EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (WELSH LANGUAGE) 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 The primary purpose of the Order is to provide the National Assembly for Wales with legislative competence in relation to the Welsh language, which reflects the existing functions of the Welsh Ministers and the Welsh Language Board. The competence will enable the National Assembly to legislate on the Welsh language and allow the Welsh Assembly Government to propose legislation that supports its policy agenda, including confirming official status for both English and Welsh, improving services provided to Welsh speakers and establishing a Language Commissioner.

2.2 The Order inserts two matters into field 20 (Welsh Language) in Part 1 of Schedule 5 to the Government of Wales Act 2006 ("the 2006 Act"), to enable the Assembly to pass Assembly Measures in relation to:

- the promotion of the use of the Welsh language and the treatment of the Welsh and English languages on the basis of equality, and
- the freedom of persons wishing to use the Welsh language.

The Order also modifies section 94 of the 2006 Act, and amends provisions in Parts 2 and 3 of Schedule 5, to allow the Assembly to legislate in certain ways which would otherwise be prevented by those provisions.

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

None

4. Legislative Context

4.1 Successive UK Governments have recognised that legislation has a part to play in promoting and facilitating the use of the Welsh language. The Welsh Courts Act 1942 conferred limited rights upon any party or witness to use the Welsh language in courts in Wales where a person would otherwise be under a disadvantage by reason of his or her natural language of communication being Welsh. The Welsh Language Act 1967 conferred on any party, witness or other person an absolute right to use the Welsh language in the courts (subject to

giving prior notice), and also empowered Ministers to prescribe Welsh or bilingual versions of statutory forms.

4.2 The most recent and substantial statutes in relation to the language are the Welsh Language Act 1993 ("the 1993 Act") and the 2006 Act (which includes provisions about the use of the Welsh language by the Assembly, the Assembly Commission and the Welsh Assembly Government). The 1993 Act is founded on two principles - the need to promote and facilitate the use of the Welsh language and the treatment of the English and Welsh languages on a basis of equality.

4.3 The 1993 Act established the Welsh Language Board, upon which the function of promoting and facilitating the use of the Welsh language is conferred. The 1993 Act lists certain categories of persons which the Board can require to prepare Welsh language schemes - and gives the Welsh Ministers the power to add further persons to the list, by order, where it appears to them that those persons meet criteria set out in the 1993 Act.

4.4 The 1993 Act also confers powers on the Welsh Language Board to investigate alleged breaches by public bodies of their respective Welsh language schemes, and requires it to report on its investigations. However, the Welsh Language Board has no power to require persons to provide it with evidence and information that will assist it with its investigations.

4.5 Most functions under the 1993 Act rest with the Welsh Language Board, an Assembly Government Sponsored Body which is funded by the Welsh Assembly Government, and whose activities are directed by remit letter from the relevant Welsh Minister. The Welsh Ministers' functions under the 1993 Act are limited and include the power to appoint members of the Welsh Language Board - and the power to adjudicate where the Welsh Language Board and 'public bodies' fail to reach agreement on matters in relation to Welsh language schemes, as well as the power to add to the list of 'public bodies' that may be required to produce the Welsh language schemes referred to above.

4.6 Section 78 of the 2006 Act places a duty on the Welsh Ministers to adopt a strategy for promoting and facilitating the use of the Welsh language – and to adopt a Welsh language scheme. Under section 61(k) of the 2006 Act, the Welsh Ministers may do anything they consider appropriate to support the Welsh language (although this does not extend to proposing or making legislation).

4.7 Similarly, the National Assembly for Wales does not have legislative competence in relation to the Welsh language with which to alter the legislative framework within which Welsh Ministers operate. As a result, the National Assembly for Wales is unable to legislate to respond directly to changing needs and circumstances.

4.8 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.

4.9 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.

4.10 The Order confers legislative competence on the National Assembly for Wales, in the field of Welsh Language (field 20). The text of Schedule 5, with the amendments made by this Order set out in bold, is at the end of this explanatory memorandum.

5. Territorial Extent and Application

5.1 Although this instrument extends to the whole of the United Kingdom its practical application is in relation to Wales as it amends provisions which will define the scope of the Assembly's legislative competence. The Assembly may only legislate in relation to Wales, or for certain ancillary purposes.

5.2 Furthermore, provisions of Assembly Measures may only extend to (i.e. form part of the law of) England and Wales. However, by virtue of article 2 of the Order, the repeal by the Assembly of any provisions of the 1993 Act may have the same extent as the original provision. A Measure could therefore repeal a provision of the 1993 Act which extends beyond England and Wales (i.e. if it forms part of the law of Scotland or Northern Ireland).

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) (Welsh Language) Order 2009 are compatible with the Convention rights*"

7. Policy background

7.1 The Welsh language is one of the defining characteristics of the UK's cultural heritage and an essential component of the everyday lives of

Welsh speakers in Wales. The 2001 Census indicated that over 580,000 people – one in five people in Wales - now speak and use the language. This represents a slight increase on previous figures, following more than a century of decline. However, even though the language has enjoyed something of a renaissance over recent years, its status as a living language in our communities remains under threat. There is a general acceptance that the action taken by public, private and voluntary agencies – along with the growth in Welsh-medium education – can play a key role in securing its health and vitality.

7.2 The Welsh Assembly Government's National Action Plan for a Bilingual Wales, *Iaith Pawb* (2003), states that it wants Wales to be a truly bilingual nation. This is not defined as implying that everyone in Wales should be able to speak both Welsh and English. It is defined as a country where people can choose to live their lives through the medium of either Welsh or English, and where the presence of the two languages is a visible and audible source of pride and strength. *Iaith Pawb* reflects what has been the policy of successive Governments – at Wales and UK level – to support and encourage the use of the language in all aspects of life in Wales. The scope of the Order reflects this approach, to ensure that the language can continue to be a prominent and vibrant part of people's everyday lives.

7.3 The Order provides competence to enable the Assembly to build on the achievements of successive Governments, to update the legislative framework in order to address specific shortcomings that have emerged since 1993 - and to respond to future changes.

7.4 Much has been achieved under the auspices of the 1993 Act to improve the quality of services provided to Welsh speakers, but there remains scope to improve the legislative framework under which the providers of public services operate, and to clarify for Welsh speakers what level of service they can expect to receive. This is in line with the Welsh Assembly Government's commitment to a citizen-centred model of improving public services. Following the recommendations of Sir Jeremy Beecham's *Review of Local Service Delivery* (2006) the Welsh Assembly Government is investing in a programme of action to deliver efficient, effective, citizen-centred public services.

7.5 The Welsh Assembly Government recognises that members of the public in Wales can still face inconsistencies and difficulties in accessing services through the medium of Welsh. In many areas, arrangements for delivering services to the public in Wales have changed since 1993. However, the framework set by the 1993 Act does not enable these changes to be taken into account in a consistent way.

7.6 A need for greater clarity has arisen in part, therefore, from changes to the structure of certain, key public services - and new ways of delivering services. As a result, the public face of some sectors and

certain key services fall outside the scope of the 1993 Act. The Welsh Ministers have the power to specify some persons from within these sectors under the 1993 Act, but not all. This creates the potential for an uneven playing field within these sectors and uncertainty about the services that Welsh speaking customers can expect to receive.

7.7 In addition, the 1993 Act provides only a single formal mechanism for investigating breaches of Welsh language schemes and does not provide for any graduated alternatives. A single mechanism for investigating breaches of commitments made in Welsh language schemes, or made under any other arrangements, may not be appropriate in all cases, and may not achieve the right results for all users.

7.8 A key principle is that citizens should clearly understand the level of Welsh language services they can expect to receive, irrespective of who the public provider is. The competence conferred by the Order would enable the National Assembly to consider legislating to provide a consistent basis for accessing services through the medium of Welsh. As is the case at the moment, UK Government Departments responsible for non-devolved services would have a crucial contribution to make. Agencies such as Job Centres, Her Majesty's Revenue and Customs and the Driver and Vehicle Licensing Agency have been at the forefront of the development of Welsh language services to date - and it will be important to ensure that their contribution continues.

7.9 The Welsh Assembly Government is committed to the growth of the language and believes that the freedom of persons wishing to speak Welsh with one another is integral to this growth. The need to ensure that Welsh speakers can feel confident speaking the language with one another is vital. Although people already enjoy the freedom to communicate with one another in Welsh, that freedom is not adequately protected in law.

7.10 The Welsh Assembly Government believes that if the language is to be safeguarded, the freedom of people living and working in Wales to communicate with one another in Welsh should be capable of being protected. As such, the Welsh Assembly Government believes that Matter 20.2 is necessary in order to enable a subsequent Measure to take steps to protect this freedom.

7.11 A key commitment of the Welsh Assembly Government's *One Wales* programme of government is to seek legislative competence for the National Assembly which will enable the Welsh Assembly Government to propose an Assembly Measure that confirms official status for both Welsh and English, linguistic rights in the provision of services and the establishment of the post of Language Commissioner. The Welsh Language Legislative Competence Order was therefore

announced in the First Minister's first annual statement on the legislative programme in June 2007.

7.12 To support the Welsh Assembly Government's focus on citizen-centred public services, the competence conferred by the Order will enable the Welsh Assembly Government to propose a flexible approach to Welsh language provision, allowing it to develop a framework around legislative provision which can be adapted to the circumstances of particular sectors, the services they provide and the areas in which they operate. The Welsh Assembly Government may, for example, wish to propose different duties in respect of the former utilities than on the mobile phone sector.

7.13 It is the Welsh Assembly Government's policy that subsequent Measures should not impose duties on organisations unless there is a clear public benefit in doing so. It is not the intention to place disproportionate obligations on any organisation.

7.14 This would reflect the current principles of the 1993 Act, whereby the Welsh Language Board may require public bodies to prepare Welsh language schemes setting out how they will give effect, "so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality". To this end, for instance, current practice by the Board reflects the fact that it does not expect public bodies located outside Wales to employ Welsh-speaking staff (whereas public bodies located in Wales are expected to consider, for instance, the need to employ Welsh speakers as they recruit). The Board also bears in mind matters such as the size and location of organisations based in Wales, when determining their capacity to deliver services in Welsh. An example of this is its three separate templates for community council Welsh language schemes, reflecting the differing linguistic nature of communities around Wales, whilst also reflecting the limited range of services offered by those councils.

7.15 The ability to challenge the imposition of duties on grounds of reasonableness and proportionality (see paragraph 7.21) will provide organisations, such as, for example, small businesses (which could include small training bodies and those providing sub-post office services) and other businesses, such as the mobile phone companies, with additional protection in this respect. The Welsh Assembly Government's policy is that any appeal mechanism for challenging duties would be appropriately independent and impartial.

7.16 The Welsh Assembly Government also believes that any appeal arrangements should be simple to understand and to operate - and should allow for appropriate methods for dealing with complaints and addressing areas of concern.

Scope

7.17 The Order inserts two matters into Field 20 (the Welsh Language) in Part 1 of Schedule 5 to the 2006 Act, to enable the Assembly to consider legislating on these issues by way of an Assembly Measure.

7.18 Article 3 of the Order inserts a new Matter 20.1 into Field 20. This matter reflects, and builds upon, the principles that underpin the 1993 Act, namely to promote and facilitate the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality. For example, this could include marketing, providing support for organisations and developing ICT tools within any given sector, reflecting the range of functions carried out, at present, by the Welsh Language Board.

7.19 This matter does not extend to the use of the Welsh language in the courts. The relevant functions relating to the use of the Welsh language in the courts under the 1993 Act are currently exercised by the Lord Chancellor, and the Order does not seek competence to modify the position.

7.20 Matter 20.1 confers competence on the Assembly to consider legislating in relation to Wales to impose duties on persons falling within the categories listed in paragraphs (a) to (j), requiring, for example, particular services to be provided bilingually to the public. The Assembly would not be able to impose duties under this matter on persons who do not fall within these categories. The Assembly already has (under section 94(5) of the 2006 Act) the power to provide for the enforcement of provisions in Assembly Measures or otherwise, as appropriate, to make them effective, and it is under this existing provision, together with Matter 20.1, and/or 20.2, that any enforcement procedures in relation to Welsh language duties would be established.

7.21 Matter 20.1 is subject to an additional limitation, in that the Assembly will be able to impose duties on a person only if there is some means (such as a review or appeal procedure) by which the person can challenge the reasonableness and proportionality of the duties as they apply to that person.

7.22 Matter 20.1 defines the categories of person in respect of which the National Assembly will be able to consider legislating to impose duties in relation to the Welsh language. The categories of persons listed under Matter 20.1 are drawn to include existing persons which fall within the scope of section 6(1) of the 1993 Act and certain sectors which currently fall outside that Act, but which provide key public services. The categories provide the Assembly with the scope to deal with changes in infrastructure and to provide for a level playing field in

specified sectors. It will be for future proposed Assembly Measures, and subordinate legislation made under those Measures, to specify the persons upon whom duties will or may be imposed.

7.23 Paragraph (a) confers competence on the Assembly to consider legislating by Measure to impose duties on 'public authorities'. 'Public authorities' include all public authorities within the meaning of the Human Rights Act 1998, such as local authorities and local health boards. A similar definition is used in several UK statutes, including the Anti-terrorism, Crime and Security Act 2001, the Climate Change and Sustainable Energy Act 2006 and the Identity Cards Act 2006. In addition, a similar mechanism has already been used in The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

7.24 Where public authorities outsource the delivery of services to the public, the Assembly will be able to consider legislating under paragraph (b) to place duties in relation to the Welsh language on contractors, but only in connection with the services provided in relation to Wales under the outsourcing arrangements. Accordingly, any future Measure could not impose duties in respect of the Welsh language in relation to any of a contractor's other activities (unless the contractor fell under paragraphs (a) to (j) for other reasons).

7.25 Paragraph (b) is based on the discretion given to the Secretary of State (since transferred to the Welsh Ministers) under paragraph 6(1)(o)(ii) of the 1993 Act to specify as public bodies, persons carrying out activities conducted under an agreement or in accordance with arrangements made with a public body or servants or agents of the Crown.

7.26 Paragraph (c) confers competence on the Assembly to consider legislating to impose duties in relation to the Welsh language on persons providing services to the public that have been established by enactment (for example, the Big Lottery Fund, the Electoral Commission and S4C).

7.27 Paragraph (d) confers competence on the Assembly to consider legislating to impose duties on persons which have been established by prerogative instrument (such as a Royal Charter) where they fall within one or more of sub-paragraphs (i) to (v). These are persons:

(i) established to advance learning and knowledge by teaching or research or by developing or awarding qualifications. Examples of persons within this category include the University of Wales and the Open University;

(ii) established to collect, preserve or provide access to recorded knowledge or to objects and things which further understanding, for example the National Museum of Wales and the National Library of Wales;

(iii) established to support, improve, promote or provide access to heritage, culture, sport or recreational activities, for example the Sports Council for Wales and the Arts Council of Wales;

(iv) engaged in promoting a wider knowledge and representing the interests of Wales in other countries, such as the British Council; and,

(v) engaged in central banking; the Bank of England acts as the central bank of the United Kingdom.

7.28 All of the persons mentioned as examples in paragraph 7.27 are currently 'public bodies' for the purposes of the 1993 Act.

7.29 Paragraph (e) confers competence on the Assembly to consider legislating to impose duties on persons that have functions of providing services to the public conferred or imposed upon them by an enactment. This includes, for example, the Royal Commission on the Ancient and Historical Monuments of Wales, Consumer Focus and Investors in People UK. 'Functions' is a term defined in the 2006 Act to encompass both powers and duties. The principle behind this is that the only persons that fall within the competence provided for in paragraph (e) are those upon whom legislation has conferred functions of providing services to the public. The competence will extend to legislating only in relation to persons with functions in relation to Wales.

7.30 Paragraph (f) gives the Assembly the competence to consider legislating to impose Welsh language requirements on persons providing services to the public and who are in receipt of public money amounting to, or above, a threshold of £400,000 in a financial year, either provided directly by the Assembly, the Welsh Ministers, the UK Parliament, Ministers of the Crown or from an institution of the European Communities, or indirectly by or from these bodies (for example, through local authorities or Assembly Government Sponsored Bodies). The underlying principle in all these cases is that persons benefiting from substantial public funds should fulfil public responsibilities. Persons within the competence provided for in paragraph (f) include the National Theatre of Wales, the Wales Millennium Centre, the Welsh National Opera, Fforwm and the National Botanic Garden of Wales.

7.31 Paragraph (f) would also give the Assembly the competence to consider legislating to impose requirements in relation to the Welsh language on persons providing services to the public who are in receipt of public money amounting to, or above, a threshold of £400,000 or more in a financial year provided by virtue of any enactment, for example, the BBC, which receives licence fee monies under the Communications Act 2003 (see also paragraph 7.49 with regard to broadcasting).

7.32 Paragraph (f) does not include persons receiving one-off payments amounting to £400,000 or more. Persons receiving public money at, or above, this threshold will fall within paragraph (f) only if they also received public money in a previous financial year or if a decision has been made that they will receive public money in a subsequent financial year.

7.33 Persons that receive public money by way of payment for services or goods supplied by them will not be included under paragraph (f) by virtue of their having received those monies. Statutory lottery distribution bodies (i.e. the Big Lottery Fund and the other bodies which distribute lottery moneys under the National Lottery etc Act 1993) will be included under paragraph (f), but not grant recipients of lottery funding.

7.34 Paragraph (g) confers competence on the Assembly to consider legislating to impose duties on persons engaged in the regulation of a profession or industry, or other similar sphere of activity, in relation to their activities in relation to Wales. This includes bodies which operate a scheme of industry self-regulation. A 'similar sphere of activity' includes, for example, persons which regulate the ability of a member of the public to earn a livelihood in a given sector, discipline or area of activity. Persons which fall within competence under paragraph (g) will include persons such as the Nursing and Midwifery Council and the General Dental Council.

7.35 Paragraph (h) enables the Assembly to consider legislating in relation to Wales to impose Welsh language requirements on providers of social housing. These include bodies providing housing to people whose needs are not adequately served by the commercial housing market, for example housing associations.

7.36 Paragraph (i) enables the Assembly to consider legislating in relation to Wales to impose duties upon persons providing the public with certain kinds of services, as well as services related to those services. This covers key services provided to the public as well as services incidental to them.

7.37 The sub-paragraphs within paragraph (i) describe the services within competence. The competence applies to persons only where they provide services to the public. These services include the utilities (i) and (ii); postal services and post offices (iii); telecommunications services (iv); education, training (where the provider receives public money for its provision) or career guidance (including services to encourage, enable or assist participation in education, training or career guidance) (v); bus and railway services (including passenger bus and rail companies, Network Rail and bus and rail enquiries and ticketing services) (vi); and services to develop or award educational or vocational qualifications (including exam boards) (vii).

7.38 Paragraph (i) (i) includes the supply and distribution of gas, water or electricity.

7.39 Paragraph (i)(ii) covers sewerage services (including the disposal of sewerage).

7.40 Paragraph (i)(iii) covers postal services and post offices.

7.41 Paragraph (i)(iv) covers telecommunications services, including fixed line telephony and mobile phone services. Telecommunications services are defined in the interpretation section of the Order.

7.42 Paragraph (i)(v) covers education, training and career guidance services, including services to encourage, enable or assist participation in education, training or career guidance. Persons which fall within competence under paragraph (i)(v) will include persons such as UCAS, Sector Skills Councils and Careers Wales. As with other persons under paragraph (i), persons within this sector will be within competence only where they provide the listed services to the public. For example, this would include any education, training or careers advice services to members of the public provided by FE Colleges or Careers Wales.

7.43 In addition, in relation to training under paragraph (i)(v), the National Assembly would be able to impose duties only in relation to training which is funded wholly or in part by public money, including the range of government funded initiatives. Training provision which is not to some extent publicly funded would not be within competence under this paragraph (for example, companies providing training to the staff of another company, where that provision is funded entirely privately).

7.44 Paragraph (vi) covers bus and railway services, and includes the sale of tickets, the provision of travel information (such as timetables) and signage.

7.45 There are two important qualifications that apply in relation to paragraph (i) that limit the Assembly's competence in this context. Firstly, the Assembly would be able to consider legislating to impose duties on service providers only in respect of the services mentioned, and then, only where they are delivered in relation to Wales, and not in respect of their other functions or activities (unless they otherwise fall within the competence conferred on the Assembly by paragraphs (a) to (h) and (j)). Secondly, with respect to related services, the matter excludes related services provided from shops, defined in the Order as "premises where the sale of goods is the principal trade or business carried on", except the sale of tickets or provision of timetables for bus and rail services and post office counter services.

7.46 Finally, paragraph (j) of Matter 20.1 confers competence on the Assembly to consider legislating to impose duties on persons who

volunteer, or enter into an agreement, to subject themselves to such duties. This provides for persons to continue to opt-in to Welsh language schemes, or any successor mechanisms, in much the same way that persons opt-in to Investors in People and other such standards.

7.47 Matter 20.1 is subject to a further qualification. It will enable the Assembly to provide for the imposition of duties on a person only if there is some means (such as a review or appeal procedure) by which the person can challenge the reasonableness and proportionality of the duties as they apply to it. Exactly what means of challenge would be appropriate would be determined under an Assembly Measure. The practical effect will be that any person creating or imposing duties by or under an Assembly Measure will have to consider the reasonableness and proportionality of their proposals.

7.48 This qualification does not apply to "Welsh language authorities" with statutory functions of imposing, enforcing, determining or deciding challenges to duties relating to the Welsh language. For example, if a Measure were to entrust the oversight of Welsh language duties to an authority such as the Welsh Language Board or a Language Commissioner, it would not have to ensure that such an authority could challenge any duties as they applied to it, on grounds of reasonableness or proportionality.

7.49 Matter 20.1 does not enable the Assembly to impose duties on broadcasters in relation to the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, programme related materials, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms. This reflects the policy decision that Government should not be able to affect the editorial freedom of broadcasters.

7.50 The second matter to be inserted into Field 20 by the Order (Matter 20.2), provides the Assembly with the competence to consider legislating in relation to the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on such a freedom, which could include, for example, limitations related to health and safety, where that was justified). This matter would enable the Assembly to consider legislating to protect individuals' freedom to communicate with one other in Welsh. The freedom of individuals to communicate with one other in Welsh is a freedom that already exists, but the protection afforded under current legislation is limited.

7.51 The Assembly will be able to consider legislating to require persons to respect the freedom to use the Welsh language, but Matter 20.2 will not enable the Assembly to legislate to require them to take positive

steps to facilitate the use of the Welsh language between persons wishing to use the Welsh language with one another.

Effect of other provisions in the 2006 Act

7.52 The effect of the Order needs to be considered in the context of the overall provisions of the 2006 Act.

7.53 The Order and the provisions of the 2006 Act permit the Assembly to consider legislating by Measure in relation to the use of the Welsh language in relation to Wales.

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

7.55 Article 4 provides competence for the Assembly to consider legislating by Measure to amend sections 35(1), 78 and paragraph 8(3) of Schedule 2 of the 2006 Act in order to be able to legislate as regards itself, the Welsh Ministers or the Assembly Commission. This allows the Assembly to place those bodies on the same footing as other persons.

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

7.57 The Welsh Ministers intend to require Crown bodies, including Ministers of the Crown, to comply with broadly the same duties as all other persons, where the Secretary of State consents. This will require a limited amendment to the 2006 Act, in relation to proposed Matters 20.1 and 20.2 only. The amendment will permit the Assembly to confer or impose new functions on Ministers of the Crown, but only with the consent of the Secretary of State, and not so as to make Ministers of the Crown liable to punishment for criminal offences.

7.58 Government Ministers, during the passage of the 1993 Act, gave an undertaking that Crown bodies, including Ministers of the Crown, would prepare Welsh language schemes. Consequently, to allow the Assembly to make provisions for the equitable and consistent application of functions across all persons, Article 5 of the Order modifies paragraph 7 of Part 3 of Schedule 5 to the 2006 Act to confer competence on the Assembly to legislate to confer or impose functions upon Ministers of the Crown in relation to the Welsh language, with the consent of the Secretary of State.

7.59 Currently, paragraph 7 of Part 3 of Schedule 5 to the 2006 Act allows a provision of an Assembly Measure to remove or modify functions of a Minister of the Crown with Secretary of State consent but no such provision exists to allow the conferral or imposition of functions. Article 5 of the Order replicates the provisions of the current paragraph 7 in a new sub-paragraph 7(2), to allow a provision of a future Assembly Measure to confer or impose functions on Ministers of the Crown in relation to Matters 20.1 and 20.2, with the Secretary of State's consent. This Article is required in order to give the Assembly the competence to be able to avoid a multi-layered system from existing in the future, where Ministers of the Crown would provide a different level of service to the remainder of the public sector. Article 5 allows the Assembly the flexibility to be able to provide a consistent and straightforward system across the public sector.

7.60 The Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 and Part 3 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter the functions of a Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions, the appropriate UK Government Departments will be consulted, and agreement will be sought to any future proposals to change or modify such functions.

8. Consultation Outcome

8.1 There has been no consultation on this Order. However, following publication of the proposed Order in February 2009, the Secretary of State for Wales invited the public and other interested parties to write to him with their views. The organisations and individuals who responded helped inform Ministers' decisions about the scope and content of the draft Order. Copies of responses were forwarded to the Welsh Affairs Select Committee to help inform the Committee's scrutiny of the proposed Order (see paragraph 8.3).

8.2 In addition, Wales Office Ministers discussed the Order with a wide range of businesses, their representative bodies and other interested parties. These included the CBI Wales, the Mobile Broadband Group, British Gas, British Telecom, the Welsh Language Board and Cymdeithas Yr Iaith Gymraeg (the Welsh Language Society).

8.3 The Order has been subject to pre-legislative scrutiny in both the National Assembly for Wales and Parliament. The proposed Order was laid on 2 February 2009 and scrutinised by Legislation Committee No.5 of the National Assembly for Wales and the House of Commons Welsh Affairs Select Committee, who each invited submissions of evidence as part of their inquiries. The Committees published their reports on 5 June 2009 and 7 July 2009 respectively. The Welsh Grand Committee considered the issue on 14 October 2009.

8.4 The following paragraphs explain changes made to the Order to take account of the recommendations made in these reports and other changes made as a result of stakeholder engagement carried out by both Governments.

8.5 The detail of these changes is as follows:

Matter 20.1: Article 3 - Reasonable and proportionate

8.6 A key recommendation of the Welsh Affairs Committee was the need for greater clarity and precision in the wording of the Order. The Welsh Affairs Committee recommended that the proposed Order should contain clear principles, such as tests of reasonableness and proportionality, against which Assembly Measures could be tested. This would mean, in effect, a different approach in terms of defining competence, whereby a Measure would need to satisfy the tests specified in the Order, rather than the Order defining who may be affected by subsequent Measures.

8.7 Having considered the above recommendation, the Welsh Assembly and UK Governments agree that the principle of applying duties reasonably and proportionately should be embedded in the Order. However, it was felt that conferring competence based solely on principles and tests would not provide the level of clarity being sought. For instance, what may be reasonable to one person may not be reasonable to another. Similarly, the Welsh Assembly and UK Governments do not agree with Legislation Committee No. 5's recommendation that the Order need not include a list of categories of persons who could have duties imposed on them and think that it is more helpful for the Order to be more specific.

8.8 The Order has therefore been amended to provide that matter 20.1 does not include imposing duties on any person (other than Welsh language authorities) unless there exists a means by which that person may challenge those duties, as they apply to that person, on the grounds of reasonableness and proportionality (see also paragraphs 7.21 and 7.47 of this memorandum).

8.9 This would operate in addition to the requirement in the Assembly's Standing Orders for proposed Assembly Measures to be accompanied by an assessment of the likely costs and benefits of compliance.

Paragraphs (c) and (d)

8.10 Paragraph (c) would enable the National Assembly to impose duties on 'persons providing services to the public established by an enactment'; the limb relating to persons established by prerogative instrument (such as a Royal Charter) is now contained in paragraph (d).

8.11 The Welsh Affairs Committee noted the Assembly Government's intention to impose duties on only a limited number of persons established by Royal Charter; the Order has been amended accordingly to specify the range of such persons upon which duties may be placed.

8.12 As a result, to come within competence under paragraph (d), Royal Charter bodies, must satisfy the additional criteria provided for under paragraph (d) (i) to (v).

Paragraph (f)

8.13 Paragraph (f) brings within competence persons providing services to the public and who are in receipt of public money. The threshold has been raised from £200,000 to £400,000 to exclude from competence many small and medium sized bodies which are in receipt of public money, including those working in the community and voluntary sectors. The new threshold has been set at a level which will capture within competence those persons for which this limb is intended (see paragraph 7.30).

8.14 The principle that persons benefiting from substantial public funds should fall within scope of the Order was accepted by the Welsh Affairs Committee and Legislation Committee No.5 as an appropriate one, although both the concept of including a threshold in the Order, and the amount at which it was set (public funding of £200,000 or more in a financial year), attracted criticism during scrutiny. However, the Welsh Assembly and UK Governments have agreed to set a clear boundary in order to define what is considered to be "substantial" public funding. Following careful consideration, the threshold has been increased to £400,000 - thereby ensuring smaller organisations are less likely to be included in scope by virtue of the public funding they receive. Setting the threshold at this amount will ensure however that certain persons, such as the National Botanic Garden of Wales, come within scope of the Order.

8.15 The Welsh Affairs Committee recommended redrafting the paragraph to ensure that persons in receipt of one-off payments are excluded. This recommendation has been accepted, as described in paragraph 7.32, above. This will ensure that duties could not be applied to

organisations simply by virtue of them receiving a one-off grant.

8.16 Legislation Committee No.5 asked that lottery funding be included within the definition of public money. The definition does include lottery funding made available to the statutory lottery money distribution bodies, since this constitutes "money provided by virtue of an enactment". As such, it will be possible to impose duties on lottery money distribution bodies. However, as this part of the definition of public money is limited to monies provided directly by virtue of any enactment, recipients of lottery grants (who receive lottery monies provided by virtue of an enactment on an 'indirect' basis) will not come within competence by virtue of their receipt of lottery grants.

Paragraph (i) – Retail outlets

8.17 The Order has been redrafted to exclude 'shops' (as defined in the Order) from 'other services which relate to any of those services', apart from the sale of tickets or provision of timetables for bus and rail services and post office counter services. This reflects the current position in respect of post offices (including sub-post offices) which are subject to the Welsh language scheme of the Post Office.

8.18 This reflects the fact that most retail services do not come within the ambit of the 1993 Act (although the retail sector has made great advances in Welsh language provision in recent years as a result of voluntary schemes). For similar reasons banks and insurance companies are not specified within the Order.

Paragraph (i) (i) – Production and transmission

8.19 The Welsh Affairs Committee was unconvinced of the need to include the production and transmission of gas and electricity in the proposed Order. As such, it has been agreed by the UK Government and the Welsh Assembly Government that both activities should be deleted from the Order.

8.20 Legislation Committee no. 5 recommended that all energy services (for example oil suppliers) should be included within the scope of the Order. However, the Welsh Assembly Government and UK Government have agreed not to seek to extend the competence to such fuel suppliers at this stage, recognising that oil suppliers, for example, are not subject to the same level of statutory control as gas and electricity, and do not rely on a network or grid controlled under statute in order to deliver or supply oil to their customers.

Paragraph (i) (v) – Training providers

8.21 A further qualification has been introduced in relation to training provision so that only training funded wholly or partly from public money will come within competence under paragraph (i)(v). This

would ensure that Welsh language duties could not be applied in reliance upon the competence set out in paragraph (i)(v) in respect of training funded wholly by the private sector, providing a safeguard for, for instance, small training providers in the private or voluntary sectors who do not receive any public money.

Paragraph (i) (vi) - Buses

8.22 Both committees noted that the proposed Order risked establishing inconsistencies in terms of public transport by including only railway services, rightly pointing out that some bus companies would come within other categories, but it could not be said for certain that all bus companies would be included by these means.

8.23 The Welsh Assembly and UK Governments agree with both scrutiny Committees that bus services are key public services and should be specifically included on the face of the Order. The Order has therefore been modified so that bus and railway services are both included within the scope of the legislative competence under paragraph (i)(vi). This would enable the National Assembly to consider, for example, signage and timetabling information at bus stations and bus stops to be available in both Welsh and English. The Order defines the term 'bus service' as specifically excluding chartered services, private trips and organised tours as bus services need to be defined clearly, so that scheduled coach services come within scope but services chartered for private use do not. This will operate in tandem with the challenge mechanism previously described, in order to minimise the risk of unintentionally imposing disproportionate burdens on bus companies.

General exceptions to Matter 20.1 – Broadcasting

8.24 To respond to the concerns of stakeholders and of the committees, expressed during pre-legislative scrutiny, an exception has been drafted to Matter 20.1 so that the Assembly may not impose duties on broadcasters in relation to the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, programme related materials, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms.

8.25 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 6 June 2007.

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

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

This 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

This annex shows how this proposed order would amend Schedule 5 of the Government of Wales Act 2006, with footnotes indicating the source of previous amendments.

Text shown in bold is proposed to be added as a result of this order.

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.

Field 2: ancient monuments and historic buildings

[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 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).

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.

[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 5.7

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

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.

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

[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).

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;

"post-16 education" means—

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

[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.
[11] 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 (S.I. 2008/1036) and section 149(1) and (6) of the Education and Skills Act 2008 (c. 25).

(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

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

Field 8: food

Field 9: health and health services

Matter 9.1[12]

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.

Interpretation of this field

In this field—

"the health service in Wales" means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006;

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

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

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

"qualifying liability in tort" means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with 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[13]

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

[12] 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).
[13] 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.

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[14]

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—

[14] 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.

(i) the investigation and adjudication of such allegations and reports on the outcome of investigations,
(ii) the action that may be taken where breaches are found to have occurred,

(e) codes of conduct for employees of relevant authorities.

For the purposes of this matter—

"relevant authority" has the same meaning as in Part 3 of the Local Government Act 2000, except that other than in paragraph (d) it does not include a police authority,

"member" includes a co-opted member within the meaning of that Part.

Matter 12.4

Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental wellbeing of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with functions of a public nature.

Matter 12.5

Provision for and in connection with—

(a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,
(b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and
(c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are "relevant Welsh authorities"—

(a) a county council, county borough council or community council in Wales,
(b) a National Park authority for a National Park in Wales,
(c) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
(d) a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales,
(e) a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.

Field 13: National Assembly for Wales

Matter 13.1

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

Matter 13.2

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

Matter 13.3

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

Matter 13.4

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

Matter 13.5

Provision about the meaning of Welsh words and phrases in-

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

Matter 13.6

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

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

Field 14: public administration

Field 15: social welfare

Matter 15.1[15]

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[16]

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,

[15] 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).
[16] 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.

Interpretation of this field[17]

In this field—

[17] 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).

"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.

Field 16: sport and recreation

Matter 16.1[18]

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

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

Field 17: tourism

Field 18: town and country planning

Matter 18.1[19]

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—

[18] 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).
[19] 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

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;

(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.

EXCEPTIONS TO MATTERS[20]

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

TABLE – Highways and transport

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

[20] 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).

TABLE – Social welfare

Column 1 Exceptions	Column 2 Matters to which the exceptions relate
1. Child support.	Matters 15.1 15.2, 15.3, 15.4, 15.5, 15.6, 15.8
2. Child trust funds, apart from subscriptions to such funds by— (a) the council of a county or county borough council in Wales, or (b) the Welsh Ministers.	Matters 15.2, 15.4, 15.5
3. Tax credits.	Matters 15.1 15.2, 15.4, 15.5
4. Child benefit and guardian's allowance.	Matters 15.1 15.2, 15.4, 15.5
5. Social security.	Matters 15.1 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8
6. Independent living funds.	Matters 15.1 15.2, 15.5, 15.6, 15.7, 15.8
7. Motability.	Matters 15.1 15.2, 15.5, 15.6, 15.7, 15.8
8. Vaccine Damage Payments	Matters 15.2, 15.5, 15.6, 15.7, 15.8
9. Intercountry adoption, apart from adoption agencies and their functions, and functions of the "Central Authority" under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.	Matters 15.2, 15.3
10. The Children's Commissioner established under the Children Act 2004.	Matters 15.2, 15.3, 15.4, 15.5, 15.8
11. Family law and proceedings apart from— (a) welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and (b) Welsh family proceedings officers.	Matters 15.2, 15.3, 15.4, 15.5
12. Welfare foods	Matters 15.2, 15.5, 15.6, 15.8

PART 2

GENERAL RESTRICTIONS

Functions of Ministers of the Crown

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

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

Criminal Offences

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

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

(b) on conviction on indictment, with a period of imprisonment exceeding two years.

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

(a) where the offence is a summary offence, 51 weeks, and

(b) where the offence is triable either way, twelve months.

Police Areas[23]

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.

[23] 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.

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

This Act

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

(2) Sub-paragraph (1) does not apply to—

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

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

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

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

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

PART 3
EXCEPTIONS FROM PART 2

Functions of Ministers of the Crown

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

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

Police areas[24]

[24] Paragraph 7A was inserted by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 235 and Schedule 17, paragraphs 1 and 4.

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.

Data Protection Act 1998[25]

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.

[25] 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).