



WALES OFFICE

**PRE-LEGISLATIVE SCRUTINY
OF THE
PROPOSED
NATIONAL ASSEMBLY FOR WALES
(LEGISLATIVE COMPETENCE)
(ENVIRONMENT)
ORDER 2009**



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ORDER 2009**

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

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MINISTERIAL FOREWORD

By the Secretary of State for Wales

The Rt. Hon. Paul Murphy MP

The proposed National Assembly for Wales (Legislative Competence)(Environment) Order 2009

This is the eighth proposed Order in Council under Section 95 of the Government of Wales Act 2006 that I have 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 6 June 2007.

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.

DRAFT STATUTORY INSTRUMENTS

2009 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative Competence)
(Environment) Order 2009**

Made - - - - 2009

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the day of 2009

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, commencement and interpretation

1.—(1) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Environment) Order 2009.

(2) This Order shall come into force on the day after the day on which it is made.

(3) In this Order “the 2006 Act” means the Government of Wales Act 2006.

Amendments relating to the field of environment

2. In field 6 (environment) of Part 1 of Schedule 5 to the 2006 Act insert—

“Matter 6.1

Preventing, reducing, collecting, managing, treating or disposing of waste in Wales and disposing in the sea adjacent to Wales, out as far as the seaward boundary of the territorial sea, of waste collected, managed or treated on land.

^(a) 2006 c.32.

This matter does not include regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).

This matter does not include regulation of decommissioned explosives that are outside the scope of the waste directive by virtue of Article 2(1)(b)(v) of the waste directive and are or have been—

- (a) held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence;
- (b) held by or for the purposes of visiting forces.

This matter does not include regulation of radioactive material that is at military premises.

This matter does not include regulation of the decommissioning of offshore energy installations and related infrastructure.

This matter does not include regulation of the capture, conveyance and disposal of carbon dioxide as part of relevant carbon capture and storage.

This matter does not include regulation of the following activities in the territorial sea adjacent to Wales—

- (a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;
- (b) depositing any explosive substance or article in the sea or on or under the seabed;
- (c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.

See below for further provision about what this matter does not include.

Matter 6.2

Protecting or improving the environment in relation to pollution.

This matter does not include regulation of oil and gas exploration and exploitation in those parts of the territorial sea adjacent to Wales that are not relevant territorial waters.

This matter does not include—

- (a) regulating the composition and content of fuel used in any of the following—
 - (i) a means of transport;
 - (ii) non-road mobile machinery;
 - (iii) an agricultural or forestry tractor;
- (b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;
- (c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;
- (d) provision of financial support in connection with—
 - (i) the production of renewable energy for consumption in transport, or
 - (ii) the use of that energy in transport,including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.

See below for further provision about what this matter does not include.

Matter 6.3

Protecting or improving the environment in relation to nuisances.

This matter does not include imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose.

This matter does not include removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove.

This matter does not include regulation of the emission of smoke, artificial light or noise from military premises.

This matter does not include regulation of electricity activities, gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities.

This matter does not include regulation of oil and gas exploration and exploitation in the territorial sea adjacent to Wales.

This matter does not include regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

Not included in matters 6.1, 6.2 and 6.3

Provision made by health and safety regulations.

Not included in matters 6.2 and 6.3

Matters 6.2 and 6.3 do not include any of the following—

- (a) regulation of the contained use of genetically modified organisms;
- (b) regulation of the decommissioning of offshore energy installations and related infrastructure;
- (c) regulation of the following activities in the territorial sea adjacent to Wales—
 - (i) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;
 - (ii) scuttling any vessel or floating container;
 - (iii) constructing, altering or improving works in or over the sea or on or under the seabed;
 - (iv) using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;
 - (v) dredging;
 - (vi) depositing or using any explosive substance or article in the sea or on or under the seabed;
 - (vii) incinerating any substance or object on any vehicle, vessel, marine structure or floating container,
- (d) marine licensing under Part 4 of the *Marine and Coastal Access Act 2009*.

Meaning of “pollution”

In this field “pollution” means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.

For the purposes of this definition “air” includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

Meaning of “nuisance”

In this field “nuisance” means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution.

Meaning of “relevant defence” and “relevant exclusion”

In matter 6.3, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance (“the unlawful nuisance”)—

“relevant defence” means statutory removal (however expressed, and whether conditional or not) of the civil or criminal liability in respect of an act, omission or state of affairs that is within the scope of the unlawful nuisance.

“relevant exclusion” means statutory exclusion (however expressed, and whether conditional or not) of an act, omission or state of affairs from the scope of the unlawful nuisance.

In those definitions, a reference to the scope of the unlawful nuisance is a reference to the class of acts, omissions and states of affairs that constitutes the unlawful nuisance.

Other interpretation of this field

In this field—

“agricultural or forestry tractor” means any motor vehicle, fitted with wheels on at least two axles or with caterpillar tracks, where the main function of the vehicle lies in its tractive power and it is specifically designed to tow, push, carry or power certain tools, machinery or trailers intended for agricultural or forestry use;

“electricity activity” means any of the following—

- (a) generating electricity at a generating station whose construction, extension or operation requires—
 - (i) the consent of the Secretary of State, or
 - (ii) the authority of an order granting development consent under the Planning Act 2008;
- (b) transmitting, distributing or supplying electricity;

and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity;

“electronic communication” means a communication transmitted—

- (a) by means of an electronic communications network, or
- (b) by other means but while in an electronic form;

“electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
 - (i) apparatus comprised in the system,
 - (ii) apparatus used for the switching or routing of the signals; and
 - (iii) software and stored data;

“energy nuisance” means a nuisance that relates to electricity activities, gas activities, oil activities, or infrastructure that is necessary for carrying out any such activities;

“environmental harm” means any of the following—

- (a) harm to the health of humans and other living organisms;
- (b) harm to the quality of the environment, including—
 - (i) harm to the quality of the environment taken as a whole,
 - (ii) harm to the quality of the air, water or land, and
 - (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;
- (c) offence to the senses of human beings;
- (d) damage to property;
- (e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;

“gas activity” means storing, conveying or supplying gas, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“marine structure” means a platform or other artificial structure at sea, other than a pipeline;

“military premises” means premises which are—

- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
- (b) occupied by or for the purposes of visiting forces;

“non-road mobile machinery” means any mobile machine, transportable industrial equipment or vehicle with or without body work, not intended for the use of passenger – or goods – transport on the road, in which an internal combustion engine is, or is to be, installed;

“offshore energy installation” means any of the following installations that are maintained in the territorial sea adjacent to Wales, or on the foreshore or other land in Wales intermittently covered with water, and that are not connected with dry land by a permanent structure providing access at all times and for all purposes—

- (a) oil installations (including those used for oil activities or for oil exploration or exploitation);
- (b) gas installations (including those used for gas activities or for gas exploration or exploitation);
- (c) carbon dioxide storage installations;
- (d) renewable energy installations;

“oil activity” means storing, conveying or supplying oil, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“relevant carbon capture and storage” means the capture and underground disposal of carbon dioxide by a method in which the carbon dioxide is captured at the place of its production and conveyed for disposal by pipeline directly from the place of production to a place of underground disposal;

“relevant territorial waters” means the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Wales is measured; but any order made under section 104(4)(a) of the Water Resources Act 1991 for the purposes of Part 3 of that Act in relation to an area of the territorial sea adjacent to Wales also applies for the purposes of determining what are relevant territorial waters for the purposes of this field;

“renewable energy” means energy from renewable non-fossil sources;

“statutory” means arising by virtue of an Act;

“transport fuel” means any of the following—

- (a) renewable transport fuel;
- (b) fossil fuel;
- (c) any solid, liquid or gaseous fuel that is neither renewable transport fuel nor fossil fuel;

“vessel” includes hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;

“Wales” has the same meaning as in the Interpretation Act 1978;

“waste directive” means Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, as it was originally adopted.

An order or an order in council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.”

Amendments to Part 2 of Schedule 5 to the 2006 Act

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

(2) At the appropriate place insert—

“Economic development (field 4 of Part 1)

(1) Generation of electricity at generating stations whose construction, extension or operation requires—

- (a) the consent of the Secretary of State, or
- (b) the authority of an order granting development consent under the Planning Act 2008;

and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity.

(2) Transmitting, distributing or supplying electricity.

(3) Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

(4) Nuclear energy and nuclear installations, including—

- (a) nuclear safety; and
- (b) liability for nuclear occurrences,

but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965.”.

(3) Under the heading *“Highways and transport (field 10 of Part 1)”*—

(a) after paragraph (1) insert—

“(1A) Road freight transport services, including goods vehicles operating licensing”

(b) for paragraph (2) substitute—

“(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment.

For this purpose “relevant vehicle” means—

- (a) a motor vehicle, and
- (b) non-road mobile machinery and agricultural and forestry tractors (each of those expressions having the same meaning as in field 6 of Part 1).”;

(c) after paragraph (11) insert—

- “(11A) Aviation, air transport, airports and aerodromes, apart from—
- (a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,
 - (b) strategies by the Welsh Ministers or local or other public authorities about provision of air services,
 - (c) regulation of the use of aircraft carrying animals for the purpose of protecting any of the following—
 - (i) human health, apart from the health of persons in aircraft;
 - (ii) animal, fish or plant health;
 - (iii) the environment.”;
- (d) for paragraph (12) substitute—
- “(12) Shipping, apart from—
- (a) financial assistance for shipping services to, from or within Wales, and
 - (b) regulation of the use of vessels carrying animals for the purposes of protecting any of the following—
 - (i) human health, apart from the health of persons on vessels;
 - (ii) animal, fish or plant health;
 - (iii) the environment.”;
- (e) for paragraph (15) substitute—
- “(15) Harbours, docks, piers and boatslips, apart from —
- (a) those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and
 - (b) regulation for the purposes of protecting human, animal, fish or plant health or the environment.
- (16) Carriage of dangerous goods, including transport of radioactive material.”.
- (4) At the appropriate place insert—
- “*Water and flood defence (field 19 of Part 1)*
- (1) Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.
 - (2) Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.”.

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.

Article 2 inserts matters 6.1, 6.2 and 6.3 into field 6 (environment) of Part 1 of Schedule 5 to the 2006 Act. It also inserts interpretation provisions into that field.

Matter 6.1 is about preventing, reducing, collecting, managing, treating or disposing of waste.

Matter 6.2 is about protecting or improving the environment in relation to pollution.

Matter 6.3 is about protecting or improving the environment in relation to nuisances.

There are a number of exclusions from the three matters.

Article 3 amends Part 2 of Schedule 5 to the 2006 Act to make provision for exceptions that apply to all matters in Part 1 of Schedule 5.

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 Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009

Proposal for a Government Legislative Competence Order relating to the Environment

Introduction

1. The memorandum sets out the background to and the context of the proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009.
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act). 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 can therefore modify existing legislation and make new provisions), 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.
3. Matters may be inserted into the Fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or a Legislative Competence Order, 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 Legislative Competence Order.
4. The proposed LCO would confer further legislative competence on the National Assembly for Wales, in the Field of environment (Field 6 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.

Background

The Strategic Context

5. This proposed LCO will provide the National Assembly for Wales ('the Assembly') with competence in relation to waste, pollution and nuisances. The Welsh Assembly Government's vision, as set out in the *One Wales* Programme of Government, is of a truly sustainable environment and the Welsh Assembly Government is pursuing a number of specific actions and policies, including seeking enhanced legislative competence, in order to realise this vision. The Environment is a long-devolved policy area, being one of the Fields listed in the Government of Wales Act 1998 within which

Ministerial functions were transferred from the Secretary of State for Wales to the Assembly at its inception. In addition, further executive functions have been devolved to Welsh Ministers in subsequent Acts of Parliament. The proposed LCO seeks legislative competence for the Assembly over areas where executive competence is already held by Welsh Ministers. This would allow the Assembly to consider legislation in this area and enable the Welsh Assembly Government to propose legislation supporting the delivery of the vision above. This LCO was one of the very first Orders brought forward by the Welsh Assembly Government and is an integral part of its legislative programme.

6. The Welsh Assembly Government's overall approach to waste, pollution and local environmental quality is set out in a number of strategic policy documents. The key overarching document is the Welsh Assembly Government's Sustainable Development Scheme, which is of particular relevance to the scope of the powers in the Order. Section 79 of the Government of Wales Act 2006 places a duty on Welsh Ministers to prepare a scheme setting out how they propose, in the exercise of their functions, to promote sustainable development. In November 2008, the Welsh Assembly Government published for consultation its revised Sustainable Development Scheme entitled '*One Wales: One Planet*' setting out the Welsh Assembly Government's vision of a sustainable Wales and establishing sustainable development as the central organising principle for policy development and implementation. The revised scheme sets out that in order to achieve this goal over a generation, the total resources currently used to sustain our lifestyles need to be reduced by two thirds. This includes radically reducing our use of carbon-based energy by 80-90%, resulting in a similar reduction in greenhouse gas emissions; having a radically different approach to waste management and moving towards a zero waste nation; and organising the way we live and work so we can travel less by car. The LCO will provide legislative powers to the Assembly that will enable the Welsh Assembly Government to propose legislation which will be a vital tool in helping to deliver the sustainable development duty.
7. The Sustainable Development Scheme sets out the Welsh Assembly Government's broad approach, across the full range of its responsibilities, toward realising the vision of a sustainable Wales. The Environment Strategy for Wales (2006) builds on the Sustainable Development Scheme's aspirations by providing more detail on the Welsh Assembly Government's long term strategy for the environment of Wales. The Environment Strategy sets the strategic direction for the next 20 years and establishes the framework within which to achieve an environment which is clean, bio-diverse healthy, and valued by the people of Wales. It is supported by a series of action plans and a policy map setting out the key actions that are being taken to deliver its outcomes. There are a number of key outcomes that are relevant to the scope of the LCO.
8. In relation to waste management, the Environment Strategy emphasises that achieving a more sustainable pattern of consumption and production will help reduce the impact that economic activity has on the environment. The Strategy sets out a range of outcomes which the Welsh Assembly Government will work towards, including minimising the amount of waste

generated in Wales; accepting the principle of 'reduce, reuse and recycle' across government, business, industry and home life; ensuring appropriate waste management facilities are in place to minimise landfill; and encouraging business to produce designed products that require less resources and ensure minimal waste.

9. The Environment Strategy also aims to minimise pollution and reduce its impact on the environment and on health. Outcomes which the Welsh Assembly Government is working towards include reducing air pollution, leading to increased life expectancy; and maintaining and enhancing the quality of groundwater, rivers, lakes and coastal waters.
10. In relation to local environmental quality, the Environment Strategy notes the Welsh Assembly Government's aim of securing places where quality of life is not negatively affected by environmental nuisances. A specific outcome in this area is the minimisation of environmental nuisances such as litter, flytipping, graffiti, dog fouling, fly-posting, noise pollution and light pollution.
11. Supplementing the Environment Strategy's strategic approach in relation to waste management is the Welsh Assembly Government's long term framework for waste management and resource efficiency, set out in 'Wise About Waste – The National Waste Strategy for Wales' (2002). The National Waste Strategy provides further detail on how the Welsh Assembly Government will work in partnership with others to move Wales from an over-reliance on landfill to more sustainable waste management by limiting the amount of waste produced and managing it more effectively, recycling and composting far more and finally disposing safely the waste that cannot be recycled or composted. 'Wise About Waste' is currently being reviewed and a revised Waste Strategy will be issued for consultation in the first half of 2009.

Current Legislative Framework

12. The Welsh Assembly Government has significant executive powers and secondary legislative competence across a wide range of legislation relating to the environment. In relation to the scope of the powers within the Order, Welsh Ministers have very broad powers that have been devolved from a number of sources. The key sources of these powers are as follows:

- Control of Pollution Act 1974 and Control of Pollution (Amendment) Act 1989

These Acts provide powers in relation to waste carriage and disposal, water pollution, noise pollution, atmospheric pollution and public health.

- Food and Environmental Protection Act 1985

This Act gives the Welsh Ministers powers to control the dumping of waste in the territorial sea adjacent to Wales.

- Local Government Acts of 1988 and 1999

These Acts provide further powers in relation to setting statutory recycling and composting targets.

- Environmental Protection Act 1990

The Act provides Welsh Ministers with broad powers in relation to integrated pollution control and integrated air pollution control; statutory nuisances and clean air; contaminated land; waste; and litter.

- Water Industry Act and Water Resources Act 1991

Under these Acts, the Welsh Ministers have the functions of regulating water quality and wholesomeness, and preventing and controlling water pollution, in relation to Wales.

- Clean Air Act 1993

This Act confers powers on the Welsh Ministers in relation to certain types of emission into the air.

- Environment Act 1995

The Act provides Welsh Ministers with powers to give directions and guidance to the Environment Agency with regard to how the Agency carries out its wide-ranging functions, which include pollution control, waste and contributing to the achievement of sustainable development.

- Pollution Prevention and Control Act 1999

This is a key piece of legislation which provides powers for Welsh Ministers to make subordinate legislation regulating any kind of polluting activities, or to prevent or control emissions capable of causing any pollution.

- Anti-Social Behaviour Act 2003

This Act provides powers relating to graffiti.

- Clean Neighbourhoods and Environment Act 2005

In relation to local environmental quality, key executive powers are contained within this Act, which provides powers in relation to noise and in relation to Site Waste Management Plans.

- European Law

Welsh Ministers also have considerable powers under Designation Orders, designating them for the purposes of implementing European law. Some of the key Designations are:

- the European Communities (Designation) (No. 3) Order 2000 No 2812 - Designation in relation to air quality

- the European Communities (Designation) (No. 2) Order 2003 No. 1246 – (Designation in relation to urban and industrial waste water);
 - the European Communities (Designation) (No. 4) Order 2003 No. 2901 (Designation in relation to water resources)
 - the European Communities (Designation) (No. 7) Order 2004 - Designation in relation to water quality;
 - the European Communities (Designation) Order 2004 No. 706 - Designation in relation to environmental noise;
 - EC Designation Order 2005/850 (Designation for “measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste”); and
 - the European Communities (Designation) Order 2007 No. 193 (Designation in relation to land contamination);
13. The above paragraphs describe some of the key executive powers that Welsh Ministers currently have in relation to the environment. However, Welsh Ministers’ powers in relation to these subject areas are broad and the above list is by no means exhaustive.

Current Actions

14. Legislation is supplemented by a range of executive actions. Many of the key actions in relation to household, commercial and industrial waste management in Wales arise from targets set in the ‘Wise about Waste’ Strategy. For example, the Welsh Assembly Government funds Local Authority household waste recycling via the Sustainable Waste Management Grant and the Regional Capital Access Fund. In 2009/10, the budget for this is £67m. There is also funding (£3.5m in 2009/10) for capital competitions for the provision of strategically important infrastructure. The Welsh Assembly Government also funds a number of service providers who provide a diverse range of advice and support to the general public, business, public sector and the community sector. These include agencies such as Envirowise, WRAP, Wise about Waste and Cylch. The development of Sector Plans as part of the review of the current ‘Wise about Waste’ Strategy involves working closely with key sectors to drive forward the goals of the Waste Strategy.
15. In relation to pollution, the Welsh Assembly Government has been working in partnership with Defra and the Environment Agency to take forward the Environmental Permitting Programme (EPP). The EPP aims to reduce the burden of industrial regulation on both regulated businesses and the Environment Agency without reducing effective regulation of human health or the environment. With reference to environmental water quality, the Welsh Assembly Government issues detailed guidance to the Environment Agency to meet a number of European Community Directives, most notably the Water Framework Directive. The key actions to make improvements to water quality are found in the Environment Strategy for Wales, specifically that diffuse pollution is better understood, and action is taken to reduce and manage diffuse pollution. Much of the regulatory work in relation to pollution control and waste management is undertaken by the Environment Agency, to which the Welsh Assembly Government provided over £23m grant funding

in 2008-09. The Welsh Assembly Government has a general power of direction over the Environment Agency (Wales).

16. With regard to local environment quality issues, the Welsh Assembly Government issued detailed guidance in 2008 on the powers contained within the Clean Neighbourhoods and Environment Act 2005 which is designed to help community and town councils decide whether to utilise the powers under the Act. These include powers for community and town councils to take legal action against those that litter, flyposting or graffiti in their areas. The 'Tidy Towns' initiative, a *One Wales* commitment, was launched in April 2008, and is supported by an annual fund of £4 million. Funding is available to local authorities where there is evidence that they have worked with local communities, voluntary organisations and other key stakeholders to improve the quality of their local environment. The aim of the project is to empower the people of Wales to take responsibility for the quality of their own local environment so that over the next 3 years they can contribute towards a clean, safe and tidy Wales.
17. These activities have contributed to the Welsh Assembly Government making clear progress in relation to the overall goal of sustainable development. The latest Sustainable Development Indicators report by the Welsh Assembly Government, published in August 2008, shows clear improvements in 15 of the 39 areas measured and includes improvements in environment-related indicators such as biodiversity conservation (the status of Biodiversity Action Plan species); air quality, both urban and rural; river quality; waste (waste arisings by disposal); household waste (recycled or composted); sustainable water and greenhouse gas emissions. The 'State of the Environment' bulletin, also published in 2008, summarises the latest information on the indicators that monitor progress against the Environment Strategy. The bulletin highlighted that there had been an improvement in over half of the indicators that have been defined and where information exists, including in relation to both waste management and pollution. For waste management the indicators showed improvements in areas such as the proportion of municipal, industrial and commercial waste recycled or composted; the proportion of municipal, industrial and commercial waste sent to landfill; and the proportion of packaging waste recovered in the UK. In relation to environmental hazards, there was an improvement in the indicators relating to bathing water quality; the intake of persistent organic chemicals and metals via food intake in relation to WHO guidelines; and trends in radioactive discharges from major sources in Wales.

The need for change

18. The key driver for legislative competence in relation to these policy areas is that it will enable Welsh Ministers to propose legislation to the Assembly that supports the goal of a more holistic approach to policy development and improvement in what is a long-devolved policy area. As previously noted in paragraphs 12-13, Welsh Ministers already have wide-ranging executive powers in relation to waste, pollution and local environmental quality. However, the regulation-making powers, whilst wide, restrict Welsh Ministers to a piecemeal approach to regulatory change across this policy area. Legislative competence will enable Welsh Ministers to adopt a more holistic

approach to tackling critical challenges in relation to the environment and propose more strategic legislation for consideration by the Assembly.

19. Closely linked to the need for a more holistic and coherent approach to legislation is the fact that the Welsh Assembly Government has a distinct and clearly defined policy agenda in relation to environmental policy. The Welsh Assembly Government undertakes a wide range of activities and initiatives supporting environmental improvement, and creating a sustainable environment is one of the key aims of the *One Wales* Programme of Government. In particular, *One Wales* commits the Welsh Assembly Government to use legislation to strengthen recycling targets and to provide better and more coordinated support in relation to waste management. As noted in paragraphs 5-11, the broad policy commitments set out in *One Wales* are supported by key Assembly Government strategic documents in this policy area, namely the Sustainable Development Scheme, the Environment Strategy and the Waste Strategy. Legislative competence would enable Welsh Ministers to propose coherent strategic legislation in line with the Welsh Assembly Government's defined policy agenda.
20. Legislative competence will also enable Welsh Ministers to propose legislation to the Assembly to address new and significant challenges in relation to the environment. A key challenge, and a headline indicator for the Welsh Assembly Government's sustainable development aspirations, is to reduce Wales' ecological footprint. The ecological footprint is an indicator of the total environmental burden that is placed on the planet and represents the area of land needed to provide the raw materials, energy and food, as well as absorb pollution and waste created – in this case by the Welsh population. Wales' ecological footprint was first calculated using 2001 data and Wales is the first country to recalculate its footprint using 2003 data. The most recent report shows that the Welsh footprint has increased at an average rate of 1.5% per year between 1990 and 2003 – a trend that is replicated elsewhere in the UK. Although the report has confirmed that Wales' ecological footprint is the lowest of the four countries of the UK, it is still at an unsustainably high level and more needs to be done.
21. Another important challenge faced by the Welsh Assembly Government, and a commitment in the *One Wales* Programme of Government, is the implementation of a citizen-centered model of improving public services, drawing on the Beecham Review of Local Service Delivery (2006). The Welsh Assembly Government has put in place a challenging programme to deliver efficient, effective, citizen centred public services. Securing improved waste management, improving local environmental quality standards and safeguarding the environment and human health from pollutants are key elements of providing better quality public services to the citizens of Wales.
22. Legislative competence will enable Welsh Ministers to propose legislation to the Assembly to respond effectively to these and other challenges as they emerge and meet the Welsh Assembly Government's aspiration of a truly sustainable environment and the provision of excellent public services. It is important that all the appropriate policy levers, including legislative competence, are available to help address significant environmental challenges in a holistic manner and improve the local environment for people

in all parts of Wales.

23. The provision of legislative competence on the Assembly in relation to the specified policy areas will enable the Welsh Assembly Government to bring forward coherent and holistic proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. The exact content of these Measures is a matter for Welsh Ministers, but Welsh Assembly Government priorities in the short to medium term are likely to focus on Measures which are aimed at addressing waste management issues and improving local environmental quality. Policy proposals will be subject to consultation, and any Measures will be subject to thorough scrutiny and approval by the Assembly. Assembly Measures will supplement a broader package of actions that will help us move towards the aspirations set out in this Memorandum.

Scope

24. The approach taken with regard to this LCO is for legislative competence to follow the current boundaries of what are devolved and non-devolved issues.
25. It is proposed that three Matters be inserted into Field 6: *environment* of Schedule 5 to the Government of Wales Act 2006, to enable the Assembly to legislate on these issues by way of Assembly Measures.

Matter 6.1 – Waste

26. Matter 6.1 will provide the Assembly with legislative competence in relation to the prevention, reduction, collection, management, treatment or disposal of waste on the mainland of Wales. It also provides competence in relation to the disposal of waste in the sea around Wales, where that waste has been collected, managed or treated on land. This will enable the Assembly to legislate in order to increase recycling and improve sustainable waste management in Wales.

Matter 6.2 – Pollution

27. Matter 6.2 will provide legislative competence for the protection or improvement of the environment in relation to pollution. This will enable the Assembly to pass Measures to strengthen pollution controls in a holistic way.

Matter 6.3 – Nuisance

28. Matter 6.3 will provide legislative competence for the protection or improvement of the environment in relation to nuisances. This will enable the Assembly to pass Measures to address nuisances and improve local environmental quality. “Nuisances” are defined, for the purposes of the competence, as acts or omissions affecting any place, or states of affairs in any place, which may impair or interfere with the amenity of the environment or any legitimate use of the environment. The definition of “Nuisance” does not, however, include an act, omission or state of affairs that constitutes pollution.

29. In summary, the principal purpose of this LCO is to enable the Assembly to pass Assembly Measures under Part 3 of the Government of Wales Act 2006 to improve the environment of Wales.

Exceptions

30. As stated above, the legislative competence provided by this LCO broadly reflects the current executive powers of Welsh Ministers. The LCO therefore includes a number of exceptions to the legislative competence, the broad purpose of which is to reflect topics which are relevant to waste or environmental protection, but where the Welsh Ministers do not have significant functions. Exceptions are necessary where a particular Matter is so broad that it could be interpreted as including something which is not meant to be included within the competence being conferred. The exceptions therefore seek to provide clarity over the extent of the competence that the Assembly is acquiring in this LCO. The exceptions are summarised below.

Exceptions from all Matters

31. The regulation of the decommissioning of offshore energy installations and related infrastructure is excluded from all Matters. Offshore petroleum, renewable energy and carbon storage installations are subject to existing decommissioning regimes established by UK legislation - the Petroleum Act 1998, the Energy Act 2004 and the Energy Act 2008.
32. Provisions made by health and safety regulations are also excluded from all Matters. The Welsh Ministers currently have no powers to make such regulations

Exceptions from Matter 6.1 (Waste)

33. Matter 6.1 does not include the regulation of the provision of postal services by persons licensed by the Postal Services Commission. Regulatory arrangements for postal services are set out in the Postal Services Act 2000.
34. The regulation of decommissioned explosives, in relation to military activities, is also excluded from this Matter. Decommissioned explosives are excluded from the Waste Framework Directive (Directive 2006/12/EC) and the Welsh Ministers' powers in relation to waste under the Environmental Protection Act 1990 reflect this exclusion.
35. The regulation of radioactive material at military premises is excluded from the scope of this Matter, thus reflecting provisions in the Radioactive Substances Act 1993.
36. The regulation of large-scale Carbon Capture and Storage (CCS) is excluded from the Matter. Under the Energy Act 2008, the disposal of CO₂ in the territorial sea adjacent to Wales requires a licence from the Secretary of State. Regulatory arrangements for the full range of CCS activities have yet to be defined.

37. The regulation of certain activities in the territorial sea adjacent to Wales is also excluded from Matter 6.1. The Marine and Coastal Access Bill will provide Welsh Ministers with a range of licensing and regulatory powers in relation to the territorial sea adjacent to Wales.

Exceptions from Matter 6.2 (Pollution) alone

38. The regulation of oil and gas exploration and exploitation is excluded from the pollution competence, in relation to the outermost 9 miles of the territorial sea adjacent to Wales. The Assembly will have competence in relation to this Matter in the area extending 3 miles out to sea from the low-water mark thus reflecting the powers of Welsh Ministers under the Pollution Prevention and Control Act 1999. The geographical limit of this exception is also set out in paragraph 54.
39. Matter 6.2 does not include a number of topics concerned with transport fuel. The first is the regulation of the composition and content of fuel used in a means of transport, in non-road mobile machinery or in an agricultural or forestry tractor. Also excluded from competence are obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel. In the current renewable transport fuel obligation, this is evidence of the volume of renewable fuel supplied. To take account of the fact that transport is likely to be powered by renewable “energy”, rather than just renewable “fuel”, the Order also excludes from competence the making of provisions regarding the proportion of renewable energy consumed in transport, including the imposition of sustainability requirements in relation to renewable energy products. Finally, the provision of financial support in connection with the production or use of renewable energy for consumption in transport, including the imposition of sustainability requirements as a condition for financial support, is excluded. The content and composition of transport fuel, and the renewable transport fuel obligation, are non-devolved policy areas
40. There are exceptions that apply to both Matter 6.2 and 6.3. These are set out at paragraphs 47-48 below.

Exceptions from Matter 6.3 (Nuisance) alone

41. Competence under Matter 6.3 does not include the ability to impose criminal or civil liability for nuisances arising from energy activities or infrastructure, where there is a statutory authority for the act, omission or state of affairs that constitutes that nuisance. However, if the Welsh Ministers have the power to impose liability in the circumstances, the Assembly will also have legislative competence.
42. Likewise excluded from the nuisance competence are defences or other forms of exemption from liability (criminal or civil) for nuisance where those defences or exemptions are created by statute and the nuisance in question relates to energy activities or infrastructure. In other words, the Assembly will not be able to make someone liable for nuisance arising from energy

activities, where, at the moment, the person would not be liable. Again, this exception from legislative competence is disapplied where the Welsh Ministers have the power to remove the defence in question.

43. The regulation of the emission of smoke, artificial light and noise from military establishments is excluded from Matter 6.3. Smoke, light and noise from those establishments are exempted from the provisions of the Environmental Protection Act 1990 in relation to statutory nuisances.
44. The regulation of the generation of electricity at a generating station whose construction, extension or operation requires the consent of the Secretary of State or an order granting development consent under the Planning Act 2008 is excluded from legislative competence in relation to this Matter. The regulation of the transmission, distribution and supply of electricity is also outside legislative competence. And the regulation of oil and gas activities, other than those activities carried out by an individual for their domestic purposes, is excluded from competence in relation to this particular Matter. These are non-devolved policy areas.
45. The regulation of oil and gas exploration and exploitation is excluded from Matter 6.3 in relation to the territorial sea adjacent to Wales (12 nautical miles from the mean low-water mark). The geographical limit of this exception is also set out in paragraph 54.
46. The regulation of electronic communication and networks is outside legislative competence in relation to this particular Matter. Telecommunications is a non-devolved policy area.

Exceptions from Matters 6.2 and 6.3

47. The regulation of the contained use of genetically modified organisms (GMOs) is excluded from both Matters. This reflects the fact that the Welsh Ministers do not have executive powers in this regard under Part VI of the Environmental Protection Act 1990, while they do have powers in relation to other aspects of GMOs.
48. The licensing regime established under Part 4 of the Marine and Coastal Access Bill is excluded from the legislative competence conferred by these Matters. The Marine and Coastal Access Bill will provide Welsh Ministers with a range of licensing and regulatory powers in relation to the territorial sea adjacent to Wales.

Exceptions in Paragraph A1 of Part 2 of Schedule 5 of the Government of Wales Act 2006

49. The proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009, commonly referred to as the Carers LCO, will, if approved by the Assembly and Parliament, shortly change the way in which exceptions apply to Matters in Schedule 5 to the 2006 Act. The proposed Order would change the effect of certain exceptions to Matters in Part 1 of Schedule 5, by removing the current table and making certain exceptions, to be listed in Part 2 of the Schedule, apply to all Matters. Part 2 of Schedule

5 would be renamed as “Exceptions to Matters and General Restrictions”. The exceptions to be listed in paragraph A1 of that Part will be organised into Fields, in the same way that Matters are. Section 94 of the 2006 Act would also be amended to reflect this change. This will achieve more surely the objective that these exceptions should apply in all cases where they are relevant and makes Schedule 5 clearer and easier to understand by applying these exceptions to all Matters listed in it.

50. The proposed Carers LCO is currently subject to pre-legislative scrutiny in Parliament and the Assembly.
51. The Order will add a number of exceptions to paragraph A1 of Part 2 of Schedule 5 to the Government of Wales Act 2006. Section 94 of the 2006 Act, as it will be amended by the Carers LCO, 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. The new exceptions to be added by this Order are set out below.

Economic Development (Field 5)

- The generation of electricity from a generating station whose construction, extension or operation requires the consent of the Secretary of State or the authority of an order granting development consent under the Planning Act 2008 is excluded from all Matters.
- The transmission, distribution and supply of electricity are also excluded from all Matters.
- Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation, is excluded from all Matters.
- Nuclear energy and nuclear installations, including nuclear safety and liability for nuclear occurrences, are excluded from all Matters. This exception does not include provisions within an Assembly Measure relating to the disposal of very low level radioactive waste from Nuclear Licensed Sites.

Highways and Transport (Field 10)

- Road freight transport services, including goods vehicles operating licensing, are excluded from all Matters. This exception does not include the regulation of use of vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment.
- Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, are excluded from all Matters. This exception does not include the regulation of relevant vehicles carrying animals, where such regulation is for the purposes of protecting human, animal, fish or plant health or the environment.

- Aviation, air transport, airports and aerodromes are excluded from all Matters. There are three carve-outs to this exception. Firstly, the exception does not cover the provision of financial assistance to providers or proposed providers of air transport services or airport facilities or services. Secondly, the exception does not include strategies by the Welsh Ministers or local or other public authorities about the provision of air services. Thirdly, the exception does not include the regulation of the use of aircraft carrying animals for the purpose of protecting human, animal, fish or plant health (other than the health of persons on aircraft) or the environment.
- Shipping is excluded from all Matters. There are two carve-outs from this exception. Firstly, the exception does not cover the provision of financial assistance for shipping services to, from or within Wales. Secondly, the exception does not include regulations for the purposes of protecting human, animal, fish or plant health (other than the health of persons on ships) or the environment.
- Harbours, docks, piers and boatslips are excluded from all Matters. There are two carve-outs from this exception. Firstly, the exception does not cover those harbours, docks, piers or boatslips that are used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of these purposes). Secondly, the exception does not include regulations for the purposes of protecting human, animal, fish or plant health or the environment.
- The carriage of dangerous goods, including the transport of radioactive material, is excluded from all Matters.

Water and Flood Defence (Field 19)

- The appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales are excluded from all Matters.
- The licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales, are excluded from all Matters.

Geographical limits of any Assembly Measure

52. Section 94 of the 2006 Act imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly's legislative competence. A provision is outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). For these purposes, section 158 of the 2006 Act defines "Wales" as extending out to the seaward boundary of the territorial sea (12 nautical miles from the low water mark). There are limited exceptions for certain kinds

of ancillary provisions, for example a provision appropriate to make the provisions of the Measure effective, or a provision enabling other provisions of the Measure to be enforced, or making consequential amendments to other legislation.

53. The limitation relating to functions other than in relation to Wales prevents the Assembly from passing any Measure conferring on the Welsh Ministers, Welsh local authorities or any other public authority, functions which relate other than to Wales.
54. The proposed Order uses a definition of “Wales” which does not include the territorial sea. This means that, in relation to Matter 6.1, a provision of an Assembly Measure under the competence accorded to the National Assembly by the LCO could extend to the whole landmass of Wales, to the mean low-water mark on the sea-shore. It could extend further where it was dealing with the disposal of waste collected, managed or treated on land; in that case it could extend to the seaward boundary of the territorial sea (12 nautical miles from the low-water mark). This latter extent would also apply to all Measures under Matters 6.2 and 6.3. The only exception in the case of provision made under those Matters would be if an Assembly Measure aimed to regulate oil and gas exploration and exploitation in relation to pollution. The geographical limits of such an Assembly Measure would extend seawards from the low-water mark to three miles into the territorial sea adjacent to Wales. The Assembly would not have competence over pollution from offshore oil and gas exploration and exploitation in the outermost nine miles of the territorial sea adjacent to Wales.

Minister of the Crown functions

55. This proposed Order 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 the functions of the Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions the appropriate UK Government Departments will be consulted and agreement sought.

Conclusion

56. 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 proposed LCO to which this Explanatory Memorandum relates.

**Welsh Assembly Government
April 2009**

SCHEDULE 5

ASSEMBLY MEASURES

(In Part 1, text shown in bold is proposed to be added as a result of this order)

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1¹

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.

¹ Matters 5.1-5.4 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I.2007/910).

*Matter 5.4A*²

The regulation of—

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

*Matter 5.5*³

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*⁴

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;

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

³ 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).

⁴ 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)

(b) persons described in matter 5.17 receiving higher education.

Matter 5.11⁵

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 5.15⁶

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

⁶ 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*⁷

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*⁸

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*⁹

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*¹⁰

In this field—

⁷ 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).

⁸ 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).

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

¹⁰ 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.

“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.

Field 6: environment

Matter 6.1

Preventing, reducing, collecting, managing, treating or disposing of waste in Wales and disposing in the sea adjacent to Wales, out as far as the seaward boundary of the territorial sea, of waste collected, managed or treated on land.

This matter does not include regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission authorising the person to convey letters from one place to another (whether or not the licence relates to the services).

This matter does not include regulation of decommissioned explosives that are outside the scope of the waste directive by virtue of Article 2(1)(b)(v) of the waste directive and are or have been—

- (a) held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence;**
- (b) held by or for the purposes of visiting forces.**

This matter does not include regulation of radioactive material that is at military premises.

This matter does not include regulation of the decommissioning of offshore energy installations and related infrastructure.

This matter does not include regulation of the capture, conveyance and disposal of carbon dioxide as part of relevant carbon capture and storage.

This matter does not include regulation of the following activities in the territorial sea adjacent to Wales—

- (a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;**
- (b) depositing any explosive substance or article in the sea or on or under the seabed;**
- (c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.**

See below for further provision about what this matter does not include.

Matter 6.2

Protecting or improving the environment in relation to pollution.

This matter does not include regulation of oil and gas exploration and exploitation in those parts of the territorial sea adjacent to Wales that are not relevant territorial waters.

This matter does not include—

- (a) regulating the composition and content of fuel used in any of the following—**
 - (i) a means of transport;**
 - (ii) non-road mobile machinery;**
 - (iii) an agricultural or forestry tractor;**
- (b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;**
- (c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;**
- (d) provision of financial support in connection with —**

- (i) the production of renewable energy for consumption in transport, or**
- (ii) the use of that energy in transport,**

including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.

See below for further provision about what this matter does not include.

Matter 6.3

Protecting or improving the environment in relation to nuisances.

This matter does not include imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose.

This matter does not include removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove.

This matter does not include regulation of the emission of smoke, artificial light or noise from military premises.

This matter does not include regulation of electricity activities, gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities.

This matter does not include regulation of oil and gas exploration and exploitation in the territorial sea adjacent to Wales.

This matter does not include regulation of electronic communications and electronic communications networks.

See below for further provision about what this matter does not include.

Not included in matters 6.1, 6.2 and 6.3

Provision made by health and safety regulations

Not included in matters 6.2 and 6.3

Matters 6.2 and 6.3 do not include any of the following—

- (a) regulation of the contained use of genetically modified organisms;**
- (b) regulation of the decommissioning of offshore energy installations and related infrastructure;**
- (c) regulation of the following activities in the territorial sea adjacent to Wales—**

- (i) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;
 - (ii) scuttling any vessel or floating container;
 - (iii) constructing, altering or improving works in or over the sea or on or under the seabed;
 - (iv) using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;
 - (v) dredging;
 - (vi) depositing or using any explosive substance or article in the sea or on or under the seabed;
 - (vii) incinerating any substance or object on any vehicle, vessel, marine structure or floating container;
- (d) marine licensing under Part 4 of the *Marine and Coastal Access Act 2009*.

Meaning of “pollution”

In this field “pollution” means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.

For the purposes of this definition “air” includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

Meaning of “nuisance”

In this field “nuisance” means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution.

Meaning of “relevant defence” and “relevant exclusion”

In matter 6.3, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance (“the unlawful nuisance”)—

“relevant defence” means statutory removal (however expressed, and whether conditional or not) of the civil or criminal liability in respect of an act, omission or state of affairs that is within the scope of the unlawful nuisance.

“relevant exclusion” means statutory exclusion (however expressed, and whether conditional or not) of an act, omission or state of affairs from the scope of the unlawful nuisance.

In those definitions, a reference to the scope of the unlawful nuisance is a reference to the class of acts, omissions and states of affairs that constitutes the unlawful nuisance.

Other interpretation of this field

In this field—

“agricultural or forestry tractor” means any motor vehicle, fitted with wheels on at least two axles or with caterpillar tracks, where the main function of the vehicle lies in its tractive power and it is specifically designed to tow, push, carry or power certain tools, machinery or trailers intended for agricultural or forestry use;

“electricity activity” means any of the following—

- (a) generating electricity at a generating station whose construction, extension or operation requires—
 - (i) the consent of the Secretary of State, or**
 - (ii) the authority of an order granting development consent under the Planning Act 2008;****
- (b) transmitting, distributing or supplying electricity;**

and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity;

“electronic communication” means a communication transmitted—

- (a) by means of an electronic communications network, or**
- (b) by other means but while in an electronic form;**

“electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and**
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
 - (i) apparatus comprised in the system,**
 - (ii) apparatus used for the switching or routing of the signals; and**
 - (iii) software and stored data;****

“energy nuisance” means a nuisance that relates to electricity activities, gas activities, oil activities, or infrastructure that is necessary for carrying out any such activities;

“environmental harm” means any of the following—

- (a) harm to the health of humans and other living organisms;**
- (b) harm to the quality of the environment, including—
 - (i) harm to the quality of the environment taken as a whole,**
 - (ii) harm to the quality of the air, water or land, and**
 - (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;****
- (c) offence to the senses of human beings;**
- (d) damage to property;**
- (e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;**

“gas activity” means storing, conveying or supplying gas, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“marine structure” means a platform or other artificial structure at sea, other than a pipeline;

“military premises” means premises which are—

- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or**
- (b) occupied by or for the purposes of visiting forces;**

“non-road mobile machinery” means any mobile machine, transportable industrial equipment or vehicle with or without body work, not intended for the use of passenger – or goods-transport on the road, in which an internal combustion engine is, or is to be, installed;

“offshore energy installation” means any of the following installations that are maintained in the territorial sea adjacent to Wales, or on the foreshore or other land in Wales intermittently covered with water, and that are not connected with dry land by a permanent structure providing access at all times and for all purposes—

- (a) oil installations (including those used for oil activities or for oil exploration or exploitation);**
- (b) gas installations (including those used for gas activities or for gas exploration or exploitation);**
- (c) carbon dioxide storage installations;**
- (d) renewable energy installations;**

“oil activity” means storing, conveying or supplying oil, except any such activity that is carried out by an individual for the domestic purposes of the individual;

“relevant carbon capture and storage” means the capture and underground disposal of carbon dioxide by a method in which the carbon dioxide is captured at the place of its production and conveyed for disposal by pipeline directly from the place of production to a place of underground disposal;

“relevant territorial waters” means the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Wales is measured; but any order made under section 104(4)(a) of the Water Resources Act 1991 for the purposes of Part 3 of that Act in relation to an area of the territorial sea adjacent to Wales also applies for the purposes of determining what are relevant territorial waters for the purposes of this field;

“renewable energy” means energy from renewable non-fossil sources;

“statutory” means arising by virtue of an Act;

“transport fuel” means any of the following—

- (a) renewable transport fuel;**
- (b) fossil fuel;**
- (c) any solid, liquid or gaseous fuel that is neither renewable transport fuel nor fossil fuel;**

“vessel” includes hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;

“Wales” has the same meaning as in the Interpretation Act 1978;

“waste directive” means Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, as it was originally adopted.

An order or an order in council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.

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

Field 8: food

Field 9: health and health services

Matter 9.1¹¹

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

¹¹ 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).

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 10.1¹²

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 12.1¹³

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

¹² 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.

¹³ 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.

(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 15.1¹⁴

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 15.2¹⁵

Functions of public authorities relating to—

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

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

Matter 15.3

Adoption services and special guardianship support services.

Matter 15.4

Fostering.

Matter 15.5

Social care services for any of the following—

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;

¹⁴ 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).

¹⁵ 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.

- (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*¹⁶

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,
- (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;

¹⁶ 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).

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

Field 16: sport and recreation

Matter 16.1¹⁷

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

Field 18: town and country planning

Matter 18.1¹⁸

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—

¹⁷ 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).

¹⁸ Matters 18.1 – 18.3 were inserted by section 202 of the Planning Act (c. 29).

“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

(In Parts 2 and 3, text in italics is proposed to be added by the proposed National Assembly for Wales (Legislative Competence) (Social Welfare) 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)—

Economic development (field 4 of Part 1)

- (1) **Generation of electricity at generating stations whose construction, extension or operation requires—**
 - (a) **the consent of the Secretary of State, or**
 - (b) **the authority of an order granting development consent under the Planning Act 2008;****and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity.**
- (2) **Transmitting, distributing or supplying electricity.**
- (3) **Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.**
- (4) **Nuclear energy and nuclear installation, including—**
 - (a) **nuclear safety, and**
 - (b) **liability for nuclear occurrences,****but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965.**

Highways and transport (field 10 of Part 1)

- (1) *Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.*
- (1A) **Road freight transport services, including goods vehicles operating licensing.**

- (2) **Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment.**
For this purpose, “relevant vehicle” means—
- (a) **a motor vehicle, and**
 - (b) **non-road mobile machinery and agricultural and forestry tractors (each of these expressions having the same meaning as in field 6 of Part 1)**
- (3) *Road traffic offences.*
- (4) *Driver licensing.*
- (5) *Driving instruction.*
- (6) *Insurance of motor vehicles.*
- (7) *Drivers’ hour.*
- (8) *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.*
- (9) *Public service vehicle operator licensing.*
- (10) *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.*
- (11) *Transport security.*
- (11A) **Aviation, air transport, airports and aerodromes, apart from—**
- (a) **financial assistance to providers or proposed providers of air transport services or airport facilities or services,**
 - (b) **strategies by the Welsh Ministers or local or other public authorities about provision of air services,**
 - (c) **regulation of the use of aircraft carrying animals for the purpose of protecting any of the following—**
 - (i) **human health, apart from the health of persons in aircraft;**
 - (ii) **animal, fish or plant health;**
 - (iii) **the environment.**
- (12) **Shipping, apart from—**
- (a) **financial assistance for shipping services to, from or within Wales, and**
 - (b) **regulation of the use of vessels carrying animals for the purposes of protecting any of the following—**
 - (i) **human health, apart from the health of persons on vessels;**
 - (ii) **animal, fish or plant health;**
 - (iii) **the environment.**
- (13) *Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.*
- (14) *Technical and safety standards of vessels.*

- (15) **Harbours, docks, piers and boatslips, apart from—**
 - (a) those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of these purposes), and
 - (b) regulation for the purposes of protecting human, animal, fish or plant health or the environment.
- (16) **Carriage of dangerous goods, including transport of radioactive material.**

Social welfare (field 15 of Part 1)

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

Water and flood defence (field 19 of Part 1)

- (1) **Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.**
- (2) **Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.**

General Restrictions

Functions of Ministers of the Crown

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

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

Criminal Offences

2 (1) A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable—

- (a) on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
- (b) on conviction on indictment, with a period of imprisonment exceeding two years.

(2) In sub-paragraph (1) “the prescribed term” means—

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

Police Areas¹⁹

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

¹⁹ Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 3.

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 Areas²⁰

- 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

²⁰ Paragraph 7A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 4.

- 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

- 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 1998²¹

- 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.

²¹ 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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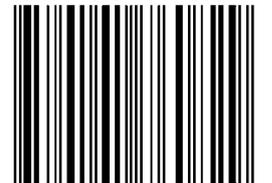
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