



**WALES OFFICE**

**PRE-LEGISLATIVE SCRUTINY  
OF THE PROPOSED  
NATIONAL ASSEMBLY FOR WALES  
(LEGISLATIVE COMPETENCE)  
(EDUCATION) ORDER 2010**



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*Presented to Parliament by the Secretary of State for Wales  
By Command of Her Majesty  
October 2009*

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## **MINISTERIAL FOREWORD**

**By the Secretary of State for Wales**

**The Rt. Hon. Peter Hain MP**

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

This is the thirteenth proposed Order in Council under Section 95 of the Government of Wales Act 2006 that the Government has presented to the House of Commons Welsh Affairs Select Committee and the House of Lords Constitution Select Committee for pre-legislative scrutiny. This proposed Order is part of the Welsh Assembly Government's legislative programme as set out by the First Minister, the Rt. Hon. Rhodri Morgan AM, in his speech to the National Assembly for Wales on 14 July 2009.

I have consulted UK Cabinet colleagues on this proposed Order and have their support.

Part 3 of the Government of Wales Act 2006 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 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 Order in Council under Section 95 of the Act. The Order in Council 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 will be contained in Assembly Measures and any subordinate legislation made under them. The National Assembly for Wales deliberates fully on proposed Measures, and any subordinate legislation made under Measures will be subject to scrutiny by the Assembly.

Proposed Orders in Council 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 National Assembly for Wales. In scrutinising proposed Orders, Parliamentary Committees consider whether or not it is appropriate to devolve legislative competence to the National Assembly in the particular areas of policy specified in the Order.

A final draft Order will be prepared in light of the pre-legislative scrutiny. The Welsh Assembly Government will lay that draft Order before the National

Assembly for Wales for its approval. If approved, the unamendable draft Order will be laid before both Houses of Parliament and be subject to the Affirmative Resolution procedure. If both Houses also approve it, the draft Order will then go 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 look forward to the outcome of the pre-legislative scrutiny on this proposed Order.

A handwritten signature in black ink, appearing to read "Nick Hain". The signature is written in a cursive style with a large initial "N".

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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**CONSTITUTIONAL LAW**

**DEVOLUTION, WALES**

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

*Made* - - - -

*Coming into force in accordance with Article 1*

At the Court at Buckingham Palace, the     day of     2010

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(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) (Education) Order 2010 and it shall come into force on the day after the day on which it is made.

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

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

(2) After Matter 5.2(b) insert —

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(a) 2006 c.32.

(b) Matters 5.1 to 5.10 were inserted in Field 5 by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007 No. 910); Matter 5.10 was amended by the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008 No. 1036) and the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008 No. 3132). Matter 5.4A was inserted by section 149 of the Education and Skills Act 2008 (c. 25). Matters 5.11 to 5.16 were inserted by section 27 of the Further Education and Training Act 2007 (c. 25); Matters 5.15 and 5.16 were amended by section 149 of the Education and Skills Act 2008. Matter 5.17 was inserted by S.I. 2008 No. 1036; Matter 5.17 was amended by S.I. 2008 No. 3132. Matter 5.18 was inserted by S.I. 2008 No. 3132.

*“Matter 5.2A*

Conduct and governance of schools maintained by local education 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 education authorities.

*Matter 5.2C*

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

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

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

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

Matter 5.2A comprises the conduct and governance of schools maintained by local education authorities in Wales. It includes the allocation of functions, property, rights and liabilities that relate to such schools.

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

Matter 5.2C is about the establishment of bodies, such as companies, by persons responsible for schools maintained by local education authorities in Wales.

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

**MEMORANDUM DRAFTED BY  
THE WELSH ASSEMBLY GOVERNMENT**

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

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

#### **Proposal for a Legislative Competence Order relating to the conduct and governance of schools.**

##### **Introduction**

1. This Memorandum sets out the background to the provisions in the attached Welsh Assembly Government proposed Legislative Competence Order (LCO) which would confer additional legislative competence upon the National Assembly for Wales (the Assembly).
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy. The UK Government's White Paper "Better Governance for Wales" published in June 2005 set out the UK Government's commitment to enhance the legislative powers of the Assembly, as a democratically elected institution with its own detailed scrutiny procedures.
3. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the Assembly to legislate by Assembly Measure on specified matters. These matters may be added to fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Parts 2 and 3 of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this memorandum.
4. Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or a LCO, approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via a LCO.
5. The proposed LCO would confer further legislative competence on the Assembly, in the field of Education and Training (field 5 within Schedule 5 to the 2006 Act). Attached at Annex A is a copy of Schedule 5 showing the legislative competence that the Assembly has acquired to date and the mechanism by which it was conferred.
6. New legislative powers in respect of the specified matters will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation in the form of Measures, which are based on Welsh priorities and timescales. These

Measures will be subject to thorough scrutiny and approval by the Assembly.

## **Background**

7. Education in Wales is a long devolved policy area. In Wales, prior to the creation of the Assembly in 1999, the extensive executive powers for education in Wales, were exercised by the Secretary of State for Wales. Education is also one of the fields listed in the Government of Wales Act 1998 within which functions were transferred from the Secretary of State for Wales to the Assembly at its inception. The constitutional changes made by the 2006 Act then vested those executive powers in the Welsh Ministers and in addition extensive legislative competence for education and training has already been added to field 5<sup>1</sup>. School governance is however one of the parts of education law for which the Assembly does not have competence.
8. The statutory basis for school governance has existed in much the same form since the introduction of the Locally Managed School Model brought into being for Wales and England by the Education Reform Act 1988. Other than Pupil Referral Units, every maintained school has to have a governing body. The governing body sets the strategic direction of the school and monitors and evaluates progress. The governing body receives an individual school budget and is responsible for allocating resources in a way that it deems fit to support the strategic direction and to discharge its functions (that is its powers and duties) effectively.
9. In addition to the constitutional context, the policy context for the Assembly Government's request for the conferral of legislative competence on the Assembly has several elements.
10. Foremost, the Assembly Government wishes to raise standards of attainment in all schools. In pursuit of this the Assembly Government has piloted a Schools Effectiveness Framework to stimulate, promote and facilitate more and better collaboration. As it expands and develops, the framework will need to take increasing account of school governing bodies because governance provides the accountability mechanism within which schools operate, and the means by which outcomes are monitored and evaluated, resource allocation decided, and responsibility lies for taking action to improve outcomes.
11. Secondly, the Assembly Government is committed to 14-19 Learning Pathways which is a Wales wide initiative in which all learners aged 14-19 will take part. The intention is to provide parity between vocational and academic learning. The success of 14-19 Learning Pathways very much depends on schools, further education institutions (FEIs) and

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<sup>1</sup> <http://www.assemblywales.org/bus-home/bus-legislation.htm>

other learning providers working together, sometimes with learners attending several establishments.

12. The Assembly Government encourages local authorities and further education institutions to consider how provision is planned and organised so that it is effective in terms of what is offered and more efficient in how it is delivered. The number of school pupils in Wales continues to decline with a commensurate rise in surplus capacity. The Assembly Government is challenging local authorities to consider how schools are organised and how they, and others, can work together to create an effective network of providers. The Assembly Government is supporting these changes with capital investment under the 21<sup>st</sup> Century Programme, the aim being to have schools of the right standard in the right places.
13. The Webb Review of the Mission and Purpose of Further Education in Wales (Promise and Performance: December 2007) has emphasised the need for collaboration to be the basis for the delivery of post-14 learning in Wales. The review underlined the importance of providers working collaboratively and it highlighted the value of utilising the potential for new governance arrangements between schools and FEIs (for which the Assembly has competence under Matter 5.13 of Schedule 5 of the 2006 Act). This LCO for school governance would complement Matter 5.13. The Assembly Government's Skills that Work for Wales Strategy has also identified the need to transform the way the post-11 provider network operates and collaborates so as to improve effectiveness and efficiency. It pointed to the need to reshape the learning network to enable and empower providers to work in partnership in order to deliver learning provision tailored for the learner. In line with this theme of needing more and better collaboration, the Deputy Minister for Skills made a written statement to the Assembly on 30 April 2009 stating the Assembly Government's intention to reform governance arrangements for further education institutions. The Minister is establishing a review group to advise him about options for reform.
14. A further theme that has emerged since the creation of the Locally Managed School Model is the growing emphasis placed on children and young people having a voice in their schools. The Assembly Government intends that the United Nations' Convention on the Rights of the Child will continue to underpin its policies. Article 12 of the UNCRC states that a child capable of forming his or her own views has the right to express those views freely in matters affecting the child. Children and young people have an interest in how schools are governed and they need an effective voice. Every school in Wales must by law have a School Council comprising pupils of all ages. In secondary schools, the School Council may nominate pupils from years 11, 12 or 13 to be associate pupil governors who may attend governing body meetings and play a part in policy formulation and decision making.

15. The Assembly Government has commissioned studies of school governance in recent years<sup>2</sup>. These have considered the quality and capability of school governing bodies and governor training. The evidence is that the effectiveness of governing bodies varies and the training available to governors is uneven, with weaknesses in consistency of approach, availability and take-up by governors.
16. In July 2009 the Assembly's Enterprise and Learning Committee published its report 'The Role of School Governors'. The report identified some of the issues described above about training and the effectiveness of governing bodies. Taking the Committee report and other evidence together, the Assembly Government wishes to have the means to address these issues.
17. This proposed LCO will provide the Assembly with competence in relation to school governance. The Assembly now has competence for much of the education law. School governance underpins and relates to how schools work and what they do. It is thus a core part of the law for education. Gaining competence for school governance and the other topics dealt with in this draft Order would therefore allow the Assembly to consider legislation including the potential consolidation of education law for Wales.

### **Current Legislative Framework**

18. Current law for the government of maintained schools, mainly set out in Part III, Chapter 1 of the Education Act 2002 (EA 2002), requires every maintained school in Wales to have its own governing body which is responsible for the local management of that school. This places governing bodies in a central and critical position for the successful and efficient delivery of education in a maintained school setting. This also includes the requirement for local authorities to provide information and training for governors as they see fit to enable them to discharge their functions. Such information and training is free of charge to governors.
19. Current primary legislation in respect of governing bodies deals with topics which include the following:

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<sup>2</sup> *School Governance and Improvement in Wales – Universities of Birmingham and Glamorgan, 2004.*

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

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

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

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

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

- the constitution, functions and membership of governing bodies (principally sections 19, 20, 23 and 34 of EA 2002);
  - the means by which governing bodies may collaborate or federate, including collaboration with Further Education Institutions (“FEI”) (sections 24-26 EA 2002 and section 166 of the Education and Inspections Act 2006 (“E&I Act 2006”));
  - the governing body’s responsibility for the conduct of the school and to promote high standards (sections 21 and 29B EA 2002 and section 38 of the E&I Act 2006); and
  - powers to provide community facilities; to control school premises; and to determine session times; (sections 27-28; 31; 32; EA 2002 respectively).
20. Primary legislation also places requirements on governing bodies concerning their relationships with stakeholders, for example, by providing parents with an annual report, to hold a parents evening and have a process in place for dealing with complaints (sections 30; 33; and 29).
21. Complementing and supporting these core responsibilities and requirements, governing bodies also have functions in relation to innovation in schools (section 1 of the EA 2002, with sections 2-5 setting out administrative arrangements); the formation of companies (sections 11-13 of the EA 2002); the behaviour, discipline and welfare of pupils (section 88 of the E&I Act 2006 and section 61 SSFA 1998), including home-school agreements (section 110 SSFA 1998); consultation with pupils (Section 176 of the 2002 Act); admissions (section 43 E&I Act 2006), and further powers in the case of voluntary aided and foundation schools, where the school is the admissions authority (Part III, Chapter 1 of the SSFA 1998 (as amended) applies); religious worship (sections 70-71 SSFA 1998, as amended by section 55 E&I Act 2006); and charging (section 457 of the EA Act 1996). Voluntary and foundation school governing bodies may propose prescribed alterations to the school, closure of the school, or change of category (sections 28, 29, 30, 35 SSFA 1998).
22. Local Authorities and the Assembly Government have powers of intervention in schools causing concern (Part I, Chapter IV of the SSFA 1998 as amended by Part 4 of the EA 2002 and the E&I Act 2006). These powers provide a means for Local Authorities and the Assembly Government to take action in schools that are failing and/or are badly managed or cause concern. The powers include the appointment of interim executive boards of appointed governors to temporarily govern schools that fall in these categories. Welsh Ministers also have powers to direct governing bodies under sections 496 and 497 of the EA 1996 (as amended), should they consider a body is acting unreasonably or is failing to discharge its duties (except in the case of a voluntary school where a Local Authority arrangement under section 409 EA 1996 applies), and to resolve disputes between governing bodies under section 495 of the EA 1996.

23. Section 22 of the EA 2002 covers the requirement of LEAs to provide free information and training to school governors.

## **Scope**

24. It is proposed that three Matters be inserted into Field 5 (education and training) in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on the issues described in the Matters by way of Assembly Measures.
25. Article 2 of the proposed LCO would insert new Matters 5.2A, 5.2B and 5.2C into Field 5. The following paragraphs describe each Matter in turn.
26. Matter 5.2A would provide the Assembly with competence to legislate with respect to the conduct and governance of schools maintained by local education authorities. With respect to governance it would allow the Assembly to legislate for the constitution and membership of governing bodies, which is currently set by Part III, Chapter 1 of the EA 2002, and for the training of governors; in short the structures for decision making and the quality of that decision making. The Assembly could pass legislation in relation to the creation (or abolition) of, and the allocation of functions amongst, bodies responsible for school governance. The Assembly would have the competence to legislate for how a body should conduct a school. For clarity, substantive changes to school finance and school staffing are not within the competence which would be created by this LCO. If new governance arrangements were created under the LCO, some linked changes to the persons or bodies with functions relating to staffing and finance would be required and so, to that extent, staffing and finance matters are within competence.
27. Matter 5.2B would provide the Assembly with competence to legislate in relation to securing collaboration between persons or bodies with functions in relation to schools maintained by a local education authority (federation of governing bodies would fall within the scope of Matter 5.2A). The Assembly already has the competence for and in connection with securing collaboration between a FEI and a school maintained by a local education authority under Matter 5.13. The current provisions relating to federation and collaboration in respect of school governing bodies are found at sections 24 - 26 of the Education Act 2002.
28. Matter 5.2C would provide competence for the Assembly to legislate in relation to the conferring of authority to establish a body, such as a school company or other educational body that can provide services to schools and FEI's and could be able to exercise functions on behalf of local education authorities. It reflects and extends (in that it allows schools to provide services to a FEI) provision in respect of governing bodies found in sections 11 and 12 of the Education Act 2002.

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

29. Section 94 of the 2006 Act prohibits Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly's legislative competence. A provision is outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.
30. The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the Welsh Ministers, Welsh local authorities or any other public authority functions which did not relate to Wales.

## **Minister of the Crown functions**

31. This proposed Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter (remove or modify) the functions of Ministers of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions, the appropriate UK Government Departments will be consulted and agreement sought to any future proposals to remove or modify those functions.

## **Conclusion**

32. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence of the National Assembly for Wales should be extended in accordance with the provisions of the government proposed LCO to which this Explanatory Memorandum relates.

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

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

## SCHEDULE 5

### ASSEMBLY MEASURES

#### PART 1

#### MATTERS

*Field 1: agriculture, fisheries, forestry and rural development*

*Matter 1.1<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.

*Field 2: ancient monuments and historic buildings*

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<sup>1</sup> Matter 1.1 was inserted by the National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009 (S.I. 2009/1758).

*Field 3: culture*

*Field 4: economic development*

*Field 5: education and training*

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

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

*Matter 5.2*

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

*Matter 5.2A*

**Conduct and governance of schools maintained by local education 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 education authorities.**

*Matter 5.2C*

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

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

*Matter 5.3*

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

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<sup>2</sup> Matters 5.1-5.4 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I.2007/910).

*Matter 5.4*

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

*Matter 5.4A*<sup>3</sup>

The regulation of—

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

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

Provision about school attendance, the behaviour of pupils at school, school discipline and the exclusion of pupils from school (including the duties of parents in connection with those matters).

*Matter 5.6*

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

*Matter 5.7*

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

*Matter 5.8*

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

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

*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.

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

<sup>4</sup> Matters 5.5-5.9 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I 2007/910).

*Matter 5.10*<sup>5</sup>

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

This matter applies to—

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

*Matter 5.11*<sup>6</sup>

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

*Matter 5.12*

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

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

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

Provision about—

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

*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.

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

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

*Matter 5.14*

The provision of financial resources for and in connection with—

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

*Matter 5.15*<sup>7</sup>

The inspection of—

- (za) schools;
- (zb) relevant independent educational institutions;
- (a) education or training provided by institutions concerned with the provision of further education
- (b) pre-16 education or training, or post-16 education or training, provided otherwise than by institutions within paragraphs (za) to (a);
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.

*Matter 5.16*<sup>8</sup>

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

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

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

Education and training for—

- (a) persons who have a greater difficulty in learning than the majority of persons of the same age as those persons;
- (b) persons who have, or have had—
  - (i) a physical or mental impairment, or

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<sup>7</sup> Matter 5.15 was inserted by section 27(2) of the Further Education and Training Act 2007 (c.25) and amended by section 149(1), (3) and (4) of the Education and Skills Act 2008 (c.25).

<sup>8</sup> Matter 5.16 was inserted by section 27(2) of the Further Education and Training Act 2007 and amended by section 149(1) and (5) of the Education and Skills Act 2008 (c. 25).

<sup>9</sup> Matter 5.17 was inserted by article 2(3) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I.2008/1036) and amended by article 6(b) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

- (ii) a progressive health condition (such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment.

*Matter 5.18<sup>10</sup>*

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

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

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

*Interpretation of this field<sup>11</sup>*

In this field—

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

“post-16 education” means—

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

“post-16 training” means—

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

“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.

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<sup>10</sup> Matter 5.18 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.

<sup>11</sup> Interpretation provisions were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), section 27(3) of the Further Education and Training Act 2007 (c. 25), article 2(4) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 and section 149(1) and (6) of the Education and Skills Act 2008.

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

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

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

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

*Field 6: environment*

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

*Field 8: food*

*Field 9: health and health services*

*Matter 9.1*<sup>12</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.

*Interpretation of this field*

In this field—

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

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

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

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

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

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

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>13</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.

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

*Interpretation of this field*

In this field—

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

*Field 11: housing*

*Field 12: local government*

*Matter 12.1*<sup>14</sup>

Provision for and in connection with—

- (a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (b) the establishment of councils for new principal areas and the abolition of existing principal councils.

“Principal area” means a county borough or a county in Wales, and a “principal council” means a council for a principal area.

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<sup>13</sup> Matter 10.1 and the interpretation provisions for field 10 were inserted by section 22 of the Local Transport Act 2008 (c. 26). See also section 23 of that Act.

<sup>14</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.

### *Matter 12.2*

Provision for and in connection with—

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

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

### *Matter 12.3*

Any of the following—

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

For the purposes of this matter—

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

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

### *Matter 12.4*

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

### *Matter 12.5*

Provision for and in connection with—

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

The following are “relevant Welsh authorities”—

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

*Field 13: National Assembly for Wales*

*Matter 13.1*

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

*Matter 13.2*

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

*Matter 13.3*

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

*Matter 13.4*

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

*Matter 13.5*

Provision about the meaning of Welsh words and phrases in-

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

*Matter 13.6*

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

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

*Field 14: public administration*

*Field 15: social welfare*

*Matter 15.1*<sup>15</sup>

Charges levied by local authorities for social care services provided or secured by them and payments in respect of individuals with needs relating to their well-being so that they, or persons looking after them, may secure social care services to meet those needs.

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

*Matter 15.2*<sup>16</sup>

Functions of public authorities relating to—

- (a) safeguarding children from harm and neglect;
- (b) safeguarding and promoting the well-being of vulnerable children;

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<sup>15</sup> Matter 15.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008/1785) and amended by article 3(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

<sup>16</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.

- (c) reducing inequalities in well-being between children or young persons.

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

*Matter 15.3*

Adoption services and special guardianship support services.

*Matter 15.4*

Fostering.

*Matter 15.5*

Social care services for any of the following—

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

*Matter 15.6*

Co-operation and arrangements to safeguard and promote the well-being of children or young persons,

This matter applies to co-operation by, and arrangements made by,—

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;
- (b) police authorities and chief officers of police for police areas in Wales;
- (c) the British Transport Police Authority;
- (d) local probation boards for areas in Wales;
- (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and the 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
- (f) youth offending teams for areas in Wales;
- (g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
- (h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

*Matter 15.7*

Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

*Matter 15.8*

Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; the functions of such an office or body, including in particular—

- (a) reviewing the effect on children or young persons of the exercise by any persons of functions related to their well-being;
- (b) reviewing and monitoring—
  - (i) advocacy services;
  - (ii) arrangements for dealing with complaints and representations made by, or on behalf of, children or young persons in respect of persons with functions related to their well-being or persons providing them with social care services;
- (c) examining cases of particular children or young persons;
- (d) considering, and making representations about, any matter affecting the well-being of children or young persons.

*Interpretation of this field<sup>17</sup>*

In this field—

“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;

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<sup>17</sup> Interpretation provisions for field 15 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008/1785) and replaced by article 3 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

“social care services” means any of the following provided in connection with the well-being of any person: residential or non-residential care services; 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>18</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.

*Field 17: tourism*

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<sup>18</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. 2009/3132).

*Field 18: town and country planning*

*Matter 18.1*<sup>19</sup>

Provision for and in connection with—

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

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

*Matter 18.2*

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

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

*Matter 18.3*

Provision for and in connection with—

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

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

*Interpretation of this field*

In this field—

“local planning authority” in relation to an area means—

- (a) a National Park authority in relation to a National Park in Wales;
- (b) a county council in Wales or a county borough council, in any other case;

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

*Field 19: water and flood defence*

*Field 20: Welsh language*

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<sup>19</sup> Matters 18.1 – 18.3 were inserted by section 202 of the Planning Act 2008 (c. 29).

*(Text in italics is proposed to be added by the draft National Assembly for Wales  
(Legislative Competence) (Exceptions to Matters) Order 2009.)*

## PART 2

### EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS

#### Exceptions to matters

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

##### *Highways and transport (field 10 of Part 1)*

- (1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.*
- (2) Road traffic offences.*
- (3) Driver licensing.*
- (4) Driving instruction.*
- (5) Insurance of motor vehicles.*
- (6) Drivers' hour.*
- (7) Traffic regulation on special roads, pedestrian crossings, traffic signs (apart from the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000 for the purposes of the matter 10.1) and speed limits.*
- (8) Public service vehicle operator licensing.*
- (9) Provision and regulation of railway services, apart from financial assistance which—
  - (a) does not relate to the carriage of goods,*
  - (b) is not make in connection with a railway administration order, and*
  - (c) is not make in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.**
- (10) Transport security.*
- (11) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.*
- (12) Technical and safety standards of vessels.*

##### *Social welfare (field 15 of Part 1)*

- (1) Child Support.*
- (2) Child trust funds, apart from subscriptions to such funds by—
  - (a) a county council or county borough council in Wales, or*
  - (b) the Welsh Ministers.**
- (3) Tax credits.*
- (4) Child benefit and guardian's allowance.*
- (5) Social security.*
- (6) Independent living funds.*

- (7) *Motability.*
- (8) *Vaccine damage payments.*
- (9) *Intercountry adoption, apart from adoption agencies and their functions, and functions of the “Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.*
- (10) *The Children’s Commissioner established under the Children Act 2004.*
- (11) *Family law and proceedings apart from—*
  - (a) *welfare advice courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and*
  - (b) *Welsh family proceedings officers.*
- (12) *Welfare foods.*

### *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>20</sup>

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<sup>20</sup> Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 3.

- 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

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

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

This Act

- 6 (1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
- (2) Sub-paragraph (1) does not apply to sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54 and 156(2) to (5).
- (3) Sub-paragraph (1) does not apply to any provision—  
 (a) making modifications of so much of any enactment as is modified by this Act, or

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

### PART 3

#### EXCEPTIONS FROM *GENERAL RESTRICTIONS* IN PART 2

##### Interpretation

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

##### Functions of Ministers of the Crown

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

##### Police Areas<sup>21</sup>

- 7A Part 2 does 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—*
- (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

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<sup>21</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.

- 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>22</sup>

- 11 Part 2 does not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, section 31(6) of the Data Protection Act 1998 so that it applies to complaints under any Assembly measure relating to matter 9.1 in Part 1.

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<sup>22</sup> Paragraph 11 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (SI 2007/910).



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