Draft Order laid before Parliament under section 58(4)(a) of the Government of Wales Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

CONSTITUTIONAL LAW
DEVOLUTION, WALES

The Welsh Ministers (Transfer of Functions) (No. 2) Order 2009

Made - - - - [ ] 2009

Coming into force - - 31st December 2011

At the Court at Buckingham Palace, the [ ] day of [ ] 2009

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 58 and 157(2) of, and paragraph 2 of Schedule 4 to, the Government of Wales Act 2006(**1**).

In accordance with section 58(4) of that Act a draft of this Order was—

(a) laid before, and approved by resolution of, each House of Parliament; and

(b) approved by the Welsh Ministers.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009.

(2) This Order shall come into force on 31st December 2011.

(3) In this Order—

"the 1984 Act" means the Building Act 1984(**2**);

(**1**) 2006 c. 32.

(**2**) 1984 c. 55. Amendments relevant to this Order include those made by the Building Act 1984 (Appointed Day and Repeal) Order 1985 (S.I. 1985/1603), article 2; the Deregulation and Contracting Out Act 1994 (c. 40), section 32; the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996 (S.I. 1996/1905), articles 2 to 4; the Sustainable and Secure Buildings Act 2004 (c. 22) sections 1 to 5 and 7 to 9 (some of which are not yet in force); and the Climate Change and Sustainable Energy Act 2006 (c. 19), sections 11 and 13.

"the 2000 Regulations" means the Building Regulations 2000(**3**)003B

"the 2007 Regulations" means the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007(**4**);

"the construction EPC provisions" means—

(a) regulation 17E of the 2000 Regulations (energy performance certificates);

(b) regulation 12 of the Building (Approved Inspectors etc.) Regulations 2000(**5**) (energy performance certificates); and

(c) regulation 9 of the 2007 Regulations (construction of Crown and statutory undertakers' buildings);

"excepted energy building" is defined by the Schedule.

Transfer of functions

2. The following functions are, so far as exercisable in relation to Wales, transferred to the Welsh Ministers—

(a) functions conferred or imposed on the Secretary of State by or under the 1984 Act(**6**), subject to articles 3 and 4;

(b) functions of the Secretary of State under—

(i) section 6 of the Sustainable and Secure Buildings Act 2004(**7**) (Secretary of State to report on building stock); and

(ii) section 14 of the Climate Change and Sustainable Energy Act 2006(**8**) (report regarding compliance).

3. Article 2(a) does not transfer—

(a) any functions so far as they are exercisable in relation to an excepted energy building;

(b) functions under section 44(5) of the 1984 Act (functions exercisable by the Secretary of State as a Crown authority); or

(c) functions under section 42(7) or 134(1) of the 1984 Act (power of the Secretary of State to appoint a day for a modification to cease to have effect or for a provision to come into force).

4.—(1) The transfer by article 2(a) of functions under Part 5A of the 2000 Regulations(**9**) (energy performance of buildings) is subject to the following provisions.

(**3**) S.I. 2000/2531. There have been numerous amending instruments. Those which are most relevant to this Order include the Building (Amendment) (No. 2) Regulations 2002 (S.I. 2002/2871); the Building (Amendment) Regulations 2004 (S.I. 2004/1465); the Building and Approved Inspectors (Amendment) Regulations 2006 (S.I. 2006/652), Part 2; the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991), regulation 8 and Schedule 2, paragraph 1; the Building and Approved Inspectors (Amendment) Regulations 2007 (S.I. 2007/3384), regulation 2; and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No. 2) Regulations 2008 (S.I. 2008/2363), regulation 3.

(**4**) S.I. 2007/991, amended by S.I. 2007/1669, S.I. 2007/3302, S.I. 2008/647 and S.I. 2008/2363.

(**5**) S.I. 2000/2532. There have been numerous amending instruments. Regulation 12 was substituted by the 2007 Regulations, regulation 8 and Schedule 2, paragraph 2; and amended by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No. 2) Regulations 2008 (S.I. 2008/2363), regulation 4(1) and (2).

(**6**) Certain functions of a Minister of the Crown under the 1984 Act were transferred to the National Assembly for Wales constituted by the Government of Wales Act 1998 (c. 38) by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1, as varied by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253), article 4 and Schedule 3; and have been transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30.

(**7**) 2004 c. 22.

(**8**) 2006 c. 19.

(**9**) Part 5A, comprising regulations 17A to 17E, was inserted by the Building and Approved Inspectors (Amendment) Regulations 2006 (S.I. 2006/652), regulations 2 and 15. New regulations 17A and 17E to 17J were substituted for regulations 17A and

(2) Functions under regulation 17A (methodology of calculation and expression of energy performance) are transferred only so far as they are exercisable for the purposes of—

(a) regulation 17B (minimum energy performance requirements for buildings); and

(b) the construction EPC provisions.

(3) Functions under regulation 17F (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.

Powers to confer or impose functions

5.—(1) Any pre-commencement power to confer or impose a relevant function on the Secretary of State shall have effect as a power to confer or impose the function on the Welsh Ministers, the First Minister or the Counsel General.

(2) For the purposes of paragraph (1)—

(a) a pre-commencement power is a power which was exercisable immediately before 31st December 2011; and

(b) a relevant function is a function which, had it been a function of the Secretary of State immediately before 31st December 2011, would have been transferred to the Welsh Ministers by article 2.

Modifications to the 2007 Regulations—disclosure of documents and data

6.—(1) The 2007 Regulations are modified as follows in relation to—

(a) a relevant document;

(b) data collected or used for the purpose of preparing a relevant document; and

(c) information derived from a relevant document.

(2) Regulation 14(2)(f) (purposes for which certificates and recommendation reports may be disclosed to the Secretary of State) shall have effect as if the reference to the Secretary of State included the Welsh Ministers.

(3) Regulation 37 (disclosures to the Secretary of State) shall have effect as if the references to the Secretary of State for Communities and Local Government included the Welsh Ministers.

(4) For the purposes of paragraph (1), a relevant document is an energy performance certificate or recommendation report—

(a) relating to a building in Wales other than an excepted energy building; and

(b) prepared for the purposes of the construction EPC provisions.

Transfer of property, rights and liabilities—exception

7. Paragraph 1(1) of Schedule 4 to the Government of Wales Act 2006 (transfer of property, rights and liabilities connected with transferred functions) does not apply to any documentary or electronic records to which the Secretary of State is entitled at the coming into force of this Order in connection with any function exercisable by the Secretary of State which is transferred by this Order.

17E by the 2007 Regulations, regulation 8 and Schedule 2, paragraph 1(1), (7) and (8). There have been other amendments to regulation 17E. The provisions inserting and amending Part 5A of the 2000 Regulations, which included regulation 8 of the 2007 Regulations and Schedule 2 to those Regulations, were made in the exercise of powers conferred by the 1984 Act. The provisions of the 2007 Regulations other than regulation 8 and Schedule 2, and amendments to those provisions, were made under section 2(2) of the European Communities Act 1972 (c. 68). Functions conferred by those other provisions of the 2007 Regulations are not transferred by this Order (but see article 6 for modifications to the 2007 Regulations).

Amendments to section 14 of the 1984 Act

8.—(1) Section 14 of the 1984 Act (consultation with Building Regulations Advisory Committee and other bodies) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Secretary of State shall appoint a committee, to be known as the Building Regulations Advisory Committee for England, for the purpose of advising the Secretary of State on the exercise of the Secretary of State's power to make building regulations, and on other subjects connected with building regulations."

(3) In subsections (2) and (3), after "Committee" insert "for England".

(4) In subsection (4)(**10**)—

(a) in paragraph (a), after "Committee" insert "for England"; and

(b) in paragraph (b), after "local authorities" insert "in England".

(5) After subsection (4) insert—

"(5) The Welsh Ministers shall appoint a committee, to be known as the Building Regulations Advisory Committee for Wales, for the purpose of advising them on the exercise of their power to make building regulations, and on other subjects connected with building regulations.

(6) The Welsh Ministers may pay such expenses incurred by members of the Building Regulations Advisory Committee for Wales as the Welsh Ministers may determine.

(7) Before making any building regulations containing substantive requirements, the Welsh Ministers shall consult the Building Regulations Advisory Committee for Wales and such other bodies as appear to them to be representative of the interests concerned.

(8) Before making any building regulations containing provision of the kind authorised by paragraph 11(1)(c) of Schedule 1 to this Act, the Welsh Ministers shall consult—

(a) the Building Regulations Advisory Committee for Wales,

(b) such persons or bodies as appear to them to be representative of local authorities in Wales, and

(c) such other bodies as appear to them to be representative of the interests concerned.".

Transitional provision for members of the Building Regulations Advisory Committee

9.—(1) This article applies to a person who, immediately before 31st December 2011, is a member of the Building Regulations Advisory Committee ("the former Committee").

(2) The person shall on 31st December 2011 become a member of the Building Regulations Advisory Committee for England.

(3) The membership shall be—

(a) on the same terms and conditions as the appointment to the former Committee; and

(b) for a period equivalent to the period of that appointment which remains on 31st December 2011.

Amendment to the Parliamentary Commissioner Act 1967

10.—(1) The Parliamentary Commissioner Act 1967(**11**) is amended as follows.

(**10**) Subsection (4) was inserted by the Deregulation and Contracting Out Act 1994 (c. 40), section 32(2).
(**11**) 1967 c. 13.