

## EXPLANATORY MEMORANDUM TO

### THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (CULTURE AND OTHER FIELDS) ORDER 2010

2010 No. 1212

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 fields of ancient monuments and historic buildings, culture and sport and recreation. The Welsh Assembly Government’s *One Wales* Programme of Government contains a commitment to place a statutory duty on local authorities to promote culture and encourage partnership to deliver high quality cultural experiences for their communities.

2.2 The Order inserts one matter into each of the following three fields: field 2 (ancient monuments and historic buildings), field 3 (culture) and field 16 (sport and recreation) in 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 The constitutional context to this request is set out by the 2006 Act and the UK Government’s policy, contained in the White Paper “Better Governance for Wales”. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the Assembly to legislate by Assembly Measure on specified matters. Matters may be added to the fields within Part 1 of Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament, in relation to matters, subject to the limitations provided for in the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (“LCO”) in this Memorandum. Attached at Annex A is a copy of Schedule 5 to the 2006 Act showing the legislative competence that the Assembly has acquired to date.

- 4.2 The current law in relation to culture encompasses a general local authority power and a series of specific powers and duties which are conferred by a wide range of legislation.
- 4.3 The widest power can be found in section 2 of the Local Government Act 2000. This power enables local authorities to do anything to promote or improve the economic, social or environmental well-being of their areas. The power may be exercised for the benefit of all or any persons in a local authority's area. In determining whether or how to exercise this power a local authority must have regard to its community strategy and to any guidance issued by the Welsh Ministers. This power is further limited in that:
- (i) it cannot be used by local authorities to do anything that they are unable to do by virtue of any prohibition, restriction or limitation on their powers that is contained in any other enactment;
  - (ii) it does not enable a local authority to raise money (whether by precepts, borrowing or otherwise); and
  - (iii) the Welsh Ministers may by order make provision preventing local authorities from doing, by virtue of this power, anything that is specified, or is of a description specified, in that order.
- 4.4 This wide-ranging power, in conjunction with other specific powers and duties, means that local authorities have extensive powers to provide cultural services and activities. The majority of these powers are permissive in that they do not place actual duties on local authorities to provide the majority of such services and activities.
- 4.5 There are however some exceptions to this position. The key areas of cultural provision where local authorities have statutory duties are:
- Library services – The Public Libraries and Museums Act 1964 places a duty on local authorities to provide a comprehensive and efficient library service. Libraries are therefore a statutory service that local authorities in Wales are obliged to provide;
  - Archive services – The Local Government (Wales) Act 1994 places a duty on local authorities to make and maintain a scheme setting out their arrangements for the proper care, preservation and management of their records - both historical archives and records which belong to or are in the custody of the council;
  - Public access to monuments under public control – The Ancient Monuments and Archaeological Areas Act 1979 places a duty on local authorities to provide public access to monuments under their ownership or guardianship;

- Allotments – The Small Holdings and Allotments Act 1908 places a duty on local authorities to assess the demand for allotments within their area and to provide and let a sufficient number of allotments according to that demand.

## **5. Territorial Extent and Application**

Although this instrument extends to the whole of the United Kingdom, its practical application is limited to Wales. The LCO would permit the Assembly to legislate by Measure in relation to the specified functions of local authorities in Wales. There is no provision within the LCO that would enable the Assembly to legislate in relation to English local authority functions.

## **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) (Culture and Other Fields) Order 2010 are compatible with the Convention rights”*

## **7. Policy background**

7.1 Culture is not a luxury. Its importance as a vital element of everyone’s lives, everyday, should be recognised. Welsh culture has and continues to play a fundamental role in the creation of Welsh national identity. At the national level it is one of the most important tools in attracting those who want to work, learn, visit and invest in Wales - the Welsh arts and creative industries play an important part in the Welsh economy and contribute to the prosperity of Wales; cultural tourism, the built heritage and major cultural events generate income for Wales. At the local level culture is an important element of community regeneration; cultural activities are widely recognised as an essential element of developing and sustaining community cohesion; sport and recreational activities are an essential element of the health and well-being agenda; culture is an essential part of the education and development of children, young people and lifelong learning and makes an important contribution to adult skills development. At the individual level cultural activities bring pleasure and wellbeing into people’s lives.

7.2 The Welsh Assembly Government’s aim is to widen participation in the full range of artistic, cultural, sporting and recreational services and activities. People’s background, their level of income or where they live should not be a barrier to access to, and participation in, high quality cultural experiences. The *One Wales* Programme of Government contains a commitment aimed at promoting arts and culture and encouraging sport and recreational activity.

## Rationale

- 7.3 The key role that Welsh local authorities play in the provision of cultural services and activities in their own local communities is fully recognised. It is in this context that *One Wales* identified as a key area strengthening and supporting the role of local authorities in the development and delivery of arts and cultural services and activities across Wales. However, at the current time, the Assembly does not have the necessary legislative competence over this subject area with which to consider updating the legislative framework to respond to the particular cultural needs and aspirations in Wales.
- 7.4 The current permissive legislative framework has resulted in variations in the range and quality of the local authority cultural services and activities provided across Wales. To respond to this need, *One Wales* contains a commitment to place a statutory duty on local authorities to promote culture and encourage partnership to deliver high quality cultural experiences for their communities. The aim of the *One Wales* commitment is to improve the delivery of high quality cultural experiences across the whole of Wales by placing local authority cultural services and activities on a statutory footing. By doing so, this could help to:
- enhance the contribution of cultural activities to cross cutting agendas such as regeneration, health and social inclusion, and to sharpen the focus on local authority performance in such areas;
  - raise the profile of cultural activities and the crucial role local authorities play in promoting and supporting them;
  - improve cultural service provision by local authorities over time;
  - ensure that local communities are made aware of the local authority cultural services and activities available to them;
  - increase access to and participation in local authority cultural services and activities, particularly for those groups of people that are not currently engaged or are under engaged in this provision, so that participation is not dependent on where people live or their background;
  - encourage local authorities to co-operate with each other and with a range of organisations such as public bodies, the third sector, associations and clubs in order to promote and deliver their cultural services and activities through the greater use of partnerships.
- 7.5 The current permissive statutory position in relation to local authority cultural services and activities means that it is not possible to achieve the policy aim of the *One Wales* commitment without new legislation. Issuing guidance to local authorities (which the Welsh Assembly Government could do under existing powers) which is not backed by a statutory duty would not achieve the policy aim of the *One Wales* commitment as set out in paragraph 7.4 above.

- 7.6 The Welsh Assembly Government is mindful that in taking forward the *One Wales* commitment there is a need to preserve the flexibility of individual local authorities to determine and meet the cultural service needs of their own communities. There is also a need to ensure that putting culture on a statutory footing does not create a minimum standard which could have the unwanted impact of lowering provision in some areas rather than securing improvement.
- 7.7 The LCO will provide the necessary competence to enable the Welsh Assembly Government to propose an Assembly Measure that will implement the *One Wales* commitment and achieve its policy objectives.

### **Scope**

- 7.8 The LCO confers further legislative competence on the Assembly by inserting one matter into each of the following fields; Field 2 (Ancient Monuments and Historic Buildings), Field 3 (Culture) and Field 16 (Sport and Recreation) in Part 1 of Schedule 5 to the 2006 Act, to enable the Assembly to legislate in these areas by way of Assembly Measure.

#### *Matter 2.1- archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks.*

- 7.9 Article 2(2) inserts matter 2.1 into Field 2. This matter provides the Assembly with legislative competence in relation to the functions of local authorities in the support, improvement and promotion of the appreciation by the public of archaeological remains, ancient monuments, buildings and places of historical or architectural interest and historic wrecks.
- 7.10 Matter 2.1 is worded differently to matters 3.1 and 16.4 in that it includes the words '*the appreciation by the public of*' which the other two matters do not. The *One Wales* commitment is aimed at delivery of services and activities to the public. Many of the local authority functions in relation to the areas covered by matter 2.1 are regulatory in nature and do not necessarily result in services or activities being delivered to the public. These words have been included to encompass those local authority functions that are relevant to the *One Wales* commitment.

#### *Matter 3.1 - museums, galleries and libraries, arts and crafts, archives and historical records, and cultural activities and projects*

- 7.11 Article 2(3) inserts matter 3.1 into Field 3. The matter provides the Assembly with legislative competence in relation to the functions of local authorities in the support, improvement and promotion of museums, galleries and libraries, arts and crafts, archives and historical records, and cultural activities and projects. The matter does not

include licensing the sale and supply of alcohol, provision of entertainment and late night refreshment (see paragraph 8.7).

*Matter 16.4 – sport and recreation*

- 7.12 Article 2(4) inserts matter 16.4 into Field 16. The matter provides the Assembly with legislative competence in relation to the functions of local authorities in the support, improvement and promotion of sport and recreational activities. It also excludes licensing the sale and supply of alcohol, provision of entertainment and late night refreshment (see paragraph 8.7).
- 7.13 Each of these matters is concerned with the functions of local authorities. ‘Function’ is a term defined in section 158(1) of the 2006 Act as meaning ‘power or duty’.
- 7.14 The application of these matters is specifically linked to the support, improvement or promotion of local authority cultural provision. The matters reflect the wording used in section 60 and 61 of the 2006 Act and section 2 of the Local Government Act 2000. The wording encompasses functions that will enable the policy aim of the *One Wales* commitment to be achieved including, by way of example, functions of finance, planning, consultation, collaboration and co-operation.
- 7.15 Competence is limited to the functions of local authorities. Local authorities are defined as meaning “councils of counties and county boroughs in Wales”.

**Minister of the Crown functions**

- 7.16 By virtue of Part 2 of Schedule 5 to the 2006 Act, a provision of an Assembly Measure cannot confer or impose any function on a Minister of the Crown. By virtue of Parts 2 and 3 of Schedule 5 of the 2006 Act, a provision of an Assembly Measure cannot remove or modify any function of a Minister of the Crown without the consent of the Secretary of State. The LCO has no impact on any Minister of the Crown functions.

**8. Consultation Outcome**

- 8.1 There has been no consultation on this Order. However, it has been subject to pre-legislative scrutiny in both the 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.

## **Changes to the Proposed LCO following Pre-Legislative Scrutiny**

- 8.3 Pre-legislative scrutiny of the proposed LCO was undertaken by the House of Lords Constitution Committee, the National Assembly for Wales Legislation Committee No 4 and the House of Commons Welsh Affairs Committee. The Committees published their findings on 15 October, 9 November and 7 December 2009 respectively.
- 8.4 The Welsh Affairs Committee recommended changes to the Explanatory Memorandum to clarify the use of the words ‘support, improvement and promotion’ in the LCO. These changes have been made. The Committee also recommended the use of the words ‘public appreciation’ and ‘public awareness’ be standardised across the LCO and EM. The Welsh Assembly Government has carefully reviewed the use of these terms, and believes their meanings are clear in both documents.
- 8.5 A key recommendation of the National Assembly for Wales Legislation Committee No.4 was that the fixed exceptions contained within matters 2.1 and 3.1 should be removed. The Committee took the view that it was important for the Assembly to have powers to legislate in all the areas covered by matters 2.1 and 3.1.
- 8.6 The LCO has been revised to remove these fixed exceptions. The Welsh Assembly and UK Governments, having considered this recommendation carefully, accept the Committee’s view, concluding that removing the exceptions gives the Assembly appropriate flexibility in this area and makes the competence contained in the LCO more coherent. The effect of the removal of these fixed exceptions is that the matters will encompass the local authority functions to which the exceptions related.
- 8.7 Following careful consideration of the scope of matters 3.1 and 16.4, the Welsh Assembly Government and the UK Government have agreed to insert an exception relating to the ‘licensing of sale and supply of alcohol, provision of entertainment and late night refreshment’. The phrasing of this exception mirrors the exception contained in Subject 12 of Part 1 of Schedule 7 to the 2006 Act. It bites only on matters 3.1 and 16.4, and so applies specifically to these matters.
- 8.8 The National Assembly for Wales Legislation Committee No.4 recommended that the wording ‘of the appreciation by the public’ be removed from matter 2.1. This wording has been retained in the LCO as it encompasses those local authority functions that are relevant to the *One Wales* commitment.
- 8.9 The House of Lords Constitution Committee concluded that the LCO does not raise any matters of constitutional principle. It noted that, looking forward, the Committee may want to take a closer look at the

evolving constitutional relationship between the Welsh Assembly Government and local authorities in Wales.

### *Article 3 - General exceptions*

- 8.10 The proposed LCO contained general exceptions that applied to all matters in Part 1 of Schedule 5 to the 2006 Act. Article 3 of the proposed LCO included the following six general or ‘floating’ exceptions:
- Public lending right.
  - Broadcasting.
  - Classification of films, and video recordings.
  - Government indemnities for objects on loan.
  - Payments to Her Majesty’s Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.
  - Betting, gaming and lotteries.
- 8.11 These exceptions mirror the exceptions contained in Subjects 3 and 16 of Part 1 of Schedule 7 to the 2006 Act.
- 8.12 Following pre-legislative scrutiny, the Welsh Assembly and UK Governments carefully considered the extent to which the six floating exceptions relate to the three matters in the LCO. They concluded that the competence provided by these matters would not extend to the areas covered by the following general exceptions contained within Article 3 of the proposed LCO: Broadcasting, Government indemnities for objects on loan and Payments to Her Majesty’s Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest. These general exceptions have been removed from the LCO as they have no substantive effect on the competence conferred by it.
- 8.13 The following general exceptions have been retained in the LCO: Public lending right, Classification of films and video recordings and Betting, gaming and lotteries. A provision of an Assembly Measure will not be within competence if it falls within these general exceptions, which apply to all matters in Schedule 5.

## **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.

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 –

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

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

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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).

*Field 2: ancient monuments and historic buildings*

***Matter 2.1***

**The functions of local authorities in the support, improvement and promotion of the appreciation by the public of archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks.**

**In this matter “local authorities” means the councils of counties and county boroughs in Wales.**

*Field 3: culture*

***Matter 3.1***

**The functions of local authorities in the support, improvement and promotion of arts and crafts, museums and galleries, libraries, archives and historical records, and cultural activities and projects.**

**This matter does not include licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.**

**In this matter “local authorities” means the councils of counties and county boroughs in Wales.**

*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 5.3***

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.

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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 5.4A*<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.

*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.

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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).

<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).

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

*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;

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

- (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;
- (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—

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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).

<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).

- (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

“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),

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<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).

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.

##### *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;

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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).



- (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.

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<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—

“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;

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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.

“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),
- (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.

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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.

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>*

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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).



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.

### *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>

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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).

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.

*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.

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<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).

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;

“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

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<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).

- (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

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<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).

(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.

#### ***Matter 16.4***

**The functions of local authorities in the support, improvement and promotion of sport and recreational activities.**

**This matter does not include licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.**

#### *Interpretation of this field*

In this field—

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

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

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

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

“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.

*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;

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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).



“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—

- (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);

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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).

- (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)—

#### *Culture (field 3 of Part 1)*

- (1) **Public lending right.**
- (2) **Classification of films, and video recordings.**

#### *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.

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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).

- (1A) Road freight transport services, including goods vehicles operating licensing.
- (2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—
  - a. regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment, and
  - b. regulation relating to matter 10.1.

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.

*Sport and recreation (field 16 of Part 1)*

- (1) **Betting, gaming and lotteries.**

*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*

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

### TABLE

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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.

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

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

*This Act*

- 6 (1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
- (2) Sub-paragraph (1) does not apply to—<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—
- (a) making modifications of so much of any enactment as is modified by this Act, or
  - (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Assembly Measure.

<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).



## 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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(1) 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.

(2) 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

#### *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*

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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).

- 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).