



**WALES OFFICE**

**PRE-LEGISLATIVE SCRUTINY  
OF THE  
PROPOSED  
NATIONAL ASSEMBLY FOR WALES  
(LEGISLATIVE COMPETENCE)  
(HEALTH AND HEALTH SERVICES)  
ORDER 2011**



## WALES OFFICE

# **PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (HEALTH AND HEALTH SERVICES) ORDER 2011**

*Presented to Parliament by the Secretary of State for Wales  
by Command of Her Majesty  
January 2011*

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This publication is also available on <http://www.official-documents.gov.uk/>

ISBN: 9780101799225

Printed in the UK by The Stationery Office Limited  
on behalf of the Controller of Her Majesty's Stationery Office

ID P002409260      01/11

Printed on paper containing 75% recycled fibre content minimum.

## **MINISTERIAL FOREWORD**

**By the Secretary of State for Wales**

**The Rt. Hon. Cheryl Gillan MP**

### ***Proposed Order in Council on Health and Health Services***

Legislative Competence Orders (LCOs) are Orders in Council made under section 95 of the Government of Wales Act 2006 (the “2006 Act”) which confer legislative competence on the National Assembly for Wales.

This proposed LCO is part of the Welsh Assembly Government’s legislative programme for 2010-11, announced by the First Minister, the Rt. Hon. Carwyn Jones AM, on 13 July 2010. It would confer legislative competence on the Assembly in relation to consent or other authorisation for organ and tissue donation for the purposes of transplantation. I have consulted UK Cabinet colleagues on this proposed Order, and they support its publication for pre-legislative scrutiny.

Part 3 of the 2006 Act gave the National Assembly for Wales the power to pass legislation, known as Assembly Measures, which can do anything that an Act of Parliament can do, within the constraints set out in the Act. The scope of the Assembly’s powers to pass Measures is set out in Part 3 of, and Schedule 5 to, the Act. The scope of the powers can be extended by adding “matters” to Schedule 5, either through a Parliamentary Bill or, as in this case, by an LCO. The LCO route enables the Welsh Assembly Government - or Assembly Committees or backbenchers - to initiate a request for legislative competence.

Each “matter” simply defines legislative competence. Although the accompanying Explanatory Memorandum sets out the scope and background relating to the request, the details of the legislation to be passed would be set out in Assembly Measures and any subordinate legislation made under them.

Proposed LCOs are subject to pre-legislative scrutiny by the House of Commons Welsh Affairs Committee, the House of Lords Constitution Select Committee and by a committee of the Assembly. In scrutinising proposed LCOs, parliamentary committees consider whether or not it is appropriate to devolve legislative competence to the Assembly in the particular areas of policy specified in the Order.

Final draft Orders, prepared in light of pre-legislative scrutiny, require the approval of the Assembly and both Houses of Parliament before going forward to the Privy Council to be made.

I welcome the work of the Welsh Affairs Select Committee and the House of Lords Constitution Committee and await the outcome of the pre-legislative scrutiny on this proposed Order.

**2011 No.**

**CONSTITUTIONAL LAW**

**DEVOLUTION, WALES**

**The National Assembly for Wales (Legislative Competence) (Health and Health Services) Order 2011**

*Made - - - - -*

*Coming into force in accordance with Article 1*

At the Court at Buckingham Palace, the    day of    2011

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a) a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

**Citation and commencement**

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Health and Health Services) Order 2011 and it comes into force on the day after the day on which it is made.

**Amendment of Schedule 5 to the Government of Wales Act 2006**

2.—(a) Field 9 (health and health services) of Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended as follows.

(2) After Matter 9.2(b)insert —

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(a)

2006 c.32.

(b)

Matter 9.1 was inserted in field 9 by article 3(3) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910). Matter 9.2 was inserted by article 2(2) of the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 (S.I. 2010/236).

*“Matter 9.3*

Consent or other authorisation for the following activities for the purpose of transplantation to a human body—

- (a) storage and use of the body of a deceased adult;
- (b) removal, storage and use of any relevant material of which such a body consists or which it contains.

This matter does not include consent or other authorisation for any of the activities mentioned in paragraphs (a) and (b) in the following circumstances without the consent of a coroner.

The circumstances are those where a person carrying out any activity mentioned in paragraphs (a) and (b) knows, or has reason to believe, that the body of a deceased person, or relevant material which has come from the body of a deceased person, is or may be, required for the purposes of functions of a coroner.

In this matter—

“deceased adult” means a deceased person who had attained the age of 18 before death;

“relevant material” means material that consists of human cells, apart from gametes, embryos, hair and nails.”.

*Name*  
Clerk of the Privy Council

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Government of Wales Act 2006 (“the 2006 Act”).

The Order extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (or “Assembly Measures”). It does this by adding a new matter to the field of health and health services contained within Schedule 5 to the 2006 Act. Subject to general limitations on the legislative competence of the National Assembly for Wales, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act, an Assembly Measure may make provision that relates to the matters contained in the fields set out in Schedule 5 to the 2006 Act.

Article 2 inserts matter 9.3 into field 9 (health and health services) of Part 1 of Schedule 5 to the 2006 Act. Matter 9.3 is about consent or other authorisation for the following activities for the purpose of transplantation to a human body—

- (a) storage and use of the body of a deceased adult;
- (b) removal, storage and use of any relevant material of which such a body consists or which it contains.

Matter 9.3 contains an exception relating to circumstances in which persons carrying out the activities mentioned in paragraphs (a) and (b) above know, or have reason to believe, that the body or relevant material subject to the activity is, or may be, required for the purposes of functions of a coroner. The matter does not include provision that allows the carrying out of the activities mentioned in paragraphs (a) and (b) in these circumstances without the consent of a coroner.

The new matter 9.3 contains definitions of “deceased adult” and “relevant material.”

A full regulatory impact assessment has not been prepared for this Order since the effect of this Order is only to confer competence on the National Assembly for Wales to legislate.

**MEMORANDUM  
DRAFTED BY  
THE WELSH ASSEMBLY GOVERNMENT**

## **MEMORANDUM FROM THE WELSH ASSEMBLY GOVERNMENT**

### **CONSTITUTIONAL LAW: DEVOLUTION, WALES**

#### **The National Assembly for Wales (Legislative Competence) (Health and Health Services) Order 2011**

#### **Proposed Legislative Competence Order relating to organ and tissue donation for the purposes of transplantation**

##### **Introduction**

1. This Explanatory Memorandum explains the background to, and the scope of, the powers requested in the accompanying proposed Legislative Competence Order.
2. Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”) defines the extent of the competence of the National Assembly for Wales (“the Assembly”) to pass legislation. Schedule 5 to the 2006 Act (“Schedule 5”) contains 20 ‘fields’ (field 9 is “health and health services”) and these fields may contain related ‘matters’ (Matter 9.1 is to do with “...the provision of redress...in connection with... the health service in Wales”). The Assembly is empowered to legislate, within the scope of matters in Schedule 5, by passing Assembly Measures.
3. A Measure has the same effect as an Act of Parliament. Subject to certain limitations set out in Part 2 of Schedule 5 to the 2006 Act, it can amend existing legislation and make new provisions in relation to any matter in Schedule 5.
4. An Order made by Her Majesty in Council is one way in which the competence of the Assembly to pass legislation may be extended. Such an Order is known as a ‘Legislative Competence Order’ (“LCO”) and is made under section 95 of the 2006 Act. It amends Schedule 5 by adding matters specified in the Order that relate to one or more of the ‘fields’ in Schedule 5.
5. The purpose of the accompanying proposed LCO is to extend the legislative competence of the Assembly in field 9 (health and health services) of Schedule 5. Schedule 5 is attached at Annex A showing the legislative competence that the Assembly has acquired to date. This will allow Welsh Ministers, Assembly Members and Assembly Committees to bring forward proposals for legislation, relating to consent or other authorisation for organ and tissue donation for the purposes of transplantation, within the scope of the new matters, which may then be scrutinised and passed by the Assembly.

## **Background**

6. The Welsh Assembly Government wishes to increase the number of organ and tissue donors in Wales to improve both the health and quality of life of citizens.

7. The proposed LCO covers organ and tissue donation. The use of both tissues and organs are currently governed by the Human Tissue Act 2004. The current organ donation opt-in system includes organs and tissues. The Organ Donation Register (“ODR”) covers organs and corneas. It should be noted that there is often a general lack of precision when reference is made in reports and publications to organ and tissue donation. Indeed this Explanatory Memorandum makes reference to reports and publications that refer to “organs”, where “tissues” are also included. Therefore for the avoidance of doubt, this Explanatory Memorandum and the accompanying LCO refer to both organs and tissues.

8. It should be noted that where reference is made to externally sourced publications, the term “presumed consent” is sometimes referred to by those authors, with reference to the opt-out system.

9. The Welsh Assembly Government seeks to introduce an opt out system of organ donation for those living and dying in Wales, in addition to continuing to participate in the existing UK-wide opt-in system.

10. This document explains the rationale for further intervention in Wales over and above the current opt-in system in the UK. It should be noted that much progress has been achieved in recent years across the UK, with a record number of transplants (3,706) carried out in the last year, an increase of 5% over the previous year<sup>1</sup>. An even higher increase has been recorded in Wales, which has seen a 20% rise in the number of organ donors, with the deceased donation rate rising to 13.7 per million population (“pmp”), from 12.2 pmp. These improvements are based on the implementation of the Organ Donation Taskforce recommendations made in 2008, which aims to bring about a 50% increase in organ donation rates by 2013. To date, donor rates across the UK have increased by about 22% over the baseline year of 2007/08.

### *Demand for organs and tissues*

11. Across the UK, hundreds of people die each year while waiting on the transplant waiting list for a suitable donor to become available. Of the 1,000 or so people that die each year for want of a transplant, only about 500 are actually on the waiting list<sup>2</sup>. There is evidence to suggest that the transplant waiting list under-reports the number of people actually in need of a transplant and that more people would be placed on the list by clinicians if more organs were available.

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<sup>1</sup> NHS Blood and Transplant Annual Activity Report 2009/10, 4<sup>th</sup> November 2010.

<sup>2</sup> ODTF Organs for Transplants The Supplement Report 2008

### *Supply of organs and tissues*

12. Infrastructure changes as a result of the implementation of the Organ Donation taskforce recommendations are addressing the need to identify all potential donors. But once potential donors are identified, it is possible that organs are not being made available in a number of cases not because the deceased objected to donation but because they never took the step of signing the ODR or informing their relatives of their wishes. When relatives were approached for a decision on this matter, up to 40% opted not to donate, often without knowing the deceased individual's wishes.

13. This is supported by surveys, including one by NHS Blood and Transplant ("NHSBT") which reported that 90% of people claimed to support organ donation but only circa 28% of the UK's population are registered on the NHS ODR. Around 30% of organ donors in 2009/10 had registered their positive choice for donation on the ODR but in the remaining 70% of cases, families decided on behalf of the deceased.

14. To further illustrate the shortage of cadaveric organs and tissues for donation, it is relevant to note the rise in the number of living donor transplants, particularly in respect of kidney transplants. (This entails healthy individuals undergoing major surgery, with possible consequences for their own health and wellbeing and with implications for the NHS due to the extra operation and subsequent care costs of the living donor.) In 2009/10 living donors provided 50 (42%) of the total kidneys transplanted into people who live in Wales.

15. Despite such developments, the disparity between the number of donors and the number of people requiring a transplant in the UK continues to increase by about 8%<sup>3</sup> a year. Although donor rates have increased by about 22% since 2007/08, it is noteworthy that this gap has persisted despite prolonged advertising campaigns, encouraging people to become donors, and the fact that kidney transplantation is the most clinically and cost effective treatment for those with end stage renal failure ["ESRF"]. Also, for end-stage failure of organs such as the liver, lung and heart, it is the only available treatment.

### *Consideration of current arrangements*

16. In 2008, following a review of organ donation in the UK and elsewhere, the Organ Donation Task Force ("ODTF")<sup>4</sup> made fourteen recommendations within the current legislative framework.

17. All four UK administrations supported the fourteen ODTF recommendations and the Wales Organ Donation Implementation Group ("WODIG") was set up to ensure that they were implemented in Wales. The

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<sup>3</sup> Department of Health, Organs for Transplants. A report from the Organ Donation Taskforce. January 2008

<sup>4</sup>ODTF "Organs for Transplants"

work of WODIG continues but even if fully implemented is not expected to provide the required number of donors to meet expected demand.

18. Later in 2008, as a second piece of work, the ODTF looked into the potential impact of an opt-out system for organ donation in the UK and recommended<sup>5</sup> against it. Some organisations who supported the introduction of presumed consent included the Chief Medical Officers (in all four nations), the BMA, the British Transplant Society and the Royal College of Nursing.

19. Also in 2008 the Assembly's Health, Wellbeing and Local Government Committee held an inquiry into presumed consent for organ donation. It recommended against the Assembly seeking legislative competence at that time but added that any future legislation to introduce presumed consent in Wales should adopt a "soft" opt-out system.

20. Also in 2008, the Welsh Assembly Government ('WAG') Minister for Health and Social Services, Edwina Hart AM OStJ MBE, launched public debates on organ donation in Wales and in May 2009 the WAG published a consultation paper<sup>6</sup> on the issue. The feedback from these demonstrated support for the introduction of new laws for a "soft" opt-out system in Wales. This outcome reflected the results of similar surveys undertaken across the UK<sup>i</sup>, which found that the majority of the public, around 60%, would support a change to an opt-out system.

## Rationale

21. In summary, the principle reasons for introducing a "soft" opt-out organ donation system in Wales are shown below. This list was originally produced by the BMA<sup>7</sup> but is endorsed by the Welsh Assembly Government:

- "Studies show that the majority of people say that they would be willing to donate their organs for transplantation purposes, but only around a quarter of the population are on the NHS Organ Donation Register [*in the UK*]"
- Given that the majority of people say that they would be willing to donate, presuming consent rather than presuming objection is more likely to achieve the aim of respecting the wishes of the deceased person.
- Unlike the current system, there would be a clear mechanism for protecting the wishes of those who do not want to become a donor.
- While relatives would still be consulted, they would be relieved of the burden of making the decision in the absence of any indication of the deceased person's wishes.
- A shift to presumed consent would prompt more discussion with families about organ donation.

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<sup>5</sup> ODTF "*The potential impact of an opt-out system for organ donation in the UK*" November 2008

<sup>6</sup> "Options for changes to the organ donation system in Wales"

<sup>7</sup> BMA Brief of Clinical Working Group Report, contained in Annex E Appendix B of A report from the Organ Donation Taskforce. January 2008

- With such a shift, organ donation becomes the default position. This represents a more positive view of organ donation, which is to be encouraged.
- Despite the acknowledged difficulties of obtaining meaningful data about the presumed consent in other countries, the BMA believes that, as one part of a broader strategy, a shift to presumed consent is likely to have a positive effect on donation rates”.

### **Welsh Assembly Government policy**

22. The Minister for Health and Social Services made a Written Cabinet Statement on Organ Donation in Wales on 18<sup>th</sup> December 2009 and on 13<sup>th</sup> July 2010 the First Minister announced the intention to seek the necessary legislative powers in the 2010/11 legislative programme.

23. Legislative competence is requested to provide for changes to the system of consent to cadaveric organ and tissue donation for the purposes of transplantation.

### **Current legislative and administrative framework**

#### **Human Tissue Act 2004**

24. The Human Tissue Act 2004 (“HTA”) applies to England, Wales and Northern Ireland (there is separate legislation in place in Scotland: The Human Tissue (Scotland) Act 2006). The HTA governs the removal, storage and use of organs and tissue from a deceased person for transplantation and other purposes not covered by the LCO. The HTA makes consent the fundamental principle underpinning the lawful storage and use of organs and tissue.

#### **Human Tissue Authority**

25. The Human Tissue Authority was established in 2005 to regulate the removal, storage, use and disposal of organs and tissue and to act as the UK national competent authority under the European Tissue and Cells Directive (“EUTCD”) for regulating tissue and cells for human application (except those regulated by the Human Fertilisation and Embryo Authority). It is also responsible for approving organ donation from the living, licensing sundry activities and carrying out inspections.

#### **NHS Blood and Transplant (“NHSBT”)**

26. The Organ Donation and Transplantation Directorate of NHSBT (an England and Wales Special Health Authority) manages transplant waiting lists, allocates organs, collects and analyses transplant data for all transplant units in the UK, and promotes organ donation and the NHS ODR. All organs donated in Wales are allocated on a UK basis by NHSBT.

### **Scope**

27. It is proposed that this Legislative Competence Order inserts one matter (Matter 9.3) into Field 9: health and health services in Schedule 5 to the Government of Wales Act 2006. This will enable the Assembly to legislate by way of Assembly Measure.

#### Matter 9.3

28. The matter would provide the Assembly with competence to introduce legislation concerning consent or authorisation for the following activities for the purpose of transplantation to a human body:

- (a) storage and use of the body of a deceased adult;
- (b) removal, storage and use of any relevant material of which such a body consists or which it contains.

29. The matter does not extend to consent or other authorisation for any of the activities set out in paragraph 28 (a) and (b) where a person who is carrying out that activity knows, or has reason to believe, that the body of a deceased person, or relevant material which has come from the body of deceased person, is or may be, required for the purpose of functions of a coroner.

30. The matter defines “deceased adult” to mean a deceased person who had attained the age of 18 before death. “Relevant material” is defined in the Human Tissue Act 2004 as material, which consists of or includes human cells, apart from gametes, embryos outside the human body and hair and nails from the body of a living person. This includes organs, part-organs, tissue and cells of which such a body consists or which it contains. A similar definition is used for the purposes of the LCO.

31. This legislative competence would enable legislation to be developed to take forward the Welsh Assembly Government’s policy of increasing the number of organs and tissues available for donation, and in particular by introducing a “soft” opt-out system. By “soft” opt-out system we mean doctors can remove organs from every adult who lives and dies in Wales where the law applies, unless a person has registered to opt out; but adopting good practice whereby doctors ask the relatives for their agreement at the time of death. The persons to whom such legislation applies will need to be clearly identified in the legislation.

32. Work is already underway to develop a mechanism to determine those to whom the Measure would apply. It will be important to ensure that in the case of the introduction of a “soft” opt-out system in Wales, those to whom it applies have been in Wales for a sufficient period of time to acquire a knowledge and understanding of the system, in order to make an informed decision about whether to opt out and to ensure compliance with the European Convention of Human Rights. Possible eligibility criteria considered to date include people that are, or whose details are listed on the following:

- ordinarily resident in Wales;
- Electoral Register;
- GP Register;
- resident in Wales for at least 6 months, plus another test. This is akin to the Belgium model.

33. With regard to “ordinarily resident”, this term is often used in relation to health and social care but is not defined in statute. The term has been considered by the courts on a number of occasions including in the case of *Shah v Barnet London Borough Council [1983] 1ALL ER 226*. In that case Lord Scarman concluded that "ordinary resident refers to a man's abode in a particular place or country which he had adopted voluntarily for settled purpose as part of the regular order of his life for the time being, whether short or long duration".

34. In order for ordinary residence to be established it is important that the residence is voluntarily adopted and that there is a degree of settled purpose. However there are issues with this option as someone could become ordinarily resident in a day and so may not have had an opportunity to opt out. Consent can only be presumed if people are properly informed and given a genuine opportunity to opt out.

35. Subject to the LCO being made, these options will need to be developed further as part of the legislative process and the appropriate criteria would be set out in the Assembly Measure. These criteria will be developed to ensure that they only apply to those people who both live and die in Wales. In addition provision would also need to be made in the Assembly Measure for certain groups to be excluded. These are likely to include the following:

- All minors under 18 years;
- Adults lacking capacity.

### **Geographical limits of any Assembly Measure**

36. Section 94 of the 2006 Act prohibits Assembly Measures having effect other than in relation to Wales. This LCO applies only to people who live and die in Wales. The means by which this will be defined is a matter for a subsequent Measure.

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

37. Part 2 of Schedule 5 prevents Assembly Measures from altering the functions of a Minister of the Crown without the consent of the Secretary of State. No such functions have been identified as being engaged by this proposed LCO.

### **Conclusion**

38. For the reasons outlined above, it is proposed that the legislative competence of the Assembly is extended in accordance with the provisions of the proposed LCO to which this Explanatory Memorandum relates.

## Annex A

## SCHEDULE 5

### ASSEMBLY MEASURES

#### PART 1

##### MATTERS

**(Text in bold would be added as a result of this Order in Council)**

*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<sup>2</sup>*

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<sup>3</sup>*

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 the 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>4</sup>*

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

*Matter 5.2*

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

*Matter 5.2A<sup>5</sup>*

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<sup>2</sup> Matter 2.1 was inserted by article 2(1) and (2) of the National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2010 (S.I. 2010/1212).

<sup>3</sup> Matter 3.1 was inserted by article 2(1) and (3) of the National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2010 (S.I. 2010/1212).

<sup>4</sup> Matters 5.1 and 5.2 were 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 the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 5 and paragraph 59 of Schedule 2.

<sup>5</sup> Matters 5.2A – 5.2C were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Education) Order 2010 (S.I. 2010/1209).

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

*Matter 5.2B*

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

*Matter 5.2C*

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

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

*Matter 5.3<sup>6</sup>*

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

*Matter 5.4*

Provision about the curriculum in schools maintained by local authorities.

*Matter 5.4A<sup>7</sup>*

The regulation of—

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

*Matter 5.5<sup>8</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).

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<sup>6</sup> Matters 5.3 and 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) and amended by the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 5 and paragraph 59 of Schedule 2.

<sup>7</sup> Matter 5.4A was inserted by section 149(1) and (2) of the Education and Skills Act 2008 (c.25) and amended by the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 5 and paragraph 59 of Schedule 2.

<sup>8</sup> Matters 5.5 to 5.9 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

*Matter 5.6*

Provision about the making arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education.

*Matter 5.7*

Provision about entitlement to primary, secondary and further education and to training.

*Matter 5.8*

Provision about the provision of services that are intended to encourage, enable or assist people—

- (a) to participate effectively in education or training,
- (b) to take advantage of opportunities for employment, or
- (c) to participate effectively in the life of their communities.

*Matter 5.9*

Provision about food and drink provided on school premises or provided for children at a place where they receive education or childcare.

*Matter 5.10<sup>9</sup>*

Arrangements for persons to travel to and from the places where they receive education or training.

This matter applies to—

- (a) persons receiving nursery, primary, secondary or further education or training;
- (b) persons described in matter 5.17 receiving higher education.

*Matter 5.11<sup>10</sup>*

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

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<sup>9</sup> Matter 5.10 was inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), and amended by article 2(2) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and article 6(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

<sup>10</sup> Matters 5.11-5.14 were inserted by section 27(2) of the Further Education and Training Act 2007 (c.25).

#### *Matter 5.12*

Provision for and in connection with the establishment and dissolution of—

- (a) institutions concerned with the provision of further education, and
- (b) bodies that conduct such institutions,

including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.

Provision about—

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

#### *Matter 5.13*

Provision for and in connection with securing collaboration—

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

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

#### *Matter 5.14*

The provision of financial resources for and in connection with—

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

#### *Matter 5.15<sup>11</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

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<sup>11</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).

- (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>12</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>13</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>14</sup>*

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

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

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

<sup>12</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>13</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>14</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).

*Interpretation of this field*<sup>15</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), 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.

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<sup>15</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).

## *Field 6: environment*

### *Matter 6.1<sup>16</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;
- (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—

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<sup>16</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).

- (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>17</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>18</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 or 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

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<sup>17</sup> Matter 9.1 and 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>18</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).

symptoms or manifestations; and it includes (but is not limited to) nursing, psychological intervention, habilitation, rehabilitation and care.

### **Matter 9.3**

**Consent or other authorisation for the following activities for the purpose of transplantation to a human body—**

- (a) storage and use of the body of a deceased adult;**
- (b) removal, storage and use of any relevant material of which such a body consists or which it contains.**

**This matter does not include consent or other authorisation for any of the activities mentioned in paragraphs (a) and (b) in the following circumstances without the consent of a coroner.**

**The circumstances are those where a person carrying out any activity mentioned in paragraphs (a) and (b) knows, or has reason to believe, that the body of a deceased person, or relevant material which has come from the body of a deceased person, is or may be, required for the purposes of functions of a coroner.**

**In this matter—**

**“deceased adult” means a deceased person who had attained the age of 18 before death;**

**“relevant material” means material that consists of human cells, apart from gametes, embryos, hair and nails.**

### *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>19</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.

*Matter 10.2*<sup>20</sup>

Concessionary travel on the following services—

- (a) bus services;
- (b) Welsh services provided under a franchise agreement to which the Welsh Ministers are a party.

Any expression which is used in paragraph (b) and the Railways Act 2005 has the meaning given in that Act.

*Interpretation of this field*

In this field—

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

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

*Field 11: housing*

*Matter 11.1*<sup>21</sup>

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

In this Matter “new residential premises” means—

- (a) premises newly constructed for residential use,
- (b) premises newly converted to residential use,

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<sup>19</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.

<sup>20</sup> Matter 10.2 inserted by the National Assembly for Wales (Legislative Competence) (Transport) Order 2010 (SI 2010/1208).

<sup>21</sup> Matter 11.1 was inserted by the National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010 (SI 2010/1210).

- (c) premises converted to use as one or more new residences by subdivision of one or more existing residences, and
- (d) premises converted to use as one or more new residences by amalgamation of one or more existing residences.

*Matter 11.2*<sup>22</sup>

Social housing providers

*Matter 11.3*

Relevant social housing bodies.

*Matter 11.4*

Tenure of rented social housing and other arrangements under which social housing is provided.

*Matter 11.5*

Disposals of—

- (a) social housing,
- (b) land held or used for the purposes of, or in connection with, social housing, and
- (c) land to which a provision of any of the following enactments applies—
  - (i) Part 2 of the Housing Act 1985;
  - (ii) Part 5 of the Housing Act 1985;
  - (iii) Chapter 2 of Part 1 of the Housing Act 1996;
  - (iv) Chapter 4 of Part 1 of the Housing Act 1996;
  - (v) Chapter 4 of Part 2 of the Housing and Regeneration Act 2008 (insofar as the disposal does not fall within paragraph (a) or (b) of this matter).

*Matter 11.6*

Provision of advice and non-financial assistance to individuals in respect of their obtaining, and living in, housing.

This matter includes, in particular, advice and non-financial assistance in respect of skills that are relevant to the ability to live independently, or more independently, in housing.

*Matter 11.7*

Provision by local authorities of caravan sites for use by Gypsies and Travellers.

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<sup>22</sup> Matters 11.2 – 11.8 and the interpretation provisions for field 11 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010 (SI 2010/1838).

*Matter 11.8*

Homelessness.

*Interpretation of this field*

In this field—

“caravan site” means—

- (a) land on which a caravan or other mobile accommodation (apart from a tent) is stationed for the purposes of human habitation, and
- (b) land which is used in conjunction with land falling within paragraph (a) of this definition;

“local authority” means a county council or a county borough council in Wales;

“relevant social housing body” means a person (if, or insofar as, it is not a social housing provider) which has functions relating to—

- (a) social housing providers, or
- (b) social housing;

but such a person is a relevant social housing body only insofar as the person has functions relating to social housing providers or social housing;

“social housing” means any housing provided by a social housing provider;

“social housing provider” means—

- (a) a local authority, and
- (b) a person (other than a local authority) which—
  - (i) provides housing to, or
  - (ii) has functions relating to allocation of housing to, people whose needs are not adequately served by the commercial housing market;

but a local authority or such other person is a social housing provider only insofar as it provides, or has functions relating to allocation of housing.

*Field 12: local government*

*Matter 12.1*<sup>23</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.

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<sup>23</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. Matter 12.1 was amended by article 2(1) and (2) of the National Assembly for Wales (Legislative Competence) (Local Government) Order 2010 (SI 2010/1211),

*Matter 12.2*

Provision for and in connection with—

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

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

*Matter 12.3*

Any of the following—

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

For the purposes of this matter—

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

“member” includes a co-opted member within the meaning of that Part.

*Matter 12.4*

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

*Matter 12.5*

Provision for and in connection with—

- (a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,

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

The following are “relevant Welsh authorities”—

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

#### *Matter 12.6<sup>24</sup>*

Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements.

This matter does not include—

- (a) direct elections to executives of principal councils, or
- (b) the creation of a form of executive requiring direct elections.

For the purposes of this matter—

- (a) “executive arrangements” has the same meaning as in Part 2 of the Local Government Act 2000;
- (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).

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<sup>24</sup> Matters 12.6 and 12.7 were inserted by section 33 the Local Democracy, Economic Development and Construction Act 2009 (c. 20) and amended by article 2(1), (3) and (4) of the National Assembly for Wales (Legislative Competence) (Local Government) Order 2010 (SI 2010/1211).

*Matter 12.8*<sup>25</sup>

Areas of communities and constitution, structure, and procedures of local government institutions for communities.

*Matter 12.9*

Electoral arrangements for elected local government institutions for communities.

In this matter “electoral arrangements” does not include—

- (a) the local government franchise;
- (b) electoral registration and administration;
- (c) the voting system for the return of members in an election.

*Matter 12.10*

Conferral on local government institutions for communities of powers—

- (a) to which this matter applies,
- (b) that are exercisable in relation to their areas, and
- (c) that are powers exercisable by principal councils in relation to principal areas.

This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area.

*Matter 12.11*

Grants from the Welsh Ministers to fund local government for communities.

*Matter 12.12*

Relations between different communities (and their local government institutions), or between communities (and their local government institutions) and principal councils.

*Matter 12.13*

Schemes for the accreditation of quality in local government for communities.

*Matter 12.14*

Public participation in local government for communities (apart from elections).

*Matter 12.15*

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<sup>25</sup> Matters 12.8 – 12.17 and interpretation provisions for field 12 were inserted by article 2(1) and (5) of the National Assembly for Wales (Legislative Competence) (Local Government) Order 2010 (SI 2010/1211).

The provision of information relating to local government to the public.  
For the purposes of this matter “local government” means—

- (a) local government for communities;
- (b) local government for counties and county boroughs.

*Matter 12.16*

Salaries, allowances, pensions and other payments for members of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils;
- (c) National Park authorities;
- (d) fire and rescue authorities constituted by schemes under section 2 of the Fire and Rescue Services Act 2004 or schemes to which section 4 of that Act apply.

*Matter 12.17*

Promoting and supporting membership of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils.

*Matter 12.18<sup>26</sup>*

Council tax payable in respect of dwellings that are not the main residence of an individual.

*Interpretation of this field*

In this field—

“communities” means separate areas for the administration of local government, each of which is wholly within a principal area (but does not constitute the whole of a principal area);

“principal area” means a county borough or a county;

“principal council” means a council for a principal area.

*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*

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<sup>26</sup> Matter 12.18 inserted by article 3 of the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010 (SI 2010/1211).

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>27</sup>*

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<sup>27</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).

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>28</sup>*

Functions of public authorities relating to—

- (a) safeguarding children from harm and neglect;
- (b) safeguarding and promoting the well-being of vulnerable children;
- (c) reducing inequalities in well-being between children or young persons.

This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.

*Matter 15.3*

Adoption services and special guardianship support services.

*Matter 15.4*

Fostering.

*Matter 15.5*

Social care services for any of the following—

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after—
  - (i) who have attained the age of 25, and
  - (ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

*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;

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<sup>28</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).

- (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>29</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,

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<sup>29</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).

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>30</sup>*

Social care services connected to mental health.

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

*Interpretation of this field<sup>31</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-

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<sup>30</sup> Matter 15.10 was inserted by article 3 of the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 (S.I. 2010/236).

<sup>31</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).

residential care services; information, advice, counselling or advocacy services; financial or any other assistance;

“vulnerable children” means children—

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

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

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

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

#### *Field 16: sport and recreation*

##### *Matter 16.1<sup>32</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>33</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—

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<sup>32</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>33</sup> Matters 16.2 and 16.3, and interpretation provisions for field 16, were inserted by section 310 of the Marine and Coastal Access Act 2009 (c. 23).

- (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.

*Matter 16.4<sup>34</sup>*

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;

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<sup>34</sup> Matter 16.4 and the interpretation of “local authorities” were inserted by article 2(1) and (4) of the National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010 (SI 2010/1212).

“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>35</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—

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<sup>35</sup> Matters 18.1-18.3 and interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (c. 29).

- (a) plans of local planning authorities in relation to the development and use of land in their areas, and
- (b) removing requirements for any such plans.

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

*Interpretation of this field*

In this field—

- “local planning authority” in relation to an area means—
  - (a) a National Park authority in relation to a National Park in Wales;
  - (b) a county council in Wales or a county borough council, in any other case;

“Wales” has the meaning given by Schedule 1 to the Interpretation Act 1978.

*Field 19: water and flood defence*

*Field 20: Welsh language*

*Matter 20.1<sup>36</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;

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<sup>36</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).

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

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

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

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

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

- (a) this matter only includes duties in respect of the services and the other related services mentioned, and

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

This matter does not include imposing duties about broadcasting.

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

*Matter 20.2*

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

*Interpretation of this field*

In this field—

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

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

- (a) for which the whole capacity of the vehicle has been purchased by a charterer for the charterer’s own use or for resale;
- (b) which is a journey or trip organised privately by any person acting independently of the vehicle operator; or
- (c) on which the passengers travel together on a journey, with or without breaks and whether or not on the same day, from one or more places to one or more places and back;

“enactment” includes any future enactment;

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

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

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

“public money” means—

- (a) moneys made available directly or indirectly by—

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

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

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

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

## PART 2

### EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS<sup>37</sup>

#### Exceptions to matters<sup>38</sup>

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<sup>37</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>38</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).

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

*Culture (field 3 of Part 1)<sup>39</sup>*

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

*Economic development (field 4 of Part 1)<sup>40</sup>*

- (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)<sup>41</sup>*

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

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<sup>39</sup> The Culture heading and exceptions were inserted by article 3(1) and (2) of the the National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010 (SI 2010/1212).

<sup>40</sup> The Economic development heading and exceptions were inserted by article 3(1) and (2) of the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248).

<sup>41</sup> The Highways and transport heading and exceptions were inserted by article 2(9) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006). Amendments were made, and further exceptions inserted, by article 3(1) and (3) of the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (SI 2010/248) and article 3 of the National Assembly for Wales (Legislative Competence) (Transport) Order 2010 (SI 2010/1208),

c. regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle's construction or equipment), but not including the setting of technical standards for construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.

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 Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road.
- (14) Transport security (apart from regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements).
- (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) 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—
- (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.

In paragraphs (2) and (14) “learner transport arrangements” means arrangements of the kind described in matter 5.10 which consist of the provision of motor vehicles and are made by—

- (a) public authorities (within the meaning of field 15) exercising functions relating to education or training, or
- (b) institutions or other bodies concerned with the provision of education or training.

#### *Social welfare (field 15 of Part 1)<sup>42</sup>*

- (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 to courts, representation and provision if information, advice and other support to children ordinarily resident in Wales and their families, and

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<sup>42</sup> The Social welfare heading and exceptions were inserted by article 2(9) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

- (b) Welsh family proceedings officers.
- (12) Welfare foods.

*Sport and recreation (field 16 of Part 1)<sup>43</sup>*

- (1) Betting, gaming and lotteries.

*Water and flood defence (field 19 of Part 1)<sup>44</sup>*

- (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>45</sup>*

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<sup>43</sup> The Sport and recreation heading and exception were inserted by article 3(1) and (3) of the National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010 (S.I. 2010/1212).

<sup>44</sup> The Water and flood defence heading and exceptions were inserted by article 3(1) and (4) of the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248).

- 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*

- 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.

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<sup>45</sup> Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 235 and Schedule 17, paragraphs 1 and 3.

- (2) Sub-paragraph (1) does not apply to—<sup>46</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 make under, an Assembly Measure.

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<sup>46</sup> Paragraph 6(2) was substituted 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>47</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*

7

- (1) 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.
- (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>48</sup>

#### *Police Areas<sup>49</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*

9 The general restrictions in Part 2 do not prevent a provision of an Assembly Measure—

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<sup>47</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>48</sup> Paragraph 7 was renumbered as paragraph 7(1), and paragraph 7(2) was inserted, by article 5 of the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010 (S.I. 2010/245).

<sup>49</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).

- (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>50</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

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<sup>50</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).



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ISBN 978-0-10-179922-5

A standard linear barcode representing the ISBN number 978-0-10-179922-5.

9 780101 799225