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STATUTORY INSTRUMENTS

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**2018 No. 644**

**The Welsh Ministers (Transfer of Functions) Order 2018**

**Local Government Act 2003**

**40.**—(1) The Local Government Act 2003 <sup>M1</sup> (“the 2003 Act”) is amended in accordance with paragraphs (2) to (4).

(2) In section 97 <sup>M2</sup> (power to modify enactments in connection with charging or trading)—

(a) in subsection (1)—

(i) for “Secretary of State” substitute “ appropriate authority ”;

(ii) for “he” substitute “ the appropriate authority ”;

(b) in subsection (2) for “Secretary of State” substitute “ appropriate authority ”;

(c) omit subsections (7A) to (7C) and (8) <sup>M3</sup>;

(d) in subsection (9), after “no order shall be made” insert “ by the Secretary of State ”;

(e) in subsection (10), after “made” insert “ by the Secretary of State ”;

(f) after subsection (10) insert—

“(10A) Subject to subsection (10B), no order may be made by the Welsh Ministers under this section unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.

(10B) An order under this section which is made by the Welsh Ministers only for the purpose mentioned in subsection (10) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”; and

(g) in subsection (11)—

(i) before the definition of “discretionary service” insert—

““the appropriate authority” means—

(a) in relation to England, the Secretary of State; and

(b) in relation to Wales, the Welsh Ministers;”;

(ii) for the definition of “relevant authority” substitute—

““relevant authority” means—

(a) in relation to England—

(i) a best value authority in England;

(ii) a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004;

(iii) a parish council; or

(iv) a parish meeting of a parish which does not have a separate parish council; and

(b) in relation to Wales—

(i) a Welsh improvement authority; or

- (ii) a community council.”.
- (3) In section 98 (procedure for orders under section 97) <sup>M4</sup>—
- (a) in the heading, at the end insert “ : England ”;
- (b) in subsection (2)—
- (i) omit the words from “and, where” to “section 97”;
- (ii) for “that section” substitute “ section 97 ”;
- (iii) at the end of paragraph (b) insert “ and ”;
- (iv) omit the word “and” at the end of paragraph (c); and
- (v) omit paragraph (d).
- (4) After section 98 insert—

**“98A Procedure for orders under section 97: Wales**

- (1) Before making an order under section 97, the Welsh Ministers must consult—
- (a) such relevant authorities as appear to them to be likely to be affected by their proposals, and
- (b) such other persons as appear to them to be representative of interests likely to be so affected.
- (2) If, following consultation under subsection (1), the Welsh Ministers propose to make an order under section 97, they must lay before the National Assembly for Wales a document which—
- (a) explains their proposals,
- (b) sets them out in the form of a draft order, and
- (c) gives details of the consultation under subsection (1).
- (3) Where a document relating to proposals is laid before the National Assembly for Wales under subsection (2), no draft of an order under section 97 to give effect to the proposals (with or without modification) may be laid before the Assembly until after the expiry of the period of sixty days beginning with the day on which the document was laid.
- (4) In calculating the period mentioned in subsection (3) no account is to be taken of any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (5) In preparing a draft order under section 97 the Welsh Ministers must consider any representations made during the period mentioned in subsection (3).
- (6) A draft order laid before the National Assembly for Wales in accordance with section 97(10A) must be accompanied by a statement of the Welsh Ministers giving details of—
- (a) any representations considered in accordance with subsection (5), and
- (b) any changes made to the proposals contained in the document laid before the Assembly under subsection (2).
- (7) Nothing in this section applies to an order under section 97 which is made only for the purpose mentioned in section 97(10B).
- (8) In this section, “relevant authority” has the meaning given in section 97.”.

**Marginal Citations**

- M1** 2003 c. 26.
- M2** [Section 97\(1\)](#) and (2) was amended by section 136(3) of, and paragraphs 3(1) and 7 of Schedule 7 to, the Local Government and Public Involvement in [Health Act 2007 \(c. 28\)](#).
- M3** Subsections (7A) to (7C) were inserted by, and subsection (8) was amended by, section 141(2) of the Local Government and Public Involvement in Health Act 2007.
- M4** [Section 98](#) was amended by sections 136(3), 141(3) and 144(2) of, paragraph 3(1) and (8) of Schedule 7, and paragraph 25 of Part 2 of Schedule 8 to, the Local Government and Public Involvement in [Health Act 2007 \(c. 28\)](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Welsh Ministers (Transfer of Functions) Order 2018, Section 40.