EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (AGRICULTURE AND RURAL DEVELOPMENT) ORDER 2009

2009 No.

1. This explanatory memorandum has been prepared by The Wales Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument adds to the legislative competence of the National Assembly for Wales. It does so by amending Schedule 5 to the Government of Wales Act 2006 ("the 2006 Act"), which sets out the matters in relation to which the National Assembly for Wales ("the Assembly") may pass Assembly Measures, restrictions on the Assembly's legislative competence, and exceptions to those restrictions.

2.2 This draft Order amends Part 1 of Schedule 5 by inserting a matter into field 1 (Agriculture, Fisheries, Forestry and Rural Development) relating to the development and promotion of the red meat industry in Wales.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1 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.

4.2 Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or an Order in Council, which has first been approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, by seeking an Order in Council.

4.3 The draft Order would confer further legislative competence on the National Assembly for Wales, in the field of Agriculture, Fisheries, Forestry and Rural Development (field 1). The text of Schedule 5, as it stands at the time of laying, and with the matter to be inserted by this draft Order set out in bold, is at the end of this explanatory memorandum.

5. Territorial Extent and Application

Although this instrument extends to the whole of the United Kingdom its practical application is limited to Wales as it amends provisions which will define the scope of the Assembly's legislative competence.

6. European Convention on Human Rights

Wayne David MP, Parliamentary Under Secretary of State for Wales, has made the following statement:

"*In my view the provisions of The National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009 are compatible with the Convention rights*"

7. Policy background

7.1 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.

7.2 As a result of the devolution settlements of 1998, agriculture is devolved to all of the devolved administrations of the UK.

7.3 Within Wales, as a result of the devolution of agriculture, the Welsh Ministers exercise extensive powers in the areas of animal health and welfare, the common agricultural policy (both single payments and grants for rural development, including food processing and marketing), forestry, fisheries, plant health and animal by-products.

7.4 Included in the Welsh Ministers' devolved powers are powers under various Acts of Parliament including the Agriculture Act 1967, which included certain provisions (some of which have been repealed) relating to agricultural levy raising, promotion and development.

7.5 By way of background to the specific issue of agricultural levy raising, prior to 2008, several UK or Great Britain wide bodies collected and distributed levy in specific agricultural and horticultural sectors. One such body was the Meat and Livestock Commission ("the MLC"),

established under the Agriculture Act 1967 which raised and collected levy from the red meat sector in Great Britain. Following a 2005 review of the agricultural and horticultural levy boards in the UK and Great Britain by Rosemary Radcliffe ("the Radcliffe Review"), the UK administrations agreed in principle to establish a single UK levy board, which would be a non departmental public body and would act as a holding company for six sectoral companies covering beef and lamb, pigs, horticulture, cereals, dairy and potatoes respectively. The purposes of the new UK levy board and its sector companies (according to the Radcliffe Review) were to include increasing efficiency, productivity, marketing, development and sustainability in the UK agriculture sector, and such purposes were to be funded from industry levies. The Radcliffe Review suggested a UK board with subsidiary sector companies or, in relation to specific demands from Wales, Scotland or Northern Ireland, the ability for devolved administrations to create levy and promotional boards to operate within their own territories.

7.6 The Welsh Assembly Government consulted on the Radcliffe Review and on how the provisions of the Natural Environment and Rural Communities Act 2006 ("the NERC Act") should be implemented in Wales during the early passage of the Bill through Parliament. The consultation results concluded that the agricultural industry in Wales wanted to have a separate red meat levy and promotion board, but to be a part of the UK levy board in all other respects. The Assembly Government accepted these conclusions but decided that it would be preferable for the power to raise levy from and promote, market and develop the red meat sector in Wales to be conferred directly upon the National Assembly for Wales (now Welsh Ministers), rather than by the creation of a separate statutory levy and promotion board. However, the timing of the consultation meant that it was not possible for the Welsh Assembly Government's policy requirement to be reflected in the Bill and subsequent NERC Act.

7.7 Consequently the NERC Act conferred powers on the Secretary of State to dissolve existing levy bodies or boards and to create new ones with cross-border functions by means of secondary legislation. It also conferred powers on the National Assembly for Wales (now the Welsh Ministers), the Scottish Ministers and the relevant Northern Ireland department in relation to matters which only concerned their respective territories, to create boards to promote marketing, development and sustainability in their respective agricultural industries.

7.8 The Welsh Assembly Government's general policy is that where functions are governmental, either policy or delivery, then they should remain in-house with the focus on working directly with clients and customers and placing front line service delivery at the heart of the Assembly Government's culture. Retaining functions in-house ensures Government is more democratically accountable and streamlined. As a result, the option conferred upon the Welsh Assembly Government by

the NERC Act to create a separate levy and promotional/development body, rather than undertake those functions itself, was unsatisfactory.

7.9 As a result, the Welsh Ministers are seeking the conferral of legislative competence in this area upon the National Assembly with a view to bringing forward legislation on the development, marketing and promotion of the red meat industry in Wales. The National Assembly, with these powers, would be able to confer promotional/development functions directly upon the Welsh Ministers or delegate functions to other bodies in this area. At present, this would not be possible using the powers under the NERC Act.

7.10 The current statutory framework for the development, marketing and sustainability of the agricultural and horticultural sectors in the UK is set out in the NERC Act and the Agriculture and Horticulture Development Board Order 2008. In Wales, a separate levy raising and promotional/development board for the red meat industry was established by the Welsh Levy Board Order 2008.

7.11 The following paragraphs set out in more detail the basic principles of these pieces of legislation and how they interact.

The Natural Environment and Rural Communities Act 2006

7.12 The relevant provisions of the NERC Act are set out in Chapter 2 of Part 8 (section 87 onwards) and include powers for the appropriate authority, by order:

a) to establish a body for a purpose or purposes falling within section 88; and
b) assign to it a function or functions falling within section 89.

7.13 In relation to matters concerning Wales only, the appropriate authority was the National Assembly for Wales[1] (a function which has transferred to the Welsh Ministers, by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006). For matters relating to England and Wales, or to the existing levy bodies, the appropriate authority is the Secretary of State acting with the approval of the National Assembly (now the Welsh Ministers).

7.14 Section 88 provides that the permissible purposes of a body (a board) established under section 87 are:

a) Increasing efficiency or productivity in an agricultural or related industry;
b) Improving marketing in an agricultural or related industry;
c) Improving or developing services that an agricultural or related industry provides or could provide to the community; and

[1] Section 96(1)(b)

d) Improving the ways in which an agricultural or related industry contributes to sustainable development.

7.15 Sections 89 to 97 (and Schedules 8 to 10) make further detailed provision relating to agricultural boards, the permissible functions of a board, powers to dissolve existing levy bodies, powers of the appropriate authority (i.e. powers to make grants and to issue binding directions to a board) and order making procedures.

7.16 Two relevant pieces of legislation have been made under the NERC Act:

- The Agriculture and Horticulture Development Board Order 2008 (SI 2008/576); and
- The Welsh Levy Board Order 2008 (SI 2008/420 (W.39))

The Agriculture and Horticulture Development Board Order 2008

7.17 The Agriculture and Horticulture Development Board Order 2008 ("the AHDB Order") applies to[2]:

a) the beef and sheep industry in England;
b) the cereal and oilseed industries in the United Kingdom;
c) the horticulture industry in Great Britain;
d) the milk industry in Great Britain;
e) the pig industry in England; and
f) the potato industry in Great Britain

7.18 Within this scope, the AHDB Order establishes a body called the Agriculture and Horticulture Development Board, whose purposes (in line with Section 88 of the NERC Act) are[3]:
a) Increasing efficiency or productivity in the industry;
b) Improving marketing in the industry;
c) Improving or developing services that the industry provides or could provide to the community; and
d) Improving the ways in which the industry contributes to sustainable development.

7.19 The functions of the Board are in line with the functions provided for in section 89 of and Schedule 9 to the NERC Act. They are listed in 20 paragraphs in Schedule 1 to the Order and include (by way of examples): promoting or undertaking scientific research; providing or promoting the provision of training for those engaged in or proposed to be engaged in the industry; and promoting or undertaking research for improving arrangements for marketing and distributing products.

[2] Article 2 of the Order (scope)
[3] Article 3 (Establishment of the Agriculture and Horticulture Development Board)

7.20 In order to provide services for each industry covered by the Order, the AHDB must impose a levy[4].

7.21 In relation to the geographical areas mentioned in Article 2 of the Order, the Board replaces the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council, all of which are dissolved[5].

The Welsh Levy Board Order 2008

7.22 Under the NERC Act, provision was made in separate Welsh legislation to give effect to the conclusion of the Assembly Government's consultation that there should be a Wales specific red meat levy raising and promotional body. As a result of the Welsh Ministers being unable to confer levy raising and promotional/development powers upon themselves under the NERC Act, the Welsh Ministers made the Welsh Levy Board Order 2008 ("the WLB Order") as a temporary measure on 19 February 2008. The Welsh Levy Board came into existence on 20 February 2008, and started to exercise its levy raising and promotional/development functions on 1 April 2008. This Order had the effect of keeping the promotion and marketing of Welsh red meat within Wales.

7.23 The WLB Order is very similar in form and content to the AHDB Order, though with a much more limited scope, namely the beef, sheep and pig industries in Wales (i.e. it completes the gaps left by the AHDB Order – see paragraph 7.17 above). The WLB Order defines the beef, sheep and pig industries in a similar way as the AHDB Order, but with the addition of "processing", namely:

"beef and sheep industry" means all the activities comprised in the production, processing, marketing and distribution of—

a) cattle and sheep, including the carrying on of slaughterhouses and cattle and sheep auctions and markets;
b) meat and meat products (other than milk and milk products) from cattle and sheep;

"pig industry" means all the activities comprised in the production, processing, marketing and distribution of pigs or pig products, including the carrying on of slaughterhouses and pig auctions and markets.

In relation to these industries the purposes of the Welsh Levy Board are those set out in the AHDB Order, and listed at paragraphs 7.14 and 7.18 above.

[4] Article 6 (Levies)
[5] Article 17 (Dissolution of existing bodies)

7.24 To this end, the WLB may impose levies (Article 6), may act through subsidiaries (Article 5) and has the same functions as the AHDB has in relation to the beef, sheep and pig industries in England (see Schedule 1).

7.25 In practice, the Welsh Levy Board has delegated many of its functions by way of a delegation agreement to Hybu Cig Cymru (a company limited by guarantee and wholly owned by the Welsh Ministers) ("HCC").

7.26 The scope of the Order is aligned very closely to the relevant provisions of the NERC Act, and it reproduces the wording of section 88(1) of that Act (which sets out the permissible purposes of the Boards) in relation to the red meat industry. These purposes are listed at paragraph 7.14.

7.27 The Order would confer a Measure making power on the National Assembly for Wales relating to those purposes insofar as they relate to the red meat industry in Wales; purposes for which secondary legislation can currently be made under the NERC Act. In doing so, the Order would give the National Assembly the flexibility to organise the structure of the promotion, marketing and development of the red meat sector in Wales in several possible ways, including conferring such powers directly upon the Welsh Ministers.

7.28 In the Order, "cattle" and "pigs" are precisely defined in order to provide clarity. As the term "cattle" has a variety of definitions in existing legislation, leaving this term undefined could cause ambiguity regarding the animals that the term is intended to cover. Additionally, because the term "cattle" has been defined, without further definition, an inference could be drawn that the term "pigs" is meant to be limited to common, domestic pigs whilst, in reality, the term is meant to include wild boar and other feral pigs.

7.29 For the purposes of the definition, "cattle" means bovine animals, including bison and buffalo, and "pigs" means porcine animals, including wild boar and other feral pigs. These definitions seek to capture the Welsh Assembly Government's red meat policy, to enable the National Assembly to have the necessary scope to deal fully with the substance in a future Measure.

7.30 The red meat industry is defined in the draft Order as all of the activities comprised in:

(i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and

(ii) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

7.31 The wording, "products derived to any substantial extent from those animals" has been chosen to reflect the wording of the NERC Act closely. The term "breeding" also reflects the NERC Act (which refers to "breeding and keeping").

7.32 In the same way, the term "manufacturing" used in the Order has been chosen as it more closely reflects the wording of the NERC Act.

7.33 In order to avoid doubt, the Order is clear on its face that fleece wool and hides are specifically excluded. The British Wool Marketing Board administers a separate marketing scheme for fleece wool.

7.34 The Order is consistent with the wider legislative framework set out in the NERC Act. It would confer sufficient powers on the National Assembly for Wales to allow the Welsh Ministers to carry out the activities currently carried out by the Welsh Levy Board (namely raising a levy in the red meat sector), apart from any activities involving fleece wool and hides. The primary intention is to confer those powers on the Welsh Ministers and to dissolve the Welsh Levy Board through secondary legislation. As such, the Order is intended, primarily, as a means of addressing the policy issues that could not be addressed during the progress of the NERC Bill through Parliament.

7.35 This draft Order is unchanged from the proposed Order that preceded it. The proposed Order was scrutinised by the Proposed Welsh Red Meat Industry LCO Committee of the National Assembly for Wales and the House of Commons Welsh Affairs Committee. The Committees published their reports on 11 December 2008 and 23 February 2009 respectively. Neither Committee recommended any changes to the proposed Order.

8. Consultation Outcome

8.1 There has been no consultation on this draft Order. However, it has been subject to pre-legislative scrutiny by both a National Assembly for Wales Scrutiny Committee and the Welsh Affairs Committee, as described above, who each invited submissions of evidence as part of their inquiries. This draft Order is part of the Welsh Assembly Government's legislative programme as set out by the First Minister, the Rt Hon Rhodri Morgan AM, in his speech to the National Assembly for Wales on 15 July 2008.

8.2 Any Assembly Measure brought forward as a result of the legislative competence conferred by this instrument would usually first be subject to consultation. Assembly Measures are a matter for the National Assembly for Wales to consider.

9. Guidance

No guidance has been, or will be, issued in relation to this Order. This Explanatory Memorandum explains the scope and policy context of matters included in the Order.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it only confers legislative competence on the National Assembly for Wales, and so has no impact on business, charities or voluntary bodies.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

This draft Order confers legislative competence on the National Assembly for Wales. The monitoring or review of any Assembly Measures brought forward as a result of this legislative competence is primarily a matter for the Welsh Assembly Government and/or the National Assembly for Wales.

13. Contact

Queries about the content of the instrument or this memorandum should be addressed to Geth Williams (Tel:020 7270 0554 or email geth.williams@walesoffice.gsi.gov.uk)

James George (Tel: 029 2089 8484 or email james.george@walesoffice.gsi.gov.uk) can answer legal queries about the instrument.

Annex A

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

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

"Matter 1.1

The red meat industry, in relation to—

(a) increasing efficiency or productivity in the industry;

(b) improving marketing in the industry;

(c) improving or developing services that the industry provides or could provide to the community;

(d) improving the ways in which the industry contributes to sustainable devlopment.

Interpretation of this field

In this field "the red meat industry" means all of the activities comprised in—

(i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and

(ii) producing, processing, marketing, manufacturing and distributing products derived to any substancial extent from those animals (apart from milk and milk products, fleece wool and hides).

For the purposes of this definition—

"cattle" means bovine animals, including bison and buffalo;

"pigs" means porcine animals, including wild boar and other feral pigs."

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1[1]

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

Matter 5.2

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

Matter 5.3

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

Matter 5.4

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

Matter 5.4A[2]

The regulation of—

(a) schools that are not maintained by local education authorities;

(b) relevant independent educational institutions.

Matter 5.5[3]

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

Matter 5.6

Provision about the making 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—

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

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

[3] Matters 5.5-5.9 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007.

(a) to participate effectively in education or training,

(b) to take advantage of opportunities for employment, or

(c) to participate effectively in the life of their communities.

Matter 5.9

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

Matter 5.10[4]

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

This matter applies to—

(a) persons receiving nursery, primary, secondary or further education or training;

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

Matter 5.11[5]

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

Matter 5.12

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

(a) institutions concerned with the provision of further education, and

(b) bodies that conduct such institutions,

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

Provision about—

(a) the conduct and functions of such institutions and bodies that conduct such institutions;

(b) the property, rights and liabilities of such institutions and bodies that conduct such institutions;

(c) property held by any person for the purposes of such an institution;

(d) the governance and staff of such institutions.

Matter 5.13

Provision for and in connection with securing collaboration—

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[4] Matter 5.10 was inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), 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 (S.I. 2008/3132).

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

(a) between bodies that conduct institutions concerned with the provision of further education, or

(b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales,

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

Matter 5.14

The provision of financial resources for and in connection with—

(a) education or training provided by institutions concerned with the provision of further education;

(b) post-16 education or training provided otherwise than by such institutions;

(c) the carrying out of research relating to education or training falling within paragraph (a) or (b).

Matter 5.15[6]

The inspection of—

(za) schools;

(zb) relevant independent educational institutions;

(a) education or training provided by institutions concerned with the provision of further education;

(b) pre-16 education or training, or post-16 education or training, provided otherwise than by institutions within paragraphs (za) to (a);

(c) the training of teachers and specialist teaching assistants for schools;

(d) services of the kinds mentioned in matter 5.8.

Matter 5.16[7]

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

(a) pre-16 education or training;

(b) post-16 education or training;

(c) the training of teachers and specialist teaching assistants for schools;

(d) services of the kinds mentioned in matter 5.8.

Matter 5.17[8]

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

[7] Matter 5.16 was inserted by section 27(2) of the Further Education and Training Act 2007 and amended by section 149(1) and (5) of the Education and Skills Act 2008.

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

Education and training for—

(a) persons who have a greater difficulty in learning than the majority of persons of the same age as those persons;

(b) persons who have, or have had—

(i) a physical or mental impairment, or

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

Matter 5.18[9]

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

(a) facilities for social or physical training;

(b) educational activities.

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

Interpretation of this field[10]

In this field—

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

"post-16 education" means—

(a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and

(b) organised leisure-time occupation connected with such education;

"post-16 training" means—

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

(b) organised leisure-time occupation 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.

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

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

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

(a) it provides education for the person, and

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

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

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

Field 6: environment

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

Field 8: food

Field 9: health and health services

Matter 9.1[11]

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 10.1[12]

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

Provision for and in connection with—

(a) the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;

(b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

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

Interpretation of this field

In this field—

"motor vehicle" has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) applies as it applies for the purposes of the Road Traffic Acts;

"road" has the same meaning as in the Road Traffic Regulation Act 1984;

"Welsh trunk road" means a road for which the Welsh Ministers are the traffic authority (within the meaning of section 121A of the Road Traffic Regulation Act 1984).

Field 11: housing

Field 12: local government

Matter 12.1[13]

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

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[12] Matter 10.1 and the interpretation provisions for field 10 were inserted by section 22 of the Local Transport Act 2008 (c. 26). See also section 23 of that Act.

[13] Matters 12.1-12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 235 and Schedule 17.

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

Matter13.1

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.

Matter13.2

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).

Matter13.3

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 15.1[14]

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

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

Matter 15.2[15]

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—

(i) who have attained the age of 25, and

[14] Matter 15.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785) and amended by article 3(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

[15] Matters 15.2-15.8 were inserted by article 3(b) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.

(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—

(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[16]

In this field—

"children" means persons who have not attained the age of 18;

"development" means physical, intellectual, emotional, social or behavioural development;

"health" means physical or mental health;

"local authorities" means the councils of counties or county boroughs in Wales;

"persons formerly looked after" means persons who, at any time before attaining the age of 18—

(a) have been in the care of a public authority, or

(b) have been provided with accommodation by a public authority in order to secure their well-being;

"public authorities" means each public authority within the meaning of section 6 of the Human Rights Act 1998, apart from courts or tribunals;

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

"vulnerable children" means children—

(a) who are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of social care services,

(b) whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of social care services,

(c) who have a physical or mental impairment,

(d) who are in the care of a public authority, or

(e) who are provided with accommodation by a public authority in order to secure their well-being;

"well-being", in relation to individuals, means well-being so far as relating to any of the following—

(a) health and emotional well-being;

(b) protection from harm and neglect;

(c) education, training and recreation;

(d) the contribution made by them to society;

(e) social and economic well-being;

(f) securing their rights;

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

[16] Interpretation provisions for field 15 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785) and replaced by article 3 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

Field 16: sport and recreation

Matter 16.1[17]

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 18.1[18]

Provision for and in connection with—

(a) plans of the Welsh Ministers in relation to the development and use of land in Wales, and

(b) removing requirements for any such plans.

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

Matter 18.2

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

(a) the development of the authorities' areas, or

(b) the planning of the development of the authorities' areas.

Matter 18.3

Provision for and in connection with—

(a) plans of local planning authorities in relation to the development and use of land in their areas, and

(b) removing requirements for any such plans.

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

Interpretation of this field

In this field—

"local planning authority" in relation to an area means—

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

(b) a county council in Wales or a county borough council, in any other case;

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[17] Matter 16.1 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

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

"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[19]

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	Matters 5.10, 5.17, 5.18

[19] 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 (S.I. 2008/3132).

obligations in transport.	
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
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	Matters 15.2, 15.3

and Co-operation in respect of Intercountry Adoption.	
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[20]

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

Enactments other than this Act

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

TABLE

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

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

5 A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General.

This Act

6 (1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.

(2) Sub-paragraph (1) does not apply to sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54 and 156(2) to (5).

(3) Sub-paragraph (1) does not apply to any provision—

(a) making modifications of so much of any enactment as is modified by this Act, or

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

[20] 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.

PART 3

EXCEPTIONS FROM PART 2

Functions of Ministers of the Crown

7 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.

Police areas[21]

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,

(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.

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

Data Protection Act 1998[22]

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.

[22] Paragraph 11 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).