

2007 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**National Assembly for Wales (Legislative Competence)
(Conversion of Framework Powers) Order 2007**

Made - - - - - 2007

Laid before Parliament 2007

Coming into force in accordance with article 1(2)

Whereas the draft of this Order has been laid before, and approved by the National Assembly for Wales:

Now, therefore, Her Majesty, in pursuance of paragraph 31(2) and (4) of Schedule 11 to the Government of Wales Act 2006(a), is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows—

Citation, commencement and interpretation

- 1.**—(1) This Order may be cited as the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007.
- (2) This Order shall come into force immediately after the end of the initial period.
- (3) In this Order “the Schedule” means Schedule 5 to the Government of Wales Act 2006.

Certain functions of Assembly not to be transferred to Welsh Ministers

- 2.** The functions conferred on the National Assembly for Wales by the following provisions are not to be transferred to the Welsh Ministers—
- (a) sections 178 and 179 of the Education and Inspections Act 2006(b) (framework powers);
- (b) section 17 of the NHS Redress Act 2006(c) (framework powers).

Amendments to Part 1 of the Schedule: matters

- 3.**—(1) Part 1 of the Schedule is amended as follows.
- (2) In field 5 (education and training), insert—

“Matter 5.1

(a) 2006 c.32.
(b) 2006 c.40
(c) 2006 c.44

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

Provision about the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it.

This does not include provision about 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.

Interpretation of this field

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

- (3) In field 9 (health and health services), insert—

“Matter 9.1

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 of illness or the care or treatment of any patient.”.

Amendments to Part 3 of the Schedule: exceptions from Part 2

4. After paragraph 10, insert—

“Data Protection Act 1998

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.”.

Repeals

5. The following provisions are repealed—

- (a) sections 178 and 179 of the Education and Inspections Act 2006, and
- (b) section 17 of the NHS Redress Act 2006.

Alex Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

Section 17 of the NHS Redress Act 2006 (c.44) and sections 178 and 179 of the Education and Inspections Act 2006 (c.40) conferred framework powers on the National Assembly for Wales constituted by the Government of Wales Act 1998 (c.38) (“the current Assembly”).

Those provisions were founded on the principles set out in the Wales Office’s White Paper: *Better Governance for Wales (Cm 6582)*, which was presented to Parliament on 15th June 2005. The White Paper contained the Government’s proposals for developing the devolution settlement in Wales. It confirmed the Government’s intention, in the first phase of that development, to draft primary legislation relating to Wales “to delegate to the Assembly the maximum discretion in making its own provisions using secondary legislative powers” (see paragraph 1.24).

Section 17 of the NHS Redress Act 2006 conferred on the current Assembly a wide power to make regulations for the purpose of enabling redress to be provided (otherwise than by civil proceedings) in respect of personal injury or loss arising in connection with the diagnosis of illness, or the care or treatment of any patient as part of the health service in Wales.

Sections 178 and 179 of the Education and Inspections Act 2006 conferred on the current Assembly a wide power to make regulations applying to Wales in respect of: categories of maintained school; establishment, discontinuance and alteration of maintained schools; school admissions; the curriculum in maintained schools; attendance, discipline and exclusion; entitlement to education and training, and services to encourage, support or assist young people with regards to education and training; travel of persons receiving education and training; and food and drink provided for children.

Those provisions contained limitations and restrictions that are appropriate in the context of the devolution settlement applying to the current Assembly.

The purpose of this Order is, in pursuance of paragraph 31(2) and (4) of Schedule 11 to the Government of Wales Act 2006 (c.32), to make provision, by amending Schedule 5 to that Act, so that the National Assembly for Wales constituted by that Act (“the new Assembly”) will be able to pass Assembly Measures that are about any of the matters covered by the framework powers.

Part 3 of the Government of Wales Act 2006 sets out provisions about the legislative competence of the new Assembly to pass Assembly Measures. Schedule 5 to that Act lists the fields in which the Assembly may be granted such legislative competence by the insertion of matters. Assembly Measures are enacted by being passed by the new Assembly and approved by Her Majesty in Council.