EXPLANATORY MEMORANDUM TO

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

2010 No. 1838

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

2. Purpose of the instrument

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

2.2 This Order inserts seven new matters into Field 11 (Housing) along with interpretation provisions and one new matter into Field 12 (Local Government) of Part 1 of Schedule 5.

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

None

4. Legislative Context

4.1 Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in accordance with the competence conferred on the Assembly and subject to the provisions of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order ("LCO") in this Memorandum.

4.2 The Welsh Ministers already have devolved to them significant executive powers and secondary legislative powers across a wide range of legislation relating to housing. The key legislative provisions which relate to the Order are as follows:

Caravan Sites and Control of Development Act 1960

4.3 This Act deals with licensing of caravan sites, and provision of sites for Gypsies and Travellers.

Housing Act 1985

4.4 This Act (among other things) describes the Local Housing Authorities (which are, in Wales, County Councils or County Borough Councils), and their duties. The Act also deals with the provision of housing accommodation, the disposal of land held for housing purposes, the Right to Buy and defines secure tenancies.

Housing Associations Act 1985

4.5 This Act confers a number of general functions, relating to housing associations, on the Welsh Ministers.

Housing Act 1988

4.6 This Act governs rented accommodation including assured tenancies granted by private landlords (including housing associations and Registered Social Landlords). It also legislates in respect of housing associations.

Local Government Finance Act 1992

4.7 This Act replaced the Community Charge with the Council Tax. There are substantial secondary legislation-making powers under the Act and the devolution of these gives the Welsh Ministers powers to make significant amendments to the council tax regime.

Housing Act 1996

4.8 This Act deals with the registration and regulation of Registered Social Landlords, the disposal of land by them, the payment of Social Housing Grant and the Right to Acquire for tenants of Registered Social Landlords. The 1996 Act also deals with social housing allocations and homelessness. The Welsh Ministers already have executive powers in all these areas.

Local Government Act 2000

4.9 Section 93 of this Act empowers the Welsh Ministers to provide grants to local authorities to fund, amongst other matters, housing-related support services.

Homelessness Act 2002

4.10 This Act mainly amends the Housing Act 1996 in relation to homelessness. It also places duties on local authorities and others in relation to formulating and publishing local homelessness strategies.

Local Government Act 2003

4.11 Section 87 of this Act empowers Welsh Ministers to require Local Housing Authorities to submit Local Housing Strategies. This power has been used in the development of Affordable Housing Delivery Statements in Wales. Section 88 similarly empowers the Welsh Ministers to require the submission of Housing Revenue Account Business Plans; these have been used by the Assembly Government to scrutinise local planning to meet the Welsh Housing Quality Standard for social housing stock.

Housing Act 2004

4.12 Section 225 of this Act places a duty on local authorities to undertake an accommodation needs assessment for Gypsies and Travellers within the authority's area and to plan for identified needs. Section 226 provides that the Welsh Ministers may issue guidance regarding the duty.

5. Territorial Extent and Application

Although this instrument extends to the whole of the United Kingdom, its practical application is limited to Wales. In practice, this would be likely to mean that a Measure could make provision in relation to local authorities and other social housing providers based in Wales, housing located in Wales and the housing needs of people in Wales. However, the Welsh Assembly Government recognises that in developing future Measures it will be necessary to consider cross border issues (for example, concerning the needs of tenants whose landlords are based across the border). The Assembly Government will continue to liaise closely with the UK Government regarding any proposed future legislation.

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

7. Policy background

7.1 Housing is a devolved policy area and Ministerial functions relating to housing (with certain exceptions) were transferred to the National

7.2 Since 2008, housing policy in Wales has been undergoing a full review. At the centre is the development of a new National Housing Strategy. The Assembly Government consulted widely upon a draft of this Strategy between January and May 2009 and the final version will be published in the Spring 2010. Its vision is to promote an approach to housing supply and management that will help build a more sustainable future, thus improving our communities and the lives of individuals. The new Housing Strategy is also supported by a number of other policy developments.

7.3 There is a detailed programme of work in hand across the housing sector to put in place a new direction of travel for the delivery of affordable housing. This programme of work responds to a 2008 report by a review group, led by the former Welsh Minister Sue Essex and commissioned by the Assembly Government, on strengthening affordable housing delivery in Wales (the Report to the Welsh Deputy Minister for Housing by the Affordable Housing Task and Finish Group – commonly referred to as the Essex Review).

7.4 In relation to homelessness and following extensive public consultation, the Welsh Assembly Government launched a Ten Year Homelessness Plan in July 2009. This plan sets out the strategic aims and broader vision for minimising homelessness in Wales from 2009 to 2019. In particular, the plan recommends reviewing the statutory framework for homelessness policy in Wales, with the aim of ensuring an all-encompassing service provision for homeless people.

7.5 On the issue of housing-related support activities, the Welsh Assembly Government consulted on *Supporting people – housing related support strategy* in spring 2009. This draft strategy sets out the focus for the

7.6 In relation to Gypsies and Travellers, the Welsh Assembly Government published *A Road Less Travelled – A Draft Gypsy Traveller Strategy* for consultation in September 2009.

Rationale

7.7 The primary purpose of the LCO is to provide the National Assembly with legislative competence in relation to two main themes, namely social housing and meeting the housing needs of vulnerable people. These are devolved policy areas where the Welsh Ministers currently have extensive executive functions but where the Assembly does not have the corresponding legislative competence. Legislative competence will enable the Welsh Ministers, Assembly Members or Assembly Committees to introduce legislative proposals to the Assembly which reflect particular needs and circumstances in Wales.

7.8 The LCO will assist the Welsh Assembly Government to deliver on its ambitions, set out in *One Wales*, the Welsh Assembly Government's Programme of Government for 2007-11, of ensuring that housing need is met and that there is improved access to housing. In particular, O*ne Wales* contained three related commitments to:

- suspend the Right to Buy in areas of housing pressure;
- address homelessness; and
- provide local authorities with the powers to address the impact of second homes in areas of housing pressure.

7.9 The aims in *One Wales* are supported by key strategic documents in the policy areas, as set out in paragraphs 7.2 - 7.6. The LCO will assist the Assembly Government in helping to deliver commitments within these strategies.

7.10 The overall approach to housing policy is set out in the draft National Housing Strategy. The strategy sets out guiding principles in six areas:

- Providing the right mix of housing: developing the housing market, and breaking down the barriers that prevent people moving between social housing, private rental, part-ownership and full owner occupation.
- Using housing as a catalyst to improve lives: where necessary, aiming to offer training, financial advice, healthcare and personal support alongside the provision of housing.
- Strengthening communities: ensuring housing investments improve places, support local jobs and skills and strengthen community cohesion.
- Radically reducing the ecological footprint: improving the energy and environmental performance of all housing in Wales.

- Ensuring better services: ensuring that the regulation and management of housing provides high standards of service in the private and public sector.
- Delivering together: co-production of future work on housing policy by all those with an interest in housing.

7.11 The National Housing Strategy is supported by other strategic policy documents including those on housing-related support activities and Gypsies and Travellers. In particular, the programme of work stemming from the Essex Review into affordable housing (referred to in paragraph 7.3) aims, amongst other things, to introduce a new regulatory regime for social housing providers. The Assembly Government's 10 Year Homelessness plan (referred to in paragraph 7.4) recommends, amongst other things, reviewing the statutory framework for homelessness policy in Wales, with the aim of ensuring an all-encompassing service provision for homeless people.

7.12 Legislative competence will enable the Welsh Ministers to propose legislation in line with the Welsh Assembly Government's defined and distinct policy agenda. As was detailed in the UK Government's Better Governance for Wales White Paper that preceded the 2006 Act the executive powers already devolved to the Welsh Ministers tend to be, by their very nature, piecemeal. This is certainly the case in relation to housing, and legislative competence would allow the Assembly to have a role in deciding the legislative framework in relation to social housing and meeting the housing needs of vulnerable people under which Welsh Ministers operate. This would, in turn, enable the Welsh Ministers to adopt a more holistic approach to tackling crucial challenges in relation to social housing. Examples of how a more comprehensive approach to policy development and improvement could be adopted as a result of the conferral of legislative competence are set out in paragraphs 7.13 – 7.24 below.

7.13 For example, in relation to the regulation of Registered Social Landlords (RSLs), the Welsh Ministers already have executive functions but the existing legislative framework constrains the powers for enforcement available to them. As one illustration, the Welsh Ministers can commission a statutory investigation into the performance of an RSL, but cannot serve an Enforcement Notice requiring a social landlord to take remedial action, or require compensation to be paid to tenants. The competence proposed would enable the Assembly to consider legislation to implement a comprehensive regulatory regime developed in partnership between the Assembly Government and the housing sector in Wales. The Assembly could, amongst other things, address the fact that Welsh Ministers' powers relate solely to landlords registered under the Housing Act 1996, and not to local authorities or any other relevant bodies. This position now contrasts with the powers provided to the relevant regulators for England and Scotland - the Tenants Services Authority and the Scottish Housing Regulator. The competence

7.14 Legislative competence would also enable the Assembly Government to make legislative proposals to reform secure and assured tenancies. Under existing legislation, tenants of local authorities are normally secure tenants under the Housing Act 1985, whilst tenants of Registered Social Landlords are normally assured tenants under the Housing Act 1988. As at 31 March 2008, approximately 132,000 dwellings were rented from local authorities, and 89,000 dwellings were rented from Registered Social Landlords. The differences between the two forms of tenure are not significant for most tenants although there are differences in their statutory rights, including in respect of the Right to Buy, as well as some grounds for repossession. Consequently, when housing stock is proposed to be transferred from a local authority to a Registered Social Landlord (to fund improvements in quality) tenants have been concerned about moving from one type of tenancy to another.

7.15 The Law Commission's report Renting Homes (2006) recommended a simplified system of secure and standard contracts in place of the existing multiplicity of tenancy and licence types. Such a move would uncouple the existing link to the status of the landlord whilst providing substantial security of tenure protected by statute. The Commission considered that there is no practical justification for the current distinction and that a single form of tenure would provide many benefits for social housing tenants. These would include easier comprehension of rights, simplifying rights of succession and addressing the concerns of tenants about the transfer of housing stock from a local authority to a Registered Social Landlord which currently involves a change of tenancy.

7.16 In addition to the above, the Law Commission's report also recommended the creation of a consumer protection approach, a clear statement of rights and obligations, contained within model agreements. It also suggested the creation of specific tenure provisions for supported housing in the statutory and voluntary sector which would allow for easier possession in the early period of a tenancy and create more flexible options where an individual poses a physical risk to other tenants or staff. The draft National Housing Strategy makes a commitment to review tenure law "with the aim of establishing a clearer and more consistent framework of rights and responsibilities between landlord and tenant". Legislative competence would enable the Assembly to review the legislative framework for tenure law for social housing.

7.17 Further legislative competence would enable coherent legislation to be developed to take forward the Assembly Government's policy direction for housing-related support. Housing-related support is

- Using support as part of a range of innovative approaches to social care.
- Using the programme to address underlying needs of individuals, by providing the stability on which co-ordinated and successful interventions can be made.
- Tackling the underlying causes of repeat homelessness.
- Professionalising the work of providers in the sector and increasing the strategic focus of commissioning.
- Promoting independent living as a core value.

7.18 Legislative competence would enable the Welsh Ministers to consider proposing changes to the legislative framework to ensure that support of the desired standard is provided consistently across the 22 local authorities in Wales, and in line with the focus set out above. Competence in this area would complement the legislative competence relating to regulation, homelessness and social housing tenancies.

7.19 In relation to the provision of social housing, legislative competence could enable Welsh Ministers to develop and introduce new legislative proposals for new forms of occupation of social housing. The draft National Housing Strategy highlights the importance of developing intermediate housing, that is, housing where prices or rents are below market house prices or rents but above social rent levels. Low cost home ownership schemes, where owners do not hold all the equity in their property, are a key means for developing such intermediate housing. Legislative competence would enable the Assembly to legislate as necessary regarding low cost home ownership schemes in the future whilst ensuring coherence with other areas of social housing policy. This may involve more novel arrangements, such as mutual home ownership where the built housing assets are owned co-operatively, and the land is owned separately.

7.20 In relation to the disposals of land held or used for the purposes of providing social housing, legislative competence would provide the Assembly with full flexibility to define arrangements for Wales in what is a devolved area. Since the introduction of the Right to Buy (including the Right to Buy, Right to Acquire and Preserved Right to Buy) over 140,000 dwellings have been purchased by tenants in Wales. This equates to almost half the original social housing stock (excluding

7.21 The Welsh Ministers have already used their powers to make secondary legislation to develop a distinctive approach for the Right to Buy, tailored to the particular circumstances of Wales which differ in important respects from those in England. For example, secondary legislation has been made to:

- reduce the maximum discount from £24,000 to £16,000 throughout the whole of Wales, and
- extend significantly the number of rural areas where restrictions may be placed on resale of former Right to Buy properties.

7.22 The Assembly Government's policy aims are to support the aspirations of social housing tenants for home ownership, recognising the wider variety of forms which this can now take, but also ensuring that the legislative framework provides a facility for retaining social housing stock in appropriate circumstances**.**

7.23 The LCO would provide the Assembly with competence in relation to the disposals of land held or used for the purposes of providing social housing, including all aspects of the Right to Buy, the Preserved Right to Buy and the Right to Acquire. This would provide the Assembly with a role in deciding the legislative arrangements for Wales in what is already an area with devolved executive powers, in line with the principles of the devolution settlement and the rationale set out in paragraph 7.12 of this Memorandum. Legislative competence for the policy area as a whole addresses the piecemeal nature of executive powers, improves the clarity of the devolution settlement and ensures that the Assembly has the flexibility to improve on current arrangements. For instance, legislative competence would enable the Assembly, if it so wished, to replace the current Right to Buy scheme with improved and updated schemes to assist home ownership. It also ensures that the Welsh Assembly Government could adopt a more joined-up approach to policy development in line with the policy aims set out above.

7.24 Legislative competence would also enable the Assembly Government to propose legislation to the Assembly that supports the Assembly Government's Homelessness Strategy. The competence would allow the Assembly to legislate in relation to, for example, the prevention of homelessness, duties of housing associations, the definition of homelessness, intentionality, local connection, discharge of duties, and strategic planning responsibilities. The existing legislation on homelessness would confine Welsh Ministers to piecemeal regulatory reform whilst any legislative proposals under the proposed competence of this LCO would be subject to full and detailed scrutiny by the Assembly.

7.25 In addition to enabling Welsh Ministers to adopt a more comprehensive approach to policy development and improvement, as set out in paragraphs 7.12 – 7.24, legislative competence would also enable Welsh Ministers to address legislative constraints within the existing legislative framework. Such legislative constraints hinder the Assembly Government's ability to take forward the policy direction set out in its strategies for housing. In order to overcome these constraints, the Assembly would require competence so that appropriate Assembly Measures could be developed. Specific examples of legislative constraints are set out in paragraphs 7.26 – 7.29 below.

7.26 For example, Part 6 of the Housing Act 1996 sets out the statutory framework which local housing authorities must comply with when allocating social housing. This includes allocating secure tenancies of council housing and nominations to assured tenancies with registered social landlords. Under the 1996 Act, the Welsh Ministers have considerable executive powers in relation to social housing allocations, including some powers to amend the primary legislation. However, the Welsh Ministers do not have the power to amend or repeal the factors which local authorities may take into account when determining priorities in allocating housing accommodation (set out in section 167(2A) of the 1996 Act). This is in contrast to section 167(2), which deals with those who should receive reasonable preference in allocation schemes, where Welsh Ministers have full powers to add, amend or repeal, and could do away with reasonable preference categories altogether. Legislative competence would enable the Assembly to consider social housing allocations alongside closely related issues such as homelessness, tenure and the regulation of registered social landlords.

7.27 The competence sought also would remove legislative constraints on taking forward the Gypsy and Traveller Strategy. Lack of appropriate sites and insufficient provision has a significant detrimental impact on the lives of Gypsies and Travellers. The links between lack of accommodation and other inequalities experienced by the Gypsy and Traveller community is well established. The Welsh Assembly Government has put in place a policy framework and financial incentives to aid local authorities to deliver appropriate sites but if they do not deliver in line with clearly identified demand, the Welsh Assembly Government may seek powers, for example to be able to direct local authorities to make appropriate provision. Sections 225 & 226 of the Housing Act 2004 place a duty on local authorities to undertake an accommodation needs assessment for Gypsies and Travellers, and to plan for the identified needs. An Assembly Government Planning Circular has instructed local authorities to identify suitable locations in their local development plans for Gypsy and Traveller sites. However, existing legislation stops short of enabling the Welsh Ministers to require local authorities to deliver Gypsy and Traveller sites.

7.28 A constraint has also been identified in relation to Council Tax policy on second or empty homes. Where a high proportion of homes are kept empty for a significant proportion of the year it can have an adverse effect on the fabric of a community, for instance in relation to the viability of particular services such as schools, post offices and shops. The evidence from the 2001 census suggested that some localised areas are particularly affected by second homes – 27 wards had between 10 and 20 % of their stock as second or holiday properties.

7.29 One potential approach to mitigate the effect of such dwellings in particular areas is to allow local authorities to vary the council tax payable. The relevant legislation is section 12 of the Local Government Finance Act 1992, which makes provision relating to Council Tax. Council Tax powers are broadly devolved; the Welsh Ministers have considerable regulation-making powers. Currently, the Welsh Ministers have made regulations which give local authorities the discretion not to offer discounts on Council Tax for some classes of dwellings that are not the main residence of an individual. However, the Welsh Ministers and the Assembly have no power to allow local authorities to charge additional Council Tax in respect of such dwellings. Competence in this area would enable the Assembly to consider any proposed Assembly Measures in respect of dwellings which are not the main residence of an individual.

7.30 In summary, the areas covered by this LCO are closely inter-related. The opportunity to develop a new regulatory framework cannot be divorced from reform of the nature of secure and assured tenancies; the Right to Buy, Preserved Right to Buy and Right to Acquire are inherent to these tenancies. The need to provide affordable and appropriate housing to those in need includes action on homelessness, housing allocations, those needing housing-related support, Gypsy and Traveller sites and second or empty homes. The lack of legislative competence, and the consequent reliance on Welsh Ministers' executive powers, constrain such action. Legislative competence for the Assembly will enable the Welsh Ministers to address these constraints and propose legislation to help implement the Assembly Government's overarching housing policy.

Scope

7.31 The LCO inserts seven matters into Field 11: (housing) and one matter into Field 12: (local government) under Part 1 of Schedule 5 to the 2006 Act.

7.32 Article 2 of the LCO inserts Matters 11.2 to 11.8 into Field 11, and Article 3 inserts Matter 12.18 into Field 12.

7.33 The draft National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010, if approved, will insert Matter 11.1 into Field 11.

7.34 The following paragraphs describe each new Matter in turn.

7.35 Matter 11.2 would give the Assembly competence to legislate regarding social housing providers. These are defined as either local authorities, or other bodies providing housing to people whose needs are not adequately served by the commercial housing market. This wording applies a similar requirement to that set out in sections 69 and 70 of the Housing and Regeneration Act 2008 which must be met in relation to low cost rental accommodation or low cost home ownership accommodation in order for it to fall within the definition of "social housing" for the purposes of Part 2 of that Act. However, the definition within the LCO does not preclude such bodies from being treated as "social housing providers" on the basis that they provide "other housing". This matter also relates to the function of allocating social housing by social housing providers, in line with the corresponding definition in the interpretation section.

7.36 Matter 11.3 would give the Assembly competence to legislate regarding relevant social housing bodies. This Matter is included so as to provide competence over bodies which have functions in relation to social housing, without necessarily being social housing providers. The Welsh Ministers would be an example of such a body.

7.37 Matters 11.2 and 11.3, taken together, will therefore confer competence on the Assembly to legislate in respect of the regulation of social housing providers and also relevant social housing bodies, and to legislate in respect of the allocation of social housing.

7.38 Matter 11.4 relates to tenure arrangements for rented social housing, this would include the secure and assured tenancy regime for tenants of local authorities and Registered Social Landlords respectively. The competence that would be granted by this Matter would not extend to private sector tenancies outside social housing. The matter would also give the Assembly competence regarding other arrangements under which social housing is provided. This will enable the Assembly to consider legislation relating to, for example, shared ownership arrangements or mutual home ownership.

7.39 Matter 11.5 relates to disposals of land and would enable the Assembly to legislate regarding the Right to Buy, Preserved Right to Buy or Right to Acquire for tenants of local authorities and Registered Social Landlords. Paragraph (a) relates to social housing and paragraph (b) relates to disposals of land held or used for the purposes of, or in connection with, social housing. Paragraph (c) cites the enactments under which tenants may hold the Right to Buy, Preserved Right to Buy or Right to Acquire and is included to ensure that the Assembly is

7.40 Matter 11.6 relates to the delivery of housing-related support to those who need help to maintain or to develop the ability to occupy their home. The competence would cover, for example, situations where assistance is offered to elderly people living in sheltered accommodation, those escaping domestic abuse, or for young people leaving the care system. This matter includes advice and non-financial assistance to people in respect of skills that are relevant to their ability to live independently in housing, who might otherwise be at risk of losing their home, or to enable them to live in more independent accommodation than they otherwise might.

7.41 Matter 11.7 would provide legislative competence over sites for Gypsies and Travellers. "Caravan sites" are defined in the LCO in a similar way to that in section 1(4) of the Caravan Sites and Control of Development Act 1960. The terms "Gypsies and Travellers" and "caravan" are intentionally not defined in the LCO as it is intended that the words bear their usual meaning. "Caravan" is already used, without further definition, in Schedule 7 to the 2006 Act. This matter would enable the Assembly to define these terms within subsequent Measures for specified purposes.

7.42 Matter 11.8 would provide the Assembly with legislative competence regarding homelessness. "Homelessness" is not defined in the LCO as it is intended that the word bears its usual meaning. It is already used, without further definition, in Schedule 7 to the 2006 Act. This matter would enable the Assembly to define "homelessness" within subsequent Measures for specified purposes.

7.43 Article 3 of the Order would insert Matter 12.18 into Field 12 (Local Government). This would enable the Assembly to pass legislation relating to the Council Tax charged on dwellings that are not the main residence of an individual.

Exceptions to the competence

7.44 The LCO does not set out any exceptions to the competence which it would confer. However, that competence needs to be considered against the general exceptions set out in paragraph A1 of Part 2 of Schedule 5 to the 2006 Act (which was inserted by the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009). This means that social security, including Housing

8. Consultation Outcome

8.1 There has been no consultation on this LCO. However, it has been subject to pre-legislative scrutiny by the National Assembly Legislation Committee No. 2 and the House of Commons Welsh Affairs Committee, who each invited submissions of evidence as part of their inquiries.

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

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

Changes to the LCO following pre-legislative scrutiny

8.4 Legislation Committee No. 2 issued its report on 29 January 2010 and supported the general principles of the proposed Order. The Welsh Affairs Committee reported on 3 February and similarly welcomed the proposed LCO.

8.5 The LCO was positively received by stakeholders who responded to the Committee's consultation. Consideration was given to extend the scope of the Order to cover the private rented sector and "Community Right to Buy", as suggested by Legislation Committee No 2. The Assembly Government is currently consulting on the private rented sector, including a national register of private sector landlords and on the mandatory regulation of letting and management agents. The Assembly Government will consider options for future legislation following the consultation. At this point the Assembly Government does not have the evidence base to include Community Right to Buy within the scope Matter 11.5 and the scope of the draft Order has not been changed at this time.

8.6 In light of the careful scrutiny of Legislation Committee No. 2 and the Welsh Affairs Committee, some clarifications have been made to the Explanatory Memorandum. The meanings of "homelessness", "Gypsies and Travellers" and "caravan" as used in the LCO have been further clarified in paragraphs 7.41 and 7.42 of this Memorandum.

8.7 The Welsh Affairs Committee recommended the titles of LCOs should reflect more accurately the content of the matters they contain. The Committee therefore recommend amending the title of this LCO. The Assembly Government concluded that the title of an LCO should

8.8 The Committee also recommended that the drafting of matters relating to social housing should be reviewed to ensure they are as clear as possible. In particular, whether the matters in the proposed LCO which relate to social housing could be more simply expressed in a single matter designating "social housing". The Assembly Government has considered this recommendation carefully, concluding that the competence being conferred is best expressed in the matters as set out in the LCO. In drafting the LCO, the approach has been to avoid including exceptions and "carve-outs" to exceptions if at all possible. Expressing the competence more succinctly, for example using the term "social housing", would require the insertion of exceptions and likely carve-outs to those exceptions, such as for certain aspects of social housing finance. It has been concluded that the matters should remain in the LCO as drafted (but with some clarification to definitions - see paragraph 8.10).

8.9 The Welsh Affairs Committee recommended that the reference to "Gypsies and Travellers" be capitalised. This change has been made.

8.10 The Committee also recommended that an amendment be made to the definition of "social housing provider" to avoid any doubt being cast on the interpretation that the functions of such a provider (other than a local authority) include both provision and allocation of housing. The Committee considered that the distinction between paragraph (b) of that definition, which did not make specific reference to "allocation" and the final part of that definition, which did, might give rise to uncertainty. Given the intention that competence should apply both to provision and allocation, as stated in this Memorandum, paragraph (b) of this definition has therefore been amended to reflect this clearly. In amending this definition in the light of the Committee's recommendation, it was considered that the final part of the definition could be drafted in a simpler fashion, whilst not altering its meaning. A corresponding revision has also been made to the final part of the definition of "relevant social housing body" which had been drafted in similar terms..

9. Guidance

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

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it only confers legislative competence on the Assembly, and so has no impact on business, charities or voluntary bodies. The Welsh Assembly Government would prepare a Regulatory Impact Assessment when bringing forward any proposed Assembly Measure as a result of the legislative competence this LCO confers.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

This LCO confers legislative competence on the Assembly. 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 Assembly.

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: 02920 89 8484 or email james.george@walesoffice.gsi.gov.uk) can answer legal queries about the instrument.

Annex A

This annex shows how this Order amends Schedule 5 to the Government of Wales Act 2006, with footnotes indicating the source of previous amendments.

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

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Matter 1.1[1]

The red meat industry, in relation to–

(a) increasing efficiency or productivity in the industry;
(b) improving marketing in the industry;
(c) improving or developing services that the industry provides or could provide to the community;
(d) improving the ways in which the industry contributes to sustainable development.

Interpretation of this field

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

(a) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
(b) producing, processing, marketing, manufacturing and distributing products derived to any substantial extent from those animals (apart from milk and milk products, fleece wool and hides).

For the purposes of this definition –
"cattle" means bovine animals, including bison and buffalo;
"pigs" means porcine animals, including wild boar and other feral pigs.

Field 2: ancient monuments and historic buildings

Field 3: culture

[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 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 2008 (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 (S.I. 2008/3132).
[11] Interpretation provisions for field 5 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), section 27(3) of the Further Education and Training Act 2007 (c. 25), article 2(4) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and section 149(1) and (6) of the Education and Skills Act 2008 (c. 25).

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

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

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

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

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

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

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

Field 6: environment

Matter 6.1[12]

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

This matter does not include—
(a) regulation of any activity in the sea;
(b) regulation of the provision of postal services by a person who holds, or is required to hold, a licence from the Postal Services Commission

[12] Matters 6.1 – 6.4 and interpretation provisions for field 6 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248).

authorising the person to convey letters from one place to another (whether or not the licence relates to the services).

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

Matter 6.2

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

This matter does not include regulation of the following activities—

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

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

Matter 6.3

Protecting or improving the environment in relation to pollution.

This matter does not include—

(a) regulating the composition and content of fuel used in—
  (i) a means of transport,
  (ii) non-road mobile machinery, or
  (iii) an agricultural or forestry tractor;
(b) obligations upon persons who supply transport fuel at or for delivery to places in the United Kingdom to produce evidence showing the supply of renewable transport fuel;
(c) making provision regarding the proportion of renewable energy consumed in transport, including the imposition of requirements relating to sustainability that determine whether any particular renewable energy is to be counted towards any renewable energy obligation or target;
(d) provision of financial support in connection with—
  (i) the production of renewable energy for consumption in transport, or
  (ii) the use of that energy in transport,
  including the imposition of requirements relating to sustainability that determine whether any particular renewable energy qualifies for financial support.
(e) regulation of oil and gas exploration and exploitation in those parts of the territorial sea that are not relevant territorial waters.

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

Matter 6.4

Protecting or improving the environment in relation to nuisances.

This matter does not include—

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

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

Not included in matters 6.1, 6.2, 6.3 and 6.4

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

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

Not included in matters 6.1 and 6.2

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

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

Not included in matters 6.3 and 6.4

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

(a) regulation of the contained use of genetically modified organisms;
(b) regulation of the following activities in the sea—

(i) depositing any substance or object in the sea or on or under the seabed from any vehicle, vessel, aircraft, marine structure or floating container, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;
(ii) scuttling any vessel or floating container;
(iii) constructing, altering or improving works in or over the sea or on or under the seabed;
(iv) using any vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed;
(v) dredging;
(vi) depositing or using any explosive substance or article in the sea or on or under the seabed;
(vii) incinerating any substance or object on any vehicle, vessel, marine structure or floating container;

(c) marine licensing under Part 4 of the Marine and Coastal Access Act 2009.

Meaning of "pollution"

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

Meaning of "nuisance"

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

Meaning of "relevant defence" and "relevant exclusion"

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

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

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

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

Other interpretation of this field

In this field—

"electricity activity" means any of the following—

(a) generating electricity at a generating station whose construction, extension or operation requires—

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

(ii) the authority of an order granting development consent under the Planning Act 2008;

(b) transmitting, distributing or supplying electricity;

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

"electronic communication" means a communication transmitted—

(a) by means of an electronic communications network, or

(b) by other means but while in an electronic form;

"electronic communications network" means—

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description, and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—

(i) apparatus comprised in the system,

(ii) apparatus used for the switching or routing of the signals, and

(iii) software and stored data;

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

"environmental harm" means any of the following—

(a) harm to the health of humans and other living organisms;

(b) harm to the quality of the environment, including—

(i) harm to the quality of the environment taken as a whole,

(ii) harm to the quality of the air, water or land, and

(iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;

(c) offence to the senses of human beings;

(d) damage to property;

(e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment;

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

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

"military premises" means premises which are—

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

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

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

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

(b) carbon dioxide storage installations;

(c) renewable energy installations;

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

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

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

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

"statutory" means arising by virtue of an Act;

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

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

An order or an Order in Council made under or by virtue of section 158(3) or (4) for the purposes of that section also applies for the purpose of determining any boundary between the parts of the sea which are to be treated as adjacent to Wales for the purposes of this field and those which are not.

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

Field 8: food

Field 9: health and health services

Matter 9.1[13]

Provision for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law if England and Wales, qualifying liability in tort arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales.

Matter 9.2[14]

Assessment of mental health and treatment of mental disorder.

This matter does not include any of the following —

(a) subjecting patients to —

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

(ii) compulsory supervision, or

(iii) guardianship;

(b) consent to assessment or treatment;

(c) restraint;

(d) detention.

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

Interpretation of this field

In this field—

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

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

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

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

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

[14] Matter 9.2 and the interpretation of "mental disorder" were inserted by the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 (S.I. 2010/236).

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

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

Field 10: highways and transport

Matter 10.1[15]

Provision for and in connection with—

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

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

Interpretation of this field

In this field—

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

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

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

Field 11: housing[16]

Matter 11.2

Social housing providers.

Matter 11.3

Relevant social housing bodies.

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

[16] Matter 11.1 would be inserted by the draft National Assembly for Wales (Legislative Competence) (Housing)(Fire Safety) Order 2010.

Matter 11.4

Tenure of rented social housing and other arrangements under which social housing is provided.

Matter 11.5

Disposals of—

(a) social housing,

(b) land held or used for the purposes of, or in connection with, social housing, and

(c) land to which a provision of any of the following enactments applies—

(i) Part 2 of the Housing Act 1985;

(ii) Part 5 of the Housing Act 1985;

(iii) Chapter 2 of Part 1 of the Housing Act 1996;

(iv) Chapter 4 of Part 1 of the Housing Act 1996;

(v) Chapter 4 of Part 2 of the Housing and Regeneration Act 2008

(insofar as the disposal does not fall within paragraph (a) or (b) of this matter).

Matter 11.6

Provision of advice and non-financial assistance to individuals in respect of their obtaining, and living in, housing.

This matter includes, in particular, advice and non-financial assistance in respect of skills that are relevant to the ability to live independently, or more independently, in housing.

Matter 11.7

Provision by local authorities of caravan sites for use by Gypsies and Travellers.

Matter 11.8

Homelessness.

Interpretation of this field

In this field—

"caravan site" means—

(a) land on which a caravan or other mobile accommodation (apart from a tent) is stationed for the purposes of human habitation, and

(b) land which is used in conjunction with land falling within paragraph (a) of this definition;

"local authority" means a county council or a county borough council in Wales;

"relevant social housing body" means a person (if, or insofar as, it is not a social housing provider) which has functions relating to—
(a) social housing providers, or
(b) social housing;
but such a person is a relevant social housing body only insofar as the person has functions relating to social housing providers or social housing;

"social housing" means any housing provided by a social housing provider;

"social housing provider" means—
(a) a local authority, and
(b) a person (other than a local authority) which—
(i) provides housing to, or
(ii) has functions relating to allocation of housing to,
people whose needs are not adequately served by the commercial housing market;
but a local authority or such other person is a social housing provider only insofar as it provides, or has functions relating to allocation of, housing.

Field 12: local government

Matter 12.1[17]

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.

[17] Matters 12.1-12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 235 and Schedule 17 paragraphs 1 and 2.

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

Matter 12.3

Any of the following—

(a) the principles which are to govern the conduct of members of relevant authorities,

(b) codes of conduct for such members,

(c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),

(d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct including in particular—

(i) the investigation and adjudication of such allegations and reports on the outcome of investigations,

(ii) the action that may be taken where breaches are found to have occurred,

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

For the purposes of this matter—

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

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

Matter 12.4

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

Matter 12.5

Provision for and in connection with—

(a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,

(b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and

(c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are "relevant Welsh authorities"—

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

Matter 12.6[18]

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

This matter does not include—

(a) direct elections to executives of principal councils, or
(b) the creation of a form of executive requiring direct elections.

For the purposes of this matter—

(a) "executive arrangements" has the same meaning as in Part 2 of the Local Government Act 2000;
(b) "principal council" means a county or county borough council;
(c) "direct elections" means elections by local government electors (within the meaning of section 270(1) of the Local Government Act 1972).

Matter 12.7

Committees of principal councils with functions of—

(a) review or scrutiny, or
(b) making reports or recommendations.

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

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

Matter 12.18[19]

[18] Matters 12.6 and 12.7 were inserted by section 33 the Local Democracy, Economic Development and Construction Act 2009 (c. 20).
[19] Matters 12.8 to 12.17 would be inserted by the draft National Assembly for Wales (Legislative Competence) (Local Government) Order 2010.

Council tax payable in respect of dwellings that are not the main residence of an individual.

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[20]

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

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

Matter 15.2[21]

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

[20] Matter 15.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785), and amended by article 3(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132) and by article 2(2) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

[21] 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).

(ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

Matter 15.6

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

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

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

Matter 15.7

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

Matter 15.8

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

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

Matter 15.9[22]

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

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

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

(a) a child with a physical or mental impairment, or

(b) an individual aged 18 or over,

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

(a) by virtue of a contract of employment or other contract with any person, or

(b) as a volunteer for a body (whether or not incorporated).

Matter 15.10[23]

Social care services connected to mental health.

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

Interpretation of this field[24]

In this field—

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

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

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

"health" means physical or mental health;

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

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

[23] Matter 15.10 and the interpretation of "advocacy services" were inserted by article 3 of the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 (S.I. 2010/236)..

[24] Interpretation provisions for field 15 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785), replaced by article 3 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132), and amended by article 2(4) of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (S.I. 2009/3010).

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

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

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

"social care services" means any of the following provided in connection with the well-being of any person: residential or non-residential care services; information, advice, counselling or advocacy services; 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[25]

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

[25] 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).

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

Matter 16.2[26]

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

This matter does not include—

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

Matter 16.3

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

Land is relevant land if it—

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

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

Interpretation of this field

In this field—

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

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

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

"public foot crossing", in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a

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

public right of access, by virtue of which the public are able to cross the river on foot;

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

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

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

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

Field 17: tourism

Field 18: town and country planning

Matter 18.1[27]

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.

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

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

Interpretation of this field

In this field—

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

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

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

"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[28]

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;

[28] Matters 20.1 – 20.2 and the interpretation provision for field 20 were inserted by article 3 of the National Assembly for Wales (Legislative Competence)(Welsh Language) Order 2010 (S.I. 2010/245).

(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.

PART 2

EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS[29]

Exceptions to matters[30]

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

Economic development (field 4 of Part 1)

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

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

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

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

(2) Transmitting, distributing or supplying electricity.

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

(4) Nuclear energy and nuclear installations, including—

(a) nuclear safety, and

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

[30] Paragraph A1 was inserted by article 2(9) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006) Amendments to this paragraph were inserted by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248).

(b) liability for nuclear occurrences,

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

Highways and transport (field 10 of Part 1)

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

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

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

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

b) regulation relating to matter 10.1.

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

(3) Road traffic offences.

(4) Driver licensing.

(5) Driving instruction.

(6) Insurance of motor vehicles.

(7) Drivers' hours.

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

(9) Pedestrian crossings.

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

(11) Speed limits.

(12) Public service vehicle operator licensing.

(13) Provision and regulation of railway services, apart from financial assistance which—

(a) does not relate to the carriage of goods,

(b) is not made in connection with a railway administration order, and

(c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.

(14) Transport security.

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

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

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

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

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

(ii) animal, fish or plant health, or

(iii) the environment.

(15) Shipping, apart from—

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

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

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

(ii) animal, fish or plant health, or

(iii) the environment.

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

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

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

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

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

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

Social welfare (field 15 of Part 1)

(1) Child Support.

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

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

(b) the Welsh Ministers.

(3) Tax credits.

(4) Child benefit and guardian's allowance.

(5) Social security.

(6) Independent living funds.

(7) Motability.

(8) Vaccine damage payments.

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

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

(11) Family law and proceedings apart from—

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

(b) Welsh family proceedings officers.

(12) Welfare foods.

Water and flood defence (field 19 of Part 1)

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

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

General Restrictions

Functions of Ministers of the Crown

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

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

Criminal Offences

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

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

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

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

Police Areas[31]

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

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

Enactments other than this Act

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

TABLE

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

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

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

This Act

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

(2) Sub-paragraph (1) does not apply to—[32]

(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—

[32] This provision was inserted by the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010 (S.I. 2010/245).

(a) making modifications of so much of any enactment as is modified by this Act, or
(b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or make under, an Assembly Measure.

PART 3

EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2[33]

Interpretation

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

Functions of Ministers of the Crown

7

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

(2) Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be made enforceable against Ministers of the Crown by means of criminal offences.[34]

Police Areas[35]

7A The general restrictions in Part 2 do not prevent a provision of an Assembly Measure making an alteration to the boundary of a police area in Wales if the Secretary of State consents to the provision

Comptroller and Auditor General

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

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[33] The heading for Part 3 was substituted, paragraph 6Z was inserted, and the opening words of paragraphs 7 to 11 were substituted, by article 2(10) to (12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

[34] This provision was inserted by the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010 (S.I. 2010/245).

[35] Paragraph 7A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 4; and amended by article 2(12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).

Restatement

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

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

(b) repealing or revoking any spent enactment,

or conferring power by subordinate legislation to do so.

Subordinate legislation

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

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

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

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

Data Protection Act 1998[36]

11 The general restrictions in Part 2 do not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, section 31(6) of the Data Protection Act 1998 so that it applies to complaints under any Assembly measure relating to matter 9.1 in Part 1.

[36] Paragraph 11 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), and amended by article 2(12) of the National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006).