

EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (HEALTH AND HEALTH SERVICES AND SOCIAL WELFARE) ORDER 2010

2010 No. 236

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

2. **Purpose of the instrument**

2.1 This Order, brought forward by Jonathan Morgan AM, provides the National Assembly for Wales with legislative competence in respect of the assessment of an individual's mental health; the treatment of an individual who is mentally disordered; and advocacy services in respect of persons who are or may be mentally disordered. The competence does not extend to people subject to, or likely to be subject to, compulsory detention under the Mental Health Act 1983, except in relation to independent advocacy. Nor does it allow the Assembly to amend the provisions relating to compulsory treatment or the definition of mental disorder contained in the Mental Health Act 1983.

2.2 The Order inserts one new 'matter' into field 9 (Health and Health Services) and one into field 15 (Social Welfare) in Part 1 of Schedule 5 to the Government of Wales Act 2006 ("the 2006 Act"), along with interpretation provisions and 'fixed exceptions' to those matters.

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

None

4. **Legislative Context**

4.1 Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. Matters may be added to the fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament in relation to matters, subject to the limitations provided for in the 2006 Act. An Order in Council under section 95 of the 2006 Act is referred to as a Legislative Competence Order or LCO in this memorandum.

4.2 In general terms the provision of assessment and clinical treatment in respect of mental health is provided as part of the National Health

Service under the National Health Service (Wales) Act 2006, both through general duties placed on Welsh Ministers and through the actual provision of services by Local Health Boards (LHBs). Local authorities also have responsibility for the provision of assessment and services established in various provisions within social care legislation. Some of the legislative provision relates only to adults, while other elements relate to persons of all ages. For example:

- National Assistance Act 1948 – section 21 confers a duty to provide accommodation for persons aged 18 or over who are in need of care and attention; section 29 confers a duty to promote the welfare of, amongst others, mentally disordered persons aged 18 or over.
- National Health Service and Community Care Act 1990 – section 47 requires a local authority to carry out an assessment where it appears to them that any disabled person for whom they may provide or arrange for the provision of community care services may be in need of such services. Having regard to that assessment, the local authority must decide whether the need calls for the provision of such services by them. Where it would appear the services should be provided by an LHB, they must notify the appropriate trust or authority. Section 47 does not guarantee the actual provision of services.

4.3 The Mental Health Act 1983 (“the 1983 Act”) provides the statutory framework under which assessment and treatment are provided under compulsion. The 1983 Act deals with the manner by which patients may be compelled, amongst other matters, to receive assessments in hospital of their mental state and receive treatment for mental disorder. The 1983 Act does not deal with the actual provision of assessment or treatment.

4.4 The 1983 Act has recently been amended by the Mental Health Act 2007 and most significantly, in the context of this LCO, now provides for advocacy services to be provided in certain circumstances in respect of patients subject to certain provisions of the 1983 Act (mainly compulsion). Such advocates are known as Independent Mental Health Advocates (“IMHAs”).

4.5 The Mental Capacity Act 2005 also provides for advocates in certain prescribed circumstances, known as Independent Mental Capacity Advocates (“IMCAs”). The role of IMCAs has recently been expanded under the deprivation of liberty safeguards of this Act.

5. Territorial Extent and Application

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

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

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) (Health and Health Services and Social Welfare) Order 2010 are compatible with the Convention rights"

7. Policy background

- 7.1 Mental health problems are very common - about one in six adults suffer from mental health problems at any point in time. There are a wide range of mental health problems ranging from common disorders of depression and anxiety, with a prevalence of about 14% in the UK, to the less common psychotic illnesses such as schizophrenia with a prevalence of less than 0.5%. Over one million people each year seek specialist treatment for mental health problems.
- 7.2 Depression and dementia are the commonest mental health problems in older people, but older people can also experience those types of mental health problems outlined above. Under-detection of mental illness in older people is widespread, due to the nature of the symptoms and the fact that many older people live alone. Dementia can also occur before the age of 65; there are about 1000 people with dementia in younger age groups in Wales.
- 7.3 Mental health has been identified as one of the Welsh Assembly Government's health priorities. The Welsh Assembly Government's

strategy for mental health services for adults of working age in Wales was published in 2001, and set out the Assembly Government's aspirations for a modern, community focussed mental health service which is based on the principles of equity, empowerment, effectiveness and efficiency. In April 2002 the National Service Framework (NSF) for Adult Mental Health Services was published, which set the standards and key actions necessary to drive up quality and reduce variations in health and social care policy.

- 7.4 In 2005 the Wales Audit Office published a baseline review of adult mental health service provision in Wales. This found that at that time services were not configured in an optimum way to support the delivery of the NSF standards and key actions. As a result *Raising the Standard*, the revised NSF for adult mental health services, was published in October 2005. This updated the original NSF, taking into account the structural changes that had been introduced and also reflected the baseline review and other key reviews into mental health services that had taken place.
- 7.5 The Strategy for Older People (2003), and the second phase of that Strategy (for 2008 to 2013), *Living Longer, Living Better*, recognises the social and economic determinants of health and well being and promotes active, healthy aging. The accompanying NSF for Older People (2006) aims to complement and dovetail with adult mental health policy.
- 7.6 *Everybody's Business*, the Child and Adolescent Mental Health Service strategy document (2001), sets out the Welsh Assembly Government's aims, objectives and underpinning principles for services for children and young people. This is supported by the NSF for Children, Young People and Maternity Services (2005).

Rationale

- 7.7 During 2007 the Minister for Health and Social Services sought evidence on the possible future direction of mental health legislation in Wales. In response, a number of stakeholders spoke of the importance of improving service delivery, balancing the use of compulsory powers in mental health with improved rights for individuals, and developing legislation that is sensitive to the needs of people in Wales.
- 7.8 Organisations have reported the informed views of service users who have pointed to the importance of receiving early assessment and treatment for mental ill health: "...clients and carers know from experience that if a person receives early treatment for their mental illness they are much less likely to become so ill that they need compulsory treatment" (Hafal, 2007). Evidence shows that early intervention in psychosis - the detection and treatment of psychosis during the early phases of illness - can improve the long-term course of psychosis. Early intervention can lead to a faster, more complete

recovery, a decrease in the frequency and severity of relapses, and an increase in time to first relapse.

- 7.9 Users of mental health services often experience difficulty negotiating with mental health professionals and ensuring that their own point of view is acknowledged. These difficulties apply both to the practical activities of daily life as well as help with their mental health problems. Users often have little information about their mental ill health and the various alternatives for treatment and care. Advocacy seeks to address this imbalance by ensuring that their voice is heard, their choice is real and their rights are safeguarded.
- 7.10 The Adult Mental Health Strategy (2001) states that: “*Every person who comes into contact with mental health services should have the right to an appropriate advocate.*” The baseline review of adult mental health services in 2005 identified that advocacy services in some parts of Wales were limited. A number of advocacy providers, service users and service providers have all expressed concerns that advocacy services will become focussed on the provision of statutory advocacy at the expense of meeting the wider strategic intention.
- 7.11 Despite the existing framework of legislation, guidance and NSFs, consultations with service users, service providers, mental health professionals and others, have identified gaps within the legislation and service provision that cannot be currently addressed in respect of assessment, treatment and advocacy. Namely:
- the need for an improved focus on early intervention and treatment through statutory duties as regards the provision of assessment and treatment which is the preferred option of many service users and their families;
 - the extant duties on local authorities to provide certain assessments do not translate into duties to provide services arising out of the assessments;
 - the duties for assessment by local authorities are applicable only in respect of those who are mentally disordered, and not those who appear to be exhibiting symptoms or manifestations of such disorder. This can result in individuals having to reach a certain level of ill health before becoming eligible for assessment;
 - a patchwork of obligations in respect of specialist mental health assessment and treatment within secondary services. In Wales such services are increasingly provided on a multidisciplinary basis, which involves a range of professionals and services. Those working within such services are keen to ensure, in line with the Welsh Assembly Government’s strategies and service frameworks for mental health, that multidisciplinary working in

this way should be strengthened. This would allow for a more seamless approach to service provision for the individual recipient, and for those services to be focussed on the needs of the individual in line with effective care planning;

- the existing legislative framework does not provide for a wide ranging and comprehensive advocacy service - the role of the IMHA is limited to specific functions in respect of qualifying patients in limited circumstances. There is a need to ensure advocacy is available for people at a time when their mental health and usual support mechanisms may be breaking down, leaving them vulnerable when key decisions about treatment and support may need to be made.

7.12 There are no suitable provisions within existing legislation that may be used to deliver a more comprehensive assessment, treatment and advocacy framework that is suitable for Wales.

7.13 Legislative competence is needed in respect of:

- the assessment of an individual's mental health;
- the treatment of a person who is mentally disordered;
- advocacy services in respect of persons who are or may be mentally disordered.

Scope

Matter 9.2

7.14 The LCO inserts Matter 9.2 into Field 9 (Health and Health Services) in Schedule 5 to the 2006 Act. This will enable the Assembly to legislate on the assessment of mental health and treatment of mental disorder by way of Assembly Measure. The competence will enable future legislation to be considered which would place duties on NHS bodies and social services providers to assess a person's mental health. The competence will allow such duties to be imposed in respect of individuals (of all ages) with a current or previous diagnosis of mental disorder, as well as those who are presenting with symptoms of mental ill health for the first time. In addition, it will enable duties to be placed on NHS bodies and social services providers in respect of the treatment of a person's assessed mental disorder.

7.15 Matter 9.2 will not allow the Assembly to legislate in respect of compelling individuals to be assessed, treated or supervised or subjecting persons to guardianship. In effect this means that there is no overlap between the main subject matter of the 1983 Act and the legislative competence of the National Assembly for Wales.

7.16 Similarly matters concerning consent to treatment, restraint or detention are specifically excepted from matter 9.2. Again this ensures

that the legislative competence does not overlap with the 1983 Act or the common law in these areas.

- 7.17 For the purposes of the matter, treatment of mental disorder is defined in accordance with the definition of treatment within the 1983 Act; this includes provision excluding alcohol or drug dependence from the definition of mental disorder.

Matter 15.10

- 7.18 The LCO inserts Matter 15.10 into Field 15 (Social Welfare) in Schedule 5 to the Government of Wales Act 2006. Matter 15.10 extends legislative competence as regards the provision of social care services to the area of mental health. Other matters relating to social care services have been added under field 15 by the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008; (Social Welfare and Other Fields) Order 2008; and (Social Welfare) Order 2009. Social care services are defined in this field as: *“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.”*
- 7.19 In addition, Article 3(3) provides a definition of advocacy as *“services providing assistance (by way of representation or otherwise) in connection with the well-being of any person”*. Notwithstanding that this is in Field 15 (Social Welfare), this definition will encompass advocacy connected with health related matters as well as social services.
- 7.20 Matter 15.10 provides the National Assembly with competence in relation to advocacy, apart from IMCA services established under the Mental Capacity Act 2005 as these are specifically excepted. The competence conferred does however cover all other aspects of advocacy.

Exceptions

- 7.21 Each of the matters has specific exceptions that apply to each matter only, as described above. The LCO does not add any new general exceptions that apply to all matters, since no additional exceptions of this kind are necessitated by the matters being added. The existing general exceptions will apply to the matters inserted by this LCO. The ‘general exceptions’ referred to are the exceptions that were added by Article 2(9) of the National Assembly for Wales (Exceptions to Matters) Order 2009 as paragraph A1 of Part 2 of Schedule 5 to the 2006 Act.

Minister of the Crown functions

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

8. Consultation Outcome

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

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

Changes to the LCO following pre-legislative scrutiny

8.3 The *Proposed Provision of Mental Health Services LCO Committee of the National Assembly for Wales*, the *House of Commons Welsh Affairs Select Committee* and the *House of Lords Constitution Committee* undertook detailed and comprehensive pre-legislative scrutiny of the proposed LCO. The Committee of the National Assembly published its report in June 2008; the Welsh Affairs Committee and the Constitution Committee published their reports in October 2009.

8.4 This LCO was the first to be laid before Parliament for scrutiny by a non-Government Assembly Member, a matter which the Welsh Affairs Committee commented on during their deliberations in noting the level of co-operation between the Assembly Member, the Welsh Assembly Government and the Wales Office.

8.5 In light of the helpful and considered recommendations of the Committee of the National Assembly for Wales and the Welsh Affairs Committee, a number of changes have been made to both the LCO and the Explanatory Memorandum.

8.6 The Constitution Committee of the House of Lords considered the proposed LCO raised no matters of constitutional principle.

Changes to the Order

8.7 The proposed LCO was significantly revised following the recommendations made by the Committee of the National Assembly for Wales and before it was laid before Parliament for pre-legislative

scrutiny. An alternative drafting approach was adopted, moving to competence in relation to the substantive issues of assessment of mental health and treatment of mental disorder. The earlier draft provided for these matters but by reference to individuals.

- 8.8 The Committee of the National Assembly for Wales were concerned about the relationship between the LCO and the 1983 Act, and the revised proposed LCO took account of this by excluding the substantive matters of the 1983 Act rather than individuals subject to the 1983 Act.
- 8.9 In evidence to both Committees the importance of the delivery of mental health services by both health and social care agencies was emphasised, and was specifically acknowledged in the recommendations of the Committee of the National Assembly for Wales. The revised proposed LCO took account of this by creating a new Matter within Field 15 which provides for competence in relation to social care services connected to mental health.
- 8.10 The Welsh Affairs Select Committee took evidence from a number of witnesses regarding the importance and value of independent mental health advocacy. The Committee correctly noted that it was not the intention to disapply in Wales the right to an IMHA for those subject to compulsory powers under the 1983 Act. The Committee thereby suggested that given this position, the drafting of the LCO should be reconsidered.
- 8.11 Following the evidence given to the Welsh Affairs Committee and in light of the constructive comments made within the report, the drafting of the LCO has been carefully reconsidered on this point. As stated in the evidence sessions, the intention is very much to support the development of independent mental health advocacy in Wales, including for patients subject to compulsion under the 1983 Act. The LCO therefore includes competence for the National Assembly to repeal the provisions in the 1983 Act related to advocacy to support the future development of a comprehensive advocacy service in Wales.
- 8.12 The IMHA scheme under the 1983 Act has been operational in Wales since November 2008, and it is anticipated that this will develop and grow, providing an important safeguard for patients. However, were the LCO to be re-drafted to exclude competence to repeal provision in the 1983 Act from competence it would have the unintended consequence of limiting the National Assembly's flexibility to further improve and develop the advocacy scheme in Wales. In contrast, the competence as defined would enable the National Assembly to update the IMHA scheme over time and enable it to potentially replace it with an improved and expanded scheme to deliver specialist mental health advocacy to patients subject to compulsion or otherwise. It is for this reason therefore the competence has been preserved within the Order

Changes to the Explanatory Memorandum

8.13 Both Committees requested that this Memorandum make clear to whom any new duties created by future Assembly Measures and imposed on the NHS and local authorities would apply. Whilst both Committees were satisfied that the LCO extended competence in relation to persons with a current or previous diagnosis of mental disorder as well as those without such a diagnosis, this Memorandum now confirms that position (at paragraph 7.14 above). Similarly both Committees were satisfied that the LCO extended competence in relation to persons of all ages (including children and young people). This Memorandum also confirms that position (at paragraph 7.14 above).

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 Order.

10. Impact

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

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

This LCO 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).

Susan Olley (Tel: 029 2089 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 to the Government of Wales Act 2006, with footnotes indicating the source of previous amendments.

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

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Matter 1.1¹

The red meat industry, in relation to–

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

Interpretation of this field

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

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

For the purposes of this definition –

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

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

Field 2: ancient monuments and historic buildings

¹ 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 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1²

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

Matter 5.2

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

Matter 5.3

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

Matter 5.4

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

Matter 5.4A³

The regulation of—

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

Matter 5.5⁴

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.

² 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).

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

⁴ 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 5.7

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*⁵

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*⁶

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—

⁵ Matter 5.10 was inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), and amended by article 2(2) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and article 6(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order (S.I. 2008/3132)

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

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

Matter 5.13

Provision for and in connection with securing collaboration—

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

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

Matter 5.14

The provision of financial resources for and in connection with—

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

*Matter 5.15*⁷

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.

⁷ 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).

*Matter 5.16*⁸

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*⁹

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*¹⁰

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

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

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

*Interpretation of this field*¹¹

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

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ 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).

(b) organised leisure-time occupation connected with such education;

“post-16 training” means—

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

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

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

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

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

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

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

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 9.1*¹²

¹² Matter 9.1 and the interpretation provisions for field 9 were inserted by article 3(3) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

Provision for and in connection with 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

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.**

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*¹³

Provision for and in connection with—

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

Interpretation of this field

In this field—

“motor vehicle” has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) applies as it applies for the purposes of the Road Traffic Acts; “road” has the same meaning as in the Road Traffic Regulation Act 1984;

“Welsh trunk road” means a road for which the Welsh Ministers are the traffic authority (within the meaning of section 121A of the Road Traffic Regulation Act 1984).

Field 11: housing

Field 12: local government

*Matter 12.1*¹⁴

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.

¹³ 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.

¹⁴ Matters 12.1-12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 235 and Schedule 17.

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

Matter 12.3

Any of the following—

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

For the purposes of this matter—

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

Matter 12.4

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

Matter 12.5

Provision for and in connection with—

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

The following are “relevant Welsh authorities”—

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

*Matter 12.6*¹⁵

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

¹⁵ Matters 12.6 and 12.7 will be inserted by section 33 the Local Democracy, Economic Development and Construction Act 2009 (c. 20), which comes into force on 12 January 2010.

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*¹⁶

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*¹⁷

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,

¹⁶ 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).

¹⁷ 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).

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 15.9¹⁸

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.

¹⁸ 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).

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

Social care services connected to mental health.

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

*Interpretation of this field*¹⁹

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;

¹⁹ 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).

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

“vulnerable children” means children—

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

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

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

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

Field 16: sport and recreation

*Matter 16.1*²⁰

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*²¹

²⁰ 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).

²¹ Matters 16.2 and 16.3 will be inserted by section 310 of the Marine and Coastal Access Act 2009 (c. 23), which comes into force on 12 January 2010.

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

This matter does not include—

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

Matter 16.3

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

Land is relevant land if it—

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

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

Interpretation of this field

In this field—

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

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

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

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

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

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

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

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

Field 17: tourism

Field 18: town and country planning

*Matter 18.1*²²

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—

²² Matters 18.1 – 18.3 and interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (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

PART 2

EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS²³

Exceptions to matters²⁴

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

Highways and transport (field 10 of Part 1)

- (1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.
- (2) Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used (apart from regulation relating to matter 10.1).
- (3) Road traffic offences.
- (4) Driver licensing.
- (5) Driving instruction.
- (6) Insurance of motor vehicles.
- (7) Drivers' hours.
- (8) Traffic regulation on special roads (apart from regulation relating to matter 10.1).
- (9) Pedestrian crossings.
- (10) Traffic signs (apart from the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000 for purposes relating to matter 10.1).
- (11) Speed limits.
- (12) Public service vehicle operator licensing.
- (13) Provision and regulation of railway services, apart from financial assistance which—
 - (a) does not relate to the carriage of goods,
 - (b) is not made in connection with a railway administration order, and
 - (c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.
- (14) Transport security.
- (15) Shipping, apart from financial assistance for shipping services to, from or within Wales.
- (16) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.
- (17) Technical and safety standards of vessels.
- (18) Harbours, docks, piers and boatslips, apart from those used or required wholly or mainly for communications between places in Wales.

Social welfare (field 15 of Part 1)

²³ 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).

²⁴ 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).

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

General Restrictions

Functions of Ministers of the Crown

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

Criminal Offences

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

- (a) where the offence is a summary offence, 51 weeks, and
- (b) where the offence is triable either way, twelve months.

*Police Areas*²⁵

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

Enactments other than this Act

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

TABLE

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

- 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

²⁵ Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 3.

6 (1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.

(2) Sub-paragraph (1) does not apply to sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54 and 156(2) to (5).

(3) Sub-paragraph (1) does not apply to any provision—

(a) making modifications of so much of any enactment as is modified by this Act, or

(b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Assembly Measure.

PART 3

EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2²⁶

Interpretation

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

Functions of Ministers of the Crown

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

Police Areas²⁷

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

²⁶ 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).

²⁷ 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*²⁸

- 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.

²⁸ 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).