



WALES OFFICE

**PRE-LEGISLATIVE SCRUTINY
OF THE PROPOSED
NATIONAL ASSEMBLY FOR WALES
(LEGISLATIVE COMPETENCE)
(LOCAL GOVERNMENT)
ORDER 2009**



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*Presented to Parliament by the Secretary of State for Wales
By Command of Her Majesty
July 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) (Local Government) Order 2009

This is the eleventh proposed Order in Council under Section 95 of the Government of Wales Act 2006 that the Government has presented to the House of Commons Welsh Affairs Select Committee and the House of Lords Constitution Select Committee for pre-legislative scrutiny. This proposed Order is part of the Welsh Assembly Government's legislative programme as set out by the First Minister, the Rt. Hon. Rhodri Morgan AM, in his speech to the National Assembly for Wales on 14 July 2009.

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.

Each "matter" simply defines legislative competence. Although the accompanying Explanatory Memorandum will set 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 Committee, the House of Lords Constitution Select Committee and 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 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 Hain". The signature is written in a cursive style with a large initial "N" and "H".

DRAFT STATUTORY INSTRUMENTS

2009 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (Local Government) Order 2009**

Made - - - -

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the day of 2009

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 section 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. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Local Government) Order 2009 and it shall come into force on the day after the day on which it is made.

Amendments relating to the field of local government

2.—(1) Field 12 (local government) of Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended as follows.

(2) After matter 12.7(b) insert —

“Matter 12.8

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

(a) 2006 c.32.

(b) Matters 12.1 to 12.5 were inserted by the Local Government and Public Involvement in Health Act 2007 (c.28), section 235, Schedule 17, paragraphs 1 and 2. *Matters 12.6 and 12.7 are to be inserted by framework powers in the Local Democracy, Economic Development and Construction Bill.*

Matter 12.9

Electoral arrangements for elected local government institutions for communities.

In this matter “electoral arrangements” does not include—

- (a) the local government franchise;
- (b) electoral registration and administration;
- (c) the voting system for the return of members in an election.

Matter 12.10

Conferral on local government institutions for communities of powers—

- (a) to which this matter applies,
- (b) that are exercisable in relation to their areas, and
- (c) that are powers exercisable by principal councils in relation to the areas of principal councils.

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

Matter 12.11

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

Matter 12.12

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

Matter 12.13

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

Matter 12.14

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

Matter 12.15

The provision of information relating to local government to the public.

For the purposes of this matter “local government” means—

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

Matter 12.16

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

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

Matter 12.17

Promoting and supporting membership of the following—

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

Interpretation of this field

In this field—

“communities” means separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council);

“principal councils” means county councils and county borough councils.”.

Name
Clerk of the Privy Council

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 matters 12.8 to 12.17 and interpretation provisions into field 12 (local government) of Part 1 of Schedule 5 to the 2006 Act.

Matters 12.8 to 12.14 cover a range of topics concerning local government for communities. These topics include: areas of communities; constitution, structure and procedures of institutions; electoral arrangements; powers to promote or improve the economic, social or environmental well-being of a community area; grant funding for communities; relations between communities and relations between communities and counties and county boroughs; quality accreditation schemes for local government for communities; and public participation in local government for communities.

“Communities” are defined for the purposes of field 12 (by an amendment to that field inserted by this LCO) as separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council).

Matter 12.15 is about the provision of information to the public about local government for communities, counties and county boroughs.

Matter 12.16 is about salaries, allowances, pensions and other payments for members of local government institutions for communities, county and county borough councils, National Park authorities and fire and rescue authorities.

Matter 12.17 is about promoting and supporting membership of local government institutions for communities and county and county borough councils.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

**MEMORANDUM DRAFTED BY
THE WELSH ASSEMBLY GOVERNMENT**

MEMORANDUM FROM THE WELSH ASSEMBLY GOVERNMENT

CONSTITUTIONAL LAW: DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Local Government) Order 2009

Proposal for a Legislative Competence Order relating to
community councils and councillor recruitment, retention
and allowances

Introduction

1. The Government of Wales Act 2006 (“the 2006 Act”) empowers Her Majesty, by Order in Council, to confer continuing legislative competence on the National Assembly for Wales (“the Assembly”) to legislate by Assembly Measure on specified matters. 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.
2. The attached document is a proposed Order in Council. The Order extends the legislative competence of the Assembly by inserting a number of matters into Part 1 of Schedule 5 to the 2006 Act. The Order may be made by Her Majesty in Council following approval of the draft Order by the Assembly and by both Houses of Parliament. Attached at Annex A is a copy of Schedule 5 showing legislative competence that the National Assembly has acquired to date.
3. This memorandum has been prepared by the Welsh Assembly Government (“the Assembly Government”). It explains the background to and the contents of the proposed Order in Council.
4. New legislative powers related to the specified matter will enable the Assembly to pass Measures which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.

Background

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

- local government at community level (the legislation currently in force provides for community meetings and community and town councils, generically referred to as “community councils”);
 - public information about local government for communities, counties and county boroughs;
 - remuneration of councillors in community, county and county borough councils and of members of National Park Authorities and fire and rescue authorities;
 - promoting and supporting membership of community, county and county borough councils
6. The context for the Assembly Government’s proposal flows from three reviews and their associated reports into the circumstances of community councils and of councillors in Wales.
 7. Firstly, the study undertaken in 2003 by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales [“Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales” (the “Aberystwyth Report”)] presented a comprehensive review of the activities undertaken by community councils across Wales. The Aberystwyth Report identified the constraints which community councils believed they faced and set out a number of proposals for enhancing the role of community councils, should a council wish to take on additional responsibilities. The Aberystwyth Report also concluded that the existing procedures for establishing a community council were too restrictive and those for dissolving a community council were too lax. The Aberystwyth Report further recommended that the Assembly Government should examine possible alternative mechanisms for directly funding community and town councils, and providing additional funding through the use of direct grants. In its formal response to the Aberystwyth Report (in 2004), the Assembly Government gave a commitment to seek legislation to address issues identified in the review, with a view to putting in place arrangements to develop and strengthen the role of community councils and enabling them to deliver a wider range of services and actions locally. This would also serve to increase the effectiveness of community councils’ representational role and their ability to work in partnership with other bodies.
 8. Secondly, in December 2007 the Report of the Councillors Commission “Representing the Future” (“the 2007 Report”) was presented to the UK Government’s Department for Communities and Local Government. The 2007 Report included numerous proposals designed to assist in the recruitment of a greater number of candidates for local government and to assist with the retention of councillors once elected. In March 2008 the Assembly Government established the Councillor Commission Expert Panel Wales (“the Expert Panel”) to consider the recommendations of the 2007 Report and their applicability to Wales and to look at wider issues connected to the recruitment and retention

of councillors. That Panel is due to report to the Assembly Government shortly, but has already indicated informally that it considers that there is need for concerted action by the Assembly Government to improve: diversity monitoring of councillors and candidates; the training and development of serving councillors; flexible working for councillors; administrative support for councillors; and public accountability of councillors.

9. Thirdly, the report of the Independent Remuneration Panel for Wales (“the Independent Panel”) is due toward the end of 2009. The Independent Panel is reviewing the remuneration structure of councillors in Wales, including salaries, allowances and pensions payable to councillors. The initial report of the Independent Panel (July 2008) and its supplementary report (December 2008) made various recommendations for future reform, and notably the seeking of legislative competence over councillors’ remuneration.
- 10 The Assembly Government has resolved to bring forward the attached Legislative Competence Order seeking to confer powers on the Assembly to legislate in relation to the areas identified by the reviews.

Current legislative framework

11. The Local Government Act 1972 (“the 1972 Act”) established the current system of local government in England and Wales and makes provisions with respect to the organisation and functions of local authorities in England and Wales including a system of communities in Wales. These were the areas that were formerly the boroughs, urban districts and rural parishes in Wales, and certain divided parts of former urban districts as at 1st April 1974. The functions of the Secretary of State under the 1972 Act insofar as exercisable in Wales have been transferred, with certain exceptions, to the National Assembly for Wales and are now vested in the Welsh Ministers. Local government was further reorganised under the Local Government (Wales) Act 1994. Other statutes relating to the issues addressed by the proposed Order include the Local Government and Housing Act 1989, the Local Government Acts 2000 and 2003 and the Representation of the People Acts 1983 and 1985. The Welsh Ministers have executive functions under the Local Government Act 2000 and 2003. The functions of the Secretary of State pursuant to the Representation of the People Acts have not been transferred to the Welsh Ministers.
12. The National Assembly for Wales already has legislative competence in relation to many aspects of local government, as set out in field 12 of Schedule 5 to the 2006 Act. The legislative competence conferred by this Order confers legislative competence on the Assembly that is wider than the current subordinate legislative power of the Welsh Ministers. Neither the Assembly nor the Welsh Ministers have power at present to legislate for significant changes to the law covering the following topics: community councils (constitution, structure,

procedures and responsibilities), community reviews, relations between tiers of local government, councillor allowances (including the functions of the Independent Remuneration Panel, which is limited by regulations made in 2007) and the recruitment and retention of councillors. The legislative competence that would be conferred by the proposed Order would enable the Assembly to make changes to the law in these areas by way of Measure. More detailed analyses are provided in the paragraphs below, which set out the specific proposals.

Scope

13. It is proposed that ten Matters be inserted under Field 12: Local Government in Schedule 5 to the Government of Wales Act 2006 to enable the Assembly to legislate on the issues covered by the Matters by way of Assembly Measure.
14. Article 2(2) would insert Matters 12.8 to 12.17 into Field 12. The following paragraphs describe each Matter in turn.
15. *Matter 12.8* would give the Assembly competence over the constitution, structure and procedures of community councils and for community meetings. It would also give competence over arrangements in respect of community reviews, in so far as they relate to the areas of communities. The current provisions relating to these activities are set out in Part II and Part IV of the 1972 Act. Sections 27-29 of the 1972 Act set out the procedures for holding community meetings and the stages for the establishment and dissolution of community councils. Welsh Ministers have no regulation-making powers to enable them to alter the rules for calling community meetings or for the staging of community polls. Section 55(2) of the 1972 Act places a duty on each principal council in Wales to keep the whole of their area under review for the purpose of considering whether or not to make recommendations to the Local Government Boundary Commission for Wales with respect to the constitution, abolition or alteration of their community areas. The Matter would also give the Assembly competence over the co-option of members and youth representatives.
16. *Matter 12.9* would give the Assembly competence over the electoral arrangements for community councils. This includes issues such as the number of councillors that may be returned; whether or not community councils should be divided into wards for electoral purposes; and reviews of these arrangements. The Matter excludes the local government franchise, the arrangements for electoral registration and electoral administration, including the conduct of elections, and the voting system used at community council elections in Wales.
17. *Matter 12.10* would provide competence for the Assembly to extend to community councils in Wales the power to promote or improve the economic, social or environmental well-being of their areas. Part I of the Local Government Act 2000 provides a power for local authorities

to do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. The local authorities on which the well-being power in section 2(1) of the 2000 Act is conferred are, in relation to Wales, county councils and country borough councils only.

18. *Matter 12.11* would provide the Assembly with competence for the Welsh Ministers to make grants to community councils. The bulk of community council income is received by means of a council tax precept under section 41 of the Local Government Finance Act 1992. The developing role of community councils may create new demands on their finances and the Aberystwyth report recommended that the Assembly Government should consider providing additional funding through the use of direct grants.
19. *Matter 12.12* would provide a competence for the Assembly to legislate to encourage productive relations and collaboration between community councils and between community councils and principal councils (ie county and county borough councils). In July 2008, the Assembly Government published '*A Shared Community – Relationship building and charters for unitary authorities and community and town councils*'. This document provides guidance to encourage collaborative arrangements through which the two tiers of government would work together in a mutually supportive and co-operative way for the benefit of their communities. The development and adoption of collaboration arrangements is currently voluntary, though strongly encouraged by the Assembly Government.
20. *Matter 12.13* would provide a competence for the Assembly to put in place measures to raise the competence of community councils. There is currently no national programme to assess the competence of community councils in Wales, unlike in England which has the Quality Parish and Town Council Scheme, a national programme with standards set by stakeholders to the scheme.
21. *Matter 12.14* would provide competence for the Assembly to legislate to encourage transparency and wider participation in the proceedings of community councils. Section 21(2)(a) of the Representation of the People Act 1985 provides that where, at an ordinary election of community councillors, an insufficient number of persons are or remain validly nominated to fill the vacancies, the new council may co-opt any person or persons to fill any remaining vacancies. It is accepted good practice that opportunities for co-option are advertised openly within the local community. This avoids the perception of community councils being 'closed shops' and provides opportunities for greater participation by under-represented groups. There is no requirement at present, however, for the advertising of vacancies.
22. *Matter 12.15* would provide competence for the Assembly to legislate to encourage greater accountability in local government by way of the

information provided by principal and community councils about their activities to local people.

23. *Matter 12.16* would provide competence over issues relating to salaries, allowances, pensions and other payments to members of county and county borough councils, national park authorities, community councils and fire and rescue authorities in Wales. Legislative provisions for the remuneration of councillors are contained within section 18 of the 1989 Local Government and Housing Act, section 100 of the Local Government Act 2000 and supporting regulations. The Independent Remuneration Panel has raised the need for reform in relation to allowances, pensions and gratuities for councillors but the Panel has not yet completed its consideration of all the issues and its conclusions will not be presented until it reports in December 2009.
24. *Matter 12.17* would provide competence for the Assembly to require principal councils and community councils to provide better support and working conditions for serving councillors with a view to assisting in the recruitment of greater numbers of candidates for local government and in the retention of councillors once elected. The Assembly Government's "Expert Panel" has considered the recommendations of the UK Government's Councillors' Commission on recruiting and retaining councillors and is due to report shortly. This competence would enable the Assembly to respond to that report as appropriate.

Geographical limits of any Assembly Measure

25. The proposed LCO would permit the Assembly to legislate by Measure in relation to Wales. There is no provision within the proposed LCO that would enable the Assembly to legislate in relation to English local authority functions.

Minister of the Crown functions

26. By virtue of Part 2 of Schedule 5 to the 2006 Act, an Assembly Measure cannot confer or impose any function on a Minister of the Crown. This proposed LCO does not seek to disapply this restriction. By virtue of Parts 2 and 3 of Schedule 5 of the 2006 Act, the Assembly may not by Measure remove or modify any functions of a Minister of the Crown without the consent of the Secretary of State and this would be sought if applicable pursuant to any Measure flowing from this proposed LCO.

Conclusion

27. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence of the National Assembly for

Wales should be extended in accordance with the provisions of the draft Order to which this Explanatory Memorandum relates.

Dr Brian Gibbons
Welsh Assembly Government
July 2009

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

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

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Matter 1.1¹

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

Field 3: culture

¹ Matter 1.1 was inserted by the National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2009 as approved by Her Majesty in Council on 8 July 2009.

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—

- (a) schools that are not maintained by local education authorities;
- (b) 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, 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.

*Matter 5.16*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).

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

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 5.17⁹

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 5.18¹⁰

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 field¹¹

In this field—

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

“post-16 education” means—

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

“post-16 training” means—

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 (SI 2008/3132).

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

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

- (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.

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).

Interpretation of this field

In this field—

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

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

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

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

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

Field 10: highways and transport

*Matter 10.1*¹³

Provision for and in connection with—

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

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

Interpretation of this field

In this field—

“motor vehicle” has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for 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).

¹³ Matter 10.1 and the interpretation provisions for field 10 were inserted by section 22 of the Local Transport Act 2008 (c. 26). See also section 23 of that Act.

Field 11: housing

Field 12: local government

*Matter 12.1*¹⁴

Provision for and in connection with—

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

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

Matter 12.2

Provision for and in connection with—

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

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

Matter 12.3

Any of the following—

- (a) the principles which are to govern the conduct of members of relevant authorities,
- (b) codes of conduct for such members,
- (c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),
- (d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct including in particular—
 - (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—

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.

“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 12.8¹⁵

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

¹⁵ Matters 12.6 and 12.7 are to be inserted by framework powers in the Local Democracy, Economic Development and Construction Bill.

Matter 12.9

Electoral arrangements for elected local government institutions for communities.

In this matter “electoral arrangements” does not include—

- (a) the local government franchise;**
- (b) electoral registration and administration;**
- (c) the voting system for the return of members in an election.**

Matter 12.10

Conferral on local government institutions for communities of powers—

- (a) to which this matter applies,**
- (b) that are exercisable in relation to their areas, and**
- (c) that are powers exercisable by principal councils in relation to the areas of principal councils.**

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

Matter 12.11

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

Matter 12.12

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

Matter 12.13

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

Matter 12.14

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

Matter 12.15

The provision of information relating to local government to the public.

For the purposes of this matter “local government” means—

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

Matter 12.16

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

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

Matter 12.17

Promoting and supporting membership of the following—

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

Interpretation of this field

In this field—

“communities” means separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council);

“principal councils” means county councils and county borough councils.

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*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 persons looking after them, may secure social care services to meet those needs.

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

*Matter 15.2*¹⁷

Functions of public authorities relating to—

- (a) safeguarding children from harm and neglect;
- (b) safeguarding and promoting the well-being of vulnerable children;

¹⁶ Matter 15.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008/1785) and amended by article 3(a) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

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.

- (c) reducing inequalities in well-being between children or young persons.

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

Matter 15.3

Adoption services and special guardianship support services.

Matter 15.4

Fostering.

Matter 15.5

Social care services for any of the following—

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

Matter 15.6

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

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

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

Matter 15.7

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

Matter 15.8

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

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

Interpretation of this field¹⁸

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;

¹⁸ Interpretation provisions for field 15 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (SI 2008/1785) and replaced by article 3 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

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

“vulnerable children” means children—

- (a) who are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of social care services,
- (b) whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of social care services,
- (c) who have a physical or mental impairment,
- (d) who are in the care of a public authority, or
- (e) who are provided with accommodation by a public authority in order to secure their well-being;

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

- (a) health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being;
- (f) securing their rights;

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

Field 16: sport and recreation

*Matter 16.1*¹⁹

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

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

Field 17: tourism

Field 18: town and country planning

*Matter 18.1*²⁰

¹⁹ 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. 2009/3132).

²⁰ Matters 18.1 – 18.3 were inserted by section 202 of the Planning Act (c. 29).

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;

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

Field 19: water and flood defence

Field 20: Welsh language



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