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SCHEDULES

PROSPECTIVE

SCHEDULE 3

Section 53

CORRESPONDING CODE OF PRACTICE FOR WELSH DEVOLVED POWERS OF ENTRY

Code of practice

- 1 (1) The Welsh Ministers may prepare a code of practice containing guidance about the exercise of—
- (a) powers of entry, or
 - [^{F1}(b) associated powers.
- The code may only contain provision that would be within the legislative competence of the National Assembly for Wales if contained in an Act of the Assembly.]
- (2) Such a code may, in particular, include provision about—
- (a) considerations before exercising, or when exercising, any such powers,
 - (b) considerations after exercising any such powers (such as the retention of records, or the publication of information, about the exercise of any such powers).
- (3) Such a code—
- (a) need not contain provision about every type of power of entry or associated power,
 - (b) may make different provision for different purposes.
- (4) In the course of preparing such a code in relation to any powers, the Welsh Ministers must consult—
- (a) such persons appearing to the Welsh Ministers to be representative of the views of persons entitled to exercise the powers concerned as the Welsh Ministers consider appropriate, and
 - (b) such other persons as the Welsh Ministers consider appropriate.

Textual Amendments

- F1** Words in [Sch. 3 para. 1\(1\)](#) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\)](#), [Sch. 6 para. 93](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 3\(r\)](#)

Issuing of code

- 2 (1) The Welsh Ministers must lay before the National Assembly for Wales—
- (a) any code of practice prepared under paragraph 1, and
 - (b) a draft of any order providing for the code to come into force.

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- (2) The Welsh Ministers may make the order and issue the code if the draft of the order is approved by a resolution of the National Assembly for Wales.
- (3) The Welsh Ministers must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Welsh Ministers may prepare another code of practice under paragraph 1 if the draft of the order is not so approved.
- (5) A code comes into force in accordance with an order under this paragraph.
- (6) Such an order—
 - (a) is to be a statutory instrument, and
 - (b) may contain transitional, transitory or saving provision.

Alteration or replacement of code

- 3 (1) The Welsh Ministers—
 - (a) must keep the devolved powers of entry code under review, and
 - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code in relation to any powers, the Welsh Ministers must consult—
 - (a) such persons appearing to the Welsh Ministers to be representative of the views of persons entitled to exercise the powers concerned as the Welsh Ministers consider appropriate, and
 - (b) such other persons as the Welsh Ministers consider appropriate.
- (3) The Welsh Ministers must lay before the National Assembly for Wales an alteration or a replacement code prepared under this paragraph.
- (4) If, within the 40-day period, the National Assembly for Wales resolves not to approve the alteration or the replacement code, the Welsh Ministers must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Welsh Ministers must issue the alteration or replacement code.
- (6) The alteration or replacement code—
 - (a) comes into force when issued, and
 - (b) may include transitional, transitory or saving provision.
- (7) Sub-paragraph (4) does not prevent the Welsh Ministers from laying a new alteration or replacement code before the National Assembly for Wales.
- (8) In this paragraph “the 40-day period” means the period of 40 days beginning with the day on which the alteration or replacement code is laid before the National Assembly for Wales.
- (9) In calculating the 40-day period, no account is to be taken of—
 - (a) any period during which the National Assembly for Wales is dissolved, and
 - (b) any period of more than four days during which the National Assembly for Wales is in recess.

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- (10) In this paragraph “the devolved powers of entry code” means any code of practice issued under paragraph 2(2) (as altered or replaced from time to time).

Publication of code

- 4 (1) The Welsh Ministers must publish any code issued under paragraph 2(2).
- (2) The Welsh Ministers must publish any replacement code issued under paragraph 3(5).
- (3) The Welsh Ministers must publish—
- (a) any alteration issued under paragraph 3(5), or
 - (b) the code or replacement code as altered by it.

Effect of code

- 5 (1) A relevant person must have regard to the devolved powers of entry code when exercising any functions to which the code relates.
- (2) A failure on the part of any person to act in accordance with any provision of the devolved powers of entry code does not of itself make that person liable to criminal or civil proceedings.
- (3) The devolved powers of entry code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a relevant person to have regard to the devolved powers of entry code in determining a question in any such proceedings.
- (5) In this paragraph “relevant person” means any person specified or described by the Welsh Ministers in an order made by statutory instrument.
- (6) An order under sub-paragraph (5) may, in particular—
- (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions,
 - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under sub-paragraph (5) contains a restriction of the kind mentioned in sub-paragraph (6)(a) in relation to a person, the duty in sub-paragraph (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions.
- (8) Before making an order under sub-paragraph (5) in relation to any person or description of persons, the Welsh Ministers must consult such persons appearing to the Welsh Ministers to be representative of the views of the person or persons in relation to whom the order may be made as the Welsh Ministers consider appropriate.
- (9) No instrument containing the first order under sub-paragraph (5) is to be made unless a draft of it has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (10) Subject to this, an instrument containing an order under sub-paragraph (5) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

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Interpretation

6

In this Schedule—

“the devolved powers of entry code” has the meaning given by paragraph 3(10),

“power of entry” and “associated power” have the meaning given by section 46.

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/2234 art. 13 by [S.I. 2014/831 art. 2\(2\)](#)
- specified provision(s) transitional provisions and savings for commencing S.I. 2013/1814 by [S.I. 2013/1813 art. 2-9](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 7A inserted by [2019 c. 3 Sch. 2 para. 20](#)