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STATUTORY INSTRUMENTS

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**2018 No. 644**

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

**Civil Contingencies Act 2004**

- 41.**—(1) The Civil Contingencies Act 2004<sup>M1</sup> is amended in accordance with this article.
- (2) In section 2 (duty to assess, plan and advise)—
- (a) in subsections (1) and (2), for “Part 1 or 2 of Schedule 1” substitute “ Part 1, 2 or 2A of Schedule 1 ”;
  - (b) after subsection (4) insert—
    - “(4A) The Welsh Ministers may, in relation to a person or body listed in Part 2A of Schedule 1, make regulations about—
      - (a) the extent of a duty under subsection (1) (subject to subsection (2));
      - (b) the manner in which a duty under subsection (1) is to be performed.”;
  - (c) after subsection (6) insert—
    - “(6A) Subsection (5) has effect in relation to subsection (4A) as it has effect in relation to subsection (3), but as if—
      - (a) paragraph (e) were omitted,
      - (b) in paragraphs (h) and (i)—
        - (i) a reference to Part 1 or 3 of Schedule 1 were a reference to Part 2A or 5 of that Schedule, and
        - (ii) a reference to Part 1 of that Schedule were a reference to Part 2A of that Schedule, and
      - (c) in paragraph (p) the references to a Minister of the Crown, the Scottish Ministers and a Northern Ireland department were omitted.”.
- (3) In section 3 (section 2: supplemental)—
- (a) after subsection (2) insert—
    - “(2A) The Welsh Ministers may issue guidance to a person or body listed in Part 2A or 5 of Schedule 1 about the matters specified in section 2(4A) and (5) (as applied by section 2(6A)).”;
  - (b) in subsection (3)(a) for “section 2(3) or (4)” substitute “ section 2(3), (4) or (4A) ”;
  - (c) in subsection (3)(b) for “subsection (1) or (2)” substitute “ subsection (1), (2) or (2A) ”;
  - (d) in subsection (4) for “Part 1 or 2 of” substitute “ Part 1, 2 or 2A of ”;
  - (e) in subsection (5) for “Part 3 or 4 of” substitute “ Part 3, 4 or 5 of ”.
- (4) In section 4 (advice and assistance to the public)—
- (a) in subsection (1) for “paragraph 1, 2 or 13” substitute “ paragraph 1, 13 or 18A ”;
  - (b) in subsection (2) for “paragraph 1 or 2” substitute “ paragraph 1 ”;
  - (c) after subsection (3) insert—

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- “(3A) The Welsh Ministers may, in relation to a body specified in paragraph 18A of that Schedule, make regulations about—
- (a) the extent of the duty under subsection (1);
  - (b) the manner in which the duty under subsection (1) is to be performed.”;
- (d) in subsection (4) for “subsection (2) or (3)” substitute “ subsection (2), (3) or (3A) ”;
- (e) in subsection (6) for “paragraph 1 or 2” substitute “ paragraph 1 ”;
- (f) after subsection (7) insert—
- “(7A) The Welsh Ministers may issue guidance to a body specified in paragraph 18A of that Schedule about the matters specified in subsections (3A) and (4).”;
- (g) in subsection (8)(a) for “subsection (2) or (3)” substitute “ subsection (2), (3) or (3A) ”;
- (h) in subsection (8)(b) for “subsection (6) or (7)” substitute “ subsection (6), (7) or (7A) ”.
- (5) In section 5 (general measures)—
- (a) after subsection (2) insert—
- “(2A) The Welsh Ministers may by order require a person or body listed in Part 2A of Schedule 1 to perform a function of that person or body for the purpose of—
- (a) preventing the occurrence of an emergency,
  - (b) reducing, controlling or mitigating the effects of an emergency, or
  - (c) taking other action in connection with an emergency.”;
- (b) after subsection (5) insert—
- “(5A) Subsection (4) has effect in relation to subsection (2A) as it has effect in relation to subsection (1), but as if—
- (a) in paragraphs (d) and (e)—
    - (i) a reference to Part 1 or 3 of Schedule 1 were a reference to Part 2A or 5 of that Schedule, and
    - (ii) a reference to Part 1 of that Schedule were a reference to Part 2A of that Schedule, and
  - (b) in paragraph (f) the references to a Minister of the Crown, to the Scottish Ministers and to a Northern Ireland department were omitted.”.
- (6) In section 6 (disclosure of information)—
- (a) after subsection (2) insert—
- “(2A) The Welsh Ministers may make regulations requiring or permitting one person or body listed in Part 2A or 5 of Schedule 1 (“the provider”) to disclose information on request to another person or body listed in any Part of that Schedule (“the recipient”).”;
- (b) in subsection (3) for “subsection (1) or (2)” substitute “ subsection (1), (2) or (2A) ”;
- (c) after subsection (5) insert—
- “(5A) The Welsh Ministers may issue guidance to a person or body about the performance of functions under regulations made under subsection (2A).”.
- (d) in subsection (6)(a) for “subsection (1) or (2)” substitute “ subsection (1), (2) or (2A) ”;
- (e) in subsection (6)(b) for “subsection (4) or (5)” substitute “ subsection (4), (5) or (5A) ”.
- (7) After section 8 (urgency: Scotland) insert—

### “8A Urgency: Wales

- (1) This section applies where—
  - (a) there is an urgent need to make provision of the kind that could be made by an order under section 5(2A) or by regulations under section 6(2A), but
  - (b) there is insufficient time for the order or regulations to be made.
- (2) The Welsh Ministers may by direction make provision of the kind that could be made by an order under section 5(2A) or by regulations under section 6(2A).
- (3) A direction under subsection (2) must be in writing.
- (4) Where the Welsh Ministers give a direction under subsection (2)—
  - (a) they may revoke or vary the direction by further direction,
  - (b) they must revoke the direction as soon as is reasonably practicable (and they may, if or in so far as they think it desirable, re-enact the substance of the direction by way of an order under section 5(2A) or by way of regulations under section 6(2A)), and
  - (c) the direction ceases to have effect at the end of the period of 21 days beginning with the day on which it is given (but without prejudice to the power to give a new direction).
- (5) A provision of a direction under subsection (2) is to be treated for all purposes as if it were a provision of an order under section 5(2A) or of regulations under section 6(2A).”
- (8) In section 9 (monitoring by Government)—
  - (a) after subsection (2) insert—

“(2A) The Welsh Ministers may require a person or body listed in Part 2A or 5 of Schedule 1—

    - (a) to provide information about action taken by the person or body for the purpose of complying with a duty under this Part, or
    - (b) to explain why the person or body has not taken action for the purpose of complying with a duty under this Part.”;
  - (b) in subsection (3) for “subsection (1) or (2)” substitute “ subsection (1), (2) or (2A) ”;
  - (c) in subsection (4) for “subsection (1) or (2)” substitute “ subsection (1), (2) or (2A) ”.
- (9) In section 10(1) (enforcement) for “15(7) or 15A(8)” substitute “ 15(7), 15A(8) or 15B(7) ”.
- (10) After section 11 (enforcement: Scotland) insert—

### “11A Enforcement: Wales

- (1) Any of the following may bring proceedings in the High Court in respect of a failure by a person or body listed in Part 2A or 5 of Schedule 1 to comply with section 2(1), 3(3), 4(1) or (8), 5(3), 6(6), 9(4) or 15B(7)—
  - (a) the Welsh Ministers,
  - (b) a person or body listed in Part 2A of Schedule 1, and
  - (c) a person or body listed in Part 5 of Schedule 1.
- (2) In proceedings under subsection (1) the High Court may grant any relief, or make any order, that it thinks appropriate.”
- (11) In section 13 (amendment of lists of responders)—
  - (a) after subsection (2) insert—

“(2A) The Welsh Ministers may by order amend Schedule 1 so as to—

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- (a) add an entry for a devolved Welsh authority to Part 2A or 5;
- (b) remove an entry from Part 2A or 5;
- (c) move an entry from Part 2A to Part 5 or vice versa.

(2B) In subsection (2A) “devolved Welsh authority” has the meaning given in section 157A of the Government of Wales Act 2006<sup>M2</sup>.”;

- (b) in subsection (3) for “subsection (1) or (2)” substitute “ subsection (1), (2) or (2A) ”.

(12) After section 14A (Northern Ireland: consultation) insert—

**“14B Wales: consultation**

(1) A Minister of the Crown must consult the Welsh Ministers before making regulations or an order under this Part in relation to a person or body if or in so far as the person or body exercises functions in relation to Wales.

(2) The Welsh Ministers must consult a Minister of the Crown before making regulations or an order under this Part.”.

(13) In section 15 (Scotland: cross-border collaboration)—

- (a) in subsection (1) for “Part 1” in each place it occurs, substitute “ Part 1 or 2A ”;
- (b) in subsection (5)—

- (i) for “section 5(1)” substitute “ section 5(1) or (2A) ”;

- (ii) for “Part 1” in each place that it occurs, substitute “ Part 1 or 2A ”.

(14) In section 15A (Northern Ireland: cross-border collaboration)—

- (a) in subsection (1)(a)—

- (i) for “section 15(3) or (6)” substitute “ section 15(3) or (6), or section 15B(3) or (6) ”; and

- (ii) for “Part 2” substitute “ Part 2 or 2A ”;

- (b) in subsection (1)(b) for “section 15(4)” substitute “ section 15(4) or 15B(4) ”.

(15) After section 15A insert—

**“15B Wales: cross-border collaboration**

(1) Where a person or body listed in Part 1 or 2 of Schedule 1 has a duty under section 2 or 4, the Welsh Ministers may make regulations—

- (a) permitting or requiring a person or body listed in Part 2A or 5 of that Schedule to co-operate, to such extent and in such manner as may be specified, with the person or body listed in Part 1 or 2 of that Schedule in connection with the performance of the duty;

- (b) permitting or requiring a person or body listed in Part 2A or 5 of that Schedule to provide information, either on request or in other specified circumstances, to the person or body listed in Part 1 or 2 of that Schedule in connection with the performance of the duty.

(2) The Welsh Ministers may issue guidance about a matter addressed in regulations under subsection (1).

(3) Where a person or body listed in Part 2A of Schedule 1 has a duty under section 2 or 4, a Minister of the Crown may make regulations—

- (a) permitting or requiring a person or body listed in Part 1 or 3 of that Schedule to co-operate, to such extent and in such manner as may be specified, with the person or body listed in Part 2A of that Schedule in connection with the performance of the duty;
  - (b) permitting or requiring a person or body listed in Part 1 or 3 of that Schedule to provide information, either on request or in other specified circumstances, to the person or body listed in Part 2A of that Schedule in connection with the performance of the duty.
- (4) A Minister of the Crown may issue guidance about a matter addressed in regulations under subsection (3).
- (5) If an order is made under section 5(1) or (2) imposing a duty on a person or body listed in Part 1 or 2 of Schedule 1, the Welsh Ministers may make an order—
  - (a) permitting or requiring a person or body listed in Part 2A or 5 of that Schedule to co-operate, to such extent and in such manner as may be specified, with the person or body listed in Part 1 or 2 of that Schedule in connection with the duty;
  - (b) permitting or requiring a person or body listed in Part 2A or 5 of that Schedule to provide information, either on request or in other specified circumstances, to the person or body listed in Part 1 or 2 of that Schedule in connection with the duty.
- (6) If the Welsh Ministers make an order under section 5(2A) imposing a duty on a person or body listed in Part 2A of Schedule 1, a Minister of the Crown may make an order—
  - (a) permitting or requiring a person or body listed in Part 1 or 3 of that Schedule to co-operate, to such extent and in such manner as may be specified, with the person or body listed in Part 2A of that Schedule in connection with the duty;
  - (b) permitting or requiring a person or body listed in Part 1 or 3 of that Schedule to provide information, either on request or in other specified circumstances, to the person or body listed in Part 2A of that Schedule in connection with the duty.
- (7) A person or body must—
  - (a) comply with regulations or an order under this section, and
  - (b) have regard to guidance under this section.
- (8) In this Act, except where the contrary intention appears—
  - (a) a reference to an order under section 5(1) includes a reference to an order under subsection (6) above; and
  - (b) a reference to an order under section 5(2A) includes a reference to an order under subsection (5) above.”.
- (16) In section 16 (National Assembly for Wales)—
  - (a) omit subsection (1);
  - (b) omit subsection (4)(a); and
  - (c) in subsection (4)(b) for “paragraph 4, 5, 8, 9, 10, 11 or 21 of that Schedule” substitute “paragraph 9 or 10 of Schedule 1”.
- (17) In section 17 (regulations and orders)—
  - (a) in subsection (1) for “or the Scottish Ministers” substitute “, the Scottish Ministers or the Welsh Ministers”;
  - (b) after subsection (3) insert—

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“(3ZA) An order under section 5(2A) or 13(2A) may not be made by the Welsh Ministers unless a draft has been laid before and approved by a resolution of the National Assembly for Wales.”;

(c) after subsection (5) insert—

“(5ZA) Regulations made by the Welsh Ministers under this Part are subject to annulment in pursuance of a resolution of the National Assembly for Wales.”.

(18) In Schedule 1 (category 1 and 2 responders), in Part 1 (category 1 responders: general)—

(a) omit paragraph 2;

(b) in paragraph 4, after “fire and rescue authority” insert “ in England, ”;

(c) omit paragraph 5;

(d) omit paragraph 8;

(e) in paragraph 10, after “port health authority” insert “ in England ”; and

(f) omit paragraph 12A <sup>M3</sup>.

(19) In Schedule 1, after Part 2 (category 1 responders: Scotland) insert—

## “PART 2A

### Category 1 Responders: Wales

#### **Local authorities**

**18A.**—(1) A county council in Wales.

(2) A county borough council.

#### **Emergency services**

**18B.** A fire and rescue authority in Wales within the meaning of section 1 of the Fire and Rescue Services Act 2004 <sup>M4</sup>.

#### **Health**

**18C.** A National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006 <sup>M5</sup> if, and so far as, it has the function of providing—

(a) ambulance services,

(b) hospital accommodation and services in relation to accidents and emergencies, or

(c) services in relation to public health.

**18D.** A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

#### **Environment**

**18E.** The Natural Resources Body for Wales.

### Port Health Authorities

**18F.** A port health authority in Wales constituted under section 2(4) of the Public Health (Control of Disease) Act 1984 <sup>M6</sup>.”.

(20) In Schedule 1, in Part 3 (category 2 responders: general) in paragraph 21 after “sewerage undertaker” insert “ for an area wholly or mainly in England ”.

(21) In Schedule 1, after Part 4 (category 2 responders: Scotland), insert—

## “PART 5

### Category 2 Responders: Wales

#### Utilities

**39.** A water undertaker or sewerage undertaker appointed under section 6 of the Water Industry Act 1991 <sup>M7</sup> for an area wholly or mainly in Wales.

#### Transport

**40.** The Welsh Ministers, in so far as their functions relate to matters for which they are responsible by virtue of section 1 of the Highways Act 1980 <sup>M8</sup>”.

#### Marginal Citations

- M1** 2004 c. 36; sections 2, 3, 5, 6, 9, 10, 13 and 15 were amended by article 5 of, and paragraphs 94, 96 to 99, 101, 102, 104 and 106 of Schedule 3 to, S.I. 2010/976; sections 14A and 15A were inserted by paragraphs 105 and 107 of that Schedule..
- M2** 2006 c. 32; section 157A was inserted by section 4(1) of the Wales Act 2017 (c. 4).
- M3** Paragraph 12A was inserted by article 4(1) of, and paragraph 429 of Part 1 of Schedule 2 to, S.I. 2013/755.
- M4** 2004 c. 21.
- M5** 2006 c. 42.
- M6** 1984 c. 22.
- M7** 1991 c. 56.
- M8** 1980 c. 66; the functions of the Minister in section 1, so far as they are exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the 1999 Order and are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Section 1 was amended by section 8 of, and paragraph 1 of Part 1 of Schedule 4 to, the Local Government Act 1985 (c. 51), section 21(2) of the New Roads and Street Works Act 1991 (c. 22), section 22 of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19), section 259(1) and (2) of the Greater London Authority Act 1999 (c. 29), and section 1(6) of, and paragraphs 1 and 2 of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

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