provisions of the 1995 Act to enable a local authority to undertake a separate assessment of a carer's needs and to supply services (or direct payments) directly to carers following assessment.

- **Carers (Equal Opportunities) Act 2004**

This places a duty on local authorities to inform carers of their right to an assessment, and requires carers' assessments to consider whether the carer works or is undertaking education, training or any leisure activity. It also provides for better co-operation between statutory agencies in the planning and provision of services for carers.

- **The Work and Families Act 2006**

This came into force in Wales in April 2007. It requires employers to consider requests from people with caring responsibilities to work flexibly.

- **The Children and Young Persons Act 2008**

This will require local authorities to make adequate arrangements for short break provision for Disabled Children.

In addition the Welsh Assembly Government has a range of powers to inspect, regulate and issue statutory guidance in respect of local authority services under the Local Authority Social Services Act 1970, the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards) Act 2003. It also has powers to direct the NHS under the National Health Services (Wales) Act 2006.

7.7. Despite this existing framework of legislation and guidance consultations with carers, carers' organisations and others have identified gaps in service provision that cannot currently be addressed. These include:

- a. concerns that carers' assessment and services for carers vary greatly and are very patchy across Wales. This concern was highlighted in a report produced by the Care and Social Services Inspectorate for Wales (CSSIW) in June 2008 (On the way up? Adult Social Care Performance Indicators in Wales 2006-07). The kind of services provided to carers include, but are not limited to, respite care, peer support networks, support to access social, leisure and education activities, day centres, awareness raising with professionals; information, training and outreach services, direct payments and advocacy services.
- b. the need for renewed effort to identify carers, the wider provision of information for carers, and better engagement by the NHS with carers as partners in the provision of care (Carers Summit Conference Report April 2005)
- c. evidence that the presence of an unpaid carer in a household may reduce the likelihood of the carer being assessed for priority services

by the local authority. Paradoxically, this reduces both the availability of services for the cared for person, (thereby increasing the burden on the carer), and the availability of compensatory services, such as respite, which benefit the carer. (See for example “Analysis of the Costs of Domiciliary and Personal Care in Wales: Some Direct Evidence”: Bell & Dawson: March 2008)

- d. indications that many young carers are still carrying an inappropriate burden of care, which has a measurable impact on their health as they grow into young adulthood [see for example Welsh Health Survey 2005/06: Health of Carers, 15/05/08]. Welsh Assembly Government guidance on the Carers and Disabled Children’s Act 2000 advised that “...support for young carers should be aimed primarily at helping any disabled or other adults with parental responsibility to carry out their parental role and to remove inappropriate responsibilities from young children.” And “.....any such services provided will be designed not to support them in their caring role but rather to ensure that they do not undertake a caring role that is inappropriate.” However the continuing emphasis on services to support young carers in their caring role, although welcomed by young carers themselves, suggests that we have not yet achieved the joined-up approach that is needed across social services for adults and for children, and the NHS.
- 7.8. The current framework of legislation and guidance in Wales has clearly proved insufficient to ensure that the Welsh Assembly Government’s policy objectives with regard to carers are given the necessary priority, so that these gaps and inconsistencies in service provision are tackled effectively. The Assembly Government’s “One Wales” programme of Government therefore included a commitment to prepare new legislation on carers rather than rely on existing reinforcement means alone such as performance measures and inspection, financial incentives or powers of direction. This proposal for legislative competence derives from the need to support the provision of care by carers and to promote the well-being of carers as noted above. In particular we envisage the need to improve the lives of carers in the following key areas:
- a. to ensure that carers have the right information at the right time to support them in their caring role. The *Carers’ Strategy Implementation Plan in Wales 2000* highlighted a need for the provision of easily accessible, relevant and factually correct information for carers, as well as acknowledging the need for a longer term view of the information needs of carers. The kind of information carers may need from time to time would include information about financial benefits, employment provisions including flexible working, rights to a needs assessment, social services functions available to them, care planning for the person cared for, medicines management, safe handling and lifting and other matters related to the care of the person cared for.

- b. to ensure that timely and appropriate practical and emotional help and support is provided to carers both to sustain them in their caring role and also to help them attain their personal ambitions for accessing education, training and employment opportunities. This would include giving them a right to appropriate breaks from caring responsibilities.
- c. to ensure that statutory agencies (being those agencies mentioned in section 3(5) of the Carers (Equal Opportunities) Act 2004 (c.15)) properly engage with carers as partners in the provision of care involving them at all levels in the assessment, delivery and evaluation of an individual's care arrangements.

Scope

- 7.9. It is proposed that the Matter be inserted under Field 15: Social Welfare in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on these issues by way of an Assembly Measure. Carers in this context means carers of individuals cared for of any age, but in the case of individuals caring for children it covers only children with a physical or mental impairment. The Order would not allow the Assembly to legislate in respect of persons who provide care by virtue of a contract of employment or other contract or as a volunteer for a body. Neither would the Order confer power on the Assembly to alter the employment rights of carers. However, it would enable the Assembly to legislate in respect of someone who volunteers for a body but who, in addition, or as a consequence, provides care that is regular and substantial above and beyond their work as part of that body.
- 7.10. The definition of carer in this matter does not exactly mirror that given in the Carers and Disabled Children Act 2000 in that it contains no age restriction. This will ensure that the Assembly is able to legislate to promote the well-being of children and young people who are carrying out caring responsibilities, as well as older carers. The National Assembly already has competence in relation to social care services for children; persons who care for, or who are about to care for, children; and young persons. This matter will enable a Measure to broaden provision beyond that relating only to social care services and provide a single framework for a range of services to support carers.
- 7.11. The Matter would enable the Assembly to ensure that the provision of care by carers is supported and that their well-being is promoted. It would, for example, allow for a requirement to be placed on relevant public sector agencies to develop carers information strategies along the lines of the Scottish legislation in this area; for them to work together effectively to support the provision of care by carers and to promote their well-being (particularly the well-being of young carers); and also for improvements to be made to carers' access to replacement care (respite care) with provision for an entitlement to respite for defined groups. The matter specifies that it includes, "but is not

limited to”, the provision of social care services. This means that Assembly Measures made in reliance on this matter could make provision which, in promoting the well-being of carers and supporting the provision of care by them, was not exclusively confined to social care services: such as, provision to ensure that health bodies take the interests of carers into account, for example in making arrangements for appointments, discharge arrangements and collection of prescriptions for the person being cared for.

- 7.12. The definition of “well-being” to be used in relation to the matter is as set out in the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008. The definition of “social care services” in that Order is to be amended by virtue of this Order so as to include the provision of “information”. For ease of reference, the definitions can also be found at Annex A.
- 7.13. The principal purpose of this LCO is therefore to empower the Assembly to pass Assembly Measures under Part 3 of the 2006 Act that will enable the Assembly Government to improve services for carers and fulfil the commitment given in “One Wales”.

Changes to the Order following pre-legislative scrutiny

- 7.14. The following changes have been made to the order following pre-legislative scrutiny by the National Assembly for Wales Legislation Committee No 3, the House of Commons Welsh Affairs Committee and the House of Lords Constitution Committee:
 - Exceptions – article 3 of the proposed Order made technical amendments to Section 94 and Schedule 5 of the 2006 Act. The effect of the amendments was twofold; to apply the exceptions to matters listed in the table in the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 to all matters in Part 1 of Schedule 5 and to effect a change from drafting exceptions as matter specific to making them of general application to all matters. After further consideration we have decided that this new approach to exceptions will now be subject to a separate and subsequent Order – the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009.

Article 3 now amends the table of social welfare exceptions currently in Part 1 of Schedule 5. The effect of this will be to exclude the following subjects from the scope of the legislative competence of the new matter: child support (i.e. arrangements for the provision of maintenance by both parents of a child); child trust funds; tax credits; child benefit and guardian’s allowance; social security; Independent Living Funds; Motability; vaccine damage payments; the Children’s Commissioner established under the Children Act 2004; family law and proceedings and welfare foods.

- Use of the phrase ‘in particular’ – the term ‘in particular’ in matter 15.9 of the proposed Order has been replaced by the term ‘but is not limited to’ in order to make it clear that the Order encompasses support for carers provided by a range of bodies, and not just social care services. This reflects proposals made by witnesses in giving evidence;
- Volunteer for any body – Whilst the definition of Carer in the Order is very wide, it is not intended to cover those who care “by virtue of a contract of employment or other contract with any person”, nor those who act “as a volunteer for any body (whether or not incorporated)”. The Welsh Affairs Committee expressed concern that this wording might disadvantage those who are volunteer carers for a body, but who also provide voluntary care in addition to this role. The Committee recommended that the wording of the LCO be amended to make this clear. The Welsh Assembly Government agrees that individuals who provide care as a volunteer for a body, but who also provide care above and beyond that role, should not be disadvantaged. It is, however, confident that the Order as drafted would not exclude this category of carer and that an amendment is not therefore necessary. Paragraph 12 of this Memorandum has been amended so as to provide reassurance on this point.

The term ‘any body’ has been replaced by the term ‘a body’. This is a technical amendment that has no effect on the substance of the LCO. It has been made to ensure that there is no risk of misinterpreting the provision.

- Article 2(2) – article 2(2) amends matter 15.1 to allow the National Assembly for Wales to make provision by Measure about payments in respect of individuals with needs relating to their well being so that any person may secure social care services on their behalf. This amendment is needed to ensure that the Assembly’s competence under matter 15.1 encompasses the making of payments to all persons to whom direct payments may be made. Matter 15.1 as originally enacted only allows provision about payments to secure social care services if they are made to the person with those needs or to a person looking after them. Matter 15.1 was added to Schedule 5 to the Government of Wales Act 2006 prior to the Health and Social Care Act 2008 which made amendments to the relevant direct payments legislation. The category of person to whom direct payments may be made was expanded as a result of changes made to section 57 of the Health and Social Care Act 2001 by the 2008 Act. The amended section 57 gives the Welsh Ministers the power, by regulation, to expand the category of recipients to include a representative of the service user, a deputy appointed by the Court of Protection under the Mental Capacity Act 2005, a donee of a lasting power of attorney or such other person as a local authority considers to be a suitable person.

Committee recommendations/conclusions

- 7.15. The word “regular” in the definition of carers has been retained in the Order. The Assembly Scrutiny Committee expressed reservations about the use of this word regular, which it considered could exclude some patterns of care, for example, those patterns of care which might be irregular and highly variable.
- 7.16. The test that applies to the definition of carers in the LCO is drawn from the Carers and Disabled Children Act 2000 which uses the wording substantial and regular.
- 7.17. There is no intention that those whose caring patterns are irregular and highly variable should come within the scope of the LCO. There is a risk that, otherwise, carers who adopt a caring role on a one off basis, for example, caring for someone who has broken their leg in an accident, would be defined as a carer, and that is not the policy intention. The policy intention is that only those who provide a “substantial amount of care on a regular basis” are to fall within the definition of carer in the LCO. The assumption of a caring role which is recurrent, follows a discernible pattern, or happens in certain circumstances (e.g. someone who adopts a caring role for a disabled father whenever his or her mother is at work or otherwise unable to perform a caring role) would be included. Specifically, persons who suffer from unpredictable episodes of mental illness that are likely to recur will also be included. The caring role that is intended to be covered by the LCO is one which may vary over time, but which nonetheless may present a regular and substantial burden for carers.
- 7.18. The Welsh Affairs Committee expressed concern that placing new duties on local authorities and health boards with regard to carers will have cross-border implications where carers may live across the border from the person they are caring for. The Committee noted the need for effective collaboration between border authorities to ensure that all carers’ needs are met and that local authorities are clear about their duties. The Welsh Assembly Government agrees that effective cross-border collaboration is vitally important, and believes that how to achieve this is best decided at Measure stage.

8. Consultation Outcome

- 8.1 There has been no consultation on this draft Order. However, it has been subject to pre-legislative scrutiny by both a National Assembly for Wales Scrutiny Committee and the Welsh Affairs Committee, as described above, who each invited submissions of evidence as part of their inquiries. This draft Order is part of the Welsh Assembly Government’s legislative programme as set out by the First Minister, the Rt Hon Rhodri Morgan AM, in his speech to the National Assembly for Wales on 15 July 2008.

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

9. Guidance

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

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it only confers legislative competence on the National Assembly for Wales, and so has no impact on business, charities or voluntary bodies.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

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

13. Contact

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

Sue Olley (Tel: 02920 89 8568 or email susan.olley@walesoffice.gsi.gov.uk) can answer legal queries about the instrument.

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

Text shown in bold/struck through is proposed to be added/deleted as a result of this Order in Council.

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1¹

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

Matter 5.2

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

Matter 5.3

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

Matter 5.4

¹ 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).

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

Matter 5.4A²

The regulation of—

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

Matter 5.5³

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.

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.

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

³ 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 5.10*⁴

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*⁵

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

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.

⁴ Matter 5.10 was inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007, and amended by article 2(2) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I.2008/1036) and article 6(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order (S.I.2008/3132)

⁵ Matters 5.11-5.14 were inserted by section 27(2) of the Further Education and Training Act 2007 (c.25).

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*⁶

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*⁷

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

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

*Matter 5.17*⁸

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

⁶ 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).

⁷ Matter 5.16 was inserted by section 27(2) of the Further Education and Training Act 2007 and amended by section 149(1) and (5) of the Education and Skills Act 2008 (c. 25).

⁸ 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 (SI 2008/3132).

- (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 5.18⁹

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 field¹⁰

In this field—

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

“post-16 education” means—

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

“post-16 training” means—

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

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

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

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

⁹ Matter 5.18 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.

¹⁰ Interpretation provisions 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 and section 149(1) and (6) of the Education and Skills Act 2008.

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

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

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

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

Field 6: environment

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

Field 8: food

Field 9: health and health services

Matter 9.1¹¹

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

Interpretation of this field

In this field—

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

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

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

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

“qualifying liability in tort” means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with

¹¹ 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).

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 10.1¹²

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.

This does not include provision about traffic signs, apart from provision about the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000.

Interpretation of this field

In this field—

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

Field 11: housing

Field 12: local government

Matter 12.1¹³

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.

¹² Matter 10.1 and the interpretation provisions for field 10 were inserted by section 22 of the Local Transport Act 2008 (c. 26). See also section 23 of that Act.

¹³ 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.

Matter 12.2

Provision for and in connection with—

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

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

Matter 12.3

Any of the following—

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

Field 13: National Assembly for Wales

Matter 13.1

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

Matter 13.2

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

Matter 13.3

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

Matter 13.4

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

Matter 13.5

Provision about the meaning of Welsh words and phrases in-

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

Matter 13.6

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

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

Field 14: public administration

Field 15: social welfare

Matter 15.1¹⁴

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 ~~persons looking after them~~ **any other person**, may secure social care services to meet those needs.

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

Matter 15.2¹⁵

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.

¹⁴ Matter 15.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008/1785) and amended by article 3(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

¹⁵ 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.

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.

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

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) a child with a physical or mental impairment,**
- or**
- (b) as a volunteer for a body (whether or not incorporated).**

Interpretation of this field¹⁶

In this field—

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

¹⁶ Interpretation provisions for field 15 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008/1785) and replaced by article 3 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

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

“health” means physical or mental health;

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

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

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

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

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

“vulnerable children” means children—

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

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

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

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

Matter 16.1¹⁷

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.

Field 17: tourism

Field 18: town and country planning

Matter 18.1¹⁸

Provision for and in connection with—

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

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

Matter 18.2

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

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

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—

¹⁷ 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. 2009/3132).

¹⁸ Matters 18.1 – 18.3 were inserted by section 202 of the Planning Act (c. 29).

- (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

EXCEPTIONS TO MATTERS¹⁹

The exceptions specified in the first column of each table below are not included within the matters specified in the corresponding entry in the second column.

TABLE – Highways and transport

Column 1 Exceptions	Column 2 Matters to which the exceptions relate
1. Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.	Matters 5.10, 5.17, 5.18
2. Road traffic offences.	Matters 5.10, 5.17, 5.18
3. Driver licensing.	Matters 5.10, 5.17, 5.18
4. Driving instruction.	Matters 5.10, 5.17, 5.18
5. Insurance of motor vehicles.	Matters 5.10, 5.17, 5.18
6. Drivers’ hours.	Matters 5.10, 5.17, 5.18
7. Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.	Matters 5.10, 5.17, 5.18
8. Public service vehicle operator licensing.	Matters 5.10, 5.17, 5.18
9. 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	Matters 5.10, 5.17, 5.18

¹⁹ The text and tables of exceptions were inserted by article 5 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.	
10. Transport security.	Matters 5.10, 5.17, 5.18
11. Shipping, apart from financial assistance for shipping services to, from or within Wales.	Matters 5.10, 5.17, 5.18
12. Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.	Matters 5.10, 5.17, 5.18
13. Technical and safety standards of vessels.	Matters 5.10, 5.17, 5.18
14. Harbours, docks, piers and boatslips apart from those used or required wholly or mainly for communication between places in Wales.	Matters 5.10, 5.17, 5.18
15. Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.	Matters 5.10, 5.17, 5.18

TABLE – Social welfare

Column 1 Exceptions	Column 2 Matters to which the exceptions relate
1. Child support.	Matters 15.1 15.2, 15.3, 15.4, 15.5, 15.6, 15.8, 15.9
2. Child trust funds, apart from subscriptions to such funds by— (a) the council of a county or county borough council in Wales, or (b) the Welsh Ministers.	Matters 15.2, 15.4, 15.5, 15.9
3. Tax credits.	Matters 15.1 ,15.2, 15.4, 15.5, 15.9
4. Child benefit and guardian's allowance.	Matters 15.1, 15.2, 15.4, 15.5, 15.9
5. Social security.	Matters 15.1 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8, 15.9
6. Independent living funds.	Matters 15.1 15.2, 15.5, 15.6, 15.7, 15.8, 15.9
7. Motability.	Matters 15.1 15.2, 15.5, 15.6, 15.7, 15.8, 15.9
8. Vaccine Damage Payments	Matters 15.2, 15.5, 15.6, 15.7, 15.8, 15.9
9. Intercountry adoption, apart from	Matters 15.2, 15.3

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.	Matters 15.2, 15.3, 15.4, 15.5, 15.8, 15.9
11. Family law and proceedings apart from— (a) welfare advice to 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.	Matters 15.2, 15.3, 15.4, 15.5, 15.9
12. Welfare foods	Matters 15.2, 15.5, 15.6, 15.8, 15.9