

EXPLANATORY MEMORANDUM TO
THE WELSH MINISTERS (TRANSFER OF FUNCTIONS) ORDER 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Wales and the Cabinet Office, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this Order is to transfer to the Welsh Ministers executive functions currently exercised by a Minister of the Crown in areas where legislative competence is exercised by the National Assembly for Wales (“the Assembly”), or is being devolved to the Assembly by virtue of the Wales Act 2017 (“the 2017 Act”). It will more closely align legislative competence exercised by the Assembly and executive competence exercised by the Welsh Ministers. It also makes amendments to primary and secondary legislation as a result of the transfer of certain functions.
- 2.2 The functions contained in this Order relate to a variety of devolved areas, including elections, civil contingencies, health, education, agriculture and the environment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 In the view of the Department, for the purposes of House of Commons Standing Order 83P, the subject-matter of this entire instrument would be within the legislative competence of the Assembly, as defined by the new reserved powers model of Welsh devolution, if equivalent provision in relation to Wales were included in an Act of the Assembly.

4. Legislative Context

- 4.1 Section 58 of the Government of Wales Act 2006 (“GoWA 2006”) provides a power to transfer to the Welsh Ministers, the First Minister or the Counsel General any function so far as exercisable by a Minister of the Crown in relation to Wales or the Welsh zone. Section 158(1) of GoWA 2006 provides that a Minister of the Crown includes the Treasury. Section 58 also provides a power to direct that any function exercisable by a Minister of the Crown is to be exercised only with the agreement of, or after consultation with, the Welsh Ministers.
- 4.2 This Order provides in some instances for the removal of Treasury consent. Where this is the case, the substantive function comprises two elements. The function itself, and the consent to exercise that function. The substantive function has already been transferred to the Welsh Ministers, and this Order transfers the consent element of that function. As both elements of the function will be exercised by the same body, that is

the Welsh Ministers, both functions will be exercised at the same time. For presentation purposes, although the Treasury consent function is being transferred to the Welsh Ministers, it is expressed in this Order as being the removal of Treasury consent, as the consent and the exercise of the function will be exercised simultaneously by the Welsh Ministers.

- 4.3 Previously, functions were transferred to the Assembly under section 22 of the Government of Wales Act 1998. This was repealed by Schedule 12 to the GoWA 2006, and paragraph 26 of Schedule 11 to GoWA 2006 created a saving for Orders made under section 22 (“section 22 Orders”). Paragraph 30 of Schedule 11 to GoWA 2006 transferred functions from the Assembly to the Welsh Ministers, including at paragraph 30(2) functions exercisable by virtue of a section 22 Order.
- 4.4 The most extensive section 22 Order was the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672)(“the 1999 Order”).
- 4.5 Schedule 3A to GoWA 2006 (inserted by Schedule 4 to the 2017 Act) lists the functions, so far as exercisable in relation to Wales, that are exercisable concurrently or jointly by Welsh Ministers and Ministers of the Crown. Paragraph 11(1) of new Schedule 7B to GoWA (inserted by Schedule 2 to the 2017 Act) sets out the functions in devolved areas which continue to be exercised solely by Ministers of the Crown.

5. Extent and Territorial Application

- 5.1 The transfer of functions by this Order applies only in relation to Wales.
- 5.2 The Order is made under powers which extend to the whole of the United Kingdom, but transfers functions under provisions which extend only to England and Wales. It also makes a number of consequential amendments to other legislation, which have the same extent as the provisions amended.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Wales has made the following statement regarding Human Rights:

“In my view the provisions of the Welsh Ministers (Transfer of Functions) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The 2017 Act delivers on commitments made in the Command Paper “Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales” (Cm 9020), known as “the St David’s Day Agreement”, that required primary legislation. In particular the 2017 Act implements a clearer devolution settlement for Wales based on a reserved powers model and devolves further powers to the Assembly and the Welsh Ministers. This Order transfers most remaining Minister of the Crown functions in devolved areas to Welsh Ministers, along with the necessary functions to accompany the devolution of teachers’ pay, the Community Infrastructure Levy and elections, effected through the 2017 Act. This Order also clarifies the respective roles of the UK and Welsh Governments in dealing with civil contingencies in Wales, and transfers a number of other executive functions in devolved areas.

- 7.2 In November 2016 the Wales Office published an initial draft list of functions to be included in the Order. Following consultation with the Welsh Government on this list the Government agreed the scope of the functions to be transferred. Those functions are contained in Articles 6, 8, 11, 15, 21, 29, 34 and 38.
- 7.3 The 2017 Act provides for the devolution of further legislative competence to the Assembly in areas such as transport, energy, the environment and elections. In most areas the 2017 Act makes provision for the necessary functions to be transferred to Welsh Ministers alongside the devolution of legislative competence to the Assembly. However in a number of areas the Government committed to transfer executive competence separately by order. These are areas where further detailed consideration of the relevant functions was necessary or where the Bill was amended during its parliamentary passage.
- 7.4 In addition, in the St David's Day Agreement the Government accepted the Silk Commission's recommendation to clarify the respective roles of the UK and Welsh Governments in relation to civil contingencies. Article 41 therefore transfers some functions in the Civil Contingencies Act 2004 to the Welsh Ministers as they relate to devolved responders such as the fire service and the health service in Wales.
- 7.5 This Order will come into force on the day after which it is made. The only changes made by this Order are as to the identity of the person responsible for the exercise of a function rather than as to the nature functions being exercised. As such, it is the view of the Department that no duties are imposed on any person which are significantly more onerous, or which require any person to adopt different patterns of behaviour.
- 7.6 An explanation of the functions transferred is contained below. The functions transferred will be exercisable by the Welsh Ministers in relation to Wales. Where the Order or this Explanatory Memorandum does not state that a function has already been wholly or partially transferred to the Welsh Ministers, immediately before this Order comes into force the function sits entirely with a Minister of the Crown.
- 7.6.1 *Article 2 Agriculture (Artificial Insemination) Act 1946*
- Section 1 of this Act relates to the powers to make contributions, and establish centres, for the purposes of research as to the artificial insemination of livestock. These powers are currently exercised jointly by the Welsh Ministers and the Secretary of State. This Order transfers the powers so that they will be exercised solely by the Welsh Ministers, free from the requirement to obtain Treasury consent.
- 7.6.2 *Article 3 Industrial Organisation and Development Act 1947*
- This Act enables the creation of industrial development councils with powers to raise levies from industries in the UK for co-ordinated action, particularly in research, marketing and industrial re-organisation.
- Certain functions contained in this Act have already been transferred to the Welsh Ministers by the 1999 Order. All remaining functions that have not already been transferred (namely the functions contained in sections 1 to 4 and 7 and 8 of the Act) are transferred to the Welsh Ministers in so far as they are exercisable in relation to Wales, except for section 7(4) of the Act in so far as it relates to a development council exercising functions in relation to England and Wales or Great Britain.

7.6.3 *Article 4 Agriculture Act 1947*

The functions contained in section 73(3) of this Act are currently exercisable by the Lord Chancellor, enabling the Lord Chancellor to make provision for the procedure of the Agricultural Land Tribunal for Wales (Tribiwnlys Tir Amaethyddol Cymru). This Order transfers the functions of the Lord Chancellor to the Welsh Ministers.

7.6.4 *Article 5 Coast Protection Act 1949*

The functions contained in section 17 of this Act relate to the notification to coast protection authorities of coast protection work to be carried out by certain authorities. Under subsection (4), the Minister has the power to determine an objection where there is a notice of objection under section 17.

These functions are currently exercised by the appropriate Minister of the Crown, depending on who the undertakers are in relation to which a notice of objection is served. All functions of a Minister of the Crown contained in section 17 are transferred by this Order to the Welsh Ministers, in so far as they are exercisable in relation to Wales; they do not relate to harbours that are partially outside Wales; they do not relate to reserved trust ports and have not already been transferred by virtue of the 1999 Order.

7.6.5 *Article 6 National Parks and Access to the Countryside Act 1949*

Section 65(3) of this Act contains regulation making powers in relation to Access Orders. Section 72 provides regulation making powers in relation to claims for compensation and interest. Section 78(1) provides regulation making powers in relation to the form of maps of land. The 1999 Order transferred the functions of a Minister of the Crown in this Act to the Assembly, but excluded the functions contained in sections 65(3), 72, 78(1) and paragraph 4 of Schedule 1 from the transfer. This Order transfers the Minister of the Crown functions in these sections to the Welsh Ministers.

7.6.6 *Article 7 Agricultural Marketing Act 1958*

The functions contained in section 22 of this Act relate to agricultural marketing funds, and are currently exercised by the Secretary of State in relation to Wales. This Order provides that the function of the Minister of the Crown within section 22 is only to be exercised in relation to a scheme applicable in Wales, or England and Wales with the consent of the Welsh Ministers.

7.6.7 *Article 8 Plant Varieties and Seeds Act 1964*

The provisions of this Act that are currently in force largely relate to the regulation of sales of seeds. This Order transfers all functions of a Minister of the Crown under this enactment that have not already been transferred to the Welsh Ministers by the 1999 Order. The requirement for Treasury consent is also removed.

7.6.8 *Article 9 Plant Health Act 1967*

The functions contained in this Act are currently exercisable by the Welsh Ministers, having been transferred by the 1999 Order. The functions contained in sections 4 (power to make Orders to enable inspectors to take action in the case of a specified pest) and 4A (power to make an Order to impose reasonable fees or charges in respect of licences or certificates) however can only be exercised with Treasury consent. This

Order removes the requirement for the Welsh Ministers to seek Treasury consent to exercise these functions.

7.6.9 *Article 10 Agriculture Act 1967*

The function contained in section 53 of this Act (the preparation of a report setting out what has been done to discharge functions under the Act, and keeping of accounts) is currently exercisable by the Welsh Ministers (having been transferred by the 1999 Order), but subject to obtaining Treasury consent. This Order removes the requirement for the Welsh Ministers to seek Treasury consent to exercise the function.

7.6.10 *Article 11 Conservation of Seals Act 1970*

Section 1(1)(b) of this Act prescribes the firearms or ammunitions that are prohibited in the killing of seals. Section 1(2) provides that the Secretary of State may by order amend section 1(1)(b) by adding any firearm or ammunition to, or by altering the description of, or by substituting any other firearm for, the firearm or ammunition mentioned in section 1(1). This Order now transfers this function so that it will be exercisable by the Welsh Ministers.

7.6.11 *Article 12 Agriculture Act 1970*

The function contained in section 78(10) of this Act (the power to fix the appropriate fee for analysis by a Government chemist) is currently exercisable by the Welsh Ministers (having been transferred by the 1999 Order), but subject to Treasury consent. This Order removes the requirement for the Welsh Ministers to seek Treasury consent to exercise the function.

7.6.12 *Article 13 Chronically Sick and Disabled Persons Act 1970*

This Order amends section 21(1A) of this Act to provide that it is the Welsh Ministers rather than the Secretary of State who may specify the form that disabled persons must complete in order to be issued with a badge to display on motor vehicles.

7.6.13 *Article 14 Local Government Act 1972*

Section 244(2) of this Act currently provides that the Treasury has the power to make the final decision as to whether the Secretary of State can exercise Treasury functions in local or private acts passed before 4th August 1906 in relation to dealings with property, loans and connected matters. The Welsh Ministers exercise those functions of the Secretary of State in Wales. This Order dis-applies section 244(2) in relation to the discharge of functions under 244(1) by the Welsh Ministers.

7.6.14 *Article 15 Salmon and Freshwater Fisheries Act 1975*

Section 37A of this Act relates to fixed penalty notices, and refers to regulations which make provision with respect to the giving of fixed penalty notices. 37(A)(10) defines Regulations as meaning 'Regulations made under this section by the Ministers'. This Order gives the Welsh Ministers the power to make Regulations under section 37A of this Act in relation to Wales.

7.6.15 *Article 16 Fisheries Act 1981*

Part 2 of this Act relates to the provision of financial assistance to the sea fish industry. The functions contained in section 15 and 16 of this Act are currently exercisable by the Welsh Ministers (having been transferred by the 1999 Order and SI 2010/760), but subject to obtaining Treasury consent. This Order removes the requirement for the Welsh Ministers to seek Treasury consent to exercise the function.

7.6.16 *Article 17 New Towns Act 1981*

Currently, the powers under section 69(1) of this Act (prepare accounts and transmit the accounts to the Comptroller and the Auditor General), are exercised by the Welsh Ministers “as the Treasury may direct”. This Order provides that the powers should be exercised as the Welsh Ministers consider appropriate, rather than as the Treasury may direct, so that it is the Welsh Ministers alone that determine the form and manner of the accounts and when they should be prepared.

7.6.17 *Article 18 Acquisition of Land Act 1981*

Section 16 of this Act relates to land which is excluded from compulsory purchase, as it has been acquired by statutory undertakers for the purposes of their undertaking. Section 32 relates to the power to extinguish certain rights of way. Paragraph 3 of Schedule 3 relates to acquisition of new rights over special kinds of land. The functions exercisable by the Secretary of State as the appropriate Minister in these sections of the Act are transferred to the Welsh Ministers.

7.6.18 *Article 19 Industrial Training Act 1982*

This Order transfers the functions of the Secretary of State in the Act, so far as they are exercisable in relation Wales, to the Welsh Ministers, subject to certain exceptions.

Legislative competence in relation to industrial training boards is reserved under reservation H2 of Schedule 7A to the GoWA 2006, and no functions are transferred in relation to industrial training boards that are specified in Section H2.

The Welsh Ministers will only be able to exercise the function under section 4 of imposing a levy on employers in a revocation order made under section 1 for the purpose of raising an amount to meet the expenses of winding up a board and meeting its liabilities with the consent of a Minister of the Crown.

The functions under sections 11, 12, 13, 14 and 16 of this Act which relate to levies are not transferred to the Welsh Ministers.

The function of giving direction under section 15(1) or (2) of this Act is only transferred in respect of proposals submitted to the Welsh Ministers under 5(5).

The Welsh Ministers will not be required to obtain Treasury approval in relation to the discharge of functions.

7.6.19 *Article 20 Mental Health Act 1983*

The functions under section 78 of this Act are currently exercised by the Lord Chancellor. This Order transfers the functions of the Lord Chancellor in relation to the Mental Health Review Tribunal for Wales to the Welsh Ministers.

7.6.20 *Article 21 Food and Environment Protection Act 1985*

The functions under sections 16 and 18 of this Act (the power to make regulations in relation to pesticides; and the ability to impose a fee on an applicant who is seeking approval for his pesticide) are currently discharged jointly by the Welsh Ministers and the Secretary of State in Wales. The functions of the Secretary of State under sections 16 and 18 are transferred to the Welsh Ministers by this Order, so that the function is no longer exercisable jointly and can only be exercised by the Welsh Ministers.

7.6.21 *Article 22 Environment and Safety Information Act 1988*

This Order makes the Welsh Ministers the responsible authority for notices served under the Food and Environmental Protection Act 1985 in Wales. It also makes the Welsh Ministers the appropriate Minister in relation to notices served in Wales under the Food and Environment Protection Act 1985 or the Regulatory Reform (Fire Safety) Order 2005.

7.6.22 Article 23 Local Government Finance Act 1988

The function contained in paragraph 1(2) of Schedule 8 to this Act (the requirement to keep a non-domestic rating account for each chargeable financial year) is currently exercisable by the Welsh Ministers, but subject to Treasury consent. This Order removes the requirement for the Welsh Ministers to comply with Treasury directions in exercising that function.

7.6.23 Article 24 Electricity Act 1989

Section 62 of this Act confers power on the Secretary of State to set up inquiries in relation to matters under that Part of the Act, which concerns electricity supply. This Order transfers those functions under section 62 to the Welsh Ministers so that it will be the Welsh Ministers who decide whether and when to hold an inquiry in Wales under the Act.

7.6.24 Article 25 Town and Country Planning Act 1990

Section 265 of the Act defines the ‘appropriate Minister’ for the purposes of this Act. The Order makes the Welsh Ministers the appropriate Minister in relation to the statutory undertakers mentioned in section 265(1), except for statutory undertakers that are reserved trust ports within the meaning of section 32 of the Wales Act 2017; and cross-border harbours within the meaning of section 34 of the Wales Act 2017, in so far as they are exercising those functions in relation to Wales. It also transfers the functions under section 265(3)(aa) of the Act from a Minister of the Crown to the Welsh Ministers.

7.6.25 Article 26 Planning (Hazardous Substances) Act 1990

Section 36B of this Act relates to the exercise of a right of entry under Section 36 or 36A of the Act, and the carrying out of works under section 36. Section 36B of this Act was inserted by the Planning and Compensation Act 1991, and the functions of the appropriate Minister contained in the section were transferred to the Assembly by the 1999 Order, but only to the extent of its operation in cases where the Environment Agency and water and sewerage undertakers are deemed to be the statutory undertakers. This Order now transfers the remaining functions of the appropriate Minister in so far as exercisable in relation to Wales to the Welsh Ministers.

7.6.26 Article 27 Environmental Protection Act 1990

The function contained in section 113 of this Act relates to the prescription of a scheme of fees and charges for consents issued under section 111 (in relation to importing or acquiring, releasing or marketing any genetically modified organisms). It is currently exercisable by the Welsh Ministers, but subject to Treasury consent. This Order removes the requirement for the Welsh Ministers to seek Treasury consent in exercising this function.

7.6.27 Article 28 Agriculture and Forestry (Financial Provisions) Act 1991

The function contained in section 2(1) of this Act requires the occupiers of slaughterhouses at which livestock carcasses are required to be graded in pursuance of

any EU obligation to pay a fee in respect of the supervision of the grading by his officers. This function is currently exercisable by the Welsh Ministers, subject to Treasury consent. This Order removes the requirement for the Welsh Ministers to seek Treasury consent in exercising this function.

7.6.28 *Article 29 Deer Act 1991*

This Act consolidates certain enactments related to deer. This Order transfers all functions of a Minister of the Crown in this Act to the Welsh Ministers in so far as they are exercisable in relation to Wales. Sections 2 and 7 (except that in relation to section 7(5)(b) only the function of the Secretary of State as agriculture minister) have already been transferred to the Welsh Ministers by the 1999 Order.

7.6.29 *Article 30 Further and Higher Education Act 1992*

The function contained in section 16 of this Act provides a power to make an Order for the establishment of an educational institution, and is currently exercisable by the Welsh Ministers, subject to Treasury consent. This Order removes the requirement for the Welsh Ministers to seek Treasury consent in exercising this function.

7.6.30 *Article 31 Local Government Finance Act 1992*

The function contained under paragraph 5(1) of Schedule 3 to this Act is currently exercisable by the Treasury, and provides that the Treasury can change the penalties specified in paragraphs 1 and 2 of Schedule 3 to the Act, if there has been a change in the value of money since the Act was passed. This Order transfers that function to the Welsh Ministers.

7.6.31 *Article 32 Tribunals and Inquiries Act 1992*

Section 9 of this Act permits the Lord Chancellor to make rules of procedure in relation to statutory inquiries. This Order transfers that power to the Welsh Ministers so that it is the Welsh Ministers who will have the power to make rules of procedure in relation to inquiries held in Wales.

The powers to make an Order under sections 10(7) and (8) of the Act, currently exercisable by a Minister of the Crown are also transferred to the Welsh Ministers.

7.6.32 *Article 33 Deregulation and Contracting Out Act 1994*

Section 70 of this Act allows a Minister of the Crown to identify by order functions the exercise of which specified public bodies, including local authorities, can contract out. The functions currently exercised by a Minister of the Crown are transferred by this Order to the Welsh Ministers in so far as those functions relate to local authorities in Wales and are within the legislative competence of the Assembly. Whether something is within legislative competence should be considered with reference to the GoWA 2006, as amended by the Wales Act 2017. This will enable the Welsh Ministers to make an Order allowing local authorities whose function it is, to authorise persons or employees of persons to exercise those functions.

The functions under section 79C(1) of the Act to make regulations for the purposes of section 79B(h), currently exercisable by the Secretary of State, are also transferred to the Welsh Ministers by this Order in so far as they are exercisable in relation to Wales.

7.6.33 *Article 34 Lieutenancies Act 1997*

Section 2 of this Act relates to deputy lieutenants. A lord-lieutenant of a county or area must notify Her Majesty of the name of any person whom he proposes to appoint as a deputy lieutenant; a commission as deputy lieutenant is not granted to that person until the lord-lieutenant has been informed by the Lord President of the Council (a Minister of the Crown) that Her Majesty does not disapprove of the granting of the commission. The functions of the Lord President are transferred to the Welsh Ministers in so far as they are exercisable in relation to Wales.

7.6.34 *Article 35 School Standards and Framework Act 1998*

Section 137 of this Act provides for the alteration of functions and provision for dissolution of the Education Transfer Council. The Education Transfer Council (which replaced the Education Assets Board) was dissolved in 2000 and was not replaced. However, this Order transfers the functions under section 137 of this Act to the Welsh Ministers in so far as they relate to the discharge of those functions in Wales, so that they can establish a new body which is constituted in the same or a similar manner to the Education Transfer Council if they so wish.

7.6.35 *Article 36 Pollution Prevention and Control Act 1999*

This Order transfers the functions of the Secretary of State under or in relation to section 2 of this Act in relation to offshore oil and gas exploration and exploitation so far as they are exercisable in relation to Wales to the Welsh Ministers. If any of the functions transferred in this Order are currently exercisable by the Secretary of State in relation to a cross-border body, and are not functions that can be specifically exercised in relation to Wales, those functions will be exercisable by the Welsh Ministers in relation to that body concurrently with the Secretary of State.

7.6.36 *Article 37 Local Government Act 2000*

This Order transfers the functions of the Secretary of State in section 5 of this Act to the Welsh Ministers. The provisions of the Act that are being amended by this Order currently make provision only with respect to Wales. It is therefore unnecessary for the Order to provide that the functions are transferred so far as they are exercisable in relation to Wales. Those functions are the power to amend, repeal, revoke or disapply an enactment which prevents or obstructs local authorities from exercising their power under section 2(1) of the Act (the promotion of economic, social and environmental wellbeing).

7.6.37 *Article 38 Vehicles (Crime) Act 2001*

This Order transfers certain powers of the Secretary of State to the Welsh Ministers, so that the Welsh Ministers will be able to make payments to fund safety cameras, which are cameras designed to prevent or detect any of the offences specified in section 38(2) of this Act, which are speeding offences and an offence relating to traffic lights.

7.6.38 *Article 39 Education Act 2002*

The provisions in Article 39 of the Order relate to teachers' pay and conditions and student loans, and achieve a number of things.

Firstly, the Order removes the requirement for the Welsh Ministers to seek the consent of the Secretary of State to make regulations under section 7(1) of this Act.

Secondly, it transfers the function of the Secretary of State under section 10(2) of this Act to the Welsh Ministers, in so far as it is exercisable in relation to Wales. This function concerns the determination of teachers' pay and conditions.

Thirdly, the functions currently exercised by the Secretary of State under sections 122 to 124 and 126 and 127 of this Act, which relate to teachers' pay and conditions are transferred to the Welsh Ministers in so far as they are exercisable in relation to school teachers in Wales. Section 125 will not apply in relation to school teachers in Wales.

Lastly, the functions of the Secretary of State under section 186 of this Act, in so far as they are exercisable in relation to Wales, will be exercised by the Welsh Ministers concurrently with the Secretary of State. However, the making of regulations in relation to loans of the description in section 186(2)(a) of the Act will not be exercisable by the Welsh Ministers, concurrently or otherwise. In consequence of this transfer of functions, the interpretation of certain provisions in the Sale of Student Loans Act 2008 are modified.

7.6.39 Article 40 Local Government Act 2003

Sections 93(2) and 95(2) of this Act confer powers enabling the Secretary of State to modify or exclude the application of enactments that restrict a relevant authority's ability to charge for the provision of a discretionary service or carrying out trading in its functions. The section also permits the Secretary of State to modify or exclude the application of any enactment that confers power on a relevant authority to charge for a discretionary service. The definition of a relevant authority in relation to England does not include a community council. The definition of a relevant authority in relation to Wales does not include a best value authority, a fire and rescue authority, parish council or parish meeting. This Order transfers those functions to the Welsh Ministers, so far as they are exercisable in relation to Wales.

7.6.40 Article 41 Civil Contingencies Act 2004

This Order separates out the responders who are based in Wales from those who are based in England, and transfers the co-ordinating functions currently exercised by the Secretary of State in England and Wales during a civil emergency to the Welsh Ministers so far as any such coordination is required in respect of devolved responders in Wales. This Order limits the ability of a Minister of the Crown in Wales, and as such the circumstances in which they would need to seek Assembly consent have also reduced. In relation to Article 41(5)(b), the reference on the face of the Act to the National Assembly for Wales in paragraph (f) is in fact a reference to the Welsh Ministers by virtue of paragraph 30(2)(c) of Schedule 11 to the GOWA 2006.

7.6.41 Article 42 Health Act 2006

The functions under section 13 of this Act are currently exercised by the Secretary of State. This Order transfers those functions to the Welsh Ministers in so far as they are exercisable in relation to Wales, so that it is the Welsh Ministers who will be able to amend section 7 of the Children and Young Persons Act 1933 and section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 to change the minimum age for the purchase of tobacco products, where vending machines and/or retail premises are located in Wales.

7.6.42 Article 43 National Health Service Act 2006

Section 251 of this Act contains a regulation making power to make provision for and in connection with requiring or regulating the processing of prescribed patient information for medical purposes. These functions are currently exercised by the Secretary of State. This Order transfers those functions to the Welsh Ministers in so far as they are exercisable in relation to Wales.

7.6.43 *Article 44 Planning Act 2008*

Part 11 of this Act relates to the Community Infrastructure Levy (CIL), and provides that the Secretary of State may, with Treasury consent, make regulations providing for the imposition of a charge to be known as the CIL. This Order transfers the functions contained in Part 11 to the Welsh Ministers. In addition, the Welsh Ministers will be able to exercise the function under section 205 free from the requirement for Treasury consent.

7.6.44 *Article 45 Transfer of functions in relation to the devolved competence electoral legislation*

There are various functions in the electoral legislation listed in Schedule 1 to the Order that are currently exercisable by a Minister of the Crown. This Order transfers those functions to the Welsh Ministers, but only “so far as those functions are exercisable within devolved competence”. That means that when the functions are exercised within reserved areas, even if they are exercised in or in relation to Wales, those functions do not transfer to Welsh Ministers. The relevant reservations are in paragraphs 6, 7 and 20 to 27 of Schedule 7A to GOWA 2006 (inserted by the 2017 Act). These include the reservation of registration and funding of political parties (paragraph 6), matters concerning elections for membership of the House of Commons (paragraph 20), and certain specified matters in relation to elections for membership of the Assembly and local government elections (paragraphs 21 to 27), such as issues arising from the coincidence of Assembly elections or local government elections in Wales and reserved elections.

Some other functions in relation to elections are transferred to Welsh Ministers in section 5 of the 2017 Act. That section inserted a new section 13 into GOWA 2006. The functions it transfers are the power to make provision (so long as that provision would be within the legislative competence of the Assembly) about the conduct of elections of Assembly members, the questioning of an election of Assembly members and the consequences of irregularities, and the return of an Assembly member otherwise than at an election.

7.6.45 *Article 47 - Transitory provisions*

This article makes transitory provision so that The Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 will continue to have effect in Wales until such time as the Welsh Ministers make their own Regulations under sections 2 or 4 of the Civil Contingencies Act 2004. It also makes consequential amendments to the Regulations to reflect the transfer of functions to the Welsh Ministers under the Act.

Article 47 also makes transitory provision in relation to the National Health Service Act 2006, by making consequential amendments to section 25 of the Act to take effect until the repeal of section 25 of the National Health Service Act 2006 by section 179 of the Health and Social Care Act 2012 comes into force.

Consolidation

- 7.7 The Order amends a number of enactments, however it is not possible to consolidate these enactments using the power in the GOWA 2006 under which this Order is made, and nor would it be desirable to do so.

8. Consultation outcome

- 8.1 This Order has not been the subject of a public consultation, as no impact on business or the voluntary sector is foreseen.

9. Guidance

- 9.1 No formal guidance has been, or will be, issued in relation to this Order.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is not expected to be significant. The Welsh Ministers will acquire additional executive functions in areas that the Assembly exercises legislative competence.
- 10.3 There will be no budgetary transfer from the UK Government to the Welsh Consolidated Fund in connection with this Order. The costs of exercising the transferred functions will be borne by the Welsh Government.
- 10.4 No impact assessment has been produced in connection with this instrument.

11. Regulating small business

- 11.1 The legislation does not create any new obligations on small business.

12. Monitoring & review

- 12.1 The Order transfers functions to the Welsh Ministers. The monitoring or review of the carrying out of these functions will be a matter for the Assembly and Welsh Government.

13. Contact

- 13.1 The following can answer any queries regarding the instrument:
- 13.2 Stephanie Evans at Wales Office Legal Advisers Telephone: 02920 92 4215 or email stephanie.evans@cabinetoffice.gov.uk