

THE WELSH MINISTERS (TRANSFER OF FUNCTIONS) ORDER 2008

10 JULY 2008

RHODRI MORGAN, THE FIRST MINISTER

Yesterday (9 July 2008), the first transfer of functions order under the Government of Wales Act 2006 (section 58) was made by Her Majesty in Privy Council (the Order). The Order, which transfers to the Welsh Ministers functions under section 86 of the Mental Health Act 1983 and section 259 of, and Schedule 21 to, the National Health Service Act 2006, comes into force today (10 July 2008).

A copy of the Order will be laid in the Assembly by the Table Office when it is available and Assembly Members will be notified when that happens. This is the first transfer of functions order that transfers executive functions directly to the Welsh Ministers, pursuant to the provisions of the Government of Wales Act 2006. Under the previous arrangements in the Government of Wales Act 1998, functions were transferred to the National Assembly for Wales and then delegated to Ministers. Following the legal separation of the Assembly Government from the Assembly in May 2007, all existing executive functions were transferred from the Assembly to the Welsh Ministers under the Government of Wales Act 2006.

Section 86 of the Mental Health Act 1983 – the removal of patients abroad

Part 6 of the Mental Health Act 1983 (the 1983 Act) provides powers under which certain categories of detained patients and patients subject to guardianship may be moved between England and Wales and any country abroad. The powers in section 86 of the 1983 Act are to remove a person from a hospital in England or Wales and send them to another country. Where section 86 applies, it is in relation only to patients detained under Part 2 or Part 3 of the 1983 Act who are neither British citizens nor Commonwealth citizens with the right of abode in the United Kingdom.

Part 3 of the 1983 Act relates to patients involved in criminal proceedings or under sentence. Part 2 patients are often referred to as 'civil' patients, with detention in hospital being a process that does not involve the courts.

Following the making of this Transfer of Functions Order, section 86 now requires that before exercising the power of removal in relation to a patient in Wales, the Welsh Ministers must be satisfied that appropriate arrangements have been made to ensure that the patient receives proper care and treatment in the other country and that removal would be in the patient's best interests.

Before exercising the power of removal under section 86, the Welsh Ministers must obtain the approval of the Mental Health Review Tribunal. The Tribunal is an independent judicial body that is concerned with determining whether a patient continues to meet the criteria for detention under the 1983 Act. It has the power to discharge a person from detention.

Prior to the making of this Transfer of Functions Order, the functions of the Welsh Ministers were exercised by the Secretary of State for Health. Given that health falls within the executive competence of the Welsh Ministers, it is appropriate for the Welsh Ministers to exercise section 86 functions.

The Order makes it clear that there will be no transfer of functions relating to section 86 for patients who are subject to a restriction order or direction under section 41 or section 49 of the 1983 Act, or a hospital and limitation direction under section 45A of that Act. These functions will remain with the Secretary of State for Justice, who will exercise them in relation to England and Wales. This reflects the current settlement and arrangements regarding such patients. The Welsh Ministers have not sought to change those arrangements.

Section 259 of, and Schedule 21 to, the National Health Service Act 2006 – the Sale of Goodwill

The sale of goodwill of medical practices has been included in this Transfer of Functions Order and was previously reserved to the UK Government under section 259 of, and Schedule 21 to, the National Health Service Act 2006.

Any person proposing to be a party to a transaction which they think might amount to the sale of goodwill of a medical practice must now ask the Welsh Ministers for a certificate that no goodwill has been sold. The purpose of requiring a certificate is to prevent GP Practices from making a profit from the sale of the practice, other than on the premises themselves, thus making it affordable for others to purchase.

There are no significant issues in respect of costs or cross border matters relating to this Transfer of Functions Order.