Draft Order laid before Parliament under section 95(5) of the Government of Wales Act 2006, following approval by resolution of the National Assembly for Wales.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2008 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The Welsh Ministers (Transfer of Functions) Order 2008

Made - - - - *[ ] 2008*

Coming into force - - *[ ]*

At the Court at Buckingham Palace, the day of 2008

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by section 58 of, and paragraph 2 of Schedule 4 to, the Government of Wales Act 2006(**a**).

In accordance with section 58(4) of that Act a draft of this Order was—

(a) laid before, and approved by resolution of, each House of Parliament; and

(b) approved by the Welsh Ministers.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Welsh Ministers (Transfer of Functions) Order 2008.

(2) This Order shall come into force on the day after the day on which it is made.

Transfer of Functions

2. The following functions are, so far as exercisable in relation to Wales, transferred to the Welsh Ministers—

(**a**) 2006 c.32.

(a) functions under section 86 of the Mental Health Act 1983(**a**), except in relation to a patient who is subject to one or more of the following, namely—

(i) a restriction order made under section 41 of that Act;

(ii) a hospital direction made under section 45A(3)(a) of that Act;

(iii) a limitation direction made under section 45A(3)(b) of that Act; or

(iv) a restriction direction made under section 49 of that Act;

(b) functions under section 259 of, and Schedule 21 to, the National Health Service Act 2006(**b**).

Transfer of property, rights and liabilities - exception

3. The provisions of paragraph 1(1) of Schedule 4 to the Government of Wales Act 2006 do not apply to any documentary or electronic records to which a Minister of the Crown is entitled at the coming into force of this Order, in connection with any function exercisable by the Minister which is transferred by this Order.

Clerk of the Privy Council

(**a**) 1983 c.20. The functions of the Secretary of State under the Mental Health Act 1983 were, in so far as they are exercisable in relation to Wales, transferred to the National Assembly for Wales constituted under the Government of Wales Act 1998 (c.38) by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Sections 41, 42, 45A(10) and (11), 45B to 51, 53, 71, 73 to 75, 80A, 81A, 82A, 83A, 84, 85A, 86, and Schedule 2, in relation to patients who are subject to Part 3 of that Act were transferred back to the Secretary of State by article 4 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). Functions of that Assembly have been transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(**b**) 2006 c.41.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 58 of, and paragraph 2 of Schedule 4 to, the Government of Wales Act 2006 (c.32) and comes into force on the day after it is made.

This Order provides for certain functions under the Mental Health Act 1983 (c.20) ("the 1983 Act") and the National Health Service Act 2006 (c.41) ("the 2006 Act") to be transferred to the Welsh Ministers.

Article 2 of this Order transfers functions under section 86 of the 1983 Act, so far as exercisable in relation to Wales, to the Welsh Ministers, except in relation to a patient who is subject to a restriction order or direction made under Part 3 of that Act. Section 86 enables the Secretary of State to authorise the removal to any country abroad of certain detained patients who do not have a right of abode in this country and who are receiving in-patient treatment for mental illness. Section 86(3) of that Act provides that the exercise of this function is subject to the approval of a Mental Health Review Tribunal.

Article 2 also transfers functions under section 259 of, and Schedule 21 to, the 2006 Act, so far as exercisable in relation to Wales, to the Welsh Ministers. Section 259 makes it an offence to sell goodwill in medical practices. Schedule 21 provides that any person proposing to be a party to a transaction or series of transactions which he considers might amount to a sale of the goodwill of a medical practice in contravention of section 259 may ask the Secretary of State for a certificate. The Secretary of State must consider the application and if satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of such a medical practice, issue a certificate to that effect. Schedule 21 further provides that a prosecution for an offence may only be instituted by or with the consent of the Director of Public Prosecutions and the Secretary of State must, if requested, provide a copy of any certificate issued by him and copies of any documents produced in connection with the application for a certificate.

Article 3 excludes the transfer to the Welsh Ministers of documentary or electronic records connected with functions included in this Order, which would otherwise take place by operation of paragraph 1 of Schedule 4 to the Government of Wales Act 2006.

Draft Order laid before Parliament under section 95(5) of the Government of Wales Act 2006, following approval by resolution of the National Assembly for Wales.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The Welsh Ministers (Transfer of Functions) Order 2008

£3.00

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.
E2625 6/2008 182625T 19585