



WALES OFFICE

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



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

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ISBN: 978 010 175442 2

MINISTERIAL FOREWORD

By the Secretary of State for Wales

The Rt. Hon. Paul Murphy MP

Proposed Order in Council on the Welsh Language

This is the seventh 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 Constitution Select Committee for pre-legislative scrutiny. This proposed Order is part of the Welsh Assembly Government's legislative programme as set out by the First Minister, the Rt. Hon. Rhodri Morgan AM, in his speech to the National Assembly for Wales on 6 June 2007.

I welcome the publication of this proposed Order. It will encourage a wide and meaningful public debate on the proposals, building on the consultation already undertaken by the Welsh Assembly Government, and provides an opportunity for everyone in Wales to make their views known. This will complement the pre-legislative scrutiny being undertaken by Parliament and the National Assembly for Wales. I have consulted UK Cabinet colleagues on this proposed Order, and they support its publication for pre-legislative scrutiny.

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 the Assembly decides the appropriate level of scrutiny for any subordinate legislation made under Measures.

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)
(Welsh Language) Order 2009**

Made - - - - []

Coming into force in accordance with Article 1

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 and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 and shall come into force on the day after the day on which it is made.

Amendments to the Government of Wales Act 2006

2.—(1) Section 94 of the Government of Wales Act 2006 is modified in accordance with this article.

(2) Paragraph (b) of subsection (6) does not prevent the repeal of any provision of the Welsh Language Act 1993(b) from having the same extent as the repealed provision.

(a) 2006 c.32.
(b) 1993 c.38.

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

(2) In field 20 (Welsh language), insert—

“Matter 20.1

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

- (a) public authorities;
- (b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;
- (c) persons providing services to the public established by an enactment or prerogative instrument;
- (d) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- (e) persons providing services to the public who receive public money amounting to £200,000 or more in a financial year;
- (f) persons overseeing the regulation of a profession, industry or other similar sphere of activity;
- (g) social landlords within the meaning of field 11;
- (h) persons providing the public with the following kinds of services or with other services which relate to any of those services—
 - (i) gas, water or electricity services (including supply, production, transmission or distribution);
 - (ii) sewerage services (including disposal of sewage);
 - (iii) postal services and post offices;
 - (iv) telecommunication services;
 - (v) education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance);
 - (vi) railway services;
 - (vii) services to develop or award educational or vocational qualifications;
- (i) persons opting or agreeing to be subject to the imposition of the duties.

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

With regard to imposing duties in relation to paragraph (h), this matter only includes duties in respect of the services mentioned.

Matter 20.2

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

Interpretation of this field

In this field—

“enactment” includes any future enactment;

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

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

“public money” means—

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

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

4.—(1) Part 2 of Schedule 5 to the 2006 Act is modified in accordance with this article.

(2) For paragraph 6(2) substitute—

“Sub-paragraph (1) does not apply to—

- (a) sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78 and 156(2) to (5);
or
- (b) paragraph 8(3) of Schedule 2.”

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

(2) Renumber the existing paragraph 7 as 7(1) and insert the following new sub-paragraph 7(2)—

“(2) Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be enforced against Ministers of the Crown by means of criminal offences.”

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act (as amended by this Order).

Article 2 modifies the effect of section 94(6)(b) of the 2006 Act. This ensures that any future repeal of provisions of the Welsh Language Act 1993 will not be prevented from having the same extent as the provisions repealed.

Article 3 inserts matters 20.1 and 20.2 as well as interpretation provisions into field 20 (Welsh Language) of Part 1 of Schedule 5 to the 2006 Act.

Matter 20.1 is about promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality, but does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than—

- (a) public authorities;
- (b) persons who provide services to the public under agreements, or in accordance with arrangements, made with public authorities;
- (c) persons providing services to the public and established by an enactment or prerogative instrument;
- (d) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- (e) persons providing services to the public who receive public money amounting to £200,000 or more in a financial year;
- (f) persons who oversee the regulation of a profession, industry or other similar sphere of activity;
- (g) social landlords;
- (h) persons providing the public with the following services, or connected services—
 - (i) gas, water or electricity services (which includes supply, production, transmission or distribution);
 - (ii) sewerage services (which includes disposing of sewage);
 - (iii) postal services and post offices;
 - (iv) telecommunications services;
 - (v) education, training or career guidance (including services that encourage, enable or assist participation in education, training or career guidance);
 - (vi) railway services;
 - (vii) services to develop or award educational or vocational qualifications;
- (i) persons who opt or agree to be subject to the imposition of duties.

Duties imposed in relation to paragraph (b) are limited to duties in respect of services to the public that are provided under an agreement or in accordance with arrangements made with a public authority.

Duties imposed in relation to paragraph (h) are limited to duties in respect of the services mentioned (and connected services).

Matter 20.2 is about the freedom of persons who wish to use the Welsh language to do so with one another, and includes any limitations upon that freedom.

Article 4 inserts a provision that modifies paragraph 6(2) of Part 2 of Schedule 5 to the 2006 Act to add sections 35(1), 78 and paragraph 8(3) of Schedule 2 to the list of sections of the 2006 Act which may be modified by Assembly Measure or by subordinate legislation made under a Measure.

Article 5 inserts provision that modify paragraph 7 of Part 3 of Schedule 5 to the 2006 Act. Paragraph 7 is renumbered as 7(1) and a new sub-paragraph 7(2) is inserted. The new sub-paragraph 7(2) provides that Part 2 will not prevent a provision of an Assembly Measure relating to matters 20.1 or 20.2 from conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to that provision, but also provides that such functions may not be enforced against Ministers of the Crown by means of criminal offences.

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

CONSTITUTIONAL LAW: DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

Proposal for a Legislative Competence Order on the Welsh Language

Introduction

1. This Memorandum sets out the background to the provisions in the attached Welsh Assembly Government proposed Legislative Competence Order which would confer additional legislative competence upon the National Assembly for Wales (“the Assembly”).
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (“the 2006 Act”) and the UK Government’s policy. The UK Government’s White Paper “Better Governance for Wales” published in June 2005 set out the UK Government’s commitment to enhance the legislative powers of the National Assembly for Wales, as a democratically elected institution with its own detailed scrutiny procedures.
3. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision) in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (“LCO”) in this memorandum.
4. Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act by either an Act of Parliament, or an LCO approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via an LCO.
5. The proposed LCO would confer further legislative competence on the Assembly in the field of the Welsh Language (field 20 within Schedule 5 to the 2006 Act). Schedule 5 is attached at Annex A showing the legislative competence that the Assembly has acquired to date.
6. New legislative powers in respect of the specified ‘matters’ will enable the Welsh Assembly Government, Assembly Members and Assembly

Committees to bring forward proposals for legislation, in the form of Measures. These Measures will be subject to thorough scrutiny and approval by the Assembly.

Background

7. The Welsh language is one of the defining characteristics of the UK's cultural heritage and the everyday lives of Welsh speakers in Wales are affected by its expansion or decline. The 2001 census indicated that nearly 600,000 people now speak and use the language. This represents a slight increase on previous figures following more than a century of decline. However, even though the language has enjoyed something of a renaissance over recent years, its sustainability as a living language of our communities remains under threat. There is a general acceptance that the action taken by public, private and voluntary agencies – along with the growth in Welsh-medium education – can play a key role in securing its health and vitality. The purpose of the proposed LCO is to ensure that the National Assembly for Wales has the necessary legislative competence in relation to the Welsh language to enable these actions to be built on in the future.
8. The Welsh Assembly Government's National Action Plan for a Bilingual Wales, *Iaith Pawb* 2003, stated that it wanted Wales to be a truly bilingual nation. This was not defined as implying that everyone in Wales should be able to speak both Welsh and English. It was defined as a country where people can choose to live their lives through the medium of either Welsh or English, and where the presence of the two languages is a visible and audible source of pride and strength. *Iaith Pawb* reflected what has been the policy of successive governments – at Wales and UK level – to support and encourage the use of the language in all aspects of life in Wales. The scope of the proposed LCO reflects this approach to ensure that the language can continue to be a prominent and vibrant part of people's everyday lives.
9. The Welsh Assembly Government also recognises that members of the public in Wales can still face inconsistencies and difficulties in accessing services through the medium of Welsh. In many areas mechanisms for delivering services to the public in Wales have changed since 1993. The framework set by the Welsh Language Act 1993 does not enable these changes to be taken into account in a consistent way. Legislative competence in relation to promoting and facilitating the use of the Welsh language in Wales would enable the Assembly to bring the legislative framework up to date and provide a consistent basis for improving access to services through the medium of Welsh.

Current legislative framework

10. Successive UK Governments have recognised that legislation has a part to play in promoting and facilitating the use of the Welsh language. The

Welsh Courts Act 1942 conferred limited rights upon any party or witness to use the Welsh language in courts in Wales where a person would otherwise be under a disadvantage by reason of his natural language of communication being Welsh. The Welsh Language Act 1967 conferred on any party, witness or other person an absolute right to use the Welsh language in the courts (subject to giving prior notice), and also empowered Ministers to prescribe Welsh or bilingual versions of statutory forms.

11. The most recent and substantial statutes in relation to the language are the Welsh Language Act 1993 (“the 1993 Act”) and the 2006 Act (which contains sections that relate to the use of the Welsh language by the Assembly, the Assembly Commission and the Welsh Assembly Government).
12. The 1993 Act is founded on two principles - the need to promote and facilitate the use of the Welsh language and the treatment of the English and Welsh languages on the basis of equality.
13. The 1993 Act established the Welsh Language Board (latterly an Assembly Government Sponsored Body), upon which the function of promoting and facilitating the use of the Welsh language is conferred.
14. The 1993 Act also lists certain categories of bodies as public bodies upon whom a requirement to prepare Welsh language schemes can be placed. It gives the Welsh Ministers the power to add further ‘persons’ to the list by Order, where it appears to them that those persons match the criteria set out in the 1993 Act.

Citizen-centred government

15. Much has been achieved under the auspices of the 1993 Act but there remains plenty of scope to improve the legislative framework under which public agencies operate and to clarify for Welsh speakers what level of service they can expect to receive. This is very much in line with the Welsh Assembly Government’s commitment to a citizen centred model of improving public services. Following the recommendations of Sir Jeremy Beecham’s Review of Local Service Delivery (2006) the Welsh Assembly Government is investing in a programme of action to deliver efficient, effective, citizen centred public services. The *One Wales* coalition agreement commits the Government to putting in place a strategy for the continual improvement of local services through a Public Service Improvement Programme. Responding to the particular needs of Welsh speaking citizens is an integral part of this programme.

The need for change and the One Wales commitments

16. The 1993 Act – and in particular the power for the Welsh Language Board to require public bodies to prepare Welsh language schemes - effectively recognised that there are particular challenges surrounding the delivery of

the appropriate level of Welsh language services when 20% of the population speaks Welsh, and that proportion varies from over 80% to less than 10% from one local authority area to another. Consistency of approach therefore lies in the consistent application of the principle of reasonable and practicable provision. Responding to these challenges requires organisations to make the most effective use possible of their resources, including Welsh speaking staff and ICT. Since the introduction of the 1993 Act much has been done to improve the quality of services provided to Welsh speakers. The proposed LCO would provide competence to enable the Assembly to revisit and update the legislative framework established by the 1993 Act to address specific shortcomings that have become apparent during the intervening period.

17. The competence sought under the proposed LCO would, for example, allow the Assembly to legislate to achieve greater clarity for citizens with regard to the categories of bodies that can be required to produce a Welsh language scheme.
18. The need for greater clarity has arisen in part from changes to the structure of certain key public services and as a consequence of the emergence of new service delivery mechanisms which have resulted in the public face of some sectors and certain key services falling outside the scope of the 1993 Act. The Welsh Ministers have the power to specify some bodies from within these sectors under the 1993 Act, but not all. This creates the potential for an uneven playing field within these sectors and a lack of clarity about service expectations for end users.
19. The 1993 Act also confers powers on the Welsh Language Board to investigate alleged breaches by public bodies of their respective Welsh language schemes, and to report on its investigations. Failure to provide information in support of investigations, however, is not enforceable.
20. Furthermore the 1993 Act only provides a single formal mechanism for investigating breaches of Welsh language schemes and does not provide for any graduated alternatives. One mechanism for investigating breaches with regard to commitments made in Welsh language schemes may not be appropriate in all cases, and may not achieve the right results for all users. The Welsh Ministers believe that arrangements should be simple to understand and operate and allow for appropriate and proportionate methods for dealing with complaints and addressing areas of concern.
21. Policy responsibility for many of the public services to be encompassed by the proposed LCO has been devolved to the Welsh Ministers. A key principle underpinning these proposals, however, is that citizens should have a clear understanding of the level of Welsh language services they can expect to receive irrespective of the nature of the public provider. As is the case at the moment, therefore, it is proposed that government departments responsible for non devolved services would have a crucial contribution to make. Agencies such as Job Centres, Her Majesty's

Revenue and Customs and the Driver and Vehicle Licensing Agency have been at the forefront of the development of Welsh language services to date.

22. Beyond addressing the weaknesses that have emerged in the system established by the 1993 Act, the Welsh Assembly Government's One Wales programme of Government included a commitment to seek legislative competence to enable it to bring forward Assembly Measures to confirm official status for both Welsh and English, linguistic rights in the provision of services and the establishment of the post of Language Commissioner.
23. The Welsh Ministers currently have functions in relation to the Welsh language, but these are limited. Under the 1993 Act, the Welsh Ministers' functions include the power to appoint members of the Welsh Language Board, the power to adjudicate where the Welsh Language Board and 'public bodies' fail to reach agreement on matters in relation to Welsh language schemes, and the power to add to the list of 'public bodies' that may be required to produce Welsh language schemes. Under section 61(k) of the 2006 Act, the Welsh Ministers may do anything they consider appropriate to support the Welsh language (although this does not extend to proposing or making legislation). However the National Assembly for Wales does not have any legislative competence with which to alter the legislative framework so as to respond to changing needs and circumstances in the manner envisaged in the One Wales programme of Government.

Scope

24. It is proposed that two matters be inserted into Field 20: the Welsh Language of Schedule 5 to the Government of Wales Act 2006, to enable the Assembly to legislate on these issues by way of an Assembly Measure.
25. Article 3 of the proposed LCO would insert a new Matter 20.1 into Field 20. This matter would echo, and build upon, the principles that underpin the 1993 Act, namely to promote and facilitate the use of the Welsh language; and the treatment of the English and Welsh languages on the basis of equality. This could include, for instance, marketing, providing support for organisations, developing ICT tools and so forth within any given sector, echoing and building on the range of functions carried out, at present, by the Welsh Language Board.
26. This matter does not extend to the use of the Welsh language in the courts. The relevant functions relating to the use of the language in courts under the 1993 Act are currently exercised by the Lord Chancellor, and the proposed LCO does not seek competence to modify the position.
27. Matter 20.1 makes it clear, however, that the Assembly would not be permitted to impose duties under this matter on persons other than those

falling within the categories listed in paragraphs (a) to (i). The proposed LCO would provide competence, for example, permitting the Assembly to impose duties on persons falling within these categories requiring particular services to be provided bilingually to the public in Wales. Provisions contained in section 94(5) of the 2006 Act would permit the Assembly to provide appropriate remedies for a breach of such duties, and the proposed LCO does not seek to extend those provisions in any way.

28. Section 6(1)(o) of the Welsh Language Act 1993 gives the Welsh Ministers the discretion to specify as public bodies, persons which appear to them to meet defined criteria. The Welsh Ministers are provided with a discretion as to the persons who can become eligible to be required to produce a Welsh Language Scheme. It would not be possible in an LCO to provide the Assembly with a similar element of discretion to decide upon the categories of persons in respect of whom duties could be imposed through a future Measure as the Assembly cannot be permitted in an LCO to determine the limits of its own competence. Accordingly, matter 20.1 establishes clear categories of persons in respect of which the National Assembly will be able to legislate to impose duties in relation to the Welsh language. The categories of persons listed under matter 20.1 is tightly drawn to reflect existing bodies which fall within the scope of section 6(1) of the 1993 Act together with persons from certain sectors which currently fall outside the scope of the 1993 Act, but which provide key public services. The categories as drawn provide the Assembly with the scope to deal with changes in infrastructure and to provide for a level playing field in specified sectors without which the flexibility currently permitted under the 1993 Act would be lost. It will be for future proposed Assembly Measures and subordinate legislation made under those Measures to specify the bodies or persons upon whom duties will or may be imposed.
29. Paragraph (a) confers competence on the Assembly to legislate by Measure to impose duties on 'public authorities'. Public authorities is defined to include all public authorities within the meaning of the Human Rights Act 1998, and would include local authorities, local health boards etc. A similar definition is used in several UK statutes, including the Anti-terrorism, Crime and Security Act 2001, the Climate Change and Sustainable Energy Act 2006 and the Identity Cards Act 2006, and the same mechanism has also already been used in The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.
30. Where public bodies outsource the delivery of services to the public, the Assembly would be able to legislate under paragraph (b) to place duties in relation to the Welsh language on contractors, but only in relation to the services provided in Wales under the outsourcing arrangements. Accordingly, any future Measure could not impose duties in respect of the Welsh language in relation to any of a contractor's other activities (unless they fell under paragraphs (a) to (i) for other reasons).

31. Paragraph (b) is based on the discretion given to the Secretary of State (since transferred to the Welsh Ministers) under paragraph 6(1)(o)(ii) of the 1993 Act to specify as public bodies, persons carrying out activities conducted under an agreement or in accordance with arrangements made with a public body or servants or agents of the Crown.
32. Paragraph (c) would confer competence on the Assembly to legislate to impose duties in relation to the Welsh language on bodies which have been established by enactment (for example, the Big Lottery Fund, the Electoral Commission and S4C), or by prerogative instrument (for example, the National Library for Wales, the Sports Council for Wales and the British Council).
33. Paragraph (d) would confer competence on the Assembly to legislate to impose duties on bodies that have functions of providing services to the public conferred or imposed upon them by an enactment. This would include, for example, the Royal Commission on the Ancient and Historical Monuments of Wales, Consumer Focus and Investors in People UK.
34. 'Functions' is a term widely used in the 2006 Act to encompass both powers and duties. The principle behind this is that the only persons that would fall within the competence proposed by paragraph (d) are those upon whom Parliament has already conferred functions of providing services to the public. The competence will only extend to legislating in relation to bodies or persons with functions relating to Wales.
35. Paragraph (e) would give the Assembly the competence to legislate to impose requirements in relation to the Welsh language on persons providing services to the public in Wales who are in receipt of public money amounting to, or above, a threshold of £200,000 in a financial year, either provided directly by the Assembly, the Welsh Ministers, the UK Parliament, Ministers of the Crown or from an institution of the European Communities, or indirectly by or from these bodies (for example, through local authorities or Assembly Government Sponsored Bodies). The underlying principle in all these cases is that persons benefiting from substantial public funds should qualify to fulfil public responsibilities. Bodies falling within the competence proposed by paragraph (e) include those which are national in character, such as the Wales Millennium Centre, the Welsh National Opera and the National Botanic Garden of Wales.
36. Paragraph (e) would also confer competence on the Assembly to legislate to impose duties on persons in relation to their activities in Wales if they are in receipt of monies amounting to, or above, £200,000 in a financial year provided by virtue of an enactment, for example, the BBC, which receives licence fee monies under the Communications Act 2003.
37. Persons who receive money directly or indirectly from the Assembly, the Welsh Ministers, the UK Parliament, Ministers of the Crown or any of the

European Institutions by way of payment for services or goods supplied by them will not be included under paragraph (e) because of having received those monies.

38. Paragraph (f) proposes to confer competence on the Assembly to legislate to impose duties on bodies engaged in the regulation of a profession or industry, or other sphere of activity of a similar nature to a profession or industry in relation to their activities in Wales. A 'similar sphere of activity' would include, for example, bodies which regulate the ability of a member of the public to earn a livelihood in a given sector, discipline or area of activity. Persons or bodies which fall within competence under paragraph (f) will include bodies such as the Central Nursing and Midwifery Council, the General Dental Council and so forth.
39. Paragraph (g) would enable the Assembly to legislate to impose requirements in relation to the Welsh language on social landlords. 'Social landlords' is defined by reference to the definition in field 11, proposed to be inserted into Schedule 5 of the Government of Wales Act by matter 11.1 contained in the National Assembly for Wales (Legislative Competence) (Housing) Order 2009. A copy of the definition is attached at Annex B.
40. Paragraph (h) would enable the Assembly to legislate to impose duties upon persons providing the public in Wales with certain listed services, as well as related services. This covers key services provided to the public as well as incidental services. The infrastructure of certain sectors and changes in the way public services have been delivered have meant that some public facing parts of certain sectors have fallen outside the scope of the 1993 Act. This paragraph is designed to give the Assembly sufficient flexibility to be able to legislate to impose duties on bodies even if the public interface of key public services changes over time.
41. The sub-paragraphs within paragraph (h) list the services proposed to fall within competence. These services include the utilities (i and ii), postal services and post offices (iii), telecommunication services (iv), education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance, such as UCAS, Sector Skills Councils and Careers Wales) (v), railway services (including passenger rail companies, Network Rail and rail enquiries and ticketing services) (vi), and exam boards (vii).
42. There is an important caveat in relation to paragraph (h) that proposes to limit the Assembly's competence in this context - the Assembly would only be able to legislate to impose duties on service providers in respect of the services mentioned, and then, only where they are delivered in Wales, and not in respect of their other functions or activities (unless they otherwise fall within the competence conferred on the Assembly by paragraphs (a) to (g) and (i)).

43. Finally, paragraph (i) of matter 20.1 would confer competence on the Assembly to legislate to impose duties on persons who volunteer or enter into an agreement to subject themselves to such requirements. This would provide for bodies to continue to opt-in to Welsh language schemes or successor mechanisms, in much the same way that bodies opt-in to Investors in People and other such standards.
44. The second matter proposed to be inserted into Field 20 by the LCO (matter 20.2), would provide the Assembly with the competence to legislate in relation to the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on such a freedom, which could include, for example, Health and Safety limitations where that was justified). The protection afforded under current legislation is limited. This matter would enable the Assembly to legislate to protect individuals' freedom to speak Welsh with each other.
45. This matter would not require bodies to take positive steps to facilitate the use of the Welsh language between individuals, merely to respect the freedom to use the language.

Effect of other provisions in the 2006 Act

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

Geographical limits of any Assembly Measure

47. The proposed LCO would permit the Assembly to legislate by Measure in relation to the use of the Welsh language in Wales.
48. Article 2 of the proposed LCO would ensure that, if the Assembly was minded to repeal any provisions of the 1993 Act, any such repeal would have the same extent as the original provision. This would permit the Assembly, by Measure, to repeal any provision of the 1993 Act which extends beyond the competence conferred upon the Assembly by the 2006 Act (i.e. where the 1993 Act extends to Scotland or Northern Ireland). This article is limited to the repeal of provisions and would not permit the making of any 'new' legislation. It would, in any event, be subject to the requirements set out in the 2006 Act to seek the consent of the Secretary of State if any repeal would lead to the removal or modification of a function of a Minister of the Crown.

Modifications to the Government of Wales Act 2006

49. Article 4 proposes to provide competence for the Assembly to legislate by Measure to amend sections 35(1), 78 and paragraph 8(3) of Schedule 2 of the 2006 Act in order to be able to legislate as regards itself, the Welsh Ministers or the Assembly Commission. This would allow the Assembly to place those bodies on the same footing as other public bodies.

50. The ability to amend these sections is required in order to allow the Assembly the flexibility to avoid having a multi layered system in the future; the aim being to provide the end user with as straightforward and effective a system as possible. To provide an example, section 78 states that the Welsh Ministers must adopt a Welsh language scheme. If the Assembly was minded to legislate to move away from Welsh language schemes then, without the competence to amend section 78, the Welsh Ministers would be the only persons left operating under the 'old' system.

Minister of the Crown functions

51. The Welsh Ministers intend to require Crown bodies, including Ministers of the Crown, to comply with broadly the same duties as all other public bodies, where the Secretary of State consents. This will require a limited amendment to the 2006 Act, in relation to Field 20: the Welsh language only. The proposed amendment will permit the Assembly to confer or impose new duties or powers on Ministers of the Crown, but only with the consent of the Secretary of State, and not so as to make Ministers of the Crown liable to punishment for criminal offences.
52. Government Ministers, during the passage of the 1993 Act, gave an undertaking that Crown bodies, including Ministers of the Crown, would prepare Welsh language schemes. Consequently, to allow the Assembly to make provisions for the equitable and consistent application of functions across all public bodies, Article 5 of the proposed LCO would modify paragraph 7 of Part 3 of Schedule 5 to the 2006 Act to confer competence on the Assembly to legislate to confer or impose duties upon Ministers of the Crown in relation to the Welsh language, with the consent of the Secretary of State.
53. Currently, paragraph 7 of Part 3 of Schedule 5 to the 2006 Act allows a provision of an Assembly Measure to remove or modify functions of a Minister of the Crown with Secretary of State consent, but no such provision exists to allow conferral or imposition of functions. Article 5 of the proposed LCO replicates the provisions of the current paragraph 7 in a new sub-paragraph 7(2), to allow a provision of a future Assembly Measure to confer or impose functions on Ministers of the Crown in respect of the Welsh language with the Secretary of State's consent. This Article is required in order to give the Assembly the competence to be able to avoid a multi layered system from existing in the future, where Ministers of the Crown would provide a different level of service to the remainder of the public sector. Article 5 would allow the Assembly the flexibility to be able to provide a consistent and straightforward system across the public sector.
54. The proposed LCO in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 and Part 3 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter the functions of a 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 will be sought to any future proposals to change or modify such functions.

Conclusion

55. For the reasons outlined above, the Welsh Assembly Government wishes to propose that legislative competence should be conferred on the National Assembly for Wales in relation to the Welsh language, in the terms of the proposed draft LCO attached.

January 2009

Annex A

SCHEDULE 5

ASSEMBLY MEASURES

(Text in bold is to be added as a result of this Order in Council)

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 5.1a

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

Matter 5.2

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

Matter 5.3

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

Matter 5.4

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

Matter 5.4Ab

The regulation of—

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

a 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).

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

Matter 5.5a

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 of 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 5.10b

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

This matter applies to—

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

Matter 5.11c

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

a 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).

b 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 2008 (SI 2008/3132).

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

- (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 5.15a

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.

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

Matter 5.16a

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 5.17b

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 5.18c

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^d

In this field—

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

“post-16 education” means—

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

“post-16 training” means—

-
- a** 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.
 - b** 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).
 - c** Matter 5.18 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.
 - d** 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 (c. 25).

(a) training suitable to the requirements of persons who are above compulsory school age, and

(b) organised leisure-time occupation connected with such training.

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

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

(a) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and

(b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

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

(a) it provides education for the person, and

(b) the education does not amount to full-time education.

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

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

Field 6: environment

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

Field 8: food

Field 9: health and health services

Matter 9.1a

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;

^a 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).

“illness” has the same meaning as in that Act;
“patient” has the same meaning as in that Act;
“personal injury” includes any disease and any impairment of a person’s physical or mental health;
“qualifying liability in tort” means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis or illness or the care or treatment of any patient.

Field 10: highways and transport

Matter 10.1a

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 12.1b

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.

a 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.
b 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.

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

Matter 12.2

Provision for and in connection with—

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

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

Matter 12.3

Any of the following—

- (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 Measures, 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 15.1a

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 15.2b

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

a 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).

b 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.

Social care services for any of the following—

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

Matter 15.6

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

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

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;
- (b) police authorities and chief officers of police for police areas in Wales;
- (c) the British Transport Police Authority;
- (d) local probation boards for areas in Wales;
- (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 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 person 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^a

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;

^a 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).

- (d) the contribution made by them to society;
- (e) social and economic well-being;
- (f) securing their rights;

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

Field 16: sport and recreation

Matter 16.1a

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 18.1b

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.

a Matter 16.1 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

b Matters 18.1-18.3 were inserted by section 202 of the Planning Act 2008 (c. 29).

Interpretation of this field

In this field—

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

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

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

Field 19: water and flood defence

Field 20: Welsh language

Matter 20.1

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

- (a) public authorities;**
- (b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;**
- (c) persons providing services to the public established by an enactment or prerogative instrument;**
- (d) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;**
- (e) persons providing services to the public who receive public money amounting to £200,000 or more in a financial year;**
- (f) persons overseeing the regulation of a profession, industry or other similar sphere of activity;**
- (g) social landlords within the meaning of field 11;**
- (h) persons providing the public with the following kinds of services or with other services which relate to any of those services—**
 - (i) gas, water or electricity services (including supply, production, transmission or distribution);**
 - (ii) sewerage services (including disposal of sewage);**
 - (iii) postal services and post offices;**
 - (iv) telecommunication services;**
 - (v) education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance);**
 - (vi) railway services;**

(vii) services to develop or award educational or vocational qualifications;

(i) persons opting or agreeing to be subject to the imposition of the duties.

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

With regard to imposing duties in relation to paragraph (h), this matter only includes duties in respect of the services mentioned.

Matter 20.2

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

Interpretation of this field

In this field—

“enactment” includes any future enactment;

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

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

“public money” means—

(a) moneys made available directly or indirectly by—

(i) the National Assembly for Wales;

(ii) the Welsh Ministers;

(iii) Parliament;

(iv) Ministers of the Crown; or

(v) an institution of the European Communities;

(b) moneys provided by virtue of any enactment;

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

EXCEPTIONS TO MATTERS^a

The exceptions specified in the first column of each table below are not included within the matters specified in the corresponding entry in the second column.

TABLE – Highways and transport

Column 1 Exceptions	Column 2 Matters to which the exceptions relate
1. Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.	Matters 5.10, 5.17, 5.18
2. Road traffic offences.	Matters 5.10, 5.17, 5.18
3. Driver licensing.	Matters 5.10, 5.17, 5.18
4. Driving instruction.	Matters 5.10, 5.17, 5.18
5. Insurance of motor vehicles.	Matters 5.10, 5.17, 5.18
6. Drivers' hours.	Matters 5.10, 5.17, 5.18
7. Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.	Matters 5.10, 5.17, 5.18
8. Public service vehicle operator licensing.	Matters 5.10, 5.17, 5.18
9. Provision and regulation of railway services, apart from financial assistance which— (a) does not relate to the carriage of goods, (b) is not made in connection with a railway administration order, and (c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.	Matters 5.10, 5.17, 5.18
10. Transport security.	Matters 5.10, 5.17, 5.18
11. Shipping, apart from financial assistance for shipping services to, from or within Wales.	Matters 5.10, 5.17, 5.18
12. Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.	Matters 5.10, 5.17, 5.18

^a The text and tables of exceptions were inserted by article 5 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

13. Technical and safety standards of vessels.	Matters 5.10, 5.17, 5.18
14. Harbours, docks, piers and boatslips apart from those used or required wholly or mainly for communication between places in Wales.	Matters 5.10, 5.17, 5.18
15. Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.	Matters 5.10, 5.17, 5.18

TABLE – Social welfare

Column 1 Exceptions	Column 2 Matters to which the exceptions relate
1. Child support.	Matters 15.1 15.2, 15.3, 15.4, 15.5, 15.6, 15.8
2. Child trust funds, apart from subscriptions to such funds by— (a) the council of a county or county borough council in Wales, or (b) the Welsh Ministers.	Matters 15.2, 15.4, 15.5
3. Tax credits.	Matters 15.1 15.2, 15.4, 15.5
4. Child benefit and guardian's allowance.	Matters 15.1 15.2, 15.4, 15.5
5. Social security.	Matters 15.1 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8
6. Independent living funds.	Matters 15.1 15.2, 15.5, 15.6, 15.7, 15.8
7. Motability.	Matters 15.1 15.2, 15.5, 15.6, 15.7, 15.8
8. Vaccine Damage Payments	Matters 15.2, 15.5, 15.6, 15.7, 15.8
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.	Matters 15.2, 15.3
10. The Children's Commissioner established under the Children Act 2004.	Matters 15.2, 15.3, 15.4, 15.5, 15.8

11. Family law and proceedings apart from— (a) welfare advice to 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.	Matters 15.2, 15.3, 15.4, 15.5
12. Welfare foods	Matters 15.2, 15.5, 15.6, 15.8

PART 2

GENERAL RESTRICTIONS

Functions of Ministers of the Crown

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

Criminal Offences

- 2 (1) A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable—
- (a) on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
 - (b) on conviction on indictment, with a period of imprisonment exceeding two years.
- (2) In sub-paragraph (1) “the prescribed term” means—
- (a) where the offence is a summary offence, 51 weeks, and
 - (b) where the offence is triable either way, twelve months.

Police Areas^a

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

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

Enactments other than this Act

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

TABLE

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

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

This Act

- 6 (1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
- (2) **Sub-paragraph (1) does not apply to—**
(a) **sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78 and 156(2) to (5); or**
(b) **paragraph 8(3) of Schedule 2.**
- (3) Sub-paragraph (1) does not apply to any provision—
(a) making modifications of so much of any enactment as is modified by this Act, or
(b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Assembly Measure.

PART 3

EXCEPTIONS FROM PART 2

Functions of Ministers of the Crown

- 7 (1) Part 2 does not prevent a provision of an Assembly Measure removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of a Minister of the Crown if the Secretary of State consents to the provision.
- (2) **Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be enforced against Ministers of the Crown by means of criminal offences.**

Police areas^a

- 7A Part 2 does not prevent a provision of an Assembly Measure making an alteration to the boundary of a police area in Wales if the Secretary of State consents to the provision.

Comptroller and Auditor General

- 8 Part 2 does 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 Part 2 does 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 Part 2 does 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,

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

- (b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
- (c) applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

Data Protection Act 1998^a

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.

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

Annex B Definition of Social Landlord

In this field “social landlord” means any of the following—

- (a) a county council or county borough council in Wales;
- (b) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981;
- (c) a housing action trust established under section 62 of the Housing Act 1988;
- (d) a housing association within the meaning of section 5 of the Housing Act 1985;
- (e) a housing trust within the meaning of section 6 of the Housing Act 1985;
- (f) a housing co-operative within the meaning of section 27B of the Housing Act 1985;
- (g) an urban development corporation established under section 135 of the Local Government, Planning and Land Act 1980;
- (h) the Welsh Ministers;
- (i) a social landlord registered under Chapter 1 of Part 1 of the Housing Act 1996;
- (j) a provider of social housing registered under Chapter 3 of Part 2 of the Housing and Regeneration Act 2008;
- (k) a manager appointed under Chapter 4 of Part 1 of the Housing Act 1996;
- (l) a person to whom a grant has been paid under section 27A of the Housing Act 1996.



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ISBN 978-0-10-175442-2

