



WALES OFFICE

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



WALES OFFICE

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

Presented to Parliament by the Secretary of State for Wales

By Command of Her Majesty

December 2008

© Crown Copyright 2008

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gov.uk

ISBN: 9780101750523

MINISTERIAL FOREWORD

By the Secretary of State for Wales

The Rt. Hon. Paul Murphy MP

The proposed National Assembly for Wales (Legislative Competence) (Social Welfare) relating to carers Order 2009.

This is the sixth 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 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 15 July 2009.

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

Part 3 of the Government of Wales Act 2006 gave the National Assembly for Wales the power to pass legislation, known as Assembly Measures, which can do anything that an Act of Parliament can do, within the constraints set out in the Act. The scope of the Assembly's powers to pass Measures is set out in Part 3 and Schedule 5 of 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 will set 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 will deliberate fully on proposed Measures and any subordinate legislation made under Measures will be subject to scrutiny by the Assembly.

As the Government's White Paper, "Better Governance for Wales", explained: "consideration of these Orders in Council could be informed by understanding the use the Assembly might propose to make of these powers in the immediate future. However, as the power would be a general and continuing one for that particular policy area, this would serve only as an example of what could be done; the issue for the Parliamentary Committees and for each House would be the appropriateness in general of delegating legislative authority to the Assembly on the particular policy area specified in the draft Order in Council".

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 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)
(Social Welfare) 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⁽¹⁾, 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 sections 95(1) and (3) 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) (Social Welfare) Order 2009 and it comes into force on the day after the day on which it is made.

Amendments to Part 1 of Schedule 5 to the Government of Wales Act 2006

2.—(1) Field 15 (social welfare) of Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) After matter 15.8 insert—

(1) 2006 c.32.

“Matter 15.9

Supporting the provision of care by carers and promoting the well-being of carers.

This matter includes, in particular, social care services to help carers.

In this matter “carers” means individuals who provide or intend to provide a substantial amount of care on a regular basis for—

- (a) a child with a physical or mental impairment, or
- (b) an individual aged 18 or over,

but it does not include individuals who provide or intend to provide care—

- (a) by virtue of a contract of employment or other contract with any person, or
- (b) as a volunteer for any body (whether or not incorporated).”.

(3) Under the heading “*Interpretation of this field*”, in the definition of “social care services”, after “non-residential social care services;” insert “information,”.

Exceptions to matters in Part 1 of Schedule 5 to the 2006 Act

3.—(1) Section 94 of the 2006 Act is amended in accordance with paragraphs (2) to (4).

(2) In subsection (4)(a), after “Schedule 5” insert “and does not fall within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule (whether or not the exception is under a heading corresponding to the field which includes the matter)”.

(3) In subsection (6)(a), after “restrictions in” insert “paragraphs 1 to 6 of”.

(4) In subsection (7), after “Schedule 5” insert “(or falls within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule)”.

(5) In section 101(1)(a), after “Schedule 5” insert “(or falls within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule)”.

(6) Schedule 5 to the 2006 Act is amended in accordance with paragraphs (7) to (12).

(7) In Part 1 of Schedule 5—

- (a) in matter 10.1 omit the words from “This does not include” to the end of that matter;
- (b) omit the words and tables from “EXCEPTIONS TO MATTERS” to the end of that part.

(8) For the heading of Part 2 of Schedule 5 substitute “EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS”

(9) After the heading of Part 2 of Schedule 5 insert—

“Exceptions to matters

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

Highways and transport (field 10 of Part 1)

- (1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.
- (2) Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.
- (3) Road traffic offences.
- (4) Driver licensing.
- (5) Driving instruction.

- (6) Insurance of motor vehicles.
- (7) Drivers' hours.
- (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 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 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.
- (11) Transport security.
- (12) Shipping, apart from financial assistance for shipping services to, from or within Wales.
- (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 those used or required wholly or mainly for communications between places in Wales.

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 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.

(12) Welfare foods.

General restrictions”

(10) For the heading of Part 3 of Schedule 5 substitute “EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2”.

(11) After the heading of Part 3 of Schedule 5, insert—

“Interpretation

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

(12) In Part 3 of Schedule 5, for “Part 2 does not” (in each place) substitute “The general restrictions in Part 2 do not”.

Name

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

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

Article 2 inserts matter 15.9 into field 15 (social welfare) of Part 1 of Schedule 5 to the 2006 Act. The matter is about supporting the provision of care by carers and promoting the well-being of carers.

Article 3 amends section 94 of the 2006 Act and Part 2 of Schedule 5 to that Act to make provision for exceptions that apply to all matters in Part 1 of Schedule 5. It also makes consequential amendments to Part 3 of Schedule 5 and other provisions of the 2006 Act.

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

**MEMORANDUM
DRAFTED BY
THE WELSH ASSEMBLY GOVERNMENT**

**MEMORANDUM FROM THE WELSH ASSEMBLY GOVERNMENT
DEPUTY MINISTER FOR HEALTH AND SOCIAL SERVICES**

CONSTITUTIONAL LAW: DEVOLUTION, WALES

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

**Proposal for a Legislative Competence Order relating to
Carers**

Introduction

1. This Memorandum sets out the background to the provisions in the attached proposed Legislative Competence Order (LCO) which would confer additional legislative competence upon the National Assembly for Wales. It explains the scope of the power requested.
2. Section 95 of the Government of Wales Act 2006 (“the 2006 Act”) empowers Her Majesty, by Order in Council, to amend Schedule 5 to that Act so as to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added if they relate to one or more of the 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.
3. The proposed Legislative Competence Order would confer further legislative competence on the National Assembly for Wales, in the field of Social Welfare (field 15 within Schedule 5 to the 2006 Act). [Attached at Annex B is a copy of Schedule 5 showing the legislative competence that the Assembly has acquired to date and the mechanism by which it was conferred]. New legislative powers in respect of the specified ‘matter’ will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.

Background

4. Carers are at the heart of 21st Century families and communities. In a changing society most people are living longer, many are developing long-term conditions and the vast majority have rising aspirations about their quality of life. Consequently, an increasing number of people will find themselves fulfilling caring responsibilities.
5. Many people, mainly women, are now balancing work, childcare and caring for an ageing parent. Increasing numbers of older people often care for their partner while providing childcare for grandchildren and parents of children with complex needs know they will be “lifetime” carers. The positive shift to independent living and care at home, away from institutionalisation, will continue to require a greater contribution from carers. At the same time families are now frequently scattered across the world, couples are struggling to retain a positive work life balance and in an ageing society some older people are left isolated with little or no support from family or friends.
6. Unpaid carers currently provide around 70% of care in the community and forecast demographic changes suggest that the pool of potential carers relative to numbers needing care is likely to decrease over the medium term. With an increasing life expectancy for those in need of care, it cannot be assumed that their carers will be able and willing to sustain their caring role over a longer period without help and support. There are also clear signs that informal care to older people by their adult children is unlikely to keep pace with demand, due to underlying demographic trends, a trend that is reflected across the UK (see for example “Informal Care for Older People Provided by Their Adult Children: Projections of Supply and Demand to 2041 in England, PSSRU Discussion Paper 2515) but is likely to be particularly acute in those parts of Wales where present reliance on informal carers is highest.
7. Many of the issues affecting carers and carers’ services in Wales are common across the UK, and in putting together this proposal the Assembly Government has taken note of the extensive consultations undertaken across the UK as part of the development of the UK Government’s strategy “Carers at the heart of 21st century families and communities” and the evidence and analysis reflected in this report. However, the 2001 Census across England and Wales shows that Wales has a higher proportion of carers than any English region (11.7 per cent or 341,000 carers), the highest proportion of people with limiting long-term illness (23.3 per cent) and a level of permanent sickness and disability in the economically inactive population aged 16-74, which is higher than any region of England at 9.2 per cent. These figures alone suggest that a singular holistic approach may be necessary and appropriate to tackling the intensity of these issues in Wales.

8. The Welsh Assembly Government's *Carers Strategy for Wales Action Plan 2007*, recognised the need to mitigate the effects of these demographic changes, and foresaw that these changes including trends towards more dispersed families could require a range of measures designed to support carers in their caring role and help them maintain their own health and well being. The 2007 Action Plan will be reviewed in 2009. Detailed proposals for measures will be informed by the outcomes of this review of the Wales strategy.

9. The current legislative framework in relation to carers focuses mainly on statutory authorities' powers and duties. It includes:

- **Disabled Persons (Services, Consultation and Representation)**

- **Act 1986**

- This requires local authorities to have regard to the ability of the carer to provide or continue to provide care when deciding what services to provide to the disabled person.

- **Carers (Recognition and Services) Act 1995**

- This contains the core statutory responsibilities and requires local authorities to carry out an assessment of a carer's ability to provide and to continue to provide care, if the carer requests this, at the time of the assessment of the person they care for.

- **Carers and Disabled Children Act 2000**

- This extends the provisions of the 1995 Act to enable a local authority to undertake a separate assessment of a carer's needs and to supply services (or direct payments) directly to carers following assessment.

- **Carers (Equal Opportunities) Act 2004**

- This places a duty on local authorities to inform carers of their right to an assessment, and requires carers' assessments to consider whether the carer works or is undertaking education, training or any leisure activity. It also provides for better co-operation between statutory agencies in the planning and provision of services for carers.

- **The Work and Families Act 2006**

- This came into force in Wales in April 2007. It requires employers to consider requests from people with caring responsibilities to work flexibly.

- **The Children and Young Persons Act 2008**

- This will require local authorities to make adequate arrangements for short break provision for Disabled Children.

In addition the Welsh Assembly Government has a range of powers to inspect, regulate and issue statutory guidance in respect of local authority services under the Local Authority Social Services Act 1970, the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards) Act 2003. It also has powers to direct the NHS under the National Health Services (Wales) Act 2006.

10. Despite this existing framework of legislation and guidance consultations with carers, carers' organisations and others have identified gaps in service provision that cannot currently be addressed. These include:

a. concerns that carers' assessment and services for carers vary greatly and are very patchy across Wales. This concern was highlighted in a report produced by the Care and Social Services Inspectorate for Wales (CSSIW) in June 2008 [On the way up? Adult Social Care Performance Indicators in Wales 2006-07]. The kind of services provided to carers include, but are not limited to, respite care, peer support networks, support to access social, leisure and education activities, day centres, awareness raising with professionals; information, training and outreach services, direct payments and advocacy services.

b. the need for renewed effort to identify carers, the wider provision of information for carers, and better engagement by the NHS with carers as partners in the provision of care [Carers Summit Conference Report April 2005]

c. evidence that the presence of an unpaid carer in a household may reduce the likelihood of the carer being assessed for priority services by the local authority. Paradoxically, this reduces both the availability of services for the cared for person, (thereby increasing the burden on the carer), and the availability of compensatory services, such as respite, which benefit the carer. [See for example "Analysis of the Costs of Domiciliary and Personal Care in Wales: Some Direct Evidence": Bell & Dawson: March 2008]

d. indications that many young carers are still carrying an inappropriate burden of care, which has a measurable impact on their health as they grow into young adulthood [see for example Welsh Health Survey 2005/06: Health of Carers, 15/05/08]. Welsh Assembly Government guidance on the Carers and Disabled Children's Act 2000 advised that "...support for young carers should be aimed primarily at helping any disabled or other adults with parental responsibility to carry out their parental role and to remove inappropriate responsibilities from young children." And "any such services provided will be designed not to support them in their caring role but rather to

ensure that they do not undertake a caring role that is inappropriate.” However the continuing emphasis on services to support young carers in their caring role, although welcomed by young carers themselves, suggests that we have not yet achieved the joined-up approach that is needed across social services for adults and for children, and the NHS.

11. The current framework of legislation and guidance in Wales has clearly proved insufficient to ensure that the Welsh Assembly Government’s policy objectives with regard to carers are given the necessary priority, so that these gaps and inconsistencies in service provision are tackled effectively. The Assembly Government’s “One Wales” programme of Government therefore included a commitment to prepare new legislation on carers rather than rely on existing reinforcement means alone such as performance measures and inspection, financial incentives or powers of direction. This proposal for legislative competence derives from the need to support the provision of care by carers and to promote the well-being of carers as noted above. In particular we envisage the need to improve the lives of carers in the following key areas:

- a. to ensure that carers have the right information at the right time to support them in their caring role. The *Carers’ Strategy Implementation Plan in Wales 2000* highlighted a need for the provision of easily accessible, relevant and factually correct information for carers, as well as acknowledging the need for a longer term view of the information needs of carers. The kind of information carers may need from time to time would include information about financial benefits, employment provisions including flexible working, rights to a needs assessment, social services functions available to them, care planning for the person cared for, medicines management, safe handling and lifting and other matters related to the care of the person cared for.

- b. to ensure that timely and appropriate practical and emotional help and support is provided to carers both to sustain them in their caring role and also to help them attain their personal ambitions for accessing education, training and employment opportunities. This would include giving them a right to appropriate breaks from caring responsibilities.

- c. to ensure that statutory agencies (being those agencies mentioned in section 3(5) of the Carers (Equal Opportunities) Act 2004 (c.15) properly engage with carers as partners in the provision of care involving them at all levels in the assessment, delivery and evaluation of an individual’s care arrangements.

Scope

12. It is proposed that the Matter be inserted under Field 15: Social Welfare in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on these issues by way of an Assembly Measure. Carers in this context means carers of individuals cared for of any age, but in the case of individuals caring for children it covers only children with a physical or mental impairment. The Order would not allow the Assembly to legislate in respect of persons who provide care by virtue of a contract of employment or other contract or as a volunteer, neither would the Order confer power on the Assembly to alter the employment rights of carers.
13. The definition of carer in this matter does not exactly mirror that given in the Carers and Disabled Children Act 2000 in that it contains no age restriction. This will ensure that the Assembly is able to legislate to promote the well-being of children and young people who are carrying out caring responsibilities, as well as older carers. The National Assembly already has competence in relation to social care services for children; persons who care for, or who are about to care for, children; and young persons. This matter will enable a Measure to broaden provision beyond that relating only to social care services and provide a single framework for a range of services to support carers.
14. The Matter would enable the Assembly to ensure that the provision of care by carers is supported and that their well-being is promoted. It would, for example, allow for a requirement to be placed on relevant public sector agencies to develop carers information strategies along the lines of the Scottish legislation in this area; for them to work together effectively to support the provision of care by carers and to promote their well-being (particularly the well-being of young carers); and also for improvements to be made to carers' access to replacement care (respite care) with provision for an entitlement to respite for defined groups. The matter specifies that it includes, "in particular", the provision of social care services. This means that Assembly Measures made in reliance on this matter could make provision which, in promoting the well-being of carers and supporting the provision of care by them, was not exclusively confined to social care services: such as, provision to ensure that health bodies take the interests of carers into account, for example in making arrangements for appointments, discharge arrangements and collection of prescriptions for the person being cared for.
15. The definition of "well-being" to be used in relation to the matter is as set out in the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008. The definition of "social care services" in that Order is to be amended by virtue of this Order so as to include the provision of "information". For ease of reference, the definitions can also be found at Annex A.

16. The principal purpose of this LCO is therefore to empower the Assembly to pass Assembly Measures under Part 3 of the 2006 Act that will enable the Assembly Government to improve services for carers and fulfil the commitment given in “One Wales”.

Exceptions

17. The proposed Order also makes technical amendments to Section 94 and Schedule 5 of the 2006 Act. The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 lists exceptions to matters in a table, with the matters to which each exception relates being identified against each one. The effect of the technical amendments to Schedule 5 which are set out in paragraph 3 of the proposed Order is to apply those same exceptions to all matters in Part 1 of Schedule 5. The table of exceptions is replaced by a list of exceptions, set out in a new paragraph A1 in Part 2 of Schedule 5. Section 94 of the 2006 Act is amended to make it clear that a provision of an Assembly Measure is not within competence if it falls within any of the exceptions listed in that paragraph. This achieves 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.
18. It will be possible to add new exceptions to the list (including under other fields) when new matters are added which make further exceptions necessary and where it is intended that those further exceptions should apply across the board. It will also still be possible to specify an exception to an individual matter in future, where it is required only as part of the definition of that matter.
19. The proposed Order does not add any new exceptions, since no additional exceptions are required by the matter being added. However the existing exceptions, including those relating to social security and other benefit payments, will apply to the matter inserted by article 2 of the proposed Order.

Geographical limits of any Assembly Measure

20. 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). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision

enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.

21. The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the Welsh Ministers, Welsh local authorities or any other public authority functions which did not relate to Wales.

Minister of the Crown functions

22. This proposed Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter 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 Department will be consulted and agreement sought to any proposals to remove or modify these functions.

Conclusion

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

Gwenda Thomas
Deputy Minister for Health and Social Services

November 2008

Annex A

Interpretations

“social care services” means any of the following provided in connection with the well-being of any person: residential or non-residential care services; *information*, advice, counselling or advocacy services; or any other assistance

“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,

SCHEDULE 5 ASSEMBLY MEASURES

Part 1 Matters

(Text in bold or struck through is proposed to be added/deleted as a result of this Order in Council)

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.

Matter 5.4A²

The regulation of-

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

¹ Matters 5.1-5.10 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910). Matter 5.10 was amended by article 2(2) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I.2008/1036).

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

Matter 5.5

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 5.10

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 5.11³

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,

³ Matters 5.11–5.16 were inserted by section 27(2) of the Further Education and Training Act 2007 (c.25).

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 5.15⁴

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);”

⁴ Matters 5.15 and 5.16 were amended by section 149 of the Education and Skills Act 2008(c.25). Matter 5.15 is amended by section 149 (3) and (4); 5.16 by section 149 (5).

- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.”

Matter 5.16

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 5.17⁵

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.

This matter does not include arrangements for persons to travel to and from the places where they receive education or training.

“Matter 5.18⁶

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.”

⁵ Matter 5.17 was inserted by article 2(3) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008.

⁶ Matter 5.18 to be inserted by National Assembly for Wales (Legislative Competence)(Social Welfare and other Fields) Order which is due before the Privy Council on 10 December 2008

Interpretation of this field⁷

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;
- (c) education or training suitable to the requirements of persons who are of or below compulsory school age

“post-16 training” means—

- (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 education 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

⁷ Interpretation provisions were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007, section 27(3) of the Further Education and Training Act 2007, and article 2(4) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 and amended by section 149(6) of the Education and Skills Act 2008.

Field 8: food

Field 9: health and health services

Matter 9.1⁸

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 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 10.1⁹

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

⁸ 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.

⁹ Matter 10.1 was inserted by Section 122 of the Local Transport Act 2008 (c.26).

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 12.1¹⁰

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 “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.

¹⁰ 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.

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 15.1¹¹

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 any of the following—

- (a) child support;
- (b) tax credits;
- (c) child benefit and guardian's allowance;
- (d) social security;
- (e) independent living funds;
- (f) motability

¹¹ Matter 15.1 and some of the 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).

Matter 15.2 ¹²

Functions of public authorities relating to—

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

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

Matter 15.3

Adoption services and special guardianship support services.

Matter 15.4

Fostering.

Matter 15.5

Social care services for any of the following—

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after—
- (e) who have attained the age of 25, and
- (f) 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—

- (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

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; **information**, advice, counselling or advocacy services; 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) physical and mental health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being;
- (f) securing their rights.

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

“Matter 15.9

Supporting the provision of care by carers and promoting the well-being of carers.

This matter includes, in particular, social care services to help carers.

In this matter “carers” means individuals who provide or intend to provide a substantial amount of care on a regular basis for—

- (a) a child with a physical or mental impairment, or**
- (b) an individual aged over 18**

but it does not include individuals who provide or intend to provide care—

- (a) by virtue of a contract of employment or other contract with any person, or**
- (b) as a volunteer for any body (whether or not incorporated).”.**

*Field 16: sport and recreation*¹³

¹³ Matter 16.1 to be inserted by National Assembly for Wales (Legislative Competence)(Social Welfare and other Fields) Order which is due before the Privy Council on 10 December 2008

Matter 16.1

The provision of recreational facilities and activities for children and 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 18.1¹⁴

Provision for and in connection with-

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

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

Matter 18.2

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

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

Matter 18.3

Provision for and in connection with-

- (a) plans of local planning authorities in relation to the development and use of land in their areas, and
- (b) removing requirements for any such plans. This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Interpretation of this field

In this field-

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

- (a) a National Park authority, in relation to a National Park in Wales;

¹⁴ Matters 18.1 to 18.3 were inserted by section 202 of the Planning and Energy Act 2008 (c.21)

- (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

EXCEPTIONS TO MATTERS

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. The 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. The 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	Matters 5.10, 5.17, 5.18

or within Wales.	
12. Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.	Matters 5.10, 5.17, 5.18
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	Column 2
Exceptions	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

EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS

Exceptions to matters

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

Highways and transport (field 10 of Part 1)

- (1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services**
- (2) Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be used.**
- (3) Road traffic offences.**
- (4) Driver licensing.**
- (5) Driving instruction.**
- (6) Insurance of motor vehicles.**
- (7) Drivers' hours.**
- (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 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.**
- (11) Transport security.**
- (12) Shipping, apart from financial assistance for shipping services to, from or within Wales.**
- (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 those used or required wholly or mainly for communication between places in Wales.**

Social welfare (field 15 of Part 1)

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

General Restrictions

Functions of Ministers of the Crown

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

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

Criminal Offences

- 2 (1) A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable—
 - (a) on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
 - (b) on conviction on indictment, with a period of imprisonment exceeding two years.

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

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

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

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

This Act

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

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

PART 3

EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2

Interpretation

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

Functions of Ministers of the Crown

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

Comptroller and Auditor General

- 8 **The general restrictions in Part 2 do not** prevent a provision of an Assembly Measure modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General if the Secretary of State consents to the provision.

Restatement

- 9 **The general restrictions in Part 2 do not** prevent a provision of an Assembly Measure—
- (a) restating the law (or restating it with such modifications as are not prevented by that Part), or
 - (b) repealing or revoking any spent enactment, or conferring power by subordinate legislation to do so.

Subordinate legislation

- 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.



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

General enquiries: 0870 600 5522

Order through the Parliamentary Hotline *Lo-call* 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

TSO Shops

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-175052-3



9 780101 750523