
DRAFT STATUTORY INSTRUMENTS

2009 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative Competence)
(Welsh Language) Order 2009**

Made - - - - []

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the day of 2009

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 and shall come into force on the day after the day on which it is made.

Amendments to the Government of Wales Act 2006

2.—(1) Section 94 of the Government of Wales Act 2006 is modified in accordance with this article.

(2) Paragraph (b) of subsection (6) does not prevent the repeal of any provision of the Welsh Language Act 1993(b) from having the same extent as the repealed provision.

(a) 2006 c.32.
(b) 1993 c.38

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

(2) In field 20 (Welsh language), insert—

“Matter 20.1

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

- (a) public authorities;
- (b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;
- (c) persons providing services to the public established by an enactment or prerogative instrument;
- (d) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- (e) persons providing services to the public who receive public money amounting to £200,000 or more in a financial year;
- (f) persons overseeing the regulation of a profession, industry or other similar sphere of activity;
- (g) social landlords within the meaning of field 11;
- (h) persons providing the public with the following kinds of services or with other services which relate to any of those services—
 - (i) gas, water or electricity services (including supply, production, transmission or distribution);
 - (ii) sewerage services (including disposal of sewage);
 - (iii) postal services and post offices;
 - (iv) telecommunication services;
 - (v) education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance);
 - (vi) railway services;
 - (vii) services to develop or award educational or vocational qualifications;
- (i) persons opting or agreeing to be subject to the imposition of the duties.

With regard to imposing duties in relation to paragraph (b), this matter only includes duties in respect of services to the public provided under an agreement, or in accordance with arrangements, made with a public authority.

With regard to imposing duties in relation to paragraph (h), this matter only includes duties in respect of the services mentioned.

Matter 20.2

Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).

Interpretation of this field

In this field—

“enactment” includes any future enactment;

“postal services” means the service of conveying letters, parcels, packets or other articles from one place to another by post and the incidental services of receiving, collecting, sorting and delivering such articles;

“public authority” means each public authority within the meaning of section 6 of the Human Rights Act 1998;

“public money” means—

- (a) moneys made available directly or indirectly by—
 - (i) the National Assembly for Wales;
 - (ii) the Welsh Ministers;
 - (iii) Parliament;
 - (iv) Ministers of the Crown; or
 - (v) an institution of the European Communities;
- (b) moneys provided by virtue of any enactment;

“telecommunications services” means any service that consists of providing access to, or facilities for making use of, any system which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical, magnetic or electro-magnetic energy (including the apparatus comprised in the system), but does not include broadcasting, radio, or television.”

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

(2) For paragraph 6(2) substitute—

“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.”

5.—(1) Part 3 of Schedule 5 to the 2006 Act is modified in accordance with this article.

(2) Renumber the existing paragraph 7 as 7(1) and insert the following new sub-paragraph 7(2)—

“(2) Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be enforced against Ministers of the Crown by means of criminal offences.”

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 for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act (as amended by this Order).

Article 2 modifies the effect of section 94(6)(b) of the 2006 Act. This ensures that any future repeal of provisions of the Welsh Language Act 1993 will not be prevented from having the same extent as the provisions repealed.

Article 3 inserts matters 20.1 and 20.2 as well as interpretation provisions into field 20 (Welsh Language) of Part 1 of Schedule 5 to the 2006 Act.

Matter 20.1 is about promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality, but does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than—

- (a) public authorities;
- (b) persons who provide services to the public under agreements, or in accordance with arrangements, made with public authorities;
- (c) persons providing services to the public and established by an enactment or prerogative instrument;
- (d) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- (e) persons providing services to the public who receive public money amounting to £200,000 or more in a financial year;
- (f) persons who oversee the regulation of a profession, industry or other similar sphere of activity;
- (g) social landlords;
- (h) persons providing the public with the following services, or connected services—
 - (i) gas, water or electricity services (which includes supply, production, transmission or distribution);
 - (ii) sewerage services (which includes disposing of sewage);
 - (iii) postal services and post offices;
 - (iv) telecommunications services;
 - (v) education, training or career guidance (including services that encourage, enable or assist participation in education, training or career guidance);
 - (vi) railway services;
 - (vii) services to develop or award educational or vocational qualifications;
- (i) persons who opt or agree to be subject to the imposition of duties.

Duties imposed in relation to paragraph (b) are limited to duties in respect of services to the public that are provided under an agreement or in accordance with arrangements made with a public authority.

Duties imposed in relation to paragraph (h) are limited to duties in respect of the services mentioned (and connected services).

Matter 20.2 is about the freedom of persons who wish to use the Welsh language to do so with one another, and includes any limitations upon that freedom.

Article 4 inserts a provision that modifies paragraph 6(2) of Part 2 of Schedule 5 to the 2006 Act to add sections 35(1), 78 and paragraph 8(3) of Schedule 2 to the list of sections of the 2006 Act which may be modified by Assembly Measure or by subordinate legislation made under a Measure.

Article 5 inserts provision that modify paragraph 7 of Part 3 of Schedule 5 to the 2006 Act. Paragraph 7 is renumbered as 7(1) and a new sub-paragraph 7(2) is inserted. The new sub-paragraph 7(2) provides that Part 2 will not prevent a provision of an Assembly Measure relating to matters 20.1 or 20.2 from conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to that provision, but also provides that such functions may not be enforced against Ministers of the Crown by means of criminal offences.

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