



**WALES OFFICE**

**PRE-LEGISLATIVE SCRUTINY  
OF THE  
PROPOSED  
NATIONAL ASSEMBLY FOR WALES  
(LEGISLATIVE COMPETENCE)  
(AGRICULTURE AND RURAL  
DEVELOPMENT)  
ORDER 2008**



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DEVELOPMENT)  
ORDER 2008**

*Presented to Parliament by the Secretary of State for Wales  
By Command of Her Majesty  
October 2008*

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## MINISTERIAL FOREWORD

**By the Secretary of State for Wales**

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

***The proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order: “Welsh Red Meat Industry Order”.***

This is the fifth 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. This proposed Order is part of the Welsh Assembly Government’s legislative programme as set out by the First Minister, the Rt. Hon. Rhodri Morgan AM, in his speech to the National Assembly for Wales 15 July 2008.

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

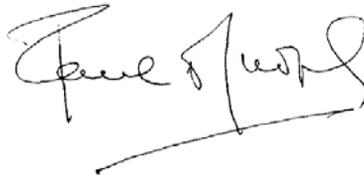
Part 3 of the Government of Wales Act 2006 gave the National Assembly for Wales the power to pass legislation, known as Assembly Measures, which can do anything that an Act of Parliament can do, within the constraints set out in the Act. The scope of the Assembly’s powers to pass Measures is set out in Part 3 and Schedule 5 of 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.

As the Government’s White Paper, “Better Governance for Wales”, explained: “consideration of these Orders in Council could be informed by understanding the use the Assembly might propose to make of these powers in the immediate future. However, as the power would be a general and continuing one for that particular policy area, this would serve only as an example of what could be done; the issue for the Parliamentary Committees and for each House would be the appropriateness in general of delegating legislative authority to the Assembly on the particular policy area specified in the draft Order in Council”.

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

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

A handwritten signature in black ink, appearing to read "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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**2008 No.**

**CONSTITUTIONAL LAW**

**DEVOLUTION, WALES**

**The National Assembly for Wales (Legislative Competence)  
(Agriculture and Rural Development) Order 2008**

*Made* - - - - - *[ ]*

*Coming into force in accordance with Article 1*

At the Court at Buckingham Palace, the    day of

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(1), 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)(Agriculture and Rural Development) Order 2008 and it comes 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 1 (agriculture, fisheries, forestry and rural development), insert—

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(1) 2006 c.32.

*“Matter 1.1*

The red meat industry, in relation to—

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

*Interpretation of this field*

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

- (i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
- (ii) 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.”

*Name*

Clerk of the Privy Council

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly of 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(2) inserts matter 1.1 and interpretation provisions into field 1 (agriculture, fisheries, forestry and rural development) of Part 1 of Schedule 5 to the 2006 Act. The new matter extends the legislative competence of the National Assembly for Wales to cover the red meat industry, in relation to—

- increasing efficiency or productivity in the red meat industry;
- improving marketing in the red meat industry;
- improving or developing services that the red meat industry provides or could provide to the community;
- improving the ways in which the red meat industry contributes to sustainable development

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



**MEMORANDUM  
DRAFTED BY  
THE WELSH ASSEMBLY GOVERNMENT**

**MEMORANDUM FROM THE WELSH ASSEMBLY GOVERNMENT  
MINISTER FOR RURAL AFFAIRS**

**The proposed National Assembly for Wales (Legislative Competence)  
(Agriculture and Rural Development) Order 2008**

**Proposal for a Government Legislative Competence Order  
relating to the Welsh Red Meat Industry**

**Introduction**

1. This Memorandum sets out the background to the provisions in the attached Welsh Assembly Government proposed Legislative Competence Order (LCO) which would confer additional legislative competence upon the National Assembly for Wales.
2. Section 95 of the Government of Wales Act 2006 (“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.
3. The proposed Legislative Competence Order would confer further legislative competence on the National Assembly for Wales, in the field of agriculture, fisheries, forestry and rural development (field 1 within Schedule 5 to the 2006 Act). Schedule 5 of the 2006 Act is attached at Annex 1.
4. 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.

## Background

5. As a result of the devolution settlements of 1998, agriculture is devolved to all of the devolved administrations of the UK.
6. Within Wales, as a result of the devolution of agriculture, the Welsh Ministers exercise extensive powers in the areas of animal health and welfare, the common agricultural policy (both single payments and grants for rural development, including food processing and marketing), forestry, fisheries, plant health and animal by-products.
7. Included in the Welsh Ministers' devolved powers are powers under various Acts of Parliament including the Agriculture Act 1967, which included certain provisions (some of which have been repealed) relating to agricultural levy raising, promotion and development.
8. By way of background to the specific issue of agricultural levy raising, prior to 2008, several UK or Great Britain wide bodies collected and distributed levy in specific agricultural and horticultural sectors. One such body was the Meat and Livestock Commission ("the MLC"), established under the Agriculture Act 1967 which raised and collected levy from the red meat sector in Great Britain. Following a 2005 review of the agricultural and horticultural levy boards in the UK and Great Britain by Rosemary Radcliffe ("the Radcliffe Review"), the UK administrations agreed in principle to establish a single UK levy board, which would be a non departmental public body and would act as a holding company for six sectoral companies covering beef and lamb, pigs, horticulture, cereals, dairy and potatoes respectively. The purposes of the new UK levy board and its sector companies (according to the Radcliffe Review) were to include increasing efficiency, productivity, marketing, development and sustainability in the UK agriculture sector, and such purposes were to be funded from industry levies. The Radcliffe Review suggested a UK board with subsidiary sector companies or, in relation to specific demands from Wales, Scotland or Northern Ireland, the ability for devolved administrations to create levy and promotional boards to operate within their own territories.
9. The Welsh Assembly Government consulted on the Radcliffe Review and on how the provisions of the Natural Environment and Rural Communities Act 2006 ("the NERC Act") should be implemented in Wales during the early passage of the Bill through Parliament. The consultation results concluded that the agricultural industry in Wales wanted to have a separate red meat levy and promotion board, but to be a part of the UK levy board in all other respects. The Assembly Government accepted these conclusions but decided that it would be preferable for the power to raise levy from and promote, market and develop the red meat sector in Wales to be conferred directly upon the National Assembly for Wales (now Welsh Ministers), rather than by the creation of a separate statutory levy and promotion board. However, the timing of the consultation meant that it was not possible for the Welsh

Assembly Government's policy requirement to be reflected in the Bill and subsequent NERC Act.

10. Consequently the NERC Act conferred powers on the Secretary of State to dissolve existing levy bodies or boards and to create new ones with cross-border functions by means of secondary legislation. It also conferred powers on the National Assembly for Wales (now the Welsh Ministers), the Scottish Ministers and the relevant Northern Ireland department in relation to matters which only concerned their respective territories, to create boards to promote marketing, development and sustainability in their respective agricultural industries.
11. The Welsh Assembly Government's general policy is that where functions are governmental, either policy or delivery, then they should remain in-house with the focus on working directly with clients and customers and placing front line service delivery at the heart of the Assembly Government's culture. Retaining functions in-house ensures Government is more democratically accountable and streamlined. As a result, the option conferred upon the Welsh Assembly Government by the NERC Act to create a separate levy and promotional/development body, rather than undertake those functions itself, was unsatisfactory.
12. As a result, the Welsh Ministers are seeking the conferral of legislative competence in this area upon the National Assembly with a view to bringing forward legislation on the development, marketing and promotion of the red meat industry in Wales. The National Assembly, with these powers, would be able to confer promotional/development functions directly upon the Welsh Ministers or delegate functions to other bodies in this area. At present, this would not be possible using the powers under the NERC Act.
13. The current statutory framework for the development, marketing and sustainability of the agricultural and horticultural sectors in the UK is set out in the NERC Act and the Agriculture and Horticulture Development Board Order 2008. In Wales, a separate levy raising and promotional/development board for the red meat industry was established by the Welsh Levy Board Order 2008.
14. The following paragraphs set out in more detail the basic principles of these pieces of legislation and how they interact.

#### The Natural Environment and Rural Communities Act 2006

15. The relevant provisions of the NERC Act are set out in Chapter 2 of Part 8 (section 87 onwards) and include powers for the appropriate authority, by order:
  - a. to establish a body for a purpose or purposes falling within section 88, and
  - b. assign to it a function or functions falling within section 89.

16. In relation to matters concerning Wales only, the appropriate authority was the National Assembly for Wales<sup>1</sup> (a function which has transferred to the Welsh Ministers, by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006). For matters relating to England and Wales, or to the existing levy bodies, the appropriate authority is the Secretary of State acting with the approval of the National Assembly (now the Welsh Ministers).
17. Section 88 provides that the permissible purposes of a body (a board) established under section 87 are:
- a. Increasing efficiency or productivity in an agricultural or related industry;
  - b. Improving marketing in an agricultural or related industry;
  - c. Improving or developing services that an agricultural or related industry provides or could provide to the community; and
  - d. Improving the ways in which an agricultural or related industry contributes to sustainable development.
18. Sections 89 to 97 (and Schedules 8 to 10) make further detailed provision relating to agricultural boards, the permissible functions of a board, powers to dissolve existing levy bodies, powers of the appropriate authority (i.e. powers to make grants and to issue binding directions to a board) and order making procedures.
19. Two relevant pieces of legislation have been made under the NERC Act:
- The Agriculture and Horticulture Development Board Order 2008 (SI 2008/576); and
  - The Welsh Levy Board Order 2008 (SI 2008/420 (W.39)).

#### The Agriculture and Horticulture Development Board Order 2008

20. The Agriculture and Horticulture Development Board Order 2008 (“the AHDB Order”) applies to<sup>2</sup>:
- a. the beef and sheep industry in England;
  - b. the cereal and oilseed industries in the United Kingdom;
  - c. the horticulture industry in Great Britain;
  - d. the milk industry in Great Britain;
  - e. the pig industry in England; and
  - f. the potato industry in Great Britain
21. Within this scope, the AHDB Order establishes a body called the Agriculture and Horticulture Development Board, whose purposes (in line with Section 88 of the NERC Act) are<sup>3</sup>:
- 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; and

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<sup>1</sup> Section 96(1)(b)

<sup>2</sup> Article 2 of the Order (scope)

<sup>3</sup> Article 3 (Establishment of the Agriculture and Horticulture Development Board)

- d. Improving the ways in which the industry contributes to sustainable development.
22. The functions of the Board are in line with the functions provided for in section 89 of and Schedule 9 to the NERC Act. They are listed in 20 paragraphs in Schedule 1 to the Order and include (by way of examples): promoting or undertaking scientific research; providing or promoting the provision of training for those engaged in or proposed to be engaged in the industry; and promoting or undertaking research for improving arrangements for marketing and distributing products.
23. In order to provide services for each industry covered by the Order, the AHDB must impose a levy<sup>4</sup>.
24. In relation to the geographical areas mentioned in Article 2 of the Order, the Board replaces the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council, all of which are dissolved<sup>5</sup>.

#### The Welsh Levy Board Order 2008

25. Under the NERC Act, provision was made in separate Welsh legislation to give effect to the conclusion of the Assembly Government's consultation that there should be a Wales specific red meat levy raising and promotional body. As a result of the Welsh Ministers being unable to confer levy raising and promotional/development powers upon themselves under the NERC Act, the Welsh Ministers made the Welsh Levy Board Order 2008 ("the WLB Order") as a temporary measure on 19 February 2008. The Welsh Levy Board came into existence on 20 February 2008, and started to exercise its levy raising and promotional/development functions on 1 April 2008. This Order had the effect of keeping the promotion and marketing of Welsh red meat within Wales.
26. The WLB Order is very similar in form and content to the AHDB Order, though with a much more limited scope, namely the beef, sheep and pig industries in Wales (i.e. it completes the gaps left by the AHDB Order – see paragraph 20 above). The WLB Order defines the beef, sheep and pig industries in a similar way as the AHDB Order, but with the addition of "processing", namely:
- "beef and sheep industry" means all the activities comprised in the production, processing, marketing and distribution of—
- a. cattle and sheep, including the carrying on of slaughterhouses and cattle and sheep auctions and markets;
  - b. meat and meat products (other than milk and milk products) from cattle and sheep;

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<sup>4</sup> Article 6 (Levies)

<sup>5</sup> Article 17 (Dissolution of existing bodies)

“pig industry” means all the activities comprised in the production, processing, marketing and distribution of pigs or pig products, including the carrying on of slaughterhouses and pig auctions and markets. In relation to these industries the purposes of the Welsh Levy Board are those set out in the AHDB Order, and listed at paragraphs 17 and 21 above.

27. To this end, the WLB may impose levies (Article 6), may act through subsidiaries (Article 5) and has the same functions as the AHDB has in relation to the beef, sheep and pig industries in England (see Schedule 1).
28. In practice, the Welsh Levy Board has delegated many of its functions by way of a delegation agreement to Hybu Cig Cymru (a company limited by guarantee and wholly owned by the Welsh Ministers) (“HCC”).

### Scope

29. The scope of the LCO is aligned very closely to the relevant provisions of the NERC Act, and it reproduces the wording of section 88(1) of that Act (which sets out the permissible purposes of the Boards) in relation to the red meat industry. These purposes are listed at paragraph 17.
30. The LCO would confer a Measure making power on the National Assembly for Wales relating to those purposes insofar as they relate to the red meat industry in Wales; purposes for which secondary legislation can currently be made under the NERC Act. In doing so, the LCO would give the National Assembly the flexibility to organise the structure of the promotion, marketing and development of the red meat sector in Wales in several possible ways, including conferring such powers directly upon the Welsh Ministers.
31. In the LCO, “cattle” and “pigs” are precisely defined in order to provide clarity. As the term “cattle” has a variety of definitions in existing legislation, leaving this term undefined could cause ambiguity regarding the animals that the term is intended to cover. Additionally, because the term “cattle” has been defined, without further definition, an inference could be drawn that the term “pigs” is meant to be limited to common, domestic pigs whilst, in reality, the term is meant to include wild boar and other feral pigs.
32. For the purposes of the definition, “cattle” means bovine animals, including bison and buffalo, and “pigs” means porcine animals, including wild boar and other feral pigs. These definitions seek to capture the Welsh Assembly Government’s red meat policy, to enable the National Assembly to have the necessary scope to deal fully with the substance in a future Measure.
33. The red meat industry is defined in the proposed LCO as all of the activities comprised in:

- (i) breeding, keeping, processing, marketing and distributing cattle, sheep and pigs (alive or dead), and
  - (ii) 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).
34. The wording, “products derived to any substantial extent from those animals” has been chosen to reflect the wording of the NERC Act closely. The term “breeding” also reflects the NERC Act (which refers to “breeding and keeping”).
35. In the same way, the term “manufacturing” used in the LCO has been chosen as it more closely reflects the wording of the NERC Act.
36. In order to avoid doubt, the LCO is clear on its face that fleece wool and hides are specifically excluded. The British Wool Marketing Board administers a separate marketing scheme for fleece wool.
37. The LCO is consistent with the wider legislative framework set out in the NERC Act. It would confer sufficient powers on the National Assembly for Wales to allow the Welsh Ministers to carry out the activities currently carried out by the Welsh Levy Board (namely raising a levy in the red meat sector), apart from any activities involving fleece wool and hides. The primary intention is to confer those powers on the Welsh Ministers and to dissolve the Welsh Levy Board through secondary legislation. As such, the proposed LCO is intended, primarily, as a means of addressing the policy issues that could not be addressed during the progress of the NERC Bill through Parliament.

#### Geographical limits of any Assembly Measure

38. 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 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 provision to make consequential amendments to other legislation.
39. The limitation relating to functions other than in relation to Wales prevents the Assembly from passing any Measure conferring on the Welsh Ministers, Welsh local authorities or any other public authority, functions which do not relate to Wales.

## Minister of the Crown functions

40. 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 and Part 3 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter the functions of a Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions, the appropriate UK Government Departments will be consulted and agreement sought to any future proposals to change or modify those functions.

41. The Secretary of State will remain the appropriate authority for the purposes of the NERC Act in relation to cross-border levy raising bodies, although the Secretary of State can only act on cross-border issues under the NERC Act with the approval of each devolved appropriate authority (as appropriate).

## Conclusion

42. For the reasons outlined above, the Welsh Assembly Government proposes that the legislative competence of the National Assembly for Wales should be extended in accordance with the proposed LCO to which this Explanatory Memorandum relates.

**Elin Jones**  
**Minister for Rural Affairs**

**July 2008**



SCHEDULE 5  
ASSEMBLY MEASURES

Part 1

Matters

**(Text in bold is proposed to be added as a result of this Order in Council)**

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

*“Matter 1.1*

The red meat industry, in relation to—

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

*Interpretation of this field*

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

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

For the purposes of this definition—

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

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

*Field 2: ancient monuments and historic buildings*

*Field 3: culture*

*Field 4: economic development*

*Field 5: education and training*

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

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<sup>1</sup> Matters 5.1-5.10 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 5.10 was amended by article 2(2) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I.2008/1036).

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 5.5*

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 of 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*

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.

This matter does not include any of the following—

- (a) the regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used;
- (b) road traffic offences;
- (c) driver licensing;
- (d) driving instruction;
- (e) insurance of motor vehicles;
- (f) drivers' hours;
- (g) traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits;
- (h) public service vehicle operator licensing;
- (i) the provision and regulation of railway services, apart from financial assistance which—
  - (i) does not relate to the carriage of goods,
  - (ii) is not made in connection with a railway administration order, and
  - (iii) 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;
- (j) transport security;
- (k) shipping, apart from financial assistance for shipping services to, from or within Wales;
- (l) navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation;
- (m) technical and safety standards of vessels;
- (n) harbours, docks, piers and boatslips, apart from those used or required wholly or mainly for communications between places in Wales;
- (o) registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

#### *Matter 5.11<sup>2</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,

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<sup>2</sup> Matters 5.11–5.16 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*

The inspection of—

- (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 training of teachers and specialist teaching assistants for schools;

(d) services of the kinds mentioned in matter 5.8.

#### *Matter 5.16*

The provision of advice and information in connection with, and the carrying out of studies in relation to, any of the kinds of education, training or services mentioned in matter 5.15.

#### *Matter 5.17<sup>3</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.

This matter does not include arrangements for persons to travel to and from the places where they receive education or training.

#### *Interpretation of this field<sup>4</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

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<sup>3</sup> Matter 5.17 was inserted by article 2(3) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008.

<sup>4</sup> Interpretation provisions were inserted by article 3(2) of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007, section 27(3) of the Further Education and Training Act 2007, and article 2(4) of the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008.

(b) organised leisure-time occupation connected with such training.

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>5</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.

*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 that Act;

“patient” has the same meaning as in that 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*

*Field 11: housing*

*Field 12: local government*

*Matter 12.1<sup>6</sup>*

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<sup>5</sup> 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.

<sup>6</sup> 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.

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 “principal council” means a council for a principal area.

*Matter 12.2*

Provision for and in connection with—

(a) the procedure for the making and coming into force of byelaws, and

(b) the enforcement of byelaws.

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

*Matter 12.3*

Any of the following—

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

(b) codes of conduct for such members,

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

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

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

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

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

For the purposes of this matter—

“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 Measures, 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>7</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 any of the following—

- (a) child support;
- (b) tax credits;
- (c) child benefit and guardian's allowance;

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<sup>7</sup> Matter 15.1 and the interpretation provisions for field 15 were inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785).

- (d) social security;
- (e) independent living funds;
- (f) motability.

*Interpretation of this field*

In this field—

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

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

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

- (a) physical and mental 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.

*Field 16: sport and recreation*

*Field 17: tourism*

*Field 18: town and country planning*

*Field 19: water and flood defence*

*Field 20: Welsh language*



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