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## SCHEDULES

### SCHEDULE 5

#### ASSEMBLY MEASURES

#### PART 2

#### [<sup>F1</sup>EXCEPTIONS TO MATTERS AND GENERAL RESTRICTIONS]

##### Textual Amendments

- F1** Sch. 5 Pt. 2: heading substituted (19.11.2009) by [The National Assembly for Wales \(Legislative Competence\) \(Exceptions to Matters\) Order 2009 \(S.I. 2009/3006\)](#), **art. 2(8)**

#### [<sup>F2</sup>*Exceptions to matters*

##### Textual Amendments

- F2** Sch. 5 Pt. 2: para. A1 and headings preceding/after said para. inserted (19.11.2009) by [The National Assembly for Wales \(Legislative Competence\) \(Exceptions to Matters\) Order 2009 \(S.I. 2009/3006\)](#), **art. 2(9)**

[<sup>F3</sup>A1 These are the exceptions mentioned in section 94(4)(a) and (7)—

[<sup>F4</sup>*Culture (field 3 of Part 1)*

- (1) Public lending right.
- (2) Classification of films, and video recordings.]

[<sup>F5</sup>*Economic development (field 4 of Part 1)*

- (1) Generation of electricity at generating stations whose construction, extension or operation requires—
  - (a) the consent of the Secretary of State, or
  - (b) the authority of an order granting development consent under the Planning Act 2008,and for this purpose, the reference to consent of the Secretary of State is a reference to consent under powers to regulate generation of electricity.
- (2) Transmitting, distributing or supplying electricity.
- (3) Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.
- (4) Nuclear energy and nuclear installations, including—
  - (a) nuclear safety, and

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- (b) liability for nuclear occurrences,  
but this paragraph does not include disposal of very low level radioactive waste moved from a site whose use requires a nuclear site licence under the Nuclear Installations Act 1965]

*Highways and transport (field 10 of Part 1)*

- (1) Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

[ Road freight transport services, including goods vehicles operating licensing.]

<sup>F6</sup>(1A)

- [<sup>F7</sup>(2) Regulation of the use of relevant vehicles on roads, the construction and use of relevant vehicles, and conditions under which relevant vehicles may be so used, apart from—

- (a) regulation of use of relevant vehicles carrying animals for the purposes of protecting human, animal, fish or plant health or the environment,<sup>F8</sup> . . .
- (b) regulation relating to matter 10.1<sup>F9</sup>, and
- (c) regulation of the description of vehicle which may be used pursuant to learner transport arrangements (including description by reference to a vehicle's construction or equipment), but not including the setting of technical standards for construction or equipment which differ from the standards that would or might otherwise apply to that vehicle.]

For the purpose of this paragraph, “ relevant vehicles ” means motor vehicles, mobile machinery and agricultural and forestry tractors. ]

- (3) Road traffic offences.
- (4) Driver licensing.
- (5) Driving instruction.
- (6) Insurance of motor vehicles.
- (7) Drivers' hours.
- (8) Traffic regulation on special roads (apart from regulation relating to matter 10.1).
- (9) Pedestrian crossings.
- (10) Traffic signs (apart from the placing and maintenance of traffic signs within the meaning of section 177 of the Transport Act 2000 for purposes relating to matter 10.1).
- (11) Speed limits.
- (12) Public service vehicle operator licensing.
- (13) Provision and regulation of railway services, apart from financial assistance which—
  - (a) does not relate to the carriage of goods,
  - (b) is not made in connection with a railway administration order, and
  - (c) is not made in connection with [<sup>F10</sup>Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road].

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- (14) Transport security<sup>[F11]</sup> (apart from regulation relating to the carriage of supervising adults on vehicles used pursuant to learner transport arrangements)]
- [ Aviation, air transport, airports and aerodromes, apart from—
- <sup>F12</sup>(14A) (a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,
- (b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
- (c) regulation of the use of aircraft carrying animals for the purpose of protecting—
- (i) human health, apart from the health of persons in aircraft,
- (ii) animal, fish or plant health, or
- (iii) the environment.]
- <sup>F13</sup>(15) Shipping, apart from—
- (a) financial assistance for shipping services to, from or within Wales, and
- (b) regulation of the use of vessels carrying animals for the purposes of protecting—
- (i) human health, apart from the health of persons on vessels,
- (ii) animal, fish or plant health, or
- (iii) the environment.]
- (16) Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.
- (17) Technical and safety standards of vessels.
- <sup>F14</sup>(18) Harbours, docks, piers and boatslips, apart from—
- (a) those used or required wholly or mainly for the fishing industry, for recreation, or for communications between places in Wales (or for two or more of those purposes), and
- (b) regulation for the purposes of protecting human, animal, fish or plant health or the environment.
- (19) Carriage of dangerous goods, including transport of radioactive material.]
- <sup>F15</sup> In paragraphs (2) and (14) “ learner transport arrangements ” means arrangements of the kind described in matter 5.10 which consist of the provision of motor vehicles and are made by—
- (a) public authorities (within the meaning of field 15) exercising functions relating to education or training, or
- (b) institutions or other bodies concerned with the provision of education or training.]
- Social welfare (field 15 of Part 1)*
- (1) Child support.
- (2) Child trust funds, apart from subscriptions to such funds by—
- (a) a county council or county borough council in Wales, or
- (b) the Welsh Ministers.
- (3) Tax credits.

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- (4) Child benefit and guardian's allowance.
- (5) Social security.
- (6) Independent living funds.
- (7) Motability.
- (8) Vaccine damage payments.
- (9) Intercountry adoption, apart from adoption agencies and their functions, and functions of the “Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.
- (10) The Children's Commissioner established under the Children Act 2004.
- (11) Family law and proceedings apart from—
  - (a) welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
  - (b) Welsh family proceedings officers.
- (12) Welfare foods.
  - [<sup>F16</sup>Sport and recreation (field 16 of Part 1)*
  - (1) Betting, gaming and lotteries.]
  - [<sup>F17</sup>Water and flood defence (field 19 of Part 1)*
  - (1) Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.
  - (2) Licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.]]

#### Textual Amendments

- F3** Sch. 5 Pt. 2 para. A1 and headings preceding/after said para. inserted (19.11.2009) by The National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009 (S.I. 2009/3006), **art. 2(9)**
- F4** Sch. 5 Pt. 2 para. A1: heading and following text inserted (13.4.2010) by virtue of The National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010 (S.I. 2010/1212), arts. 1, **3(2)**
- F5** Sch. 5 Pt. 2 para. A1: words inserted (11.2.2010) by The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248), arts. 1(2), **3(2)**
- F6** Sch. 5 Pt. 2 para. A1: words inserted (11.2.2010) by The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248), arts. 1(2), **3(3)(a)**
- F7** Sch. 5 Pt. 2 para. A1: words substituted (11.2.2010) by The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248), arts. 1(2), **3(3)(b)**
- F8** Word in Sch. 5 Pt. 2 para. A1(2) omitted (13.4.2010) by virtue of The National Assembly for Wales (Legislative Competence) (Transport) Order 2010 (S.I. 2010/1208), arts. 1(2), **3(2)(a)**
- F9** Sch. 5 Pt. 2 para. A1(2)(c) and word inserted (13.4.2010) by The National Assembly for Wales (Legislative Competence) (Transport) Order 2010 (S.I. 2010/1208), arts. 1(2), **3(2)(b)**
- F10** Words in Sch. 5 Pt. 2 para. A1(13)(c) substituted (13.4.2010) by The National Assembly for Wales (Legislative Competence) (Transport) Order 2010 (S.I. 2010/1208), arts. 1(2), **4(2)**

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- F11** Words in Sch. 5 Pt. 2 para. A1(14) inserted (13.4.2010) by The National Assembly for Wales (Legislative Competence) (Transport) Order 2010 (S.I. 2010/1208), arts. 1(2), **3(3)**
- F12** Sch. 5 Pt. 2 para. A1: words inserted (11.2.2010) by The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248), arts. 1(2), **3(3)(c)**
- F13** Sch. 5 Pt. 2 para. A1: words substituted (11.2.2010) by The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248), arts. 1(2), **3(3)(d)**
- F14** Sch. 5 Pt. 2 para. A1: words substituted (11.2.2010) by The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248), arts. 1(2), **3(3)(e)**
- F15** Words in Sch. 5 Pt. 2 para. A1(19) inserted (13.4.2010) by The National Assembly for Wales (Legislative Competence) (Transport) Order 2010 (S.I. 2010/1208), arts. 1(2), **3(4)**
- F16** Sch. 5 Pt. 2 para. A1: heading and following text inserted (13.4.2010) by virtue of The National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010 (S.I. 2010/1212), arts. 1, **3(3)**
- F17** Sch. 5 Pt. 2 para. A1: words inserted (11.2.2010) by The National Assembly for Wales (Legislative Competence) (Environment) Order 2010 (S.I. 2010/248), arts. 1(2), **3(4)**

### ***General restrictions]***

#### *Functions of Ministers of the Crown*

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

#### *Criminal offences*

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

#### *[<sup>F18</sup>Police areas*

##### **Textual Amendments**

- F18** Sch. 5 Pt. 2 para. 2A and cross-heading inserted (30.12.2007) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 235, 245(2), **Sch. 17 para. 3**

[<sup>F19</sup>2A A provision of an Assembly Measure cannot make any alteration in police areas.]

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### Textual Amendments

- F19** Sch. 5 Pt. 2 para. 2A and cross-heading inserted (30.12.2007) by Local Government and Public Involvement in [Health Act 2007 \(c. 28\)](#), ss. 235, 245(2), [Sch. 17 para. 3](#)

### *Enactments other than this Act*

- 3 <sup>F20</sup>(1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below—

TABLE

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

- <sup>F21</sup>(2) Sub-paragraph (1), so far as it applies in relation to sections 145, 145A and 146A(1) of the Government of Wales Act 1998, does not apply to a provision to which sub-paragraph (3) applies.

- (3) This sub-paragraph applies to a provision of an Assembly Measure which—
- is a provision relating to matter 14.1,
  - provides for the enforcement of a provision relating to matter 14.1 or is otherwise appropriate for making such a provision effective, or
  - is otherwise incidental to, or consequential on, such a provision.]

### Textual Amendments

- F20** Sch. 5 para. 3(1): Sch. 5 para. 3 renumbered as Sch. 5 para. 3(1) (22.5.2011) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, [Sch. 6 para. 4\(2\)\(a\)](#)
- F21** Sch. 5 para. 3(2), (3) inserted (22.5.2011) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, [Sch. 6 para. 4\(2\)\(b\)](#)

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

- 5 A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, any functions of the Comptroller and Auditor General<sup>F22</sup> or the National Audit Office].

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### Textual Amendments

**F22** Words in [Sch. 5 para. 5](#) inserted (1.4.2012) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, [Sch. 5 para. 27\(1\)](#); S.I. 2011/2576, art. 5

### *This Act*

- 6 (1) A provision of an Assembly Measure cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.
- [<sup>F23</sup>(2) Sub-paragraph (1) does not apply to—
- (a) sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78 and 156(2) to (5); or
  - (b) paragraph 8(3) of Schedule 2.]
- (3) Sub-paragraph (1) does not apply to any provision—
- (a) making modifications of so much of any enactment as is modified by this Act, or
  - (b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Assembly Measure.
- [<sup>F24</sup>(4) Sub-paragraph (1) does not apply in relation to any provision to which paragraph 3(3) applies.
- (5) But, subject to sub-paragraph (6), a provision to which paragraph 3(3) applies cannot modify, or confer power by subordinate legislation to modify, paragraph 3 of Schedule 8.
- (6) Sub-paragraph (5) does not prevent the conferral of functions on a committee of the Assembly that—
- (a) does not consist of or include any of the following persons—
    - (i) the First Minister or any person designated to exercise functions of the First Minister,
    - (ii) a Welsh Minister appointed under section 48,
    - (iii) the Counsel General or any person designated to exercise the functions of the Counsel General, or
    - (iv) a Deputy Welsh Minister, and
  - (b) is not chaired by an Assembly member who is a member of a political group with an executive role.]

### Textual Amendments

**F23** Sch. 5 Pt. 2 para. 6(2) substituted (11.2.2010) by [The National Assembly for Wales \(Legislative Competence\) \(Welsh Language\) Order 2010 \(S.I. 2010/245\)](#), arts. 1(2), [4\(2\)](#)

**F24** Sch. 5 para. 6(4)-(6) inserted (22.5.2011) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, [Sch. 6 para. 4\(3\)](#)

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