
EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 31st December 2011. It provides for certain functions under the Building Act 1984 (c. 55) (“the 1984 Act”), the Sustainable and Secure Buildings Act 2004 (c. 22) (“the 2004 Act”), and the Climate Change and Sustainable Energy Act 2006 (c. 19) (“the 2006 Act”) to be transferred from the Secretary of State to the Welsh Ministers.

This transfer expands upon the previous transfer of functions exercisable under the 1984 Act pursuant to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as varied by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). The primary function which is transferred is the power to make regulations in respect of the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings (known as “building regulations”) pursuant to section 1 of the 1984 Act in relation to Wales.

Article 2 of this Order transfers all functions exercisable by the Secretary of State by or under the 1984 Act (including functions conferred or imposed by building regulations) that have not previously been transferred to the Welsh Ministers, so far as they are exercisable in relation to Wales, subject to articles 3 and 4. Article 2 also transfers reporting functions under section 6 of the 2004 Act and section 14 of the 2006 Act, so far as they are exercisable in relation to Wales.

Article 3 excludes functions under the 1984 Act from the transfer in so far as they are exercisable in relation to an “excepted energy building” that fulfils the conditions specified in the Schedule. It also excludes the functions of the Secretary of State as a “Crown authority” under section 44(5) of the 1984 Act (which has not yet been brought into force), and the power to make orders under sections 42(7) or 134(1) bringing provisions of the 1984 Act into force.

Article 4 makes specific provision about the transfer of functions under Part 5A (energy performance of buildings) of the Building Regulations 2000 (S.I. 2000/2531) (“the 2000 Regulations”). (Part 5A was made and amended in the exercise of powers conferred by the 1984 Act, and functions under that Part are therefore transferred by article 2(a).) The functions under regulation 17A of approving methods of calculating and expressing the energy performance of buildings are transferred only so far as they are exercisable for the purposes of regulation 17B of those regulations (minimum energy performance requirements for buildings) and for the purposes of legislation which requires the provision of an energy performance certificate when a building is constructed or modified in certain ways (the “construction EPC provisions” defined in article 1(3)). Functions under regulation 17F relating to the approval of accreditation schemes for energy assessors are transferred only so far as they are exercisable in relation to the functions of energy assessors under or in relation to the construction EPC provisions.

Article 5 provides for any existing power to confer a function on the Secretary of State to have effect as a power to confer the function on the Welsh Ministers, the First Minister or the Counsel General, if the function is one which would have been transferred by this Order had it been exercisable at the time of the transfer.

The Order does not transfer functions under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991). However, article 6 modifies regulations 14(2)(f) and 37 of those Regulations, which provide for the disclosure to the Secretary of State of certain documents and information relating to energy performance certificates. Where the documents or information relate to a building in respect of which the Welsh Ministers will have functions under Part 5A of the 2000 Regulations, and were prepared or collected for the purposes of

the construction EPC provisions, regulations 14(2)(f) and 37 will have effect as if they also permitted disclosure to the Welsh Ministers.

Article 7 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.

Article 8 amends section 14 of the 1984 Act in order to replace the Building Regulations Advisory Committee with a Building Regulations Advisory Committee for England and a Building Regulations Advisory Committee for Wales.

Article 9 makes transitional provision for members of the Building Regulations Advisory Committee to become members of the Building Regulations Advisory Committee for England.

Articles 10-13 make consequential amendments to other legislation.

Article 10 amends the Parliamentary Commissioner Act 1967 (c. 13) to include the Building Regulations Advisory Committee for England in the list of bodies subject to investigation by the Parliamentary Commissioner for Administration.

Article 11 amends the list of bodies subject to the general statutory duty in the Race Relations Act 1976 (c. 74) to include both of the new advisory committees.

Article 12 amends the Public Services Ombudsman (Wales) Act 2005 (c. 10) to include the Building Regulations Advisory Committee for Wales in the list of authorities subject to investigation by the Public Services Ombudsman for Wales.

Article 13 amends the list of bodies excepted from the monitoring duty in the Race Relations Act 1976 (Statutory Duties) Order 2001 (S.I. 2001/3458) to include both of the new advisory committees.

The Schedule defines the “excepted energy buildings” in relation to which functions under the 1984 Act are not transferred to the Welsh Ministers. Where both of the conditions set out in the Schedule are met in respect of a particular type of building, that building will be an “excepted energy building”. Broadly speaking, the conditions mean that the transfer does not include any functions exercisable in relation to energy infrastructure buildings, other than buildings used wholly for residential purposes or as a shop, office, showroom or canteen.

The first condition is that the building falls within one of the categories of energy infrastructure listed in paragraph 2. The categories of building listed are all buildings in relation to which Ministers of the Crown and the Infrastructure Planning Commission have town and country planning functions. The Schedule contains a number of definitions relevant to the first condition.

The second condition is that the building is not used entirely as any one, or any combination of, the following: a residence, a shop, an office, a showroom, a canteen or an outbuilding. The Schedule contains definitions which determine the meaning of “residence” and “outbuilding” in this context.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.