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**2010 No.**

**CONSTITUTIONAL LAW**

**DEVOLUTION, WALES**

**The National Assembly for Wales (Legislative Competence)  
(Education) Order 2010**

*Made*   -   -   -   -

*Coming into force in accordance with Article 1*

At the Court at Buckingham Palace, the    day of    2010

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 sections 95(1) and 157(2) 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) (Education) Order 2010 and comes into force on the day after the day on which it is made.

**Amendments relating to the field of education and training**

2.—(1) Field 5 (education and training) of Part 1 of Schedule 5 to the Government of Wales Act 2006(b) is amended as follows.

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(a) 2006 c. 32.

(b) Matters 5.1 to 5.10 were inserted in Field 5 by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007 (S.I. 2007 No. 910); Matter 5.10 was amended by the National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 (S.I. 2008 No. 1036) and the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (S.I. 2008 No. 3132). Matter 5.4A was inserted by section 149 of the Education and Skills Act 2008 (c. 25). Matters 5.11 to 5.16 were inserted by section 27 of the Further Education and Training Act 2007 (c. 25); Matters 5.15 and 5.16 were amended by section 149 of the Education and Skills Act 2008. Matter 5.17 was inserted by S.I. 2008 No. 1036; Matter 5.17 was amended by S.I. 2008 No. 3132. Matter 5.18 was inserted by S.I. 2008 No. 3132.

(2) After Matter 5.2 insert —

*“Matter 5.2A*

Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.

*Matter 5.2B*

Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities.

*Matter 5.2C*

The following activities by persons or bodies with functions relating to schools maintained by local authorities—

- (a) establishment of bodies to do all or any of the following—
  - (i) carry out activities relating to education or training,
  - (ii) exercise education functions on behalf of local authorities;
- (b) involvement with bodies mentioned in paragraph (a).”

### **Transitory provision**

**3.**—(1) During any period in which an order to which paragraph (2) below applies is not in force—

- (a) the references to “local authorities” in the Matters inserted in Field 5 of Part 1 of Schedule 5 to the Government of Wales 2006 by Article 2 of this Order are to be read as references to “local education authorities”, and
- (b) the reference to “education” in paragraph (a)(ii) of Matter 5.2C of those Matters is to be ignored.

(2) This paragraph applies to an order which—

- (a) is made under subsection (1) of section 162 of the Education and Inspections Act 2006<sup>(a)</sup> and contains provision by virtue of paragraph (a) of that subsection<sup>(b)</sup>, and
- (b) relates to Field 5 of Part 1 of Schedule 5 to the Government of Wales Act 2006.

*Name*  
Clerk of the Privy Council

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(a) 2006 c. 40.

(b) That paragraph confers power to replace statutory references to local education authorities with references to local authorities.

## **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”). It does this by adding new matters to the field of education and training contained within Schedule 5 to the 2006 Act. Subject to general limitations on the legislative competence of the National Assembly for Wales, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act, an Assembly Measure may make provision that relates to the matters contained in the fields set out in Schedule 5 to the 2006 Act.

Article 2 inserts matters 5.2A to 5.2C into field 5 (education and training) of Part 1 of Schedule 5 to the 2006 Act.

Matter 5.2A comprises the conduct and governance of schools maintained by local authorities in Wales. It includes the allocation of functions, property, rights and liabilities that relate to such schools. While this aspect of the Matter would allow a Measure to transfer to new bodies functions relating to maintained schools, it would not of itself permit a Measure to alter the nature of those functions. For example, a Measure under this Matter could transfer functions of a school governing body relating to staffing, but could not otherwise change the nature of those functions. It could not, for instance, provide for amendment of the provisions of the School Teachers Pay and Conditions document.

Matter 5.2B concerns collaboration between persons and bodies responsible for schools maintained by local authorities in Wales.

Matter 5.2C is about the establishment of bodies by persons with functions relating to schools maintained by local authorities in Wales.

Article 3 contains transitory provision to take account of the fact that the Matters inserted in the 2006 Act by this Order are drafted in anticipation of the replacement of statutory references to “local education authority” with references to “local authority” by an order made under section 162 of the Education and Inspections Act 2006. In the event that such an order is not in force when this Order is made, this Order’s references to “local authorities” are to be read as references to “local education authorities” until such time as such an order is in force.

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