

MEMORANDWM GAN Y DIRPRWY WEINIDOG DROS IECHYD A GWASANAETHAU CYMDEITHASOL

CYFRAITH GYFANSODDIADOL: DATGANOLI, CYMRU

Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Rhif 4) 2008

Cynnig ar gyfer Gorchymyn Cymhwysedd Deddfwriaethol mewn perthynas â Chodi Tâl am Ofal Cymdeithasol Dibreswyl (Gofal Cartref)

Cyflwyniad

1. Cafodd y Memorandwm hwn ei baratoi a'i osod yn unol â Rheol Sefydlog (SO) 22.14. Mae'n nodi cefndir y darpariaethau yng Ngorchymyn Cymhwysedd Deddfwriaethol arfaethedig y llywodraeth sydd wedi'i atodi, a fyddai'n trosglwyddo cymhwysedd deddfwriaethol ychwanegol i Gynulliad Cenedlaethol Cymru. Caiff ei osod yn unol ag SO 22.13 ac mae'n esbonio cwmpas y pŵer y gofynnir amdano.
2. Mae cyd-destun cyfansoddiadol y cais hwn wedi'i nodi yn Neddf Llywodraeth Cymru 2006 (Deddf 2006) a pholisi Llywodraeth y DU. Roedd Papur Gwyn Llywodraeth y DU, sef "Trefn Lywodraethu Well i Gymru", a gyhoeddwyd ym mis Mehefin 2005, yn nodi ymrwymiad Llywodraeth y DU i gynyddu pwerau deddfwriaethol Cynulliad Cenedlaethol Cymru fel corff sy'n cael ei ethol yn ddemocrataidd â'i weithdrefnau craffu manwl ei hun.
3. Mae adran 95 Deddf 2006 yn rhoi grym i'w Mawrhydi, drwy Orchymyn yn y Cyfrin Gyngor, i roi cymhwysedd i Gynulliad Cenedlaethol Cymru ddeddfu drwy Fesur Cynulliad ar faterion penodol. Gellir ychwanegu'r materion hyn at Feysydd yn Atodlen 5 i Ddeddf 2006. Gall Mesurau Cynulliad wneud unrhyw ddarpariaeth a allai gael ei gwneud drwy Ddeddf Seneddol (ac felly gall addasu'r ddeddfwriaeth bresennol a gwneud darpariaeth newydd) mewn perthynas â materion, yn amodol ar y cyfyngiadau y darperir ar eu cyfer yn Rhan 3 Deddf 2006. Cyfeirir at Orchymyn yn y Cyfrin Gyngor o dan adran 95 Deddf 2006 fel Gorchymyn Cymhwysedd Deddfwriaethol yn y memorandwm hwn.
4. Gellir gosod materion yn y meysydd yn Atodlen 5 i Ddeddf 2006, naill ai drwy Ddeddf Seneddol neu Orchymyn Cymhwysedd Deddfwriaethol, a gymeradwyir gan y Cynulliad a dau Dŷ'r Senedd. Mae'r ail lwybr yn galluogi'r Cynulliad i ddechrau'r broses i drosglwyddo cymhwysedd o'r fath, drwy Orchymyn Cymhwysedd Deddfwriaethol.

5. Byddai'r Gorchymyn Cymhwysedd Deddfwriaethol arfaethedig yn trosglwyddo mwy o gymhwysedd deddfwriaethol i Gynulliad Cenedlaethol Cymru ym maes Lles Cymdeithasol (maes 15 yn Atodlen 5 i Ddeddf 2006). Mae copi o Atodlen 5 i'w weld yn Atodiad A. Mae'n dangos y cymhwysedd deddfwriaethol y mae'r Cynulliad wedi ei ennill hyd yn hyn a'r ffordd yr enillwyd y cymhwysedd hwnnw.

Cefndir

6. Bydd pwerau deddfwriaethol newydd o ran y 'mater' dan sylw yn galluogi Llywodraeth Cynulliad Cymru, Aelodau'r Cynulliad a Phwyllgorau'r Cynulliad i ddatblygu cynigion ar gyfer deddfwriaeth ar ffurf Mesurau sy'n seiliedig ar flaenoriaethau ac amserlenni Cymru. Bydd y Cynulliad yn craffu ar y Mesurau hyn yn drylwyr ac yn eu cymeradwyo.
7. Mae darparu gwasanaethau cymdeithasol, gan gynnwys codi tâl am wasanaethau, yn fater sydd wedi'i ddatganoli. Swyddogaeth i awdurdodau lleol yw asesu'r angen am wasanaethau cymdeithasol, fel y'i diffinnir yn adran 1 Deddf Gwasanaethau Cymdeithasol Awdurdodau Lleol 2007, a darparu'r gwasanaethau hyn. Cafodd pwerau'r Ysgrifennydd Gwladol o dan Ddeddf 1970 eu datganoli drwy Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 a Gweinidogion Cymru sy'n gyfrifol am gyhoeddi cyfarwyddiadau a chanllawiau i awdurdodau lleol o ran arfer eu swyddogaethau gwasanaethau cymdeithasol. Mae Gweinidogion Cymru hefyd yn gyfrifol am reoleiddio a gorchwyllo'r ddarpariaeth gofal cymdeithasol o ran amryw ddarnau o deddfwriaeth gofal cymdeithasol, gan gynnwys Deddf Safonau Gofal 2000 a Deddf Iechyd a Gofal Cymdeithasol (Iechyd Cymunedol a Safonau) 2003.
8. Ym mis Chwefror 2007, cyhoeddodd Llywodraeth Cynulliad Cymru ei strategaeth ddeng mlynedd ar gyfer Gwasanaethau Cymdeithasol yng Nghymru, sef "Bywydau Bodlon, Cymunedau Cefnogol". Mae'n nodi sut y bydd gwasanaethau cymdeithasol modern yn cyfrannu at Gymru well ac at wella bywydau'i dinasyddion. Mae hefyd yn pwysleisio'r angen am wasanaethau modern, hygyrch ac adweithiol, sy'n cael eu darparu i safon uchel mewn modd hyblyg, cyson a chynaliadwy ar draws ffiniau sefydliadol.
9. Mae'n rhagweld y bydd mwy o bwyslais yn cael ei roi ar gymorth yn y cartref a gwasanaethau ataliol yn hytrach nag ar ofal preswyl. Felly mae'r cais hwn am gymhwysedd deddfwriaethol yn deillio o'r angen i sicrhau bod trefniadau awdurdodau lleol i godi tâl am wasanaethau cymdeithasol yn cefnogi'r strategaeth hon.
10. O dan delerau adran 17 "Deddf Iechyd a Gwasanaethau Cymdeithasol a Dyfarniadau Nawdd Cymdeithasol 1983" (HASSASSA) ynghylch a ddylid codi tâl, a faint o dâl y dylid ei godi, cyfrifoldeb awdurdodau lleol

unigol yw gwneud penderfyniad ar wasanaethau cymdeithasol dibreswyl. Mae hyn wedi arwain at amrywiadau sylweddol o ran codi tâl am wasanaethau cyfatebol.

11. Mae defnyddwyr gwasanaethau, gofalwyr a'u cynrychiolwyr yn pryderu ynghylch y ffaith bod y costau sy'n cael eu pennu yn aml yn rhy uchel a bod modd i wahanol awdurdodau lleol bennu symiau gwahanol ar gyfer gwasanaethau tebyg, sy'n arwain at anghydraddoldeb ac ansicrwydd i'r grwpiau hyn. Mae hefyd anghysondeb yn y ffordd y caiff budd-daliadau a/neu wariant sy'n gysylltiedig ag anabledd eu trin yn asesiad yr unigolyn.
12. Hefyd gwneir y cais hwn am gymhwysedd deddfwriaethol yng nghydestun cyfyngiadau ar y setliad cyfredol sydd, mewn rhai achosion, yn cyfyngu ar allu Llywodraeth Cynulliad Cymru i fynd i'r afael â blaenoriaethau a materion Cymru. Er bod modd i Lywodraeth y Cynulliad ddarparu canllawiau statudol i awdurdodau lleol o dan adran 7 Deddf Gwasanaethau Cymdeithasol Awdurdodau Lleol ynghylch arfer eu trefniadau codi tâl, mae'r effaith y mae hyn yn ei chael wedi cael ei chyfyngu.
13. Gan ddefnyddio'r pwerau yn adran 7, cyhoeddodd Llywodraeth Cynulliad Cymru y canllawiau "Codi Tâl Tecach" i awdurdodau lleol yn 2002 mewn ymgais i fynd i'r afael â rhai o'r problemau o ran yr amrywiaeth eang mewn polisïau codi tâl a weithredir yng Nghymru. Maent yn parhau i gynnig arfer da yn bennaf heblaw am bedair elfen allweddol statudol ac sy'n sicrhau bod gan ddefnyddwyr lefel incwm gwarantedig ar ôl i dâl gael ei godi.
14. Mae adran 7 felly'n ffordd o gyhoeddi canllawiau cyffredinol yn y maes hwn. Fodd bynnag, pe bai Llywodraeth y Cynulliad yn cyhoeddi canllawiau cynhwysfawr pellach o dan adran 7 mewn perthynas â chodi tâl am ofal cymdeithasol dibreswyl, byddai angen sicrhau nad oedd yn amharu ar hawl sylfaenol awdurdodau lleol i godi tâl am wasanaethau penodol ac adfer taliadau sy'n rhesymol yn eu tyb hwy, fel y nodir yn adran 17 HASSASSA. Felly ni fyddai modd creu polisi sy'n ceisio creu mwy o gysondeb, er enghraifft drwy bennu uchafswm costau neu gostau safonol, drwy ddefnyddio pwerau adran 7. I'r perwyl hwn, nid yw pwerau gweithredol presennol Gweinidogion Cymru yn ddigonol i'w galluogi i sicrhau dull gweithredu tecach, mwy cyson.
15. Yn ogystal â chyhoeddi'r canllawiau "Codi Tâl Tecach", ym mis Chwefror 2006, cyhoeddodd y cyn-Weinidog dros lechyd a Gwasanaethau Cymdeithasol becyn o fesurau i leihau effaith codi tâl am ofal cymdeithasol dibreswyl i bobl anabl a phobl hŷn, ac ystod o fentrau i wella ansawdd a nifer y gwasanaethau hynny i'r rhai sy'n eu derbyn a'u gofalwyr. Cyhoeddodd hefyd ymrwymiad parhaus i "adolygu trefniadau codi tâl am ofal cartref a gwneud diwygiadau pan fydd cyfle i wneud hynny".
16. Felly er bod Llywodraeth y Cynulliad wedi cymryd camau i leddfu

effaith codi tâl, mae datblygiadau eraill yn y dyfodol yn awgrymu y bydd angen cymryd mwy o gamau ar godi tâl:

- a. Mae pwysau cynyddol ar wasanaethau, gyda chyllidebau'n cynyddu'n arafach nag yn y blynyddoedd diweddar, yn debygol o olygu y bydd awdurdodau lleol unigol yn teimlo mwy o gymhelliant i godi costau mewn ffyrdd sy'n debygol o ymestyn yr anghysondebau presennol;
 - b. O ganlyniad i "Cyflawni Ar Draws Ffiniau", sef fframwaith Llywodraeth y Cynulliad ar gyfer gwasanaethau cyhoeddus yng Nghymru, mae'n debygol y bydd mwy o bwyslais yn cael ei roi ar grwpiau o gyrff yn comisiynu ac yn darparu gwasanaethau yn rhanbarthol ar y cyd. Unwaith eto, bydd yn bwysig i systemau codi tâl gefnogi hyn.
17. Felly byddai pwerau newydd yn y maes hwn yn galluogi Llywodraeth Cynulliad Cymru i ddatblygu cynigion cydlynus ar gyfer Mesurau, ar sail blaenoriaethau ac amserlenni Cymru a fydd yn ein galluogi i sicrhau dull teg a chyson o godi tâl.

Cwmpas

18. Cynigir gosod y Mater ym Maes 15: Lles Cymdeithasol yn Atodlen 5 i Ddeddf Llywodraeth Cymru 2006 i alluogi'r Cynulliad i ddeddfu ar y mater hwn drwy Fesur Cynulliad. Mae'r Gorchymyn hwn yn cwmpasu taliadau y mae awdurdodau lleol yn eu codi ar gyfer gofal cymdeithasol preswyl. Ni fyddai'n galluogi'r Cynulliad i ddeddfu o ran taliadau y mae darparwyr gofal preifat yn eu codi am ofal cymdeithasol dibreswyl. Mae hefyd yn cwmpasu'r trefniadau ar gyfer codi tâl ar y defnyddwyr gwasanaethau hynny sy'n cael eu talu'n uniongyrchol i'w galluogi hwy, neu'r rhai sy'n gofalu amdanynt, i sicrhau gofal cymdeithasol dibreswyl sy'n bodloni'u hanghenion. Mae'r diffiniad o ofal cymdeithasol sydd i'w ddefnyddio ym Maes 15 wedi'i nodi yn y Gorchymyn arfaethedig sy'n delio â Phlant sy'n Agored i Niwed a Thlodi Plant, sydd hefyd yn ceisio gosod materion yn y maes hwn. Gellir ei weld hefyd yn Atodiad A er hwylustod.
19. Byddai'r Mater yn galluogi'r Cynulliad i sicrhau bod awdurdod, pan fydd yn penderfynu codi tâl, yn gwneud hynny'n unol â'r gofynion y gellir eu rhagnodi drwy Fesur Cynulliad neu oddi tano. Mae Llywodraeth y Cynulliad hefyd yn dymuno cael yr hyblygrwydd i beidio â chodi tâl am wasanaethau penodol neu i grwpiau penodol o gleientiaid os yw'n dod i'r casgliad bod hyn yn briodol, ac mae'r Mater wedi'i ddrafftio er mwyn galluogi i ddarpariaeth o'r fath gael ei gwneud drwy Fesur Cynulliad neu oddi tano.
20. Prif ddiben y Gorchymyn Cymhwysedd Deddfwriaethol hwn felly yw rhoi grym i'r Cynulliad gymeradwyo Mesurau Cynulliad o dan Ran 3 Deddf Llywodraeth Cymru, a fydd yn galluogi Llywodraeth y Cynulliad i

reoleiddio'r gwaith o bennu taliadau a dileu'r anghysondebau eang sy'n bodoli ar hyn o bryd.

Eithriadau

21. Bydd y mater dan sylw yn y Gorchymyn hwn yn ddibynnol ar eithriadau penodol. Effaith rheini fydd eithrio'r pynciau canlynol o'r cymhwysedd deddfwriaethol yn y mater newydd: cynnal plant (h.y. trefniadau i'r ddau riant ddarparu cynhaliaeth ar gyfer plentyn); credydau treth; budd-dal plant a lwfans gwarcheidwad; nawdd cymdeithasol; Cronfeydd Byw'n Annibynnol; a Motability. Pan fydd y Gorchymyn yn cael ei gyflwyno'n ffurfiol gerbron Senedd y DU, bydd yr eithriadau hyn yn cael eu cynnwys mewn tabl ar ddiwedd Rhan 1, Atodlen 5 drwy erthygl 2(3). Ar hyn o bryd, mae'r mater wedi'i rifo fel 15.9 gan fod Materion a rifwyd fel 15.1 - 15.8 dros dro wedi'u cynnwys yn y gorchymyn Plant sy'n Agored i Niwed, nad yw eto wedi cael ei gyflwyno i Senedd y DU. Caiff rhifau'r mater a'r broses o ddrafftio'r eithriadau eu haddasu fel bo angen yn nrafft terfynol y Gorchymyn, gan ddibynnu ar hylt pob un o'r Gorchymynion arfaethedig sy'n cael eu hystyried.

Terfynau daearyddol unrhyw Fesur Cynulliad

22. Mae adran 93 Deddf 2006 yn gwahardd Mesurau'r Cynulliad rhag effeithio ar unrhyw le heblaw am Gymru. Mae'n nodi nad yw darpariaethau Mesur Cynulliad yn rhan o'r gyfraith y tu hwnt i gymhwysedd deddfwriaethol y Cynulliad. Mae darpariaeth y tu hwnt i gymhwysedd y Cynulliad os yw'n gymwys i leoedd eraill heblaw am Gymru'n unig neu os yw'n trosglwyddo, yn gosod, yn addasu neu'n dileu swyddogaethau y gellir eu harfer mewn lleoedd heblaw am Gymru (neu'n rhoi'r pŵer i wneud hynny). Mae eithriadau cyfyngedig ar fathau penodol o ddarpariaeth ategol, er enghraifft darpariaeth sy'n briodol i roi darpariaethau'r Mesur mewn grym, darpariaeth sy'n galluogi gorfodi darpariaethau'r Mesur a gwneud newidiadau o ganlyniad i ddeddfwriaeth arall.
23. Mae'r cyfyngiad mewn perthynas â swyddogaethau heblaw'r rhai sy'n gymwys i Gymru yn golygu na fyddai modd i'r Cynulliad drosglwyddo drwy Fesur unrhyw swyddogaethau nad ydynt yn gymwys i Gymru i Weinidogion Cymru, awdurdodau lleol Cymru nac unrhyw awdurdod cyhoeddus arall.

Swyddogaethau Gweinidog y Goron

24. Nid yw'r Gorchymyn arfaethedig hwn yn ceisio addasu na dileu unrhyw un o swyddogaethau Gweinidog y Goron. Yn ôl Rhan 2 Atodlen 5 i Ddeddf 2006, ni all y Cynulliad addasu swyddogaethau Gweinidog y Goron drwy Fesur heb ganiatâd Ysgrifennydd Gwladol Cymru. Mewn perthynas ag unrhyw gynigion yn y dyfodol a allai effeithio ar swyddogaeth Gweinidog y Goron, bydd ymgynghoriad yn cael ei

gynnal gydag Adran briodol Llywodraeth y DU, a cheisir cytundeb ynghylch unrhyw gynigion i newid neu addasu'r swyddogaethau hyn.

Casgliad

25. Am y rhesymau a amlinellir uchod, mae Llywodraeth Cynulliad Cymru yn cynnig y dylid ymestyn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol yn unol â darpariaethau'r Gorchymyn a gynigir gan y llywodraeth sy'n gysylltiedig â'r Memorandwm Esboniadol hwn.

Gwenda Thomas

Y Dirprwy Weinidog dros Iechyd a Gwasanaethau Cymdeithasol

Tachwedd 2007

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 5.1

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.

*Matter 5.11*¹

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.

¹ Matters 5.11 – 5.16 of this Schedule have been inserted by the Further Education and Training Act 2007 and will come into force on the 23rd December 2007.

Matter 5.14

The provision of financial resources for and in connection with—

- (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

The inspection of—

- (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 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, any of the kinds of education, training or services mentioned in matter 5.15.

Interpretation of this field

In this field—

“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;

“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.

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 9.1

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 or illness or the care or treatment of any patient.

Field 10: highways and transport

Field 11: housing

Field 12: local government

Matter 12.1²

Provision for and in connection with—

(a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and

(b) 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—

(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,

² Matters 12.1 – 12.5, Paragraph 2A of Part 2 and Paragraph 7A of Part 3 of this Schedule have been inserted by the Local Government and Public Involvement in Health Act 2007 and come into force on the 30th December 2007.

(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

Field 16: sport and recreation

Field 17: tourism

Field 18: town and country planning

Field 19: water and flood defence

Field 20: Welsh language

PART 2

GENEAL 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

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

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 146A1
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

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.

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-

- (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

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.