



**WALES OFFICE**

**PRE-LEGISLATIVE SCRUTINY  
OF THE  
PROPOSED  
NATIONAL ASSEMBLY FOR WALES  
(LEGISLATIVE COMPETENCE)  
(HEALTH AND HEALTH SERVICES  
AND SOCIAL WELFARE)  
ORDER 2009**



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ORDER 2009**

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

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ISBN: 9780101762724

## **MINISTERIAL FORWARD**

**By the Secretary of State for Wales**

**The Rt. Hon. Paul Murphy MP**

***The proposed National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009 relating to Mental Health***

This is the ninth proposed Order in Council under Section 95 of the Government of Wales Act 2006 that I have presented to the House of Commons Welsh Affairs Select Committee and the House of Lords Constitutional Affairs Select Committee for pre-legislative scrutiny.

The Standing Orders of the National Assembly provide for ballots allowing members to bring forward proposed Orders in Council. This Order was published by Jonathan Morgan, the Conservative Assembly Member for Cardiff North, last year following such a ballot and is endorsed by the Welsh Assembly Government. I have previously made my clear my commitment to progress Assembly Member proposed Orders that have the support of the Welsh Assembly Government.

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

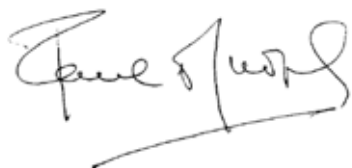
Part 3 of the Government of Wales Act 2006 gave the National Assembly for Wales the power to pass legislation, known as Assembly Measures, which can do anything that an Act of Parliament can do, within the constraints set out in the Act. The scope of the Assembly's powers to pass Measures is set out in Part 3 of, 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 will deliberate 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 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 particular areas of policy specified in the Order.

A final draft Order will be prepared in light of the pre-legislative scrutiny. The Member in charge of the Order (Jonathan Morgan AM) 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 draft order.

A handwritten signature in black ink, appearing to read "Paul Jones". The signature is written in a cursive style with a long horizontal stroke extending to the right.

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**CONSTITUTIONAL LAW**

**DEVOLUTION, WALES**

**The National Assembly for Wales (Legislative Competence)  
(Health and Health Services and Social Welfare) Order 2009**

*Made* - - - - 2009

*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, commencement and interpretation**

1.—(1) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009.

(2) This Order shall come into force on the day after the day on which it is made.

(3) In this Order “the 2006 Act” means the Government of Wales Act 2006.

**Amendments relating to the field of health and health services**

2.—(1) Field 9 (health and health services) of Part 1 of Schedule 5 to the 2006 Act is amended in accordance with this article.

(2) After matter 9.1(b) insert—

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(a) 2006 c.32.

(b) Matter 9.1 was inserted by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (SI 2007/910).

*“Matter 9.2*

Assessment of mental health and treatment of mental disorder.

This matter does not include any of the following—

- (a) subjecting patients to—
  - (i) compulsory attendance at any place for the purposes of assessment or treatment,
  - (ii) compulsory supervision, or
  - (iii) guardianship;
- (b) consent to assessment or treatment;
- (c) restraint;
- (d) detention.

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

(3) Under the heading “*Interpretation of this field*”, after the definition of “illness” insert—

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

**Amendments relating to the field of social welfare**

**3.**—(1) Field 15 (social welfare)(c) of Part 1 of Schedule 5 to the 2006 Act is amended in accordance with this article.

(2) After matter 15.8 insert—

*“Matter 15.9*

Social care services connected to mental health.

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

(3) Under the heading “*Interpretation of this field*”, before the definition of “children” insert—

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

Clerk of the Privy Council

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(c) In the field of social welfare, matter 15.8 and interpretation provisions were inserted (among other provisions) by the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

## **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 9.2 and interpretation provisions into field 9 (health and health services) of Part 1 of Schedule 5 to the 2006 Act.

Matter 9.2 is about the assessment of mental health and treatment of mental disorder, excluding compulsory attendance for assessment or treatment, compulsory supervision, guardianship, consent to treatment or assessment, restraint and detention.

Article 3 inserts matter 15.9 and interpretation provisions into field 15 (social welfare) of Part 1 of Schedule 5 to the 2006 Act.

Matter 15.9 is about social care services connected to mental health, apart from the independent mental capacity advocacy services established by Part 1 of the Mental Capacity Act 2005.

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



**MEMORANDUM BY  
JONATHAN MORGAN AM  
AND ENDORSED BY THE WELSH  
ASSEMBLY GOVERNMENT**

# **CONSTITUTIONAL LAW: DEVOLUTION, WALES**

## **The National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009**

### **Proposal for a Legislative Competence Order relating to mental health**

#### **Introduction**

1. This Explanatory Memorandum sets out the background to the provisions in the attached Member proposed Legislative Competence Order, which would confer additional legislative competence upon the National Assembly for Wales and explains the scope of the powers requested.
2. Section 95 of the Government of Wales Act 2006 (“the 2006 Act”) empowers Her Majesty, by Order in Council, to amend Schedule 5 to that Act so as to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added if they relate to one or more of the Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under section 95 of the 2006 Act is referred to as a Legislative Competence Order or LCO in this memorandum.
3. The LCO would confer further legislative competence on the National Assembly of Wales in the field of health and health services and in the field of social welfare (Field 9 and Field 15 respectively within Schedule 5 to the 2006 Act). New legislative powers in respect of the specified matters will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly. Attached at Annex A is a copy of Schedule 5 showing the legislative competence that the National Assembly has acquired to date.

## Background

4. Mental health problems are very common - about one in six adults suffer from mental health problems at any point in time. There are a wide range of mental health problems ranging from common disorders of depression and anxiety, with a prevalence of about 14% in the UK, to the less common psychotic illnesses such as schizophrenia with a prevalence of less than 0.5%. Over one million people each year seek specialist treatment for mental health problems.
5. Depression and dementia are the commonest mental health problems in older people, but older people can also have the other mental health problems of adults of working age. Under-detection of mental illness in older people is widespread, due to the nature of the symptoms and the fact that many older people live alone. Dementia can also occur before the age of 65; there are about 1000 people with dementia in younger age groups in Wales.
6. Users of mental health services often experience difficulty negotiating with mental health professionals and ensuring that their own point of view is acknowledged. These difficulties apply both to the practical activities of daily life as well as help with their mental health problems. Users often have little information about their mental ill health and the various alternatives for treatment and care. Advocacy seeks to address this imbalance by ensuring that their voice is heard, their choice is real and their rights are safeguarded.
7. Mental health has been identified as one of the Welsh Assembly Government's health priorities. The Welsh Assembly Government's strategy for mental health services for adults of working age in Wales was published in 2001, and set out the Assembly Government's aspirations for a modern, community focussed mental health service which is based on the principles of equity, empowerment, effectiveness and efficiency. In April 2002 the National Service Framework (NSF) for Adult Mental Health Services was published, this set the standards and key actions necessary to drive up quality and reduce variations in health and social care policy.
8. In October 2005 the Wales Audit Office published a baseline review of adult mental health service provision in Wales. This found that at that time services were not configured in an optimum way to support the delivery of the NSF standards and key actions. As

a result *Raising the Standard*, the revised NSF for adult mental health services, was published.

9. The Strategy for Older People (2003), and the second phase of that Strategy (for 2008 to 2013), *Living Longer, Living Better*, recognise the social and economic determinants of health and well being and promotes active, healthy aging. The accompanying NSF for Older People (2006) aims to complement and dovetail with adult mental health policy.
10. *Everybody's Business*, the Child and Adolescent Mental Health Service strategy document (2001), sets out the Welsh Assembly Government aims, objectives and underpinning principles for services for children and young people. This is supported by the NSF for Children, Young People and Maternity Services (2005).
11. During 2007 the Minister for Health and Social Services sought evidence on the possible future direction of mental health legislation in Wales. In response, a number of stakeholders spoke of the importance of improving service delivery, balancing the use of compulsory powers in mental health with improved rights for individuals, and developing legislation that is sensitive to the needs of people in Wales.
12. Organisations have reported the informed views of service users who have pointed to the importance of receiving early assessment and treatment for mental ill health: "...clients and carers know from experience that if a person receives early treatment for their mental illness they are much less likely to become so ill that they need compulsory treatment" (Hafal, 2007). Early intervention in psychosis means the detection and treatment of psychosis during the early phases of illness. Early treatment has been shown to improve the long-term course of psychosis. Early intervention can lead to a faster, more complete recovery, a decrease in the frequency and severity of relapses, and an increase in time to first relapse.
13. The Adult Mental Health Strategy (2001) states that: "Every person who comes into contact with mental health services should have the right to an appropriate advocate." The baseline review of adult mental health services in 2005 identified that advocacy services in some parts of Wales were limited. A number of advocacy providers, service users and service providers have all expressed concerns that advocacy services will become focussed on the provision of

statutory advocacy at the expense of meeting the wider strategic intention.

14. Legislative competence is needed in respect of:

- the assessment of an individual's mental health;
- the treatment of a person who is mentally disordered;
- advocacy services in respect of persons who are or may be mentally disordered.

#### Current legislative framework

15. In general terms the provision of assessment and clinical treatment in respect of mental health is provided as part of the National Health Service under the National Health Service (Wales) Act 2006, both through general duties placed on Welsh Ministers and through the actual provision of services by NHS Trusts and Local Health Boards. Local Authorities also have responsibility for the provision of assessment and services established in various provisions within "community care" or "welfare" legislation. Some of the legislative provision relates only to adults, while other elements relate to persons of all ages. For example:

- National Assistance Act 1948 – section 21 confers a duty to provide accommodation for persons aged 18 or over who are in need of care and attention; section 29 confers a duty to promote the welfare of, amongst others, mentally disordered persons aged 18 or over.
- National Health Service and Community Care Act 1990 – section 47 requires a local authority to carry out an assessment where it appears to them that any disabled person for whom they may provide or arrange for the provision of community care services may be in need of such services. Having regard to that assessment, the local authority must decide whether the need calls for the provision of such services by them. Where it would appear the services should be provided by an LHB, they must notify the appropriate trust or authority. Section 47 does not guarantee the actual provision of services.

16. The Mental Health Act 1983 (the 1983 Act) provides the statutory framework under which assessment and treatment are provided under compulsion. The 1983 Act deals with the manner by which

patients may be compelled, amongst other matters, to receive assessments in hospital into their mental disorder and receive treatment for the same. The 1983 Act does not deal with the actual provision of assessment or treatment.

17. The 1983 Act has recently been amended by the Mental Health Act 2007 and most significantly, in the context of this LCO, now provides for advocacy services to be provided in certain circumstances in respect of patients subject to certain provisions of the 1983 Act (mainly compulsion). Such advocates are known as Independent Mental Health Advocates (IMHAs).
18. The Mental Capacity Act 2005 also provides for advocates in certain prescribed circumstances, known as Independent Mental Capacity Advocates (IMCAs). The role of IMCAs will be expanded under the Deprivation of Liberty Safeguards of this Act, when these commence in April 2009.
19. Despite the existing framework of legislation, guidance and NSFs, consultations with service users, service providers, mental health professionals and others, have identified gaps within the legislation and service provision that cannot be currently addressed in respect of assessment, treatment and advocacy. Namely:
  - the existing legislative framework does not provide for a comprehensive duty *vis-à-vis* the provision of the assessment of mental health and the treatment of mental disorder outside of compulsion;
  - the need for an improved focus on early intervention and treatment through statutory duties as regards the provision of assessment and treatment which is the preferred option of many service users and their families;
  - the extant duties on local authorities to provide certain assessments do not translate into duties to provide services arising out of the assessments;
  - also, the duties for assessment by local authorities are applicable only in respect of those who are mentally disordered, and not those who appear to be exhibiting symptoms or manifestations of such disorder. This can result in individuals having to reach a certain level of ill health before becoming eligible for assessment;

- a patchwork of duties in respect of specialist mental health assessment and treatment within secondary services. In Wales such services are increasingly provided on a multidisciplinary basis, which involves a range of professionals and services. Those working within such services are keen to ensure, in line with the Welsh Assembly Government's strategies and service frameworks for mental health, that multidisciplinary working in this way should be strengthening. This would allow for a more seamless approach to service provision for the individual recipient, and for those services to be focussed on the needs of the individual in line with effective care planning;
  - the existing legislative framework does not provide for a wide ranging and comprehensive advocacy service - the role of the IMHA is limited to specific functions in respect of qualifying patients in limited circumstances. There is a need to ensure advocacy is available for people at a time when their mental health and usual support mechanisms may be breaking down, leaving them vulnerable when key decisions about treatment and support may need to be made.
20. There are no suitable powers within the current legislative provision that may be used to deliver a more comprehensive assessment, treatment and advocacy framework that is suitable for Wales.

## **Scope**

### Matter 9.2

21. It is proposed that Matter 9.2 be inserted under Field 9: Health and Health Services in Schedule 5 to the 2006 Act. This will enable the Assembly to legislate on the assessment of mental health and treatment of mental disorder by way of Assembly Measure. Any such Measure would allow duties to be placed on NHS bodies and social services providers to assess a person's mental health. The LCO would allow such duties to be placed in respect of individuals not previously diagnosed with a mental disorder, but who are presenting with the appearance of mental ill health. Duties may be placed on NHS bodies and social services providers in respect of the treatment of a person's assessed mental disorder.
22. The LCO would not allow the Assembly to legislate in respect of compelling individuals to be assessed, treated or supervised or subjecting persons to guardianship. In effect this means that there is no overlap with the main subject matter of the 1983 Act and the

legislative competence of the National Assembly for Wales. The latter's competence being restricted solely to the provision of care and treatment which are existing devolved areas.

23. Similarly the LCO would specifically exclude from legislative competence matters concerning consent to treatment, restraint or detention. Again this ensures that the legislative competence does not overlap with the 1983 Act, the Mental Capacity Act 2005 nor the common law in these areas.
24. For the purposes of the matter, treatment of mental disorder is defined in accordance with the definition of treatment within the Mental Health Act 1983; the term mental disorder within the matter draws upon the definition of this term in section 1 of the 1983 Act. This includes provision excluding alcohol or drug dependence from the definition of mental disorder.

#### Matter 15.9

25. It is further proposed that Matter 15.9 be inserted under Field 15: Social Welfare in Schedule 5 to the Government of Wales Act 2006. Matter 15.9 extends legislative competence as regards the provision of social care services to the area of mental health. Other matters relating to social care services have been added under field 15 by the National Assembly for Wales (Legislative Competence)(Social Welfare and Other Fields) Order 2008, by which social care services are defined as: *“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.”*
26. In addition Article 3(3) provides a definition of advocacy as *“services providing assistance (by way of representation or otherwise) in connection with the well-being of any person”*. Notwithstanding that this is in Field 9 (Social Welfare), this definition will encompass advocacy connected with health related matters as well as social services. Competence will extend to individuals who are subject to compulsion (under the 1983 Act) as well as those who are not. However the LCO would not allow the Assembly to legislate in respect of the independent mental capacity advocacy services established under the Mental Capacity Act 2005, this being specifically excluded in Article 3(3).
27. Article 4 of the proposed LCO also makes technical amendments to Schedule 5 to the 2006 Act, extending exceptions applying to



existing certain social care matters to the proposed new matter 15.9. As such it excludes from the legislative competence to be conferred by matter 15.9 the following areas: child support; child trust funds; tax credits; child benefit and guardian's allowance; social security; motability; vaccine damage payments; Children's Commissioner established under Children Act 2004; family law and proceedings and welfare foods.

28. The National Assembly for Wales (Legislative Competence)(Social Welfare) Order 2009, commonly referred to as the Carers LCO, changes the way in which exceptions apply to matters in Schedule 5 to the 2006 Act. The proposed Order would change the effect of exceptions to matters in Part 1 of Schedule 5 by removing the current table and making exceptions apply to all matters (unless the exception was drafted as matter-specific); Part 2 of Schedule 5 would be renamed as "Exceptions to Matters and General Restrictions" and amended to list all the current exceptions, organised by reference to fields. Section 94 of the 2006 Act would also be amended to reflect this change. The Carers LCO is currently subject to pre-legislative scrutiny in Parliament and the National Assembly and, if it is made before this LCO, Article 4 would not be required. The LCO and Explanatory Memorandum would be amended to reflect this.
29. The proposed LCO does not add any new exceptions, since no additional exceptions are required by the matter being added.

### **Geographical limits of any Assembly Measure**

30. Section 94 of the 2006 Act imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly's legislative competence. A provision is outside competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives powers to do so). There are limited exceptions to certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the Measure to be enforced and to make consequential amendments to other legislation.
31. The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the Welsh Ministers, Welsh local authorities or any other public authority, functions which did not relate to Wales.

### **Minister of the Crown functions**

32. This proposed LCO in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 of 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 modify or remove these functions.

### **Conclusion**

33. For the reasons outlined above, it is proposed that legislative competence of the National Assembly for Wales should be extended in accordance with the provisions of the Member proposed LCO to which this Explanatory Memorandum relates.

## ANNEX A

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

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

### SCHEDULE 5

#### ASSEMBLY MEASURES

##### Part 1

##### Matters

*Field 1: agriculture, fisheries, forestry and rural development*

*Field 2: ancient monuments and historic buildings*

*Field 3: culture*

*Field 4: economic development*

*Field 5: education and training*

*Matter 5.1<sup>1</sup>*

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.

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(1) 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).

#### *Matter 5.4*

Provision about the curriculum in schools maintained by local education authorities.

#### *Matter 5.4A<sup>2</sup>*

The regulation of—

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

#### *Matter 5.5<sup>3</sup>*

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.

#### *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.

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

(3) 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 5.9*

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<sup>4</sup>*

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<sup>5</sup>*

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.

Provision about—

- (a) the conduct and functions of such institutions and bodies that conduct such institutions;

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(4) 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)

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

- (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<sup>6</sup>*

The inspection of—

- (za) schools;
- (zb) relevant independent educational institutions;

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(6) 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).

- (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<sup>7</sup>*

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<sup>8</sup>*

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.

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(7) 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).

(8) 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).

*Matter 5.18<sup>9</sup>*

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<sup>10</sup>*

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—

- (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—

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

(10) 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) 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<sup>11</sup>*

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.

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(11) 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).

***Matter 9.2***

**Assessment of mental health and treatment of mental disorder.**

**This matter does not include any of the following—**

- (a) subjecting patients to—**
  - (i) compulsory attendance at any place for the purposes of assessment or treatment,**
  - (ii) compulsory supervision, or**
  - (iii) guardianship;**
- (b) consent to assessment or treatment;**
- (c) restraint;**
- (d) detention.**

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

*Interpretation of this field*

In this field—

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

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

**“mental disorder” means any disorder or disability of the mind apart from dependence on alcohol or drugs;**

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

“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<sup>12</sup>*

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).

*Field 11: housing*

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(12) 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 12: local government*

*Matter 12.1<sup>13</sup>*

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—

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

- (i) the investigation and adjudication of such allegations and reports on the outcome of investigations,
  - (ii) the action that may be taken where breaches are found to have occurred,
- (e) codes of conduct for employees of relevant authorities.

For the purposes of this matter—

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

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

#### *Matter 12.4*

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

#### *Matter 12.5*

Provision for and in connection with—

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

The following are “relevant Welsh authorities”—

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

*Field 13: National Assembly for Wales*

*Matter 13.1*

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

*Matter 13.2*

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

*Matter 13.3*

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

*Matter 13.4*

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

*Matter 13.5*

Provision about the meaning of Welsh words and phrases in—

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

*Matter 13.6*

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

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

*Field 14: public administration*

*Field 15: social welfare*

*Matter 15.1*<sup>14</sup>

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*<sup>15</sup>

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;

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(14) 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).

(15) 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.



- (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.

***Matter 15.9***

**Social care services connected to mental health.**

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

*Interpretation of this field<sup>16</sup>*

In this field—

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

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

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

“health” means physical or mental health;

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

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

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

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

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

“vulnerable children” means children—

- (a) who are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of social care services,

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(16) 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).

- (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<sup>17</sup>*

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*

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(17) 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).

*Field 18: town and country planning*

*Matter 18.1*<sup>18</sup>

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.

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

*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*

EXCEPTIONS TO MATTERS<sup>19</sup>

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

TABLE – Highways and transport

Column 1 Exceptions	Column 2 Matters to which the exceptions relate
1. Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.	Matters 5.10, 5.17, 5.18
2. Road traffic offences.	Matters 5.10, 5.17, 5.18
3. Driver licensing.	Matters 5.10, 5.17, 5.18
4. Driving instruction.	Matters 5.10, 5.17, 5.18
5. Insurance of motor vehicles.	Matters 5.10, 5.17, 5.18
6. Drivers' hours.	Matters 5.10, 5.17, 5.18

(19) The text and tables of exceptions were inserted by article 5 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132).

7. Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.	Matters 5.10, 5.17, 5.18
8. Public service vehicle operator licensing.	Matters 5.10, 5.17, 5.18
9. Provision and regulation of railway services, apart from financial assistance which—  (a) does not relate to the carriage of goods,  (b) is not made in connection with a railway administration order, and  (c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.	Matters 5.10, 5.17, 5.18
10. Transport security.	Matters 5.10, 5.17, 5.18
11. Shipping, apart from financial assistance for shipping services to, from or within Wales.	Matters 5.10, 5.17, 5.18
12. Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.	Matters 5.10, 5.17, 5.18
13. Technical and safety standards of vessels.	Matters 5.10, 5.17, 5.18
14. Harbours, docks, piers and boatslips apart from those used or required wholly or mainly for communication between places in Wales.	Matters 5.10, 5.17, 5.18
15. Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.	Matters 5.10, 5.17, 5.18

TABLE – Social welfare

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



<p>11. Family law and proceedings apart from—</p> <p>(a) welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and</p> <p>(b) Welsh family proceedings officers.</p>	<p>Matters 15.2, 15.3, 15.4, 15.5</p>
<p>12. Welfare foods</p>	<p>Matters 15.2, 15.5, 15.6, 15.8</p>



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