

EXPLANATORY MEMORANDUM TO
THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE
COMPETENCE) (HOUSING) ORDER 2009

2009 No.

1. This explanatory memorandum has been prepared by The Wales Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument adds to the legislative competence of the National Assembly for Wales. It does so by amending Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”), which sets out the matters in relation to which the National Assembly for Wales (“the Assembly”) may pass Assembly Measures, restrictions on the Assembly’s legislative competence, and exceptions to those restrictions.

2.2 This draft Order amends Part 1 of Schedule 5 by inserting a matter into field 11 (Housing) relating to the disposal by a social landlord of land held or used for housing purposes, and amends Parts 2 and 3 of that Schedule to insert a restriction and exception relevant to that matter.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1 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.

4.2 Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or an Order in Council, which has first been approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, by seeking an Order in Council.

- 4.3 The draft Order would confer further legislative competence on the National Assembly for Wales, in the field of Housing (field 11). The text of Schedule 5, as it stands at the time of laying, and with the matter, exception and restriction to be inserted by this draft Order set out in bold, is at the end of this explanatory memorandum.

5. Territorial Extent and Application

Although this instrument extends to the whole of the United Kingdom its practical application is limited to Wales as it amends provisions which will define the scope of the Assembly's legislative competence.

6. European Convention on Human Rights

Wayne David MP, Parliamentary Under Secretary of State for Wales, has made the following statement:

“In my view the provisions of The National Assembly for Wales (Legislative Competence) (Housing) Order 2009 are compatible with the Convention rights”

7. Policy background

- 7.1 New legislative powers in respect of the specified “matter” will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.
- 7.2 Housing has been a devolved subject area for many years and the Assembly Government has wide ranging powers under the Housing Act 1985 (as amended) and the Housing Act 1996 (as amended).
- 7.3 The Assembly Government's National Housing Strategy sets out a vision “that everyone should have the opportunity to live in good quality, affordable housing; be able to choose where they live and whether buying or renting is best for them and their families”. The Strategy seeks to focus on quality, choice and promoting sustainable home ownership.
- 7.4 The Assembly Government has already used its powers to make secondary legislation to develop a distinctive approach tailored to the particular circumstances of Wales which differ in significant respects from those in England. The previous Assembly approved a number of Statutory Instruments concerning Low Cost Home Ownership schemes (such as the Right to Buy and the Right to Acquire) to:
- a. reduce the maximum discount from £24,000 to £16,000

- b. extend the number of rural areas where restrictions may be placed on resale of former Right to Buy properties, and
- c. allow landlords a “right of first refusal” to repurchase properties offered for resale within 10 years of the original purchase under the Right to Buy/Acquire.

7.5 The Assembly Government has also taken action in a number of other areas concerning affordable housing. These include:

- a. revised Planning guidance on Affordable Housing and Joint Housing Land Availability Studies
- b. a local Housing Market Assessment Guide
- c. an Affordable Housing Toolkit (which identifies the full range of powers and tools available to local authorities and their partners to maximise the provision of affordable housing)
- d. increasing the Social Housing Grant programme by 72% over 4 years, and
- e. a protocol to encourage the disposal of surplus Assembly Government-owned land for affordable housing.

7.6 The proposal for these powers is also made in the context of the limitations to the current settlement, which in some respects restricts the Assembly Government from tackling Welsh priorities and issues. In a number of areas the Welsh Assembly Government’s existing powers are constrained. The main limit to the current arrangements is that the Assembly has no express statutory power to vary the qualification provisions of the Right to Buy and Right to Acquire in order to meet the particular housing needs of people and communities in Wales.

7.7 Over 70% of Wales can be regarded as rural in character. The Assembly Government has taken a number of actions to assist the development of affordable housing in rural areas including support for Rural Housing Enablers and Community Land Trusts. However, in some communities very few properties remain in the social housing stock. Almost 60% of properties in Powys and Ceredigion have been sold under the Right to Buy/Acquire.

7.8 Since the introduction of the Right to Buy (in 1980) and Right to Acquire (in 1997) over 140,000 dwellings have been purchased by tenants in Wales. This equates to almost half the original social housing stock (excluding any new builds). Although the immediate effect of a tenant exercising these rights is a change in tenure from tenant to owner-occupier, dwellings that would otherwise have become available for re-letting for social housing have been sold on the open

market. This has substantially reduced the amount of social housing available for rent by people in housing need. This is a particular problem in areas of housing pressure.

- 7.9 There were 1,525 Right to Buy claims during the year from July 2007 to June 2008. However, in the quarter from April to June 2008 1,581 households were homeless and in priority need while 2,874 households were in temporary accommodation (including Bed and Breakfast). Despite the actions outlined above, homelessness remains at a significant level while the size of the social housing stock continues to diminish.
- 7.10 To take further action concerning affordable housing, the Welsh Assembly Government believes that additional powers are required to enable the Assembly to legislate by Assembly Measure.
- 7.11 The "One Wales" programme of government of the Welsh Assembly Government includes a commitment to draw down legislative power to the Assembly in order to suspend the Right to Buy in areas of housing pressure.
- 7.12 This follows on from manifesto commitments put forward by both parties in the 2007 Assembly elections. The Labour manifesto contained a commitment to seek new legislative powers to be able to retain the pool of housing available for rent in areas of high housing need, as one measure to improve the availability of affordable housing. The Plaid Cymru manifesto contained a commitment to repeal the Right to Buy in housing hot spots where there is a shortage of rented accommodation.
- 7.13 The draft Order would confer legislative competence on the Assembly to enable it to pass Assembly Measures in a defined area of policy relating to disposal by a social landlord of land held or used for housing purposes. This would enable the Welsh Assembly Government to develop Welsh solutions to address Welsh priorities.
- 7.14 This draft Order has been prepared following scrutiny of the proposed Order to which this draft Order relates. The Proposed Affordable Housing Legislative Competence Order Committee of the National Assembly for Wales was established on 12 December 2007. It published its main report on 18 April 2008, and following revisions to the Order it published a supplementary report on 17 July 2008.
- 7.15 The Committee's main report made suggestions about the terminology in the document and requested that the Order should specifically refer to Registered Social Landlords. The majority of the Committee agreed that the legislative competence sought should be conferred on the Assembly, and recommended that the Order should have a broader scope including provisions relating to affordable housing more generally. The Committee also requested that the Assembly

Government consider how the planning system could support the expansion of affordable housing.

- 7.16 Following receipt of the Assembly Committee's main report, and with the agreement of the UK Government, revisions were made to the Order. These broadened the scope to include stock transfer, to amend the definition of social landlords; and to make some further technical changes.
- 7.17 The Welsh Assembly Government has recognised the need for planning policy to support measures to increase the supply of affordable housing. In addition to the actions set out in paragraph 8 above, the Assembly Government has recently requested that local authorities in Wales should prepare Affordable Housing Delivery Statements to bring together planning policy and housing delivery mechanisms. It is therefore considered that the requisite policies and powers are in place to use the planning system to deliver affordable housing.
- 7.18 The supplementary report of the Assembly Committee welcomed the redraft and the broadening of its scope but considered that this did not go far enough. However, the Welsh Assembly Government considers that the Order covers a defined area of competence which is sufficient to implement its current policy intent, while allowing some flexibility for future legislation.
- 7.19 The Welsh Affairs Committee published its report on the proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008 on 14 October 2008. It supported the aim of the proposed Order but made a number of recommendations the thrust of which was to restrict the legislative competence to implementation of the immediate policy intent.
- 7.20 The Committee recommended that abolition of the Right to Buy/Right to Acquire should be specifically excluded from the scope of the draft Order. The Committee also made a number of other recommendations to amend the Order to reflect the policy intention including:
 - a. that suspension should only apply in areas of extreme housing pressure, and not across the whole of Wales;
 - b. the period of suspension should be time limited; and
 - c. applicants should demonstrate measures to improve the long-term prospect of meeting housing need.
- 7.21 The Welsh Assembly Government and the UK Government have agreed that it remains appropriate for the scope of the legislative competence conferred on the Assembly to cover all disposals of land held or used for housing purposes by social housing landlords. This is

a discrete area of housing policy for which the Welsh Ministers already have executive responsibility. At the same time, power to abolish the Right to Buy was not an objective of the Welsh Assembly Government in seeking powers for the Assembly in relation to this area of policy. Amendments have been made in the draft Order in response to the Committee's recommendation to exclude abolition of the Right to Buy/Right to Acquire from its scope. The effect of these amendments is to limit the circumstances in which the Assembly could abolish the Right to Buy, to those where the Welsh Ministers and the Secretary of State are both in agreement. However the amendments do not limit the power of the Assembly to legislate in respect of the Right to Buy in ways which fall short of abolition, thus ensuring that the original purpose for which the powers were sought can be achieved. They would also allow the Assembly by Measure to disapply the Right to Buy in relation to particular types of property, such as new builds.

- 7.22 Other recommendations in the Committee's report, summarised in paragraph 23, relate to the detail of any proposal to suspend the Right to Buy, and therefore are considered to be more appropriate for the Assembly Government to address in the drafting of an Assembly Measure.
- 7.23 Three further changes have been made since the Order was considered by the Welsh Affairs Committee within article 2(1) of the Order (inserting Matter 11.1) in the definition of "social landlord":
 - 7.24 Firstly, a reference to providers of social housing registered under Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 has been added. This refers to a type of landlord introduced by the Act that would be based in England and registered by the Office for Tenants and Landlords, but which may have holdings in Wales.
 - 7.25 Secondly, a person to whom a grant has been paid under section 27A of the Housing Act 1996 has been inserted. This section has not yet been commenced, but relates to the payment of grant to landlords other than Registered Social Landlords and therefore the reference was added for completeness.
 - 7.26 Thirdly, reference to the Commission for New Towns has been removed. This body is in the process of abolition and holds no dwellings in Wales which would be subject to the Right to Buy.
- 7.27 The draft Order would amend Part 1 of Schedule 5 to the 2006 Act to insert a Matter under Field 11: housing. Matter 11.1 relates to the disposal by a social landlord of land held or used for housing purposes. For the purposes of matter 11.1, a disposal of land held or used for housing purposes includes, in particular, a disposal of land to which any of the following applies-

- a. a provision of Part 2 of the Housing Act 1985 (includes a disposal of land under section 32 (land held for housing purposes) and section 43 (disposals not within section 32) of the Housing Act 1985);
- b. a provision of Part 5 of the Housing Act 1985 (the Right to Buy);
- c. a provision of Chapter 2 of Part 1 of the Housing Act 1996 (includes disposal of land by a Registered Social Landlord and the right to acquire);
- d. a provision of Chapter 4 of Part 1 of the Housing Act 1996 (includes disposal of land by a Manager appointed under Part 1).

7.28 This would enable the Assembly to bring forward Measures under Part 3 of the 2006 Act relating to disposal by a social landlord of land held or used for housing purposes, in particular a disposal of land to which any of the provisions outlined in (a)-(d) above apply.

7.29 The draft Order amends Part 2 of Schedule 5 to the 2006 Act, which deals with general restrictions on the power of the National Assembly for Wales to pass Measures. The amendment would prevent a provision of an Assembly Measure from abolishing the Right to Buy or the Preserved Right to Buy under Part 5 of the Housing Act 1985 or abolishing the right to acquire under Chapter 2 of Part 1 of the Housing Act 1996 in Wales. Provision has been made so that the following is not to be taken to be abolition of such a right:

- a. Suspension of the right in particular circumstances;
- b. Modification of the right so that it ceases to apply in relation to particular classes of dwelling.

7.30 The scope of the Order therefore includes competence to suspend the Right to Buy, the Preserved Right to Buy and the Right to Acquire in areas of housing pressure in line with the commitment in the Welsh Assembly Government's programme of government.

7.31 The draft Order also amends Part 3 of Schedule 5 to the 2006 Act, which deals with exceptions from Part 2. If both the Secretary of State and the Welsh Ministers consent, an Assembly Measure is not prevented from abolishing the right to buy or the preserved right to buy under Part 5 of the Housing Act 1985 or abolishing the right to acquire under Chapter 2 of Part 1 of the Housing Act 1996.

7.32 The principal purpose, therefore, of this Order is to confer legislative competence on the Assembly to pass Measures under Part 3 of the 2006 Act that will give effect to policies of the Welsh Ministers aimed at improving the availability of "affordable housing" in Wales, except that the Right to Buy/Acquire and Preserved Right to Buy cannot be

abolished in Wales unless the Welsh Ministers and the Secretary of State consent to the provision. Improving the supply of affordable housing for both rent and purchase is an area of priority for the Welsh Assembly Government.

8. Consultation Outcome

8.1 There has been no consultation on this draft Order. However, it has been subject to pre-legislative scrutiny as described above, and both the Assembly Committee and Welsh Affairs Committee invited submissions of evidence as part of their inquiries. This draft Order is part of the Welsh Assembly Government's legislative programme as set out by the First Minister, the Rt Hon Rhodri Morgan AM, in his speech to the National Assembly for Wales on 6 June 2007.

8.2 Any Assembly Measure brought forward as a result of the legislative competence conferred by this instrument would usually first be subject to consultation. Assembly Measures are a matter for the National Assembly for Wales to consider.

9. Guidance

No guidance has been, or will be, issued in relation to this Order. This Explanatory Memorandum explains the scope and policy context of matters included in the draft Order.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it only confers legislative competence on the National Assembly for Wales, and so has no impact on business, charities or voluntary bodies.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

This draft Order confers legislative competence on the National Assembly for Wales. The monitoring or review of any Assembly Measures brought forward as a result of this legislative competence is primarily a matter for the Welsh Assembly Government and/or the National Assembly for Wales.

13. Contact

Queries about the content of the instrument or this memorandum should be addressed to Geth Williams (Tel:020 7270 0554 or email geth.williams@walesoffice.gsi.gov.uk)

James George (Tel: 02920 89 8484 or email james.george@walesoffice.gsi.gov.uk) can answer legal queries about the instrument.

Annex A

Proposed amendments as a result of this Order in Council

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

SCHEDULE 5

ASSEMBLY MEASURES

PART 1

MATTERS

Field 1: agriculture, fisheries, forestry and rural development

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Matter 5.1¹

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

Matter 5.2

¹ 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 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 5.4A²

The regulation of-

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

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

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

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 5.11³

Provision for and in connection with securing the provision of facilities for post-16 education or training.

Matter 5.12

Provision for and in connection with the establishment and dissolution of—

- (a) institutions concerned with the provision of further education, and
- (b) bodies that conduct such institutions,

including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.

Provision about—

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

³ Matters 5.11–5.16 were inserted by section 27(2) of the Further Education and Training Act 2007 (c.25).

- (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*⁴

The inspection of—

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

Matter 5.16

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*⁵

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.

⁴ Matters 5.15 and 5.16 were amended by section 149(1) and (3) to (5) of the Education and Skills Act 2008 (c.25).

⁵ 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)

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

*Matter 5.18*⁶

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*⁷

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;
- (c) education or training suitable to the requirements of persons who are of or below compulsory school age.

“post-16 training” means—

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

⁶ Matter 5.18 was inserted by National Assembly for Wales (Legislative Competence)(Social Welfare and other Fields) Order 2008 (S.I. 2008/3132).

⁷ 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; and were amended by section 149(1) and (6) of the Education and Skills Act 2008.

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 9.1⁸

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

Matter 10.1⁹

⁸ 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.

⁹ Matter 10.1 and the interpretation provisions for field 10 were inserted by Section 122 of the Local Transport Act 2008 (c.26).

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 other motor vehicles on Welsh trunk roads;
- b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

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

Interpretation of this field

In this field—

“motor vehicle” has the meaning given in section 185(1) of the Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) applies as it applies for the purposes of the Road Traffic Acts;

“road” has the same meaning as in the Road Traffic Regulation Act 1984;

“Welsh trunk road” means a road for which the Welsh Ministers are the traffic authority (within the meaning of section 121A of the Road Traffic Regulation Act 1984).”.

Field 11: housing

Matter 11.1

Disposal by a social landlord of held land held or used for housing purposes.

For the purposes of this matter, a disposal of land held or used for housing purposes includes, in particular, a disposal of land which any of the following applies—

- (a) a provision of Part 2 of the Housing Act 1985;**
- (b) a provision of Part 5 of the Housing Act 1985;**
- (c) a provision of Chapter 2 of Part 1 of the Housing Act 1996;**
- (d) a provision of Chapter 4 of Part 4 of the Housing Act 1996.**

Interpretation of this field

In this field “social landlord” means any of the following—

- (a) a county council or county borough council in Wales;**
- (b) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981;**
- (c) a housing action trust established under section 62 of the Housing Act 1988;**
- (d) a housing association within the meaning of section 5 of the Housing Act 1985;**
- (e) a housing trust within the meaning of section 6 of the Housing Act 1985;**
- (f) a housing co-operative within the meaning of section 27B of the Housing Act 1985;**
- (g) an urban development corporation established under section 135 if the Local Government, Planning and Land Act 1980;**
- (h) the Welsh Ministers;**
- (i) a social landlord registered under Chapter 1 of Part 1 of the Housing Act 1996;**
- (j) a provider of social housing registered under Chapter 3 of Part 2 of the Housing and Regeneration Act 2008;**
- (k) a manager appointed under Chapter 4 of Part 1 of the Housing Act 1996;**
- (l) a person to whom a grant has been paid under section 27A of the Housing Act 1996.**

Field 12: local government

Matter 12.1¹⁰

Provision for and in connection with—

- (e) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (f) 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—

¹⁰ 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, paragraphs 1 and 2.

- (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*¹¹

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

*Matter 15.2*¹²

Functions of public authorities relating to—

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

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

Matter 15.3

Adoption services and special guardianship support services.

Matter 15.4

Fostering.

Matter 15.5

Social care services for any of the following—

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after—
- (e) who have attained the age of 25, and
- (f) 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—

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;

¹¹ Matter 15.1 was inserted by article 2 of the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 (S.I. 2008/1785).

¹² Matters 15.2 – 15.8 were inserted by National Assembly for Wales (Legislative Competence)(Social Welfare and other Fields) Order 2008.

- (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 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 person 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 field¹³

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;

¹³ Interpretation provisions for field 15 were inserted by the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008 and National Assembly for Wales (Legislative Competence)(Social Welfare and other Fields) Order 2008.

“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; information, advice, counselling or advocacy services; or any other assistance;

“vulnerable children” means children—

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

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

- (a) 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.

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

*Field 16: sport and recreation*¹⁴

Matter 16.1

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

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

¹⁴ Matter 16.1 was inserted by National Assembly for Wales (Legislative Competence)(Social Welfare and other Fields) Order 2008.

Field 15.

Field 17: tourism

Field 18: town and country planning

Matter 18.1¹⁵

Provision for and in connection with-

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

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

Matter 18.2

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

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

Matter 18.3

Provision for and in connection with-

- (a) plans of local planning authorities in relation to the development and use of land in their areas, and
- (b) removing requirements for any such plans.

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

Interpretation of this field

In this field-

“local planning authority” in relation to an area means-

- (a) a National Park authority, in relation to a National Park in Wales;
- (b) a county council in Wales or a county borough council, in any other case;

¹⁵ Matters 18.1 to 18.3 and the interpretation provisions for field 18 were inserted by section 202 of the Planning Act 2008 (c.21).

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

Field 19: water and flood defence

Field 20: Welsh language

EXCEPTIONS TO MATTERS¹⁶

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

TABLE – Highways and transport

Column 1 Exceptions	Column 2 Matters to which the exceptions relate
1. The regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used.	Matters 5.10, 5.17, 5.18
2. Road traffic offences.	Matters 5.10, 5.17, 5.18
3. Driver licensing.	Matters 5.10, 5.17, 5.18
4. Driving instruction.	Matters 5.10, 5.17, 5.18
5. Insurance of motor vehicles.	Matters 5.10, 5.17, 5.18
6. Drivers’ hours.	Matters 5.10, 5.17, 5.18
7. Traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.	Matters 5.10, 5.17, , 5.18
8. Public service vehicle operator licensing.	Matters 5.10, 5.17, 5.18
9. The provision and regulation of railway services, apart from financial assistance which— (a) does not relate to the carriage of goods, (b) is not made in connection with a railway administration order, and (c) is not made in connection with Council Regulation (EEC) 1191/69 as amended by Council Regulation (EEC) No. 1893/91 on public service obligations in transport.	Matters 5.10, 5.17, 5.18

¹⁶ The tables of exceptions were inserted by the National Assembly for Wales (Legislative Competence)(Social Welfare and other Fields) Order 2008.

10. Transport security.	Matters 5.10, 5.17, 5.18
11. Shipping, apart from financial assistance for shipping services to, from or within Wales.	Matters 5.10, 5.17, 5.18
12. Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.	Matters 5.10, 5.17, 5.18
13. Technical and safety standards of vessels.	Matters 5.10, 5.17, 5.18
14. Harbours, docks, piers and boatslips apart from those used or required wholly or mainly for communication between places in Wales.	Matters 5.10, 5.17, 5.18
15. Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.	Matters 5.10, 5.17, 5.18

TABLE – Social welfare

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

and Co-operation in respect of Intercountry Adoption.	
10. The Children’s Commissioner established under the Children Act 2004.	Matters 15.2, 15.3, 15.4, 15.5, 15.8
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.	Matters 15.2, 15.3, 15.4, 15.5
12. Welfare foods	Matters 15.2, 15.5, 15.6, 15.8

PART 2

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.

*Police Areas*¹⁷

2A A provision of an Assembly Measure cannot make any alteration in police areas.

Housing

2B (1) A provision of an Assembly Measure cannot abolish any of the following-

- (a) the right to buy under section 118 of the Housing Act 1985;**
- (b) the preserved right to buy under section 171A of the Housing Act 1985;**
- (c) the right to acquire under section 16 of the Housing Act 1996.**

(2) For the purposes of this paragraph, neither of the following is to be taken to be abolition of such a right-

- (a) suspension of the right in particular circumstances;**
- (b) modification of the right so that it ceases to apply in relation to particular classes of dwelling.**

(3) In this paragraph “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it.

Enactments other than this Act

3 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)

¹⁷ Paragraph 2A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 3.

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

- 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.

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.
- (2) Sub-paragraph (1) does not apply to sections 20, 22, 24, 36(1) to (5) and (7) to (11), 53, 54 and 156(2) to (5).
- (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.

PART 3

EXCEPTIONS FROM PART 2

Functions of Ministers of the Crown

- 7 Part 2 does not prevent a provision of an Assembly Measure removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of a Minister of the Crown if the Secretary of State consents to the provision.

*Police areas*¹⁸

- 7A Part 2 does not prevent a provision of an Assembly Measure making an alteration to the boundary of a police area in Wales if the Secretary of State consents to the provision.

Housing

- 7B (1) If sub-paragraph (2) applies, Part 2 does not prevent a provision of an Assembly Measure from abolishing any of the following—**
(a) the right to buy under section 118 of the Housing Act 1985;
(b) the preserved right to buy under section 171A of the Housing Act 1985;
(c) the right to acquire under section 16 of the Housing Act 1996.
(2) This sub-paragraph applies if both the Welsh Ministers and the Secretary of State consent to the provision.

Comptroller and Auditor General

- 8 Part 2 does not prevent a provision of an Assembly Measure modifying, or conferring power by subordinate legislation to modify, any enactment relating to the Comptroller and Auditor General if the Secretary of State consents to the provision.

Restatement

- 9 Part 2 does not prevent a provision of an Assembly Measure—
(a) restating the law (or restating it with such modifications as are not prevented by that Part), or
(b) repealing or revoking any spent enactment,
or conferring power by subordinate legislation to do so.

Subordinate legislation

- 10 Part 2 does not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, an enactment for or in connection with any of the following purposes—

¹⁸ Paragraph 7A was inserted by the Local Government and Public Involvement in Health Act 2007, section 235 and Schedule 17, paragraphs 1 and 4.

- (a) making different provision about the document by which a power to make, confirm or approve subordinate legislation is to be exercised,
- (b) making provision (or no provision) for the procedure, in relation to the Assembly, to which legislation made in the exercise of such a power (or the instrument or other document in which it is contained) is to be subject, and
- (c) applying any enactment comprised in or made under an Assembly Measure relating to the documents by which such powers may be exercised.

*Data Protection Act 1998*¹⁹

- 11 Part 2 does not prevent an Assembly Measure making modifications of, or conferring power by subordinate legislation to make modifications of, section 31(6) of the Data Protection Act 1998 so that it applies to complaints under any Assembly measure relating to matter 9.1 in Part 1.

¹⁹ Paragraph 11 was inserted by article 4 of the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007.

