



WALES OFFICE

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



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*Presented to Parliament by the Secretary of State for Wales
By Command of Her Majesty
October 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) (Housing) Order 2009 relating to Domestic Fire Safety

This is the twelfth 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.

The Standing Orders of the National Assembly provide for ballots allowing members to bring forward proposed Orders in Council. This Order was published by Ann Jones, the Labour Assembly Member for the Vale of Clwyd, following the first such ballot and has the support of the Welsh Assembly Government. I have previously made 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 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 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 Welsh Assembly Government will lay that draft Order before the National Assembly for Wales for its approval. If approved, the unamendable draft Order will be laid before both Houses of Parliament and be subject to the Affirmative Resolution procedure. If both Houses also approve it, the draft Order will then go to the Privy Council to be made.

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

A handwritten signature in black ink, appearing to be 'D&K'.

2009 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative
Competence) (Housing) 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) (Housing) Order 2009 and shall come into force on the day after the day on which it is made.

Amendments to Schedule 5 to the Government of Wales Act 2006

2.—(1) Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In Field 11 (housing) insert—

Matter 11.1

^(a) 2006 c. 32.

Provision for and in connection with a requirement that an automatic fire suppression system be installed in new residential premises.

Interpretation of this Matter

“New residential premises” means –

- (a) premises constructed for residential use;
- (b) premises converted to residential use;
- (c) premises converted to use as one or more new residences by physical subdivision of one or more existing residences; and
- (d) premises converted to use as one or more new residences by physical incorporation of one or more existing residences.

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”). The effect of the Order is to extend the legislative competence of the National Assembly for Wales to make new laws for Wales by Measure under section 93 of the 2006 Act.

Article 2 inserts a new matter 11.1 into Field 11. The new matter inserted is about enabling a requirement to be imposed that an automatic fire suppression system be installed in new residential premises (including existing residential premises physically sub-divided or incorporated so as to convert them to use as one or more new residences). 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.

**MEMORANDUM BY ANN JONES AM
AND ENDORSED BY
THE WELSH ASSEMBLY GOVERNMENT**

CONSTITUTIONAL LAW: DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Housing) Order 2009

Proposal for a Legislative Competence Order relating to Domestic Fire Safety

Introduction

1. This Explanatory Memorandum sets out the background to the provisions in the Member proposed Legislative Competence Order, *The National Assembly for Wales (Legislative Competence) (Housing) Order 2009*, which would confer additional legislative competence upon the National Assembly for Wales. It explains the scope of the power requested.
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy. The UK Government's White Paper "Better Governance for Wales" published in June 2005 set out the UK Government's commitment to enhance the legislative powers of the National Assembly for Wales, as a democratically elected institution with its own detailed scrutiny procedures.
3. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this memorandum.
4. Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or a Legislative Competence Order, approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via a Legislative Competence Order.
5. The proposed Legislative Competence Order would confer further legislative competence on the National Assembly for Wales, in the field of Housing (field 11, Part 1, Schedule 5 to the 2006 Act).

6. New legislative powers in respect of the specified “matter” will enable the Assembly Government, Assembly Members and Assembly Committees to bring forward coherent 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.
7. On 26 June 2007 Ann Jones won the ballot to bring forward a proposed LCO. On 10 October 2007 the National Assembly for Wales agreed that Ann Jones may lay a proposed Order and an explanatory memorandum¹.
8. The proposed Order was laid on 20 February 2008 and an Assembly Committee, the Proposed Domestic Fire Safety LCO Committee (‘the LCO Committee’) was established to scrutinise the proposed Order. On 11 June 2008 the LCO Committee report was laid. This revised Explanatory Memorandum reflects changes made to the Proposed LCO as a consequence of the Committee’s report.

Background

What the LCO aims to achieve.

9. The LCO seeks to confer legislative competence on the National Assembly for Wales so that an Assembly Measure may be brought forward requiring all new build housing in Wales to be fitted with an automatic fire suppression system. At present this would most likely be a water-based fire sprinkler system. For the purposes of the proposed Order, “new build housing” means “new residential premises” which is defined as premises constructed for or converted to residential use, including existing residential premises that are physically subdivided or incorporated into one or more new residences. The LCO would allow the National Assembly for Wales to legislate in this area of policy. A Measure would then be brought forward making it a requirement for automatic fire suppression systems to be fitted in new residential premises.
10. Ann Jones has accepted all of the LCO Committee’s recommendations in full, apart from recommendation 3, which she has accepted in part. Recommendation 3 states:

We recommend that the proposed Order be amended to remove the interpretation provisions for the terms ‘new residential premises’ and ‘sprinkler system’, and that appropriate interpretation provisions should be considered as part of any future Measure(s).

¹ RoP p79-100, 10 October 2007

However, if the Member in charge is not minded to agree with this recommendation, our views on the individual interpretation provisions are as follows:

In relation to the term ‘new residential premises’, we consider the term as currently provided for in the proposed Order is sufficiently clearly drawn and we are therefore content with this term and its interpretation.

In relation to the term ‘sprinkler system’, we are persuaded by the evidence we have received that this term should be amended and consider that ‘automatic fire suppression system’ would be a more appropriate term, and we so recommend.

In relation to the inclusion of a reference to the British Standard (BS) 9251:2005 on the face of the proposed Order, we accept the Member in charge’s argument that including such a reference could adversely affect the Assembly’s future ability to legislate in this area should that standard be amended and, as such, we consider a reference to the relevant British Standard would be more appropriately dealt with in legislation arising out of the Proposed Order. We are therefore content that the proposed Order makes no reference to BS 9251:2005².

11. Ann Jones has decided to retain the interpretation provisions for the term “new residential premises”. This interpretation is necessary to make it clear that “new residential premises” means not only new build housing, but also premises that are converted to residential use and existing residential premises that are physically subdivided or incorporated into one or more new residences. Parts (c) and (d) of the interpretation have been reworded so that it is clear that the competence applies to all parts of existing residential premises that are converted, including any common areas. She has accepted that “automatic fire suppression system” is a more appropriate term than “sprinkler system” and that no further interpretation of this revised term is necessary in the proposed Order.
12. The objective of the proposed LCO (and the subsequent Measure) is to reduce the incidence of death and injury from fires in new build housing in Wales. This is to be achieved through a requirement for automatic fire suppression systems to be fitted in all new residential premises. This is seen as a preventative measure so that people can get out of their homes in the event of a fire occurring. It will also reduce the risk to fire fighters who are called to deal with domestic fires.
13. It is intended that the LCO includes all newly constructed residential premises and conversion of buildings from another use to residential

² Proposed Domestic Fire Safety LCO Committee, *National Assembly for Wales (Legislative Competence) (No. 7) Order 2008*, Committee Report, June 2008

use. Retrospective fitting of sprinkler systems to existing residential premises would not be included.

14. At present an “automatic fire suppression system” is most likely to be a water-based fire sprinkler system, but the term “automatic fire suppression system” is used to ensure that the competence of the Assembly and a subsequent Measure could permit other types of system which may be just as effective. The LCO Committee heard evidence that in future some medium other than water, such as gas or foam may be technically feasible for the suppression of fire in a domestic setting³.
15. The key characteristics of an automatic fire suppression system are :
 - it must be automatic and not require people to initiate its activation,
 - it must be designed primarily to protect lives, rather than property, this means it will normally be fitted with quick response sprinkler heads.
 - it must be a fire suppression system, one designed specifically to deal with fires rather than other hazards.
16. The current British Standard for residential fire sprinklers referred to in the Building Regulations is BS 9251:2005.

Fire Deaths in Wales

17. Across Wales an average of 20 people lose their lives to fire each year. About 80% of fire related deaths and injuries occur in the home.
18. In the year to September 2006, there were 10 deaths in accidental fires and 494 fire related injuries in dwellings in Wales. In addition there was 1 death and 80 fire related injuries from deliberate fires in dwellings in Wales⁴.
19. Evidence suggests that certain population groups are more at risk from domestic fires. Research carried out by the Department of Communities and Local Government has identified groups who more at risk of fire than the general population⁵. According to this research, the vulnerable groups tend towards lower income/deprived demographic groups, specifically:
 - Single middle aged people, drink and smoke at home (aged 40-59 male bias)

³ RoP p28, Proposed Domestic Fire Safety LCO Committee, 22 April 2008

⁴ Welsh Assembly Government, Statistical Directorate, Fire Statistics Monitor, Quarter 3 2006:
<http://new.wales.gov.uk/topics/statistics/headlines/other-2007/hdw200708091/?lang=en>

⁵ Department of Communities & Local Government, Research Bulletin No 9 - Learning Lessons from Real Fires: Findings from Fatal Fire Investigation Reports, July 2006
<http://www.communities.gov.uk/publications/fire/researchbulletinno9>

- Female single parents
 - Very elderly
 - Disabled/impaired
 - Young people (16-24) – including students
20. The Welsh Assembly Government of the First Assembly established a Community Fire Safety Working Group. The remit of the Group was to examine the scope for widespread adoption in Wales of Hard Wired Smoke Detectors in Social Housing; the installation of domestic sprinkler systems and their extension to other multiple occupational public buildings and to examine options for managing and controlling the incidence of arson. The Group's report *Wired for Safety*⁶ was published in October 2001 and recommended that the National Assembly should amend its Development Quality Requirements so that all new social housing in Wales should have domestic sprinkler systems installed during construction. It also recommended that the Assembly should look to enforce a requirement for sprinklers in new schools, student halls of residence, nurses homes and residential homes.

Costs associated with domestic fires

21. In 2004, the total economic cost of fire in the UK was estimated at £7.03bn, equivalent to approximately 0.78% of the gross value added of the economy⁷.
22. Based on the Welsh share of the total number of fires in England and Wales for the twelve months ending 30 September 2006, the total economic cost of fires in Wales can be estimated to be about £408 million per annum.
23. The cost of fire in domestic buildings remains one of the largest contributors to the total economic cost of fire, accounting for 28% of the overall cost.
24. The average cost of a domestic fire is estimated at £24,900, of which approximately £14,600 is accounted for by the economic cost of injuries and fatalities and £7,300 is due to property damage.
25. The estimates include healthcare costs as a direct consequence of fires (but not emotional suffering and health care costs related to fire-fighter injuries incurred during training).
26. The ubiquitous nature of the threat from fire is often overlooked as deaths and injuries occur sporadically and therefore do not have the same impact as a collective tragedy. This also affects people's views on the economic consequences of fire which are not viewed collectively.

⁶ Community Fire Safety Working Group, *Wired for Safety*, October 2001

<http://new.wales.gov.uk/ds/ig/publications/fire/wiredforsafety/report?lang=en>

⁷ Department of Communities & Local Government, *The Economic Cost of Fire: Estimates for 2004*, April 2006

<http://www.communities.gov.uk/fire/fireandresiliencestatisticsandre/firestatistics/economiccost/>

The benefits of fitting fire sprinkler systems in domestic properties

27. Sprinklers have been incorporated in buildings for some considerable time and were originally seen and developed as a means of reducing fire losses to property and contents. Over recent years there has been a growing recognition of their use as a means to contributing to life safety which is now recognised in current UK guidance to the Building Regulations⁸.
28. Evidence gathered worldwide shows that while sprinklers are primarily intended to contain or control fires in a number of cases people in the room of origin of a fire have survived as a result of the effectiveness of the sprinkler system. There are no cases on record where multiple fire deaths have occurred in buildings with working sprinkler systems. The evidence also shows that no lives have been lost in the UK due to fire in buildings fitted with domestic sprinkler systems.
29. A report⁹ published in the USA in 2007 by the National Fire Protection Association concluded that in properties where sprinklers are fitted:
 - The death rate per fire is lower by at least 57%;
 - For most property uses, damage per fire is lower by one-third to two-thirds;
 - 89% of reported structure fires have flame damage confined to the room of origin compared to 57% when no automatic extinguishing system is present.
30. A recent study¹⁰ by the US National Institute of Standards and Technology concludes that sprinklers in single family residential units make very good economic sense in terms of the return on investment.
31. In other parts of the world where the fitting of fire sprinkler systems has become a statutory requirement there have been dramatic reductions in the number of deaths caused by domestic fires. For example in the city of Vancouver where byelaws have been introduced, in 1972-1974 the number of deaths per 100,000 population was just under 7 per year. By the period 1992-1998 the number of deaths per 100,000 population had fallen to 0.6, as a result of the mandatory sprinkler regulations¹¹.

⁸ Department for Communities and Local Government, Approved Document B (Fire safety) – Volume 1: Dwelling houses (2006 Edition) <http://www.planningportal.gov.uk/england/professionals/en/1115314683674.html>

⁹ National Fire Protection Association, U.S. experience with sprinklers and other automatic fire extinguishing equipment, June 2007 <http://www.nfpa.org/assets/files/PDF/QSsprinklers.pdf>

¹⁰ U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Benefit-Cost Analysis of Residential Fire Sprinkler System, September 2007 http://www.bfrl.nist.gov/oa/publications/nistirs/NISTIR_7451_Oct07.pdf

¹¹ Building Research Establishment, Effectiveness of sprinklers in residential premises, February 2004 http://www.bre.co.uk/filelibrary/rpts/sprinkler/sprinkler_section3.pdf

32. The most comprehensive study into the effectiveness of residential fire sprinklers to date was carried out by the Rural/Metro Fire Department, Scottsdale, Arizona¹². In June 1985, the City of Scottsdale passed an 'Ordinance' that required all new flatted and commercial structures built after 5 July 1985 to be fitted with a fire sprinkler system and all new single family residences built after 1 January 1986 to be able to accommodate fire sprinklers.
33. In 1997 the Rural/Metro Fire Department, Scottsdale published *Saving Lives, Saving Money: Automatic Fire Sprinklers: A 10 Year Study* which analysed the impact of the Ordinance.
34. The Scottsdale study included a review of 109 fires that occurred in sprinklered structures, 44 of those being residential structures. In more than 90 percent of these incidents, one or two sprinkler heads controlled the fires, and the average amount of water used to suppress each fire was 209 gallons compared to 3,290 gallons estimated for manual suppression in residential properties. It was considered that 8 lives were saved over the period as a direct result of the installation of fire sprinkler systems, 4 of these in residential properties, and that up to \$25.4m was saved based on the total potential loss due to fire in sprinklered residential properties.
35. Fire sprinklers are only activated when the room temperature with the room in which a fire is burning exceeds the preset temperature of the sprinkler head - normally 68 degrees centigrade. Sprinklers operate as individual heat sensors - meaning that water is only released in the area where there is a fire. Often, in a room with two sprinkler heads only one actually operates. The amount of water used by a sprinkler system is far less than that used by the fire service because the fire is tackled at a very early stage. Fire fighters are on average likely to arrive at least 10 minutes after a fire has started meaning that more water is required and the risk to a fire fighter's life is much greater. Data collected over 30 years suggest that the chances of a sprinkler head malfunctioning are estimated to be extremely remote, perhaps no more than 1 in 16 million.

Costs of domestic fire sprinkler systems

36. The main cost associated with fire sprinkler systems is the capital cost of installation. There are also on-going maintenance costs.
37. The cost for most new homes is estimated to be about 1% to 2% of the total cost of construction. Annual maintenance costs are between £75 and £150 per annum. The installation of fire sprinklers will usually permit the introduction of design freedoms that can reduce building costs and allow innovative designs such as open plan homes. Other benefits might include reduced constructions costs where sprinklers permit the elimination of costly fire rated doors or other structural elements. This is

¹² <http://www.firesprinklers.org.uk/Services/Documents/Scottsdale.pdf>

not a regulatory Impact Assessment for any measure that may come forward as a result of this proposed LCO. Any resulting Measure would need to be accompanied by an Explanatory Memorandum containing an estimate of the cost benefits.

Scope

38. The LCO would add the following matter to field 11 of Schedule 5:

Matter 11.1

Provision for and in connection with a requirement that an automatic fire suppression system be installed in new residential premises.

Interpretation of this Matter

“New residential premises” means –

- (a) premises constructed for residential use;*
- (b) premises converted to residential use;*
- (c) premises converted to use as one or more new residences by physical subdivision of one or more existing residences; and*
- (d) premises converted to use as one or more new residences by physical incorporation of one or more existing residences.*

39. The LCO seeks to confer powers on the Assembly to make Assembly Measures in relation to the installation of automatic fire suppression systems in new residential premises.
40. If this power is conferred the intention is to bring forward a Proposed Measure that would make it a statutory requirement to install an automatic fire suppression (fire sprinkler) system in all of the following:
- Newly built residential premises including flats/apartments.
 - Existing residential premises that are either physically subdivided or incorporated so as to convert them to use as one or more new residences. For example the conversion of single dwellings to Houses in Multiple Occupation, the conversion of single premises into flats or the conversion of two adjoining premises into a single residence. The definition includes any existing or newly created common areas that may be in these premises, such as stairways.
 - Existing buildings that are converted from a non-residential use to a residential use (eg: office space converted to flats).
41. Any Measure made in reliance on the legislative competence conferred by the LCO would more particularly specify the premises to which the Measure would apply. It would also specify in more detail the type of equipment to be installed.

Exceptions

Geographical limits of any Assembly Measure

42. Section 93 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 power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.
43. 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

44. This proposed Order 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 the Minister of the Crown without the consent of the Secretary of State for Wales. 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 change or modify these functions. The making and amending of the Building Regulations are functions of a Minister of the Crown that are derived from the Building Act 1984 and are not affected by the proposed LCO.

Conclusion

45. For the reasons outlined above, Ann Jones AM wishes to propose that legislative competence should be conferred on the National Assembly for Wales in relation to automatic fire suppression systems in new residential premises, in accordance with the provisions of the proposed Order to which this Explanatory Memorandum relates.

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.

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

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1²

Provision about the categories of school that may be maintained by local education authorities.

Matter 5.2

Provision about the establishment and discontinuance of schools maintained by local education authorities, their change from one category to another and their alteration in other respects.

Matter 5.3

Provision about the admission of pupils to schools maintained by local education authorities.

Matter 5.4

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

Matter 5.4A³

The regulation of—

- (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

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).

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.

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,

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).

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

Matter 5.13

Provision for and in connection with securing collaboration—

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

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

Matter 5.14

The provision of financial resources for and in connection with—

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

*Matter 5.15*⁷

The inspection of—

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

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

*Matter 5.16*⁸

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

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

*Matter 5.17*⁹

Education and training for—

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

*Matter 5.18*¹⁰

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

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

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

*Interpretation of this field*¹¹

In this field—

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

“post-16 education” means—

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

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

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

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

“post-16 training” means—

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

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

“relevant independent educational institution” means an institution other than a school which—

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

For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if—

- (a) it provides education for the person, and
- (b) the education does not amount to full-time education.

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

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

Field 6: environment

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

Field 8: food

Field 9: health and health services

*Matter 9.1*¹²

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).

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

Interpretation of this field

In this field—

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

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

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

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

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

Field 10: highways and transport

*Matter 10.1*¹³

Provision for and in connection with—

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

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;

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.

“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

Matter 11.1

Provision for and in connection with a requirement that an automatic fire suppression system be installed in new residential premises.

Interpretation of this Matter

“New residential premises” means –

- (a) premises constructed for residential use;**
- (b) premises converted to residential use;**
- (c) premises converted to use as one or more new residences by physical subdivision of one or more existing residences; and**
- (d) premises converted to use as one or more new residences by physical incorporation of one or more existing residences.**

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

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.

Any of the following—

- (a) the principles which are to govern the conduct of members of relevant authorities,
- (b) codes of conduct for such members,
- (c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions),
- (d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct including in particular—
 - (i) the investigation and adjudication of such allegations and reports on the outcome of investigations,
 - (ii) the action that may be taken where breaches are found to have occurred,
- (e) codes of conduct for employees of relevant authorities.

For the purposes of this matter—

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

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

Matter 12.4

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

Matter 12.5

Provision for and in connection with—

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

The following are “relevant Welsh authorities”—

- (a) a county council, county borough council or community council in Wales,
- (b) a National Park authority for a National Park in Wales,

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

Field 13: National Assembly for Wales

Matter 13.1

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

Matter 13.2

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

Matter 13.3

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

Matter 13.4

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

Matter 13.5

Provision about the meaning of Welsh words and phrases in-

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

Matter 13.6

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

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

Field 14: public administration

Field 15: social welfare

*Matter 15.1*¹⁵

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

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

*Matter 15.2*¹⁶

Functions of public authorities relating to—

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

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

Matter 15.3

Adoption services and special guardianship support services.

Matter 15.4

Fostering.

Matter 15.5

Social care services for any of the following—

¹⁵ 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).

¹⁶ Matters 15.2-15.8 were inserted by article 3(b) of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.

- (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 field*¹⁷

In this field—

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

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

“health” means physical or mental health;

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

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

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

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

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

¹⁷ 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).

- (e) who are provided with accommodation by a public authority in order to secure their well-being;

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

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

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

Field 16: sport and recreation

*Matter 16.1*¹⁸

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

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

Field 17: tourism

Field 18: town and country planning

*Matter 18.1*¹⁹

Provision for and in connection with—

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

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

Matter 18.2

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

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

¹⁸ Matter 16.1 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I 2009/3132).

¹⁹ Matters 18.1 – 18.3 were inserted by section 202 of the Planning Act (c. 29).

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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