EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (LOCAL GOVERNMENT) ORDER 2010

2010 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 inserts ten new matters into field 12 (Local Government) of Part 1 of Schedule 5 along with interpretation provisions and amends three existing matters in that field.

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

None

4. Legislative Context

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 accordance with the competence conferred on the Assembly and subject to the provisions of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order ("LCO") in this Memorandum.

4.2 The Local Government Act 1972 ("the 1972 Act") established the current system of local government in England and Wales and makes provisions with respect to the organisation and functions of local authorities, including a system of communities in Wales. These were the areas that were formerly the boroughs, urban districts and rural parishes in Wales, and certain divided parts of former urban districts as

at 1st April 1974. The functions of the Secretary of State under the 1972 Act insofar as exercisable in Wales have been transferred, with certain exceptions, to the Assembly and are now vested in the Welsh Ministers. Local government was further reorganised under the Local Government (Wales) Act 1994. Other statutes relating to the issues addressed by the LCO include the Local Government and Housing Act 1989, the Local Government Acts 2000 and 2003 and the Representation of the People Acts 1983 and 1985. The Welsh Ministers have executive functions under the Local Government Act 2000 and 2003. The functions of the Secretary of State pursuant to the Representation of the People Acts have not been transferred to the Welsh Ministers.

4.3 The Assembly already has legislative competence in relation to many aspects of local government, as set out in field 12 of Schedule 5 to the 2006 Act. The legislative competence conferred on the Assembly by this LCO is wider than the current subordinate legislative powers of the Welsh Ministers. Neither the Assembly nor the Welsh Ministers have power at present to legislate for significant changes to the law covering the following topics: community councils (constitution, structure, procedures and responsibilities), community reviews, relations between tiers of local government, councillor allowances (including the functions of the Independent Remuneration Panel, which is limited by regulations made in 2007) and the recruitment and retention of councillors. The legislative competence conferred by the LCO would enable the Assembly to make changes to the law in these areas by way of Measure. More detailed analyses are provided in the paragraphs 7.1 to 7.18 below, which set out the specific proposals.

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) (Local Government) Order 2010 are compatible with the Convention rights*"

7. Policy background

7.1. The Welsh Assembly Government wishes to amend Part 1 of Schedule 5 to the 2006 Act so as to include matters under Field 12 (local government) relating to—

- Local government at community level (the legislation currently in force provides for community meetings and community and town councils, generically referred to as "community councils");
- public information about local government for communities, counties and county boroughs;
- remuneration of councillors in community, county and county borough councils and of members of National Park Authorities and fire and rescue authorities; and
- promoting and supporting membership of community, county and county borough councils.

7.2. The context for the Welsh Assembly Government's proposal flows from three reviews and their associated reports into the circumstances of community councils and of councillors in Wales.

7.3. Firstly, the study undertaken in 2003 by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales, "Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales" (the "Aberystwyth Report") presented a comprehensive review of the activities undertaken by community councils across Wales. The Aberystwyth Report identified the constraints which community councils believed they faced and set out a number of proposals for enhancing the role of community councils, should a council wish to take on additional responsibilities. The Aberystwyth Report also concluded that the existing procedures for establishing a community council were too restrictive and those for dissolving a community council were too lax. The Aberystwyth Report further recommended that the Welsh Assembly Government should examine possible alternative mechanisms for directly funding community and town councils, and providing additional funding through the use of direct grants. In its formal response to the Aberystwyth Report (in 2004), the Welsh Assembly Government gave a commitment to seek legislation to address issues identified in the review, with a view to putting in place arrangements to develop and strengthen the role of community councils and enabling them to deliver a wider range of services and actions locally. This would also serve to increase the effectiveness of community councils' representational role and their ability to work in partnership with other bodies.

7.4. Secondly, in December 2007 the Report of the Councillors Commission "Representing the Future" ("the 2007 Report") was presented to the UK Government's Department for Communities and Local Government. The 2007 Report included numerous proposals designed to assist in the recruitment of a greater number of candidates for local government and to assist with the retention of councillors once elected. In March 2008 the Welsh Assembly Government established the Councillor Commission Expert Panel Wales ("the Expert Panel") to consider the recommendations of the 2007 Report

and their applicability to Wales and to look at wider issues connected to the recruitment and retention of councillors. The Expert Panel submitted its report ("Are we being served") to the Welsh Assembly Government in August 2009. The report made a series of recommendations calling for concerted action by the Assembly Government and several other institutions to help break down barriers to increasing the diversity of elected members at all levels of government. The Welsh Assembly Government consulted on the Expert Panel's report. Some of the issues raised in the report will require legislation to implement the related recommendations. The LCO will enable the Assembly to legislate for: diversity monitoring of councillors and candidates; the training and development of serving councillors; flexible working for councillors; administrative support for councillors; and public accountability of councillors.

7.5. Thirdly, the policy report of the Independent Remuneration Panel for Wales ("the Independent Panel") is due in the first quarter of 2010. The Independent Panel is reviewing the remuneration structure of councillors in Wales, including salaries, allowances and pensions payable to councillors. The initial report of the Independent Panel (July 2008) and its supplementary report (December 2008) made various recommendations for future reform, and notably the seeking of legislative competence over councillors' remuneration.

7.6. The Welsh Assembly Government has brought forward this LCO seeking to confer powers on the Assembly to legislate in relation to the areas identified by the reviews.

Scope

7.7. It is proposed that ten matters be inserted into Field 12: *Local Government* of Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on the issues covered by the matters by way of Assembly Measure.

7.8. Article 2 inserts Matters 12.8 to 12.17 into Field 12. The following paragraphs describe each Matter in turn.

7.9. *Matter 12.8* gives the Assembly competence over the constitution, structure and procedures of community councils and for community meetings. It also gives competence over arrangements in respect of community reviews, in so far as they relate to the areas of communities. The current provisions relating to these activities are set out in Part II and Part IV of the 1972 Act. Sections 27-29 of the 1972 Act sets out the procedures for holding community meetings and the stages for the establishment and dissolution of community councils. Welsh Ministers have no regulation-making powers to enable them to alter the rules for calling community meetings or for the staging of community polls. Section 55(2) of the 1972 Act places a duty on each principal council in Wales to keep the whole of their area under review

for the purpose of considering whether or not to make recommendations to the Local Government Boundary Commission for Wales with respect to the constitution, abolition or alteration of their community areas. The Matter would also give the Assembly competence over the co-option of members and youth representatives.

7.10. *Matter 12.9* gives the Assembly competence over the electoral arrangements for community councils. This includes issues such as the number of councillors that may be returned; whether or not community councils should be divided into wards for electoral purposes; and reviews of these arrangements. The Matter excludes the local government franchise, the arrangements for electoral registration and electoral administration, including the conduct of elections, and the voting system used at community council elections in Wales.

7.11. *Matter 12.10* provides competence for the Assembly to extend to community councils in Wales the power to promote or improve the economic, social or environmental well-being of their areas. Part I of the Local Government Act 2000 provides a power for local authorities to do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. The local authorities on which the well-being power in section 2(1) of the 2000 Act is conferred are, in relation to Wales, county councils and county borough councils only.

7.12. *Matter 12.11* provides the Assembly with competence to make provision about grants by the Welsh Ministers to community councils. The bulk of community council income is received by means of a council tax precept under section 41 of the Local Government Finance Act 1992. The developing role of community councils may create new demands on their finances and the Aberystwyth report recommended that the Welsh Assembly Government should consider providing additional funding through the use of direct grants.

7.13. *Matter 12.12* enables the Assembly to legislate to encourage productive relations and collaboration between community councils and between community councils and principal councils (i.e. county and county borough councils). In July 2008, the Assembly Government published *'A Shared Community – Relationship building and charters for unitary authorities and community and town councils'*. This document provides guidance to encourage collaborative arrangements, usually set out in an agreed "charter", through which the two tiers of government would work together in a mutually supportive and co-operative way for the benefit of their communities. The development and adoption of collaboration arrangements / charters is currently voluntary, though strongly encouraged by the Welsh Assembly Government.

7.14. *Matter 12.13* allows the Assembly to put in place measures to help raise standards of local government by community councils. There is

currently no national programme to assess the competence of community councils in Wales, unlike in England which has the Quality Parish and Town Council Scheme, a national programme with standards set by stakeholders to the scheme.

7.15. *Matter 12.14* provides competence for the Assembly to legislate to encourage transparency and wider participation in the proceedings of community councils. Section 21(2)(a) of the Representation of the People Act 1985 provides that where, at an ordinary election of community councillors, an insufficient number of persons are or remain validly nominated to fill the vacancies, the new council may co-opt any person or persons to fill any remaining vacancies. It is accepted good practice that opportunities for co-option are advertised openly within the local community. This avoids the perception of community councils being 'closed shops' and provides opportunities for greater participation by under-represented groups. There is no requirement at present, however, for the advertising of vacancies.

7.16. *Matter 12.15* provides competence for the Assembly to legislate to encourage greater accountability in local government by way of the information provided to local people by principal and community councils about their activities.

7.17. *Matter 12.16* provides competence over issues relating to salaries, allowances, pensions and other payments to members of county and county borough councils, national park authorities, community councils and fire and rescue authorities in Wales. Legislative provisions for the remuneration of councillors are contained within section 18 of the 1989 Local Government and Housing Act, section 100 of the Local Government Act 2000 and supporting regulations. The Independent Remuneration Panel is clear in its view that there is need for reform in relation to allowances, pensions and gratuities for councillors. The Panel is developing its detailed proposals and will present these in a policy report expected in the first quarter of 2010.

7.18. *Matter 12.17* enables the Assembly to require principal councils and community councils to provide better support and working conditions for serving councillors with a view to assisting in the recruitment of greater numbers of candidates for local government and in the retention of councillors once elected. The Welsh Assembly Government's "Expert Panel" considered the recommendations of the UK Government's Councillors' Commission on recruiting and retaining councillors and reported in August 2009. Some of the recommendations will require legislation and this competence would enable the Assembly to legislate in these areas in due course.

8. Consultation Outcome

8.1 There has been no consultation on this LCO. However, it has been subject to pre-legislative scrutiny by the National Assembly

Legislation Committee No. 2 and the House of Commons Welsh Affairs Committee who each invited submissions of evidence as part of their inquiries.

8.2 The House of Lords Constitution Committee also considered the LCO and concluded that it did not raise any matters of constitutional principle.

8.3 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.

Changes to the LCO following pre-legislative scrutiny

8.4 The Assembly's Legislation Committee No. 2 supported the general principles of the proposed Order and concluded that the transfer of legislative competence in Matters 12.8 to 12.17 would serve to enhance local democracy and community engagement in Wales.

8.5 It registered some concerns about the possibility that exercising the competencies conferred by Matter 12.12, Matter 12.13 and Matter 12.15 might have unintended consequences in raising unrealistic expectations of what smaller community and town councils could undertake and deliver. The Committee was content with Matters 12.12, 12.13 and 12.15 as drafted and suggested that careful consideration be given to the circumstances of smaller councils when developing Measures under these Matters.

8.6 Taking account of the Legislation Committee's suggestion to consider the circumstances of smaller community councils in relation to legislative proposals, the Welsh Assembly Government believes that the development of collaborative arrangements / charters enabled by provision made under Matter 12.12 would be achievable without presenting undue difficulties for small community councils. The primary purpose of charters is to agree mutually supportive and co-operative ways of working. Delegation of duties from principal councils to community and town councils is neither a required nor a presumed outcome of charters. They can, however, provide the framework for delegation where appropriate. The Welsh Assembly Government also believes that a voluntary accreditation scheme (Matter 12.13), developed in collaboration with local government, would give the public and partner organisations confidence that a community and town council was meeting certain standards. It would also enhance the self confidence and sense of authority of these councils. The conferral of legislative competence in this area would enable the Welsh Ministers to seek a power to give such a scheme statutory backing should it be found in developing or operating the scheme that this would be beneficial.

8.7 The Welsh Assembly Government recognises that community and town councils have varying capacities and aspirations; the circumstances of all councils will be taken fully into account in developing future Measures.

8.8 The Welsh Affairs Committee also supported the proposed LCO. It concluded that it is consistent with previously announced Welsh Assembly Government policy to build up the capacity of community and town councils, and that using the LCO process was appropriate.

8.9 The Committee considered that the title of the Order was potentially confusing and should be given a name which would give readers a clearer idea of what the LCO was about. The Committee volunteered "National Assembly for Wales (Legislative Competence) (Community Councils) Order" as a possible alternative. The Assembly Government considered all possibilities, but concluded that the convention that the title of an LCO should include the name of the most significant relevant field or fields should remain. "Local Government" is the most suitable phrase to use in parentheses in the title in this instance because the LCO is conferring additional legislative competence on the Assembly in respect of a number of different matters relating to local government. The LCO will give the Assembly powers in respect of the structures and work of both tiers of local government in Wales (see paragraph 7.1).

8.10 The Welsh Affairs Committee expressed concern about the use of the word "communities" in the LCO and Explanatory Memorandum given that the word is used in a range of different contexts.

8.11 The Welsh Assembly Government considers that the use is appropriate in this LCO. The definition is limited in its application to dealing with local government institutions at a community level and extends to those community institutions which are described in the Local Government Act 1972 – namely, community and town councils and community meetings. Including this definition in the LCO spells out that the scope of the competence refers to the areas of the most local tier of local government in Wales. The community meetings to which the definition applies are only those which are organised in line with the provisions of the 1972 Act; any other meeting dealing with community issues but not organised in line with those provisions is not captured by the definition and so falls outside the scope of the LCO. Accordingly, the Welsh Assembly Government considers that usage of the word community in the LCO is consistent with usage in the 1972 Act and will help readers make the connection with the relevant provisions in that Act.

8.12 The Welsh Assembly Government has noted the comments of both the Legislation Committee and the Welsh Affairs Committee about the range of terms used to describe the various tiers of local government in Wales, but considers that a formal review of the relatively few terms is

unnecessary. It will carefully consider terms used to describe local government in drafting future legislation and in communications to ensure clarity and consistency.

8.13 The LCO includes a further change to Schedule 5 to streamline the drafting. Matters 12.1, 12.6 and 12.7 in Field 12 (local government) all include a definition of "principal council". The LCO defines a principal council for field 12 as a whole. Article 2 removes the definition under the specific matters to avoid unnecessary duplication.

9. Guidance

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

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. The Welsh Assembly Government would prepare a Regulatory Impact Assessment when bringing forward any proposed Assembly Measure as a result of the legislative competence this LCO confers.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

This LCO 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)

Sue Olley (Tel: 02920 89 8568 or email susan.olley@walesoffice.gsi.gov.uk) can answer legal queries about the instrument.

Annex A

This annex shows how this Order amends Schedule 5 to the Government of Wales Act 2006, with footnotes indicating the source of previous amendments. Three Legislative Competence Orders are due to be considered by Privy Council on 10 February 2010. Amendments to Schedule 5 as a result of these three LCOs are shown in italics.

Text to be inserted/deleted by this Order is shown in bold or struck through.

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Matter 1.1[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 development.

Interpretation of this field

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

(a) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
(b) 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).

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.

[1] Matter 1.1 and the interpretation provision for field 1 were inserted by the National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009 (S.I. 2009/1758).

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1[2]

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[3]

The regulation of—

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

Matter 5.5[4]

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).

[2] 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).
[3] Matter 5.4A was inserted by section 149(1) and (2) of the Education and Skills Act 2008 (c.25).
[4] Matters 5.5-5.9 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

Matter 5.6

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

Matter 5.7

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

Matter 5.8

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

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

Matter 5.9

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

Matter 5.10[5]

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[6]

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

Matter 5.12

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

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

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

(a) institutions concerned with the provision of further education, and
(b) bodies that conduct such institutions,

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

Provision about—

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

Matter 5.13

Provision for and in connection with securing collaboration—

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

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

Matter 5.14

The provision of financial resources for and in connection with—

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

Matter 5.15[7]

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);

[7] 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).

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

Matter 5.16[8]

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[9]

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[10]

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[11]

In this field—

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

[8] Matter 5.16 was inserted by section 27(2) of the Further Education and Training Act 2007 (c. 25) and amended by section 149(1) and (5) of the Education and Skills Act 2008 (c. 25).
[9] 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).
[10] Matter 5.18 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).
[11] Interpretation provisions for field 5 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 (S.I. 2008/1036) and section 149(1) and (6) of the Education and Skills Act 2008 (c. 25).

"post-16 education" means—
(a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
(b) organised leisure-time occupation connected with such education;

"post-16 training" means—
(a) training suitable to the requirements of persons who are above compulsory school age, and
(b) organised leisure-time occupation with such training

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

"relevant independent educational institution" means an institution other than a school which—
(a) provides part-time education for one or more persons of compulsory school age ("part-time students") whether or not it also provides full-time education for any person, and
(b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

For the purposes of the above definition of "relevant independent educational institution", an institution provides "part-time" education for a person if—
(a) it provides education for the person, and
(b) the education does not amount to full-time education.

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

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

Field 6: environment

Matter 6.1[12]

[12] Matters 6.1 – 6.4 and interpretation provisions for field 6 (shown in italics) to be inserted by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 due to be considered by Privy Council on 10 February 2010.

Preventing, reducing, collecting, managing, treating or disposing of waste.

This matter does not include—

(a) regulation of any activity in the sea;

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

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

Matter 6.2

Disposal of waste in the sea where the waste has been collected, managed or treated on land.

This matter does not include regulation of the following activities—

(a) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container;

(b) depositing any explosive substance or article in the sea or on or under the seabed;

(c) incinerating any substance or object on any vehicle, vessel, marine structure or floating container.

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

Matter 6.3

Protecting or improving the environment in relation to pollution.

This matter does not include—

(a) regulating the composition and content of fuel used in—

(i) a means of transport,

(ii) non-road mobile machinery, or

(iii) an agricultural or forestry tractor;

(b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;

(c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;

(d) provision of financial support in connection with—

(i) the production of renewable energy for consumption in transport, or

(ii) the use of that energy in transport,

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

(e) regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.

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

Matter 6.4

Protecting or improving the environment in relation to nuisances.

This matter does not include—

- *(a) imposition of criminal or civil liability in respect of energy nuisances that consist of acts, omissions and states of affairs for which there is statutory authority, except criminal or civil liability which the Welsh Ministers have power to impose;*
- *(b) removal of relevant defences to, or relevant exclusions from, rules of law which impose civil or criminal liability in respect of energy nuisances, except those defences and exceptions which the Welsh Ministers have power to remove;*
- *(c) regulation of the emission of smoke, artificial light or noise from military premises;*
- *(d) regulation of gas activities, oil activities, and infrastructure that is necessary for carrying out any such activities;*
- *(e) regulation of oil and gas exploration and exploitation in the sea;*
- *(f) regulation of electronic communications and electronic communications networks.*

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

Not included in matters 6.1, 6.2, 6.3 and 6.4

Matters 6.1, 6.2, 6.3 and 6.4 do not include any of the following—

- *(a) regulation concerning the control of major accident hazards involving dangerous substances (this exception is to be interpreted in accordance with Council Directive 96/82/EC and it relates only to activity within the scope of that Directive);*
- *(b) regulation of the decommissioning of offshore energy installations and related infrastructure.*

Not included in matters 6.1 and 6.2

Matters 6.1 and 6.2 do not include any of the following—

- *(a) regulation of decommissioned explosives that are outside the scope of the Waste Directive by virtue of Article 2(1)(b)(v) of the Waste Directive and are or have been—*
  - *(i) held on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or*
  - *(ii) held by or for the purposes of visiting forces;*
- *(b) regulation of radioactive material that is at military premises;*
- *(c) regulation of the capture, conveyance or disposal of carbon dioxide as part of relevant carbon capture and storage.*

Not included in matters 6.3 and 6.4

Matters 6.3 and 6.4 do not include any of the following—

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

Meaning of "pollution"

In this field "pollution" means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy. For the purposes of this definition "air" includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

Meaning of "nuisance"

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

Meaning of "relevant defence" and "relevant exclusion"

In matter 6.4, in relation to a rule of law which imposes civil or criminal liability in respect of an energy nuisance ("the unlawful nuisance")—

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

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

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

Other interpretation of this field

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

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

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

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

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

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

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

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

"military premises" means premises which are—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of visiting forces;

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

(a) installations used for oil activities, gas activities or for the exploration or exploitation of gas or oil;

(b) carbon dioxide storage installations;

(c) renewable energy installations;

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

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

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

"sea" means (except where the context otherwise requires) the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;

"statutory" means arising by virtue of an Act;

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

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

An order or an Order in Council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining

any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.

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

Field 8: food

Field 9: health and health services

Matter 9.1[13]

Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law if 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.

Matter 9.2[14]

Assessment of mental health and treatment of mental disorder.

This matter does not include any of the following —

(a) subjecting patients to —

(i) compulsory attendance at any place for the purposes of assessment of treatment

(ii) compulsory supervision, or

(iii) guardianship;

(b) consent to assessment or treatment;

(c) restraint;

(d) detention.

For the purpose of this matter, "treatment of mental disorder" means treatment to alleviate, or prevent a worsening of, a mental disorder or one or more of its symptoms or manifestations; and it includes (but is not limited to) nursing, psychological intervention, habilitation, rehabilitation and care.

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;

[13] 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).

[14] Matter 9.2 and the interpretation of "mental disorder" (shown in italics) to be inserted by the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 due to be considered at Privy Council on 10 February 2010.

"illness" has the same meaning as in the Act;

"mental disorder" means any disorder or disability of the mind, apart from dependence on alcohol or drugs;

"patient" has the same meaning as in the Act;

"personal injury" includes any disease and any impairment of a person's physical or mental health;

"qualifying liability in tort" means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis or illness or the care or treatment of any patient.

Field 10: highways and transport

Matter 10.1[15]

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.

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[16]

[15] Matter 10.1 and the interpretation provisions for field 10 were inserted by section 122 of the Local Transport Act 2008 (c. 26), and matter 10.1 was amended by article 2(7)(a) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006). See also section 123 of the Local Transport Act 2008.
[16] 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 paragraphs 1 and 2.

Provision for and in connection with—

(a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and

(b) the establishment of councils for new principal areas and the abolition of existing principal councils.

~~"Principal area" means a county borough or a county in Wales, and a "principal council" means a council for a principal area.~~

Matter 12.2

Provision for and in connection with—

(a) the procedure for the making and coming into force of byelaws, and

(b) the enforcement of byelaws.

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

Matter 12.3

Any of the following—

(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.

Matter 12.6[17]

Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements.

This matter does not include—

(a) direct elections to executives of principal councils, or

(b) the creation of a form of executive requiring direct elections.

For the purposes of this matter—

(a) "executive arrangements" has the same meaning as in Part 2 of the Local Government Act 2000;

~~(b) "principal council" means a county or county borough council;~~

[17] Matters 12.6 and 12.7 were inserted by section 33 the Local Democracy, Economic Development and Construction Act 2009 (c. 20).

(c) "direct elections" means elections by local government electors (within the meaning of section 270(1) of the Local Government Act 1972).

Matter 12.7

Committees of principal councils with functions of—

(a) review or scrutiny, or

(b) making reports or recommendations.

This matter does not include committees under section 19 of the Police and Justice Act 2006 (crime and disorder committees).

~~For the purposes of this matter "principal council" means a county or county borough council.~~

Matter 12.8

Areas of communities and constitution, structure, and procedures of local government institutions for communities.

Matter 12.9

Electoral arrangements for elected local government institutions for communities.

In this matter "electoral arrangements" does not include—

(a) the local government franchise;

(b) electoral registration and administration;

(c) the voting system for the return of members in an election.

Matter 12.10

Conferral on local government institutions for communities of powers—

(a) to which this matter applies,

(b) that are exercisable in relation to their areas, and

(c) that are powers exercisable by principal councils in relation to principal areas.

This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area.

Matter 12.11

Grants from the Welsh Ministers to fund local government for communities.

Matter 12.12

Relations between different communities (and their local government institutions), or between communities (and their local government institutions) and principal councils.

Matter 12.13

Schemes for the accreditation of quality in local government for communities.

Matter 12.14

Public participation in local government for communities (apart from elections).

Matter 12.15

The provision of information relating to local government to the public.
For the purposes of this matter "local government" means—

- **(a) local government for communities;**
- **(b) local government for counties and county boroughs.**

Matter 12.16

Salaries, allowances, pensions and other payments for members of the following—

- **(a) local government institutions for communities;**
- **(b) county councils and county borough councils;**
- **(c) National Park authorities;**
- **(d) fire and rescue authorities constituted by schemes under section 2 of the Fire and Rescue Services Act 2004 or schemes to which section 4 of that Act apply.**

Matter 12.17

Promoting and supporting membership of the following—

- **(a) local government institutions for communities;**
- **(b) county councils and county borough councils.**

Interpretation of this field

In this field—
"communities" means separate areas for the administration of local government, each of which is wholly within a principal area (but does not constitute the whole of a principal area);

"principal area" means a county borough or a county;

"principal council" means a council for a principal area.

Field 13: National Assembly for Wales

Matter 13.1

Creation of, and conferral of functions on, an office or body for and in connection with investigating complaints about the conduct of Assembly members and reporting on the outcome of such investigations to the Assembly.

Matter 13.2

Conferral of functions on the Assembly Commission for and in connection with facilitating the exercise by the Assembly of its functions (including the provision to the Assembly of the property, staff and services required for the Assembly's purposes).

Matter 13.3

Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister.

Matter 13.4

Provision for and in connection with the creation and maintenance of a register of interests of Assembly members and the Counsel General.

Matter 13.5

Provision about the meaning of Welsh words and phrases in-

(a) Assembly Measures
(b) subordinate legislation made under Assembly Measures and
(c) subordinate legislation not so made but made by the Welsh Ministers, the First Minister or the Counsel General.

Matter 13.6

Provision for and in connection with the procedures for dealing with proposed private Assembly Measure, including, in particular—

(a) procedures for hearing the promoters of, and objectors, to proposed private Assembly Measures,
(b) the persons who may represent such promoters and objectors, and the qualifications that such persons must possess,
(c) the imposition of fees for and in connection with the promotion of proposed private Assembly Measures, and
(d) the assessment of costs incurred in connection with proposed private Assembly Measures.

Field 14: public administration

Field 15: social welfare

Matter 15.1[18]

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 any other person, may secure social care services to meet those needs.

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

Matter 15.2[19]

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
    (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,

[18] 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) and by article 2(2) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

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

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

(a) public authorities whose principal functions relate to any one or more of the fields in this part;
(b) police authorities and chief officers of police for police areas in Wales;
(c) the British Transport Police Authority;
(d) local probation boards for areas in Wales;
(e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and the 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
(f) youth offending teams for areas in Wales;
(g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
(h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

Matter 15.7

Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

Matter 15.8

Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; the functions of such an office or body, including in particular—

(a) reviewing the effect on children or young persons of the exercise by any persons of functions related to their well-being;
(b) reviewing and monitoring—
    (i) advocacy services;
    (ii) arrangements for dealing with complaints and representations made by, or on behalf of, children or young persons in respect of persons with functions related to their well-being or persons providing them with social care services;
(c) examining cases of particular children or young persons;
(d) considering, and making representations about, any matter affecting the well-being of children or young persons.

Matter 15.9[20]

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

This matter includes (but is not limited to) social care services to help carers.

[20] Matter 15.9 was inserted by article 2(3) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

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 a body (whether or not incorporated).

Matter 15.10[21]

Social care services connected to mental health.

This matter does not include the independent mental capacity advocacy services established by Part 1 of the Mental Capacity Act 2005.

Interpretation of this field[22]

In this field—

"advocacy services" means services providing assistance (by way or representation or otherwise) in connection with the well-being of any person;

"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;

[21] Matter 15.10 and interpretation of "advocacy services" (as shown in italics) will be inserted by the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 due to be considered by Privy Council on 10 February 2010.

[22] 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), replaced by article 3 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132), and amended by article 2(4) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

"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; 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.

Field 16: sport and recreation

Matter 16.1[23]

The provision of recreational facilities and activities for children or young persons.

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

Matter 16.2[24]

[23] 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).
[24] Matters 16.2 and 16.3 were inserted by section 310 of the Marine and Coastal Access Act 2009 (c. 23).

The establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys.

This matter does not include—

(a) enabling the public to make journeys by mechanically propelled vehicles (except permitted journeys by qualifying invalid carriages);
(b) the creation of new highways (whether under the Highways Act 1980 or otherwise).

Matter 16.3

Securing public access to relevant land for the purposes of open-air recreation.

Land is relevant land if it—

(a) is at the coast,
(b) can be used for the purposes of open-air recreation in association with land within paragraph (a), or
(c) can be used for the purposes of open-air recreation in association with a route within matter 16.2.

In this matter the reference to land at the coast is not limited to coastal land within the meaning of section 3 of the Countryside and Rights of Way Act 2000.

Interpretation of this field

In this field—

"coast" means the coast of Wales adjacent to the sea, including the coast of any island (in the sea) comprised in Wales;

"estuarial waters" means any waters within the limits of transitional waters within the meaning of the Water Framework Directive (that is to say, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy);

"highway" has the same meaning as in the Highways Act 1980;

"public foot crossing", in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot;

"qualifying invalid carriage" means an invalid carriage within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970 (use of invalid carriages on highways) which complies with the prescribed requirements within the meaning of that section;

"relevant upstream waters", in relation to a river, means the waters from the seaward limit of the estuarial waters of the river upstream to the first public foot crossing;

"sea" includes the relevant upstream waters of a river;

and a journey by a qualifying invalid carriage is a permitted journey if the carriage is being used in accordance with the prescribed conditions within the meaning of section 20 of the Chronically Sick and Disabled Persons Act 1970.

Field 17: tourism

Field 18: town and country planning

Matter 18.1[25]

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—

[25] Matters 18.1-18.3 and interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (c. 29).

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

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

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

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

Field 19: water and flood defence

Field 20: Welsh language

Matter 20.1[26]

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

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

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

(a) public authorities;

(b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;

(c) persons providing services to the public established by an enactment;

(d) persons established by prerogative instrument—

(i) to advance learning and knowledge by teaching or research or by developing or awarding qualifications;

(ii) to collect, preserve or provide access to recorded knowledge or to objects and things which further understanding;

(iii) to support, improve, promote or provide access to heritage, culture, sport or recreational activities;

(iv) engaged in promoting a wider knowledge and representing the interests of Wales to other countries;

(v) engaged in central banking;

(e) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;

(f) persons providing services to the public who receive public money amounting to £400,000 or more in a financial year;

[26] Matters 20.1 – 20.2 and the interpretation provision for field 20 (as shown in italics) will be inserted by the National Assembly for Wales (Legislative Competence)(Welsh Language) Order 2010 due to be considered by the Privy Council on 10 February 2010.

(g) persons overseeing the regulation of a profession, industry or other similar sphere of activity;

(h) providers of social housing;

(i) persons providing the public with the following kinds of services or with other services which relate to any of those services—

(i) gas, water or electricity services (including supply or distribution);

(ii) sewerage services (including disposal of sewage);

(iii) postal services and post offices;

(iv) telecommunications services;

(v) education, training (where the provider receives public money for its provision), or career guidance, and services to encourage, enable or assist participation in education, training or career guidance;

(vi) bus and railway services;

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

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

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

A person who receives public money amounting to £400,000 or more in a financial year does not fall within paragraph (f) unless—

(a) that person also received public money in a previous financial year, or

(b) a decision has been made that that person will receive public money in a subsequent financial year.

With regard to imposing duties in relation to paragraph (i)—

(a) this matter only includes duties in respect of the services and the other related services mentioned, and

(b) in respect of the related services, this matter does not include the provision of related services in a shop, other than post office counter services and the sale of tickets or provision of timetables for bus and railway services.

This matter does not include imposing duties about broadcasting.

This matter does not include imposing duties on a person (other than on a Welsh language authority) unless there is a means for that person to challenge those duties, as they apply to that person, on grounds of reasonableness and proportionality.

Matter 20.2

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

Interpretation of this field

In this field—

"broadcasting" means the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms;

"bus service" means a scheduled service, by public service vehicle (within the meaning of section 1 of the Public Passenger Vehicles Act 1981, for the carriage of passengers at separate fares, other than a service—

- *(a) for which the whole capacity of the vehicle has been purchased by a charterer for the charterer's own use or for resale;*
- *(b) which is a journey or trip organised privately by any person acting independently of the vehicle operator; or*
- *(c) on which the passengers travel together on a journey, with or without breaks and whether or not on the same day, from one or more places to one or more places and back;*

"enactment" includes any future enactment;

"shop" means any premises where the sale of goods is the principal trade or business carried on;

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

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

"public money" means—

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

"telecommunications service" means any service that consists of providing access to, or facilities for making use of, any system which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of

facilitating the transmission of communications by any means involving the use of electrical, magnetic or electro-magnetic energy (including the apparatus comprised in the system), but does not include broadcasting, radio, or television;

"Welsh language authority" means a person upon whom an enactment confers or imposes functions of—

(a) imposing or enforcing on other persons duties relating to the Welsh language,

(b) determining the duties relating to the Welsh language that are imposed on other persons, or

(c) deciding challenges to the duties relating to the Welsh language that are imposed on other persons.

PART 2

EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS[27]

Exceptions to matters[28]

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

Economic development (field 4 of Part 1)

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

(a) the consent of the Secretary of State, or

(b) the authority of an order granting development consent under the Planning Act 2008,

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

(2) Transmitting, distributing or supplying electricity.

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

(4) Nuclear energy and nuclear installations, including—

(a) nuclear safety, and

(b) liability for nuclear occurrences,

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

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[27] The heading to Part 2 was substituted by article 2(8) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

[28] Paragraph A1 was inserted by article 2(9) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006) Amendments to this paragraph (shown in italics) to be inserted by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 due to be considered by Privy Council on 10 February 2010. .

Highways and transport (field 10 of Part 1)

(1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

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

(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—

a) regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment, and

b) regulation relating to matter 10.1.

For the purpose of this paragraph, "relevant vehicles" means motor vehicles, mobile machinery and agricultural and forestry tractors.

(3) Road traffic offences.

(4) Driver licensing.

(5) Driving instruction.

(6) Insurance of motor vehicles.

(7) Drivers' hours.

(8) Traffic regulation on special roads (apart from regulation relating to matter 10.1).

(9) Pedestrian crossings.

(10) Traffic signs (apart from the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000 for purposes relating to matter 10.1).

(11) Speed limits.

(12) Public service vehicle operator licensing.

(13) 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.

(14) Transport security.

(14A) Aviation, air transport, airports and aerodromes, apart from—

(a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,

(b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and

(c) regulation of the use of aircraft carrying animals for the purpose of protecting—

(i) human health, apart from the health of persons in aircraft,

(ii) animal, fish or plant health, or

(iii) the environment.

(15) Shipping, apart from—

(a) financial assistance for shipping services to, from or within Wales, and

(b) regulation of the use of vessels carrying animals for the purposes of protecting—

(i) human health, apart from the health of persons on vessels,

(ii) animal, fish or plant health, or

(iii) the environment.

(16) Shipping, apart from financial assistance for shipping services to, from or within Wales.

(17) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.

(18) Harbours, docks, piers and boatslips, apart from—

(a) those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and

(b) regulation for the purposes of protecting human, animal, fish or plant health or the environment.

(19) Carriage of dangerous goods, including transport of radioactive material.

Social welfare (field 15 of Part 1)

(1) Child Support.

(2) Child trust funds, apart from subscriptions to such funds by—

(a) a county council or county borough council in Wales, or

(b) the Welsh Ministers.

(3) Tax credits.

(4) Child benefit and guardian's allowance.

(5) Social security.

(6) Independent living funds.

(7) Motability.

(8) Vaccine damage payments.

(9) Intercountry adoption, apart from adoption agencies and their functions, and functions of the "Central Authority" under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

(10) The Children's Commissioner established under the Children Act 2004.

(11) Family law and proceedings apart from—

(a) welfare advice courts, representation and provision if information, advice and other support to children ordinarily resident in Wales and their families, and

(b) Welsh family proceedings officers.

(12) Welfare foods.

Water and flood defence (field 19 of Part 1)

(1) Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.

(2) Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.

General Restrictions

Functions of Ministers of the Crown

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

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

Criminal Offences

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

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

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

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

Police Areas[29]

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

Enactments other than this Act

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

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

TABLE

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 that 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—[30]

(a) sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78 and 156(2) to (5); or

(b) paragraph 8(3) of Schedule 2.

[30] This provision will be inserted by the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010 due to be considered by Privy Council on 10 February 2010.

(3) Sub-paragraph (1) does not apply to any provision—
(a) making modifications of so much of any enactment as is modified by this Act, or
(b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or make under, an Assembly Measure.

PART 3

EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2[31]

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

(1) Part 2 does not prevent a provision of an Assembly Measure removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of a Minister of the Crown if the Secretary of State consents to the provision.

(2) Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be made enforceable against Ministers of the Crown by means of criminal offences.[32]

Police Areas[33]

7A The general restrictions in Part 2 do 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

[31] The heading for Part 3 was substituted, paragraph 6Z was inserted, and the opening words of paragraphs 7 to 11 were substituted, by article 2(10) to (12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).
[32] This provision will be inserted by the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010 due to be considered by Privy Council on 10 February 2010.
[33] Paragraph 7A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 4; and amended by article 2(12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

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

Restatement

9 The general restrictions in Part 2 do not prevent a provision of an Assembly Measure—

(a) restating the law (or restating it with such modifications as are not prevented by that Part), or

(b) repealing or revoking any spent enactment,

or conferring power by subordinate legislation to do so.

Subordinate legislation

10 The general restrictions in Part 2 do not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—

(a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,

(b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and

(c) applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

Data Protection Act 1998[34]

11 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, 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.

[34] 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), and amended by article 2(12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).