



WALES OFFICE

**PRE-LEGISLATIVE SCRUTINY
OF THE PROPOSED
NATIONAL ASSEMBLY FOR WALES
(LEGISLATIVE COMPETENCE)
(TRANSPORT) ORDER 2010**



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*Presented to Parliament by the Secretary of State for Wales
By Command of Her Majesty
December 2009*

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MINISTERIAL FOREWORD

By the Secretary of State for Wales

The Rt. Hon. Peter Hain MP

The proposed National Assembly for Wales (Legislative Competence) (Transport) Order 2010

I am pleased to present this proposed Order in Council under Section 95 of the Government of Wales Act 2006 to the House of Commons Welsh Affairs Select Committee and the House of Lords Constitution Committee for pre-legislative scrutiny.

This proposed Order would confer legislative competence on the National Assembly for Wales in relation to concessionary travel and learner transport.

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

Part 3 of the Government of Wales Act 2006 gave the National Assembly for Wales the power to pass legislation, known as Assembly Measures, which can do anything that an Act of Parliament can do, within the constraints set out in the Act. The scope of the Assembly's powers to pass Measures is set out in Part 3 and Schedule 5 to the Act. The scope of the powers can be extended by adding "matters" to Schedule 5, either through a Parliamentary Bill or, as in this case, by an Order in Council under Section 95 of the Act. The Order in Council route enables the Welsh Assembly Government - or Assembly Committees or backbenchers - to initiate a request for legislative competence.

This proposed Order would insert a single Matter into Field 10 (highways and transport), allowing the National Assembly to legislate in relation to concessionary travel on bus services and rail services provided under a franchise agreement to which the Welsh Ministers are a party. It also enables the National Assembly to legislate on the types of vehicle which may be used to transport learners to and from the places where they receive education or training. It does so by carving out from current exceptions competence to legislate on the construction of, and equipment in, such vehicles.

Although the accompanying Explanatory Memorandum sets out the scope and background relating to the request, the details of the legislation to be passed will be contained in Assembly Measures and any subordinate legislation made under them. The National Assembly for Wales deliberates fully on proposed Measures, and any subordinate legislation made under Measures will be subject to scrutiny by the Assembly.

Proposed Orders in Council are subject to pre-legislative scrutiny by the House of Commons Welsh Affairs Select Committee, the House of Lords Constitution Committee and by a committee of the National Assembly for Wales. In scrutinising proposed Orders, Parliamentary Committees consider whether or not it is appropriate to devolve legislative competence to the National Assembly in the particular areas of policy specified in the Order.

A final draft Order will be prepared in light of the pre-legislative scrutiny. The Welsh Assembly Government will lay that draft Order before the National Assembly for Wales for its approval. If approved, the unamendable draft Order will be laid before both Houses of Parliament and be subject to the Affirmative Resolution procedure. If both Houses also approve it, the draft Order will then go to the Privy Council to be made.

I welcome the work of the Welsh Affairs Select Committee and the House of Lords Constitution Committee and look forward to the outcome of the pre-legislative scrutiny on this proposed Order.

A handwritten signature in black ink, appearing to read 'Nick Han', is positioned below the text. The signature is written in a cursive style with a large initial 'N'.

2010 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (Transport) Order 2010**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

At the Court at Buckingham Palace, the *** day *** of *** 2010

Present

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of sections 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation and commencement

1.—(a) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Transport) Order 2010.

- (1) This Order shall come into force on the day after the day on which it is made.
- (2) In this Order “Schedule 5” means Schedule 5 to the Government of Wales Act 2006.

Concessionary travel

2.—(b) Part 1 of Schedule 5 is amended as follows.

- (1) In Field 10 (highways and transport), after matter 10.1(b) insert—

(a) 2006 c.32.
(b) Matter 10.1 was inserted by section 122 of the Local Transport Act 2008 (c.26).

“Matter 10.2

Concessionary travel on the following services—

- (a) bus services;
- (b) Welsh services provided under a franchise agreement to which the Welsh Ministers are a party.

Any expression which is used in paragraph (b) and the Railways Act 2005 has the meaning given in that Act.”.

Amendments to general exceptions to matters

3.—(c) In Part 2 of Schedule 5, paragraph A1 (exceptions to matters)(c) is amended as follows.

(1) In paragraph (2) under the heading “*Highways and transport*”—

- (a) omit “and” after sub-paragraph (a), and
- (b) after sub-paragraph (b) insert “, and
- (c) regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle’s construction or equipment), but not including the setting of technical standards for construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.”.

(2) In paragraph (14) under that heading, insert at the end “(apart from regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements)”.

(3) After paragraph (19) under that heading insert—

“In paragraphs (2) and (14) “learner transport arrangements” means arrangements of the kind described in matter 5.10 which consist of the provision of motor vehicles and are made by—

- (a) public authorities (within the meaning of field 15) exercising functions relating to education or training, or
- (b) institutions or other bodies concerned with the provision of education or training.”.

Name

Clerk of the Privy Council

(c) Paragraph A1 was inserted by article 2(9) of the National Assembly for Wales (Exceptions to Matters) Order 2009 (SI 2009/3006). Paragraph (2) under the heading “highways and transport” was further amended by the National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (SI 2010/).

EXPLANATORY NOTE

(This note is not part of the Order)

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

Article 2 inserts matter 10.2 into field 10 (highways and transport) of Part 1 of Schedule 5 to the 2006 Act. Matter 10.2 is about concessionary travel.

Article 3 amends exception (2) under the heading “Highways and transport” in paragraph A1 of Part 2 of Schedule 5. The exception is for the regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used, apart from specified types of regulation. It applies to all matters in Part 1 of Schedule 5.

The amendments made by article 3(2) allows the Assembly to make provision by Measure to regulate the description of vehicle which may be used pursuant to learner transport arrangements of the kind described in matter 5.10 (including description by reference to construction and equipment).

Article 3(4) allows the Assembly to make provision by Measure to regulate the carriage of supervising adults on vehicles used pursuant to learner transport arrangements.

The provision allowed by the amendments in articles 3(2) and (4) may only be made in respect of learner transport arrangements made by public authorities having education and training functions or by institutions or other bodies concerned with the provision of education or training.

A full regulatory impact assessment has not been prepared for this Order since the effect of this Order is only to confer competence on the National Assembly for Wales to legislate.

**MEMORANDUM DRAFTED BY THE
WELSH ASSEMBLY GOVERNMENT**

**MEMORANDUM FROM THE MINISTER FOR THE ECONOMY AND
TRANSPORT**

CONSTITUTIONAL LAW: DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (Transport) Order 2010**

**Proposal for a Legislative Competence Order
relating to learner transport and concessionary
travel**

Introduction

1. This Memorandum sets out the background to the provisions in the attached Welsh Assembly Government proposed Legislative Competence Order which would confer additional legislative competence upon the National Assembly for Wales and explains the scope of the power requested.
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy contained in the White Paper "Better Governance for Wales". 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. 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, in relation to Matters, subject to the limitations provided for by the 2006 Act.
3. The proposed Order would confer further legislative competence on the National Assembly for Wales, by inserting a Matter in the field of highways and transport (Field 10 within Schedule 5 to the 2006 Act) and by amending two exceptions relating to highways and transport in Part 2 (Exceptions to Matters) of Schedule 5, paragraph A1 to carve out additional areas of competence. These new legislative powers in respect of the specified Matters will enable the Welsh Assembly Government, Assembly Members or Assembly Committees to bring forward proposals for legislation, in the form of Measures. These Measures will be subject to thorough scrutiny and approval by the National Assembly. Attached at Annex A is a copy of Schedule 5 showing the legislative competence that the National Assembly has acquired to date.

Context

4. The National Assembly acquired a range of executive functions over highways and transport under the Government of Wales Act 1998. These functions were transferred to the Welsh Ministers by the 2006 Act.

5. Further executive powers have since been devolved to the Welsh Ministers in various Acts, including the Transport Act 2000, the Railways Act 2005, the Transport (Wales) Act 2006 and the Local Transport Act 2008. In addition, legislative competence has been conferred on the National Assembly in the related area of learner travel (Matter 5.10 in the field of education and training), which was used by the National Assembly to pass the Learner Travel (Wales) Measure 2008.
6. The Welsh Assembly Government is working to develop a safe and efficient transport network to support economic development and promote social cohesion. A cornerstone of this is the commitment in *One Wales* to bring forward legislation on learner transport, thereby improving safety for learners on the journey to and from school or the place where they receive education or training. This supports the Assembly Government's policy to reduce car use by making it possible for students to walk, cycle or take the bus safely, thus reducing road congestion and improving environmental, health, social and economic outcomes.
7. The concessionary travel scheme in Wales provides free travel on local bus services for the disabled, their companions, and those aged over 60. A rail pilot scheme is also in operation, providing free travel for eligible pass holders, on the Borderlands and Conwy Valley Lines until the end of September 2010, and on the Heart of Wales and Cambrian Coast Lines until 26 March 2010.

Current legislative framework

8. The National Assembly for Wales has legislative competence in relation to learner travel, covering "arrangements for persons to travel to and from the places where they receive education or training". This competence was conferred by The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007, as amended by The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008, and The National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009. This definition includes persons receiving nursery, primary, secondary or further education or training.
9. There are, however, exceptions to the competence, which are listed in paragraph A1 of Part 2 of Schedule 5 to the Government of Wales Act 2006. These include:
 - regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used (apart from regulation relating to Matter 10.1);
 - road traffic offences;
 - driver licensing;
 - driving instruction;
 - insurance of motor vehicles;
 - drivers' hours;
 - traffic regulation on special roads;

- pedestrian crossings,
 - traffic signs;
 - public service vehicle operator licensing;
 - transport security;
 - registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.
10. The National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (SI 2009 No. 3006) amended the list of exceptions by providing for a carve out from the exceptions within paragraph A1, in relation to Matter 10.1 (road user charging), as this is already within the National Assembly's competence. The National Assembly for Wales (Legislative Competence) (Environment) Order 2010, if approved by Her Majesty in Council, will introduce a further carve out to the exception relating to "regulation of the use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment".
11. The Learner Travel (Wales) Measure was introduced on 15 April 2008 by the Minister for the Economy and Transport. It was approved by Her Majesty in Council on 10 December 2008. This Measure aims to strengthen protocols for good behaviour and discipline on school buses and provide free transport for more primary school children in Wales. The main elements of the Measure are:
- Increased safety;
 - A common policy and legal framework across Wales;
 - Clarity regarding the eligibility of free or assisted school transport;
 - Environmental sustainability in transport arrangements.
12. The Welsh Ministers' powers in relation to concessionary travel are contained in Sections 145B to 152 of the Transport Act 2000. Section 145B of the Act, as amended by the Concessionary Bus Travel Act 2007, provides for mandatory travel concessions to be provided by operators of eligible services (at present local bus services) to certain classes of passenger, including those who are elderly or disabled.
13. Section 149 of the Act requires travel concession authorities (county and county borough councils) to reimburse operators for providing the concessions in accordance with arrangements agreed with the operators or determined by the authorities. According to Section 149(3), the Welsh Ministers may by regulation make provision:
- with respect to the determination by travel concession authorities of the amounts to be paid to individual operators, or to any class of operators, by way of reimbursement,
 - as to the manner of making any payments due to operators by way of reimbursement, and

- about the terms on which, and the extent to which, travel concession authorities may employ any person as their agent for the purpose of making payments due to operators by way of reimbursement and the descriptions of persons who may be so employed.
14. The current regulations in Wales are the Mandatory Travel Concessions (Reimbursement Arrangements) (Wales) Regulations 2001:
- Regulation 3 sets the overall objective for reimbursement arrangements, namely that operators should not be financially better off or worse off as a result of providing mandatory travel concessions.
 - Regulation 4 requires that reimbursement payments must meet the costs incurred by operators in providing mandatory travel concessions and defines those costs.
 - Regulation 5 makes provision for the periods in respect of which payments are to be calculated and the dates when they must be made.
 - Regulation 6 requires authorities to adopt a standard method for determining the total number of journeys made by those entitled to the concessions and the fares values to be attributed to those journeys.
 - Regulation 7 requires authorities to review the calculations made in accordance with the standard method at least once every three years.
 - Regulation 8 requires authorities, when adopting the standard method and when calculating reimbursement payments in accordance with that method, to have regard to guidance given by the Welsh Ministers.
15. The Welsh Assembly Government issued guidelines in November 2001. Revised guidelines may be issued under Section 145B(6) of the Transport Act 2000.
16. The Welsh Ministers' powers of variation under Section 147 of the Transport Act 2000 include power to make any amendment of that Act that could have been made by amending or revoking any provision of the Travel Concessions (Extension of Entitlement) (Wales) Order 2001 (which was revoked by the 2007 Act). The following variations to the statutory concession could be made by way of statutory instrument in order to reduce the financial burden:
- Limit journeys to within a Welsh travel concession authority, i.e. local authority, or between a place in the authority's area and a place outside, but in the vicinity of that area, for example between Cardiff and Newport, but not Cardiff and Swansea.
 - Imposing times during which the concession applies by limiting travel to off-peak; that is, no free travel between, for example, 7:30am to 10:00am and 4:00pm to 6:00 pm.

- Introduce a nominal fare. We are however obliged under the Transport Act 2000 to provide a waiver ensuring at least a half-price concession.
- Limiting the class of service to which the mandatory concession applies – for example, not reimbursing concessionary journeys on the coach network (such as the TrawsCambria service).
- Limiting or removing the concession of a companion to a disabled person as set out above.

Rationale

17. The aim of the proposed Order is to confer legislative competence on the National Assembly in relation to learner transport and concessionary travel, which will enable the National Assembly to legislate for Wales in these areas.
18. Although legislative competence has already been devolved to the National Assembly for Wales in relation to arrangements for persons to travel to and from the places where they receive education or training, it does not cover the use, construction and equipment of vehicles used for learner transport.
19. The current powers enabled the National Assembly to pass the Learner Travel (Wales) Measure 2008, which, amongst other things, increased the entitlement to free transport for some primary school children and required the Welsh Ministers to make a code of conduct in relation to the behaviour of those travelling to and from their places of learning. However, the consultation and scrutiny of the Learner Travel Measure highlighted widespread concern regarding related transport regulation and safety issues. However, the National Assembly was unable to legislate in relation to the kinds of vehicles used to provide learner transport and the safety features they should have because it did not have the competence. This led to a cross-party call by Assembly Members to seek powers in this area, so that the National Assembly could define the arrangements for learner transport where it is currently unable to do so.
20. A number of exceptions apply to the National Assembly's competence in relation to learner transport, which limit the National Assembly's ability to legislate in relation to the use, construction and equipment of vehicles used for learner transport and in relation to transport security. This LCO proposes carve outs to those exceptions limited to learner transport arrangements, to enable the National Assembly to consider legislating in relation to the safety of the vehicles used. This could, for instance, enable the National Assembly to legislate to require local authorities only to use vehicles for learner transport which conform to the highest safety standards and/ or have certain characteristics (e.g. single deck vehicles, fitted with seatbelts and CCTV). Conferring

competence by redefining this exception would enable the National Assembly to address particular concerns in Wales.

21. To safeguard the long term sustainability of the concessionary travel scheme, the Welsh Assembly Government is also seeking competence for the National Assembly over concessionary travel. This would enable the National Assembly to consider legislating to exercise more rigorous control over the scheme. For example, the National Assembly could legislate, to allow the Assembly Government to directly negotiate reimbursement of operating costs with the operators and/ or administer the scheme directly. The current mechanism of reimbursing operators via local authorities fails to build in sufficient incentives to control costs since local authorities are reimbursed by the Assembly Government for the full costs incurred.
22. The competence provided by this LCO would also enable the National Assembly to consider amending the legislative framework of the scheme. Under the current range of executive powers, the Welsh Ministers may directly negotiate reimbursement with the local bus operators (acting as the agents of the local authorities). But this may introduce potential conflicts of interest, since the legislation permits the determination of appeals by the Welsh Ministers themselves. Currently the Welsh Ministers have the power to regulate the process once an application has been made to them under Section 150(6)(c) of the Transport Act 2000. However, the basic mechanisms that precede the consideration of an appeal are set out in the Transport Act 2000 and the Welsh Ministers have no powers to change these. A future Measure proposed by the National Assembly could, for instance, describe the appeals process in full.

Scope

23. It is proposed that a Matter be inserted under Field 10: highways and transport of Part 1 of Schedule 5 to the Government of Wales Act 2006, to enable the National Assembly to legislate over concessionary travel by way of Assembly Measure. This includes, but is not limited to, powers to directly administer the scheme and to determine agreements with Participating Operators (Participating Operators of Eligible Services are defined by the Travel Concessions (Eligible Services) Order 2002 (SI 2002 No 2023 (W.207) under the Transport Acts 1985 and 2000). The legislative competence of the National Assembly will be limited (in relation to concessionary travel) by restricting competence over rail travel to Welsh services provided under a franchise agreement to which the Welsh Ministers are a party - meaning local and regional services currently provided under the Arriva Trains Wales franchise, but excluding services which operate under that franchise entirely in England. This also excludes the services which operate in Wales provided by First Great Western, Virgin and Cross-Country.

24. In relation to learner transport, competence will be conferred not by inserting a new Matter, but by amending Part 2 (Exceptions to Matters) of Schedule 5, paragraph A1(2) and (14). The scope of the revisions to the exception will be limited to learner transport as defined in Matter 5.10 of Schedule 5 to the Government of Wales Act 2006. This includes taxis and other private hire vehicles (insofar as additional safety measures in respect of local authority contracted taxis used for school transport can be included in the licensing conditions). The power to regulate *learner transport* is limited to public authorities and institutions or other bodies concerned with the provision of education and training. This would include local education authorities, school governing bodies and independent schools. It would however exclude travel arrangements made by parents or the students themselves, and would also exclude visiting vehicles.
25. This Order does not seek to devolve legislative competence in relation to the technical standards of vehicles which apply throughout Great Britain. These areas which will continue to be determined by the UK Government, increasingly working within the framework of European law. Any future legislation brought forward by the National Assembly for Wales in this area would have to be compatible with the regulatory regime for vehicle safety under UK law, and the overarching requirement within the 2006 Act to be compliant with EU law, as well as the general Treaty principles pertaining to operation of the internal market.
26. The legislative competence in relation to *transport security* is limited to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements. This excludes competence in relation to all other aspects of transport security including terrorism.

Geographical limits of any Assembly Measure

27. Section 94 of the Government of Wales Act 2006 imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. This means that the National Assembly is not able, by Measure, to confer on the Welsh Ministers, Welsh local authorities or any other public authority, functions which do not relate to Wales. A provision of an Assembly Measure is not law if it is outside the Assembly's legislative competence.
28. Any provision of a Measure which makes the provisions of that or any other Measure effective, enables the provisions of that or any other Measure to be enforced or is otherwise incidental to or consequential on such a provision of a Measure, is also within the Assembly's legislative competence.

Minister of the Crown functions

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

Conclusion

30. For the reasons outlined above, the Welsh Assembly Government proposes that legislative competence should be conferred on the National Assembly for Wales in relation to learner transport and concessionary travel, in the terms of the proposed draft Order attached.

Ieuan Wyn Jones
Deputy First Minister and Minister for the Economy and Transport
Date

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

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

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Matter 1.1¹

The red meat industry, in relation to—

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

Interpretation of this field

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

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

For the purposes of this definition –

“cattle” means bovine animals, including bison and buffalo;

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

Field 2: ancient monuments and historic buildings

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

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1²

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 5.4A³

The regulation of—

- (d) schools that are not maintained by local education authorities;
- (e) relevant independent educational institutions.

Matter 5.5⁴

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

Matter 5.6

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

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

³ Matter 5.4A was inserted by section 149(1) and (2) of the Education and Skills Act 2008 (c.25).

⁴ Matters 5.5-5.9 were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

Matter 5.7

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

Matter 5.8

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

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

Matter 5.9

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

*Matter 5.10*⁵

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

This matter applies to—

- (a) persons receiving nursery, primary, secondary or further education or training;
- (b) persons described in matter 5.17 receiving higher education.

*Matter 5.11*⁶

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

Matter 5.12

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

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

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

⁵ Matter 5.10 was inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910), and amended by article 2(2) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and article 6(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order (S.I. 2008/3132)

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

Provision about—

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

Matter 5.13

Provision for and in connection with securing collaboration—

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

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

Matter 5.14

The provision of financial resources for and in connection with—

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

*Matter 5.15*⁷

The inspection of—

- (za) schools;
- (zb) relevant independent educational institutions;
- (a) education or training provided by institutions concerned with the provision of further education
- (b) pre-16 education or training, or post-16 education or training, provided otherwise than by institutions within paragraphs (za) to (a);
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.

⁷ Matter 5.15 was inserted by section 27(2) of the Further Education and Training Act 2007 (c.25) and amended by section 149(1), (3) and (4) of the Education and Skills Act 2008 (c.25).

*Matter 5.16*⁸

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

- (a) pre-16 education or training;
- (b) post-16 education or training;
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.

*Matter 5.17*⁹

Education and training for—

- (a) persons who have a greater difficulty in learning than the majority of persons of the same age as those persons;
- (b) persons who have, or have had—
 - (i) a physical or mental impairment, or
 - (ii) a progressive health condition (such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment.

*Matter 5.18*¹⁰

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

- (a) facilities for social or physical training;
- (b) educational activities.

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

*Interpretation of this field*¹¹

In this field—

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

“post-16 education” means—

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

⁸ Matter 5.16 was inserted by section 27(2) of the Further Education and Training Act 2007 (c. 25) and amended by section 149(1) and (5) of the Education and Skills Act 2008 (c. 25).

⁹ Matter 5.17 was inserted by article 2(3) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008/1036) and amended by article 6(b) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008/3132).

¹⁰ Matter 5.18 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (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

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

Field 8: food

Field 9: health and health services

*Matter 9.1*¹²

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

Interpretation of this field

In this field—

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

“illness” has the same meaning as in the Act;

“patient” has the same meaning as in the Act;

“personal injury” includes any disease and any impairment of a person’s physical or mental health;

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

Field 10: highways and transport

*Matter 10.1*¹³

Provision for and in connection with—

- (a) the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;
- (b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

Matter 10.2

Concessionary travel on the following services—

- (a) bus services;**

¹² Matter 9.1 and the interpretation provisions for field 9 were inserted by article 3(3) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007/910).

¹³ Matter 10.1 and the interpretation provisions for field 10 were inserted by section 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.

(b) Welsh services provided under a franchise agreement to which the Welsh Ministers are a party.

Any expression which is used in paragraph (b) and the Railways Act 2005 has the meaning given in that Act.

Interpretation of this field

In this field—

“motor vehicle” has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) applies as it applies for the purposes of the Road Traffic Acts; “road” has the same meaning as in the Road Traffic Regulation Act 1984; “Welsh trunk road” means a road for which the Welsh Ministers are the traffic authority (within the meaning of section 121A of the Road Traffic Regulation Act 1984).

Field 11: housing

Field 12: local government

*Matter 12.1*¹⁴

Provision for and in connection with—

- (a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (b) the establishment of councils for new principal areas and the abolition of existing principal councils.

“Principal area” means a county borough or a county in Wales, and a “principal council” means a council for a principal area.

Matter 12.2

Provision for and in connection with—

- (a) the procedure for the making and coming into force of byelaws, and
- (b) the enforcement of byelaws.

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

¹⁴ Matters 12.1-12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c. 28), section 235 and Schedule 17.

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 12.6¹⁵

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.

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

¹⁵ Matters 12.6 and 12.7 will be inserted by section 33 the Local Democracy, Economic Development and Construction Act 2009 (c. 20), which comes into force on 12 January 2010.

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*¹⁶

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*¹⁷

Functions of public authorities relating to—

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

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

Matter 15.3

Adoption services and special guardianship support services.

Matter 15.4

Fostering.

Matter 15.5

Social care services for any of the following—

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after—
 - (i) who have attained the age of 25, and
 - (ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

¹⁶ 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).

¹⁷ 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).

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 15.9¹⁸

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).

Interpretation of this field¹⁹

In this field—

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

“development” means physical, intellectual, emotional, social or behavioural development;

“health” means physical or mental health;

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

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

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

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

“social care services” means any of the following provided in connection with the well-being of any person: residential or non-

¹⁸ 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).

¹⁹ 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).

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 16.1²⁰

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

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

Matter 16.2²¹

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—

²⁰ 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).

²¹ Matters 16.2 and 16.3 will be inserted by section 310 of the Marine and Coastal Access Act 2009 (c. 23), which comes into force on 12 January 2010.

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

Matter 16.3

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

Land is relevant land if it—

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

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

Interpretation of this field

In this field—

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

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

“highway” has the same meaning as in the Highways Act 1980;

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

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

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

“sea” includes the relevant upstream waters of a river;

and a journey by a qualifying invalid carriage is a permitted journey if the carriage is being used in accordance with the prescribed 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 18.1²²

Provision for and in connection with—

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

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

Matter 18.2

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

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

Matter 18.3

Provision for and in connection with—

- (a) plans of local planning authorities in relation to the development and use of land in their areas, and
- (b) removing requirements for any such plans.

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

Interpretation of this field

In this field—

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

- (a) a National Park authority in relation to a National Park in Wales;
- (b) a county council in Wales or a county borough council, in any other case;

²² Matters 18.1 – 18.3 and interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (c. 29).

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

Field 19: water and flood defence

Field 20: Welsh language

Text inserted in ***bold italics*** would be added as a result of the
(Legislative Competence) (Environment) Order 2010

PART 2

EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS²³

Exceptions to matters²⁴

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

Highways and transport (field 10 of Part 1)

- (1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.
- (2) ***Regulation of the use of 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,²⁷ and***
 - (b) ***regulation relating to matter 10.1 and***
 - (c) ***regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle's construction or equipment), but not including the setting of technical standards for construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.***

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).

²³ 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).

²⁴ 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).

²⁵ This Schedule does not include all the modifications which would be made by the (Legislative Competence) (Environment) Order 2010, but only those necessary to show the effect of further modifications included in the (Legislative Competence) (Transport) Order 2010.

- (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 (**apart from regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements**).
- (15) Shipping, apart from financial assistance for shipping services to, from or within Wales.
- (16) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.
- (17) Technical and safety standards of vessels.
- (18) Harbours, docks, piers and boatslips, apart from those used or required wholly or mainly for communications between places in Wales.
- (19) ***Carriage of dangerous goods, including transport of radioactive material.***

In paragraphs (2) and (14) “learner transport arrangements” means arrangements of the kind described in matter 5.10 which consist of the provision of motor vehicles and are made by—

- (a) public authorities (within the meaning of field 15) exercising functions relating to education or training, or**
- (b) institutions or other bodies concerned with the provision of education or training.**

Social welfare (field 15 of Part 1)

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

- (a) welfare advice courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
 - (b) Welsh family proceedings officers.
- (12) Welfare foods.

General Restrictions

Functions of Ministers of the Crown

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

Criminal Offences

- 2 (1) A provision of an Assembly Measure cannot create, or confer power by subordinate legislation to create, any criminal offence punishable—
- (a) on summary conviction, with imprisonment for a period exceeding the prescribed term or with a fine exceeding the amount specified as level 5 on the standard scale, or
 - (b) on conviction on indictment, with a period of imprisonment exceeding two years.
- (2) In sub-paragraph (1) “the prescribed term” means—
- (a) where the offence is a summary offence, 51 weeks, and
 - (b) where the offence is triable either way, twelve months.

Police Areas²⁶

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

Enactments other than this Act

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

²⁶ Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 3.

TABLE

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

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

This Act

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

PART 3

EXCEPTIONS FROM GENERAL RESTRICTIONS IN PART 2²⁷

Interpretation

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

Functions of Ministers of the Crown

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

Police Areas²⁷

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.

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,

²⁷ 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).

- (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*²⁸

- 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.

²⁸ 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).



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