



**WALES OFFICE**

**PRE-LEGISLATIVE SCRUTINY  
OF THE PROPOSED  
NATIONAL ASSEMBLY FOR WALES  
(LEGISLATIVE COMPETENCE)  
(CULTURE AND OTHER FIELDS)  
ORDER 2009**



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ORDER 2009**

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

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ISBN: 9 78 010176 682 1

## **MINISTERIAL FOREWORD**

**By the Secretary of State for Wales**

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

### ***The proposed National Assembly for Wales (Legislative Competence)(Culture and other fields) Order 2009***

This is the tenth 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 Constitutional Affairs 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 15 July 2008.

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 be 'N. G. K.' with a period at the end.



*“Matter 2.1*

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

This matter does not include removal of any public right under an enactment to have access to any such remains, monuments, buildings, places or wrecks.

*Interpretation of this field*

In this field—

“enactment” includes any future enactment;

“local authorities” has the same meaning as in field 15.”

(3) In field 3 (Culture), insert—

*“Matter 3.1*

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

This matter does not include—

- (a) arrangements for the care, preservation and management of local authorities’ records;
- (b) removal of the duty to provide a comprehensive and efficient library service.

*Interpretation of this field*

In this field—

“local authorities” has the same meaning as in field 15;

“local authorities records” means materials under the control of a local authority setting out facts or events or otherwise recording information, including not only written records but records conveying information by any other means whatsoever.”

(4) In field 16 (sport and recreation), insert—

*“Matter 16.4*

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

*Interpretation of this field*

In this field—

“local authorities” has the same meaning as in field 15.”

3.—(1) Paragraph A1 of Part 2 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) Before “*Highways and transport (field 10 of Part 1)*”, insert—

*“Culture (field 3 of Part 1)*

- (1) Public lending right.
- (2) Broadcasting.
- (3) Classification of films, and video recordings.
- (4) Government indemnities for objects on loan.

(5) Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest."

(3) After the entry relating to "*Social Welfare (field 15 of Part 1)*", insert—

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

(1) Betting, gaming and lotteries."

*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”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act (as amended by this Order).

Article 2 inserts matters 2.1, 3.1 and 16.4 and interpretation provisions into fields 2 (ancient monuments and historic buildings), 3 (culture) and 16 (sport and recreation) of Part 1 of Schedule 5 to the 2006 Act.

Article 2(2) inserts matter 2.1 into field 2 (ancient monuments and historic buildings). This matter is about functions of local authorities in supporting, improving and promoting the appreciation by the public of archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks.

This matter does not include removing any public right under an enactment to have access to any remains, monuments, buildings, places or wrecks.

Article 2(3) inserts matter 3.1 into field 3 (culture). This matter is about functions of local authorities in supporting, improving and promoting museums, galleries and libraries, arts and crafts, archives and historic records, and cultural activities and projects.

This matter does not include—

- (a) arrangements for the care, preservation and management of local authorities’ records;
- (b) removing the duty to provide a comprehensive and efficient library service.

Article 2(4) inserts matter 16.4 into field 16 (sport and recreation). This matter is about functions of local authorities in supporting, improving and promoting sport and recreational activities.

Article 3 inserts provisions that modify Part 2 of Schedule 5 to the 2006 Act. The provisions insert exceptions into Part 2 that will apply to all matters in Part 1 of Schedule 5. The exceptions are—

Public lending rights

Broadcasting

Classification of films, and video recordings

Government indemnities for objects on loan

Payments to Her Majesty’s Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest

Betting, gaming and lotteries.

A full regulatory impact assessment has not been prepared for this Order 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) (Culture and other fields) Order 2009**

### **Proposal for a Legislative Competence Order on Culture and other fields**

#### *Introduction*

1. This Memorandum sets out the background to the provisions in the attached Welsh Assembly Government proposed Legislative Competence Order 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 National Assembly for Wales, 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 National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. 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 an 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 an LCO.

5. The proposed LCO would confer further legislative competence on the Assembly, in the fields of Ancient Monuments and Historic Buildings (field 2 within Schedule 5 to the 2006 Act), Culture (field 3 within Schedule 5 to the 2006 Act) and Sport and Recreation (field 16 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. These Measures will be subject to thorough scrutiny and approval by the Assembly.

### *Background*

7. Culture is not a luxury. Its importance as a vital element of everyone's lives, everyday, should be recognised. Welsh culture has and continues to play a fundamental role in the creation of our national identity. It is one of our most important tools in attracting those who want to work, learn, visit and invest in Wales – the Welsh arts and creative industries play an important part in the Welsh economy and contribute to the prosperity of Wales; cultural tourism, the built heritage and major cultural events generate income for Wales. At the local level culture is an important element of community regeneration; cultural activities are widely recognised as an essential element for developing and sustaining community cohesion; sport and recreational activities are an essential element of the health and well-being agenda; culture is an essential part of the education and development of children, young people and lifelong learning and makes an important contribution to adult skills development. And at the individual level cultural activities bring pleasure and wellbeing into our lives.
8. The Welsh Assembly Government's aim is to widen participation to the full range of arts, cultural, sport and recreational services and activities. Low income, background or where people live should not be a barrier to access and participation to high quality cultural experiences. The *One Wales* Programme of Government contains a large number of commitments aimed at promoting arts and culture and encouraging sport and recreational activity.

9. The key role that Welsh local authorities play in the provision of cultural services and activities to their local communities is fully recognised. It is in this context that 'One Wales' identified as a key area strengthening and supporting the role of local authorities in the development and delivery of arts and cultural services and activities across Wales. To deliver this, 'One Wales' contains a commitment to placing a statutory obligation on local authorities to promote culture and encourage partnership to deliver high quality cultural experiences for their communities. Implementation of the 'One Wales' commitment will require new legislation. But the decision for new legislation is not about regulation for its own sake – it is a resolution by the Welsh Assembly Government towards helping to ensure that all the people of Wales have access to high quality cultural provision in their communities.

*Current legislative framework*

10. There is currently no law that imposes a single general statutory duty in relation to the provision of local authority cultural services and activities. Instead, there is a general local authority power and a series of specific powers and duties which are contained in the following legislation:
  - Public Health Act 1875
  - Open Spaces Act 1906
  - Small Holdings and Allotments Act 1908
  - Law of Property Act 1925
  - Public Health Act 1961
  - Local Government (Records) Act 1962
  - Local Authorities (Land) Act 1963
  - Public Libraries and Museums Act 1964
  - Countryside Act 1968
  - Local Government Act 1972
  - Local Government (Miscellaneous Provisions) Act 1976
  - Ancient Monuments and Archaeological Areas Act 1979
  - Wildlife and Countryside Act 1981
  - Cycle Tracks Act 1984
  - Planning (Listed Buildings and Conservation Areas) Act 1990
  - Local Government (Wales) Act 1994
  - Education Act 1996
  - Local Government Act 2000

- Learning and Skills Act 2000
  - Countryside and Rights of Way Act 2000
  - Natural Environment and Rural Communities Act 2006
11. The widest power can be found in section 2 of the Local Government Act 2000. This power is designed to have sufficient breadth to enable local authorities to do anything to promote or improve economic, social and environmental well-being of their area or the persons in it. The power is wide-ranging and so can be used as a 'power of first resort'. Therefore, where there is any doubt as to whether an existing power would enable the local authority to take a particular course of action or deliver a particular service then the well-being power can, in principle, be relied upon to take forward that initiative. When exercising section 2 power, a local authority must have regard to its community strategy and also to any guidance issued by the Welsh Ministers. This power is further limited in that:
- (i) the power cannot be used by local authorities to do anything that they are unable to do by virtue of any prohibition, restriction or limitation on their powers that is contained in any other enactment;
  - (ii) the power does not enable a local authority to raise money (whether by precepts, borrowing or otherwise); and
  - (iii) the Welsh Ministers may by order make provision preventing local authorities from doing anything that is specified, or is of a description specified, in that order.
12. This wide-ranging power, in conjunction with the specific powers and duties, means that local authorities have extensive powers to provide cultural services and activities. The majority of these powers are permissive, in that they do not place an absolute duty on local authorities to provide the majority of such services and activities, there are however some exceptions to this position. These key areas of cultural provision where local authorities have absolute duties are:
- Library Services – The Public Libraries and Museums Act 1964 places a duty on local authorities to provide a comprehensive and efficient library service. Libraries (though not Museums) are therefore a statutory service that local authorities in Wales are obliged to provide.

- Archive Services – The Local Government (Wales) Act 1994 places a duty on local authorities to make and maintain a scheme setting out their arrangements for the proper care, preservation and management of their records. Records for the purpose of this provision include both historical archives and records which belong to or are in the custody of the council (ie administrative records).
13. Other absolute duties on local authorities include a duty to provide allotments (under the Small Holdings and Allotments Act 1908) and a duty to provide public access to “monuments” owned by local authorities (under the Ancient Monuments and Archaeological Areas Act 1979).

*The need for change and the One Wales commitment*

14. The current permissive legislative framework has resulted in huge variance in the range and quality of local authority cultural services and activities provided across Wales. The aim of the One Wales commitment is to improve the delivery of high quality cultural experiences across the whole of Wales by placing all local authority cultural services and activities on a statutory footing in order to:
- improve cultural service provision by local authorities over time and bring the poorer performers in line with the better performers;
  - ensure that local communities are made aware of the local authority cultural services/activities available to them (ie better promotion);
  - increase access to and participation in local authority cultural services/activities, particularly by those groups of people that are currently not engaged or under engaged in this provision, so that participation is not dependent on where people live or their background;
  - encourage local authorities to co-operate more with a range of organisations such as public bodies, the third sector, associations and clubs etc and to collaborate with other local authorities in order to promote and deliver their cultural services/activities, through greater use of partnerships.

15. The current permissive statutory position in relation to local authority cultural services and activities means that the Assembly Government is unable to require local authorities to address the issues it considers necessary to achieve the policy aim of the *One Wales* commitment without new legislation. The Assembly Government does not believe that issuing guidance to local authorities (which it could do under existing powers available) not backed by specific statutory requirements would achieve the aim of the *One Wales* commitment. In particular, it is believed that legislating by Assembly Measure would:
- highlight the contribution of cultural activities to cross cutting agendas such as regeneration, health, social inclusion etc and sharpening the focus on local authority performance in such areas;
  - raise the profile of cultural activities and the role of local government in promoting and supporting them, both within each authority and with the public; and
  - encourage collaboration, both between local authorities and between local authorities and other organisations.
16. The Welsh Assembly Government is mindful in taking forward the *One Wales* commitment that there is a need to preserve the local flexibility of individual local authorities to determine and meet the cultural service needs of their own communities. There is also need to ensure that a statutory duty does not create a minimum standard which could have the unwanted negative impact of lowering provision in some areas rather than securing improvement.
17. The proposed LCO is required to provide competence to enable the Assembly to implement the *One Wales* commitment and achieve its policy objectives.

### **Scope**

18. It is proposed that one matter be inserted into each of Field 2 (Ancient Monuments and Historic Buildings), Field 3 (Culture) and Field 16 (Sport and Recreation) of Part 1 of Schedule 5 to the Government of Wales Act 2006, to enable the Assembly to legislate on these issues by way of an Assembly Measure.
19. Article 2 of the proposed LCO would insert new Matters 2.1, 3.1 and 16.4 and interpretation provisions into Field 2 (Ancient Monuments and Historic Buildings), Field 3 (Culture) and Field 16 (Sport and Recreation).



20. Article 2(2) would insert Matter 2.1 into Field 2. This matter is about archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks. The matter would enable the Assembly Government to legislate in relation to the functions of local authorities in supporting, improving and promoting the appreciation by the public of archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks.
21. This matter does not however extend to the removal of any public rights to have access to any such remains, monuments, buildings, places or wrecks. An Assembly Measure relating to matter 2.1 could not take away those rights, such as the obligation under section 19 of the Ancient Monuments and Archaeological Areas Act 1979.
22. Article 2(3) of the proposed LCO would insert a new Matter 3.1 into Field 3. This matter is about museums, galleries and libraries, arts and crafts, archives and historical records and cultural activities and projects. The matter would enable the Assembly Government to legislate in relation to the functions of local authorities in supporting, improving and promoting museums, galleries and libraries, arts and crafts, archives and historical records and cultural activities and projects.
23. This matter does not however extend to:
  - (i) the arrangements by local authorities for the care, preservation and management of local authority records; and
  - (ii) removal of the duty of local authorities to provide a comprehensive and efficient library service.

These aspects of the relevant service areas are outside the scope of the proposed competence.

24. Article 2(4) of the proposed LCO would also insert a new Matter 16.4 into Field 16. This matter is about sport and recreational activities. The matter would enable the Assembly Government to legislate in relation to the functions of local authorities in supporting, improving and promoting sport and recreational activities.
25. Each of the proposed three matters takes a common form. Each is concerned with the functions of local authorities. 'Functions' is a term widely used in the 2006 Act to encompass both powers and duties.

26. The application of each of the matters is specifically linked to three elements relating to local authority cultural provision namely, 'support', 'improvement' and 'promotion'. This will fully enable the policy aim of the One Wales commitment to be achieved including for instance planning, consultation, collaboration/co-operation, financial or other support, promotion etc.
27. Competence is limited to the functions of local authorities. Local authorities are defined as 'councils of counties or county boroughs' in Wales.
28. In addition to the specific exclusions to Matter 2.1 in Article 2(2) and Matter 3.1 in Article 2(3) set out in paragraphs 21 and 23 above, Article 3 adds a number of exceptions to paragraph A1 of Part 2 of Schedule 5 to the 2006 Act. Section 94 of the 2006 Act, as it is proposed to be amended by the National Assembly for Wales (Legislative Competence)(Exceptions to matters) Order 2009, makes clear that a provision of an Assembly Measure is not within competence if it falls within any of the exceptions listed in that paragraph. Article 3 will therefore apply the following exceptions to all matters in Part 1 of Schedule 5 of the 2006 Act. This mirrors the exceptions already contained in Subjects 3 and 16 of Part 1 of Schedule 7 to the 2006 Act:
  - Public lending rights
  - Broadcasting
  - Classification of films and video recordings
  - Government indemnities for objects on loan
  - Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest
  - Betting, gaming and lotteries.

### **Effect of other provisions in the 2006 Act**

29. The effect of the proposed LCO needs to be considered in the context of the overall provisions of the 2006 Act.

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

30. The proposed LCO would permit the Assembly to legislate by Measure in relation to functions of local authorities in Wales relating to the specified cultural subject areas. There is no provision within the proposed LCO that would enable the Assembly to legislate in relation to English local authority functions.

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

31. By virtue of Part 2 of Schedule 5 to the 2006 Act, an Assembly Measure cannot confer or impose any function on a Minister of the Crown. By virtue of Parts 2 and 3 of Schedule 5 of the 2006 Act, the Assembly may not by Measure remove or modify any functions of a Minister of the Crown without the consent of the Secretary of State.

### **Conclusion**

32. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence should be conferred on the National Assembly for Wales in relation to the proposed LCO to which this Explanatory Memorandum relates.

**Alun Ffred Jones**  
**Heritage Minister**

**June 2009**

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*

*Field 2: ancient monuments and historic buildings*

***Matter 2.1***

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

**This matter does not include removal of any public right under an enactment to have access to any such remains, monuments, buildings, places or wrecks.**

***Interpretation of this field***

**In this field –**

**“enactment” includes any future enactment;**

**“local authorities” has the same meaning as in field 15.**

*Field 3: culture*

***Matter 3.1***

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

**This matter does not include –**

- (a) arrangements for the care, preservation and management of local authorities' records;
- (b) removal of the duty to provide a comprehensive and efficient library service.

*Interpretation of this field*

**In this field –**

**“local authorities” has the same meaning as in field 15;**

**“local authorities’ records” means materials under the control of a local authority setting out facts or events or otherwise recording information, including not only written records but records conveying information by any other means whatsoever.**

*Field 4: economic development*

*Field 5: education and training*

*Matter 5.1<sup>1</sup>*

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

*Matter 5.2*

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

*Matter 5.3*

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

*Matter 5.4*

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

*Matter 5.4A<sup>2</sup>*

The regulation of—

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

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<sup>1</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).

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

*Matter 5.5*<sup>3</sup>

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

*Matter 5.6*

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

*Matter 5.7*

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

*Matter 5.8*

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

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

*Matter 5.9*

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

*Matter 5.10*<sup>4</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.

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

<sup>4</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)

*Matter 5.11*<sup>5</sup>

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

*Matter 5.12*

Provision for and in connection with the establishment and dissolution of—  
(a) institutions concerned with the provision of further education, and  
(b) bodies that conduct such institutions,

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

Provision about—

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

*Matter 5.13*

Provision for and in connection with securing collaboration—

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

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

*Matter 5.14*

The provision of financial resources for and in connection with—

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

*Matter 5.15*<sup>6</sup>

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

<sup>6</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).

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>7</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>8</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>9</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.

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<sup>7</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>8</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).

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



*Interpretation of this field*<sup>10</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>10</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.

*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>11</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 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>12</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.

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<sup>11</sup> Matter 9.1 and the interpretation provisions for field 9 were inserted by article 3(3) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

<sup>12</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.

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>13</sup>*

Provision for and in connection with—

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

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

*Matter 12.2*

Provision for and in connection with—

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

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

*Matter 12.3*

Any of the following—

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<sup>13</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.

- (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>14</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>15</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.

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<sup>14</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>15</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.

*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>16</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;

“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,

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<sup>16</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).



- (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>17</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 16.4<sup>18</sup>*

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

*Interpretation of this field*

**In this field –**

**“local authorities” has the same meaning as in field 15.**

*Field 17: tourism*

*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

<sup>17</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).

<sup>18</sup> Matters 16.2 and 16.3 are included as framework powers in the Marine and Coastal Access Bill.

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

- (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*

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

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

## PART 2

### EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS

#### Exceptions to matters

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

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

- (1) Public lending right.**
- (2) Broadcasting.**
- (3) Classification of films, and video recordings.**
- (4) Government indemnities for objects on loan.**
- (5) Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.**

##### *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.*

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

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

*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>

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.

<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.

- 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 make 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,

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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.

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

- 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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