
W E L S H S T A T U T O R Y
I N S T R U M E N T S

2021 No. 233 (W. 59)

**NATIONAL HEALTH
SERVICE, WALES**

**The Digital Health and Care Wales
(Transfer of Staff, Property, Rights
and Liabilities) Order 2021**

EXPLANATORY NOTE

(This note is not part of the Order)

A Special Health Authority, Digital Health and Care Wales (“DHCW”) has been established under section 22 of the National Health Service (Wales) Act 2006. DHCW’s functions will relate to the provision of digital platforms, systems and services and supporting the improvement of such systems. To date, a number of these functions have been exercised by the National Health Service Wales Informatics Service (“NWIS”). NWIS forms part of the shared services hosted by Velindre University National Health Service Trust (“Velindre University NHS Trust”).

This Order makes provision for the transfer of particular staff (article 3), property (article 4), rights and liabilities (article 5) from Velindre University NHS Trust to DHCW.

Article 6 makes provision for the transfer of data, records and information.

Article 7 makes provision for the continuity of things done by, or in relation to, Velindre University NHS Trust.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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Made 3 March 2021

Laid before Senedd Cymru 4 March 2021

Coming into force 1 April 2021

The Welsh Ministers make the following Order in exercise of the powers conferred on them by sections 22(2) and (4) and 203(9) and (10) of the National Health Service (Wales) Act 2006⁽¹⁾ and after consultation in accordance with section 22(7) of that Act.

Title and commencement

1.—(1) The title of this Order is the Digital Health and Care Wales (Transfer of Staff, Property, Rights and Liabilities) Order 2021.

(2) This Order comes into force on 1 April 2021.

Interpretation

2. In this Order—

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“DHCW” (“*IGDC*”) means Digital Health and Care Wales established by article 2 of the Digital Health and Care Wales (Establishment and Membership) Order 2020⁽²⁾;

(1) 2006 c. 42.

(2) S.I. 2020/1451 (W. 313).

“NWIS” (“*GGGC*”) means the National Health Service Wales Informatics Service in Velindre University NHS Trust;

“NWIS’s functions” (“*swyddogaethau GGGC*”) means managing and providing to, or in relation to, the health service in Wales, a range of information technology systems and associated support and consultancy services, desktop services, web development, telecommunications services, and healthcare information services;

“the transfer date” (“*y dyddiad trosglwyddo*”) means 1 April 2021;

“Velindre University NHS Trust” (“*Ymddiriedolaeth GIG Prifysgol Felindre*”) means the NHS Trust established by the Velindre National Health Service Trust (Establishment) Order 1993⁽¹⁾.

Transfer of staff to DHCW

3.—(1) This article applies to any person who—

- (a) immediately before the transfer date is employed by Velindre University NHS Trust in connection with NWIS’s functions, and
- (b) has been notified in writing by Velindre University NHS Trust prior to the transfer date that they are to be transferred to DHCW.

(2) The contract of employment of any person to whom paragraph (1) applies is, on the transfer date, to be transferred to DHCW.

(3) The contract of employment of a person whose employment has transferred to DHCW under paragraph (2)—

- (a) is not terminated by the transfer, and
- (b) has effect from the transfer date as if originally made between that person and DHCW.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of Velindre University NHS Trust under, or in connection with, the contract of employment of any person whose employment transferred to DHCW on the transfer date under paragraph (2), are to transfer to DHCW, and
- (b) any act or omission before the transfer date by, or in relation to, Velindre University NHS Trust, in respect of that person or that person’s contract of employment, is deemed

(1) S.I. 1993/2838, amended by S.I. 1999/826, S.I. 2002/442 (W. 57), S.I. 2002/2199 (W. 219), S.I. 2009/2059 (W. 178), S.I. 2012/1262 (W. 157), S.I. 2017/912 (W. 223), and S.I. 2018/887 (W. 176).

to have been an act or omission of, or in relation to, DHCW.

(5) Paragraphs (2) to (4) do not have effect to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the transfer date, that person informs Velindre University NHS Trust that they object to becoming employed by DHCW.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment to DHCW as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with Velindre University NHS Trust.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with paragraph (6) is not to be treated, for any purpose, as having been dismissed by their employer.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have been transferred under paragraph (2), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by their employer.

(9) No damages are to be payable by an employer as a result of a dismissal falling within paragraph (8) in respect of any failure by the employer to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3), and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

(11) Records of Velindre University NHS Trust relating to the employment of those persons to whom paragraph (1) applies and whose contracts of employment are to transfer to DHCW pursuant to this article are to transfer to DHCW on the transfer date.

Transfer of property

4.—(1) This article applies to property held by Velindre University NHS Trust immediately before the transfer date—

- (a) which is identified in the Schedule;
- (b) which is used or held by Velindre University NHS Trust—
 - (i) for the performance of NWIS's functions, or

(ii) in connection with the performance of NWIS's functions.

(2) Any property to which paragraph (1) applies is, on the transfer date, to transfer to DHCW.

(3) Any rights or liabilities that Velindre University NHS Trust has in relation to any property to which paragraph (1) applies are, on the transfer date, to transfer to DHCW.

(4) Any property to which paragraph (1) applies which consists of land or buildings is transferred subject to, and with the benefit of—

- (a) any existing leases, tenancies and licences and any rights of occupiers and their successors;
- (b) any other interest in, and matter affecting, it.

(5) In paragraph (4), the transfer of "property" includes the transfer of the contents of the property, including any item or property of whatever description which is—

- (a) the property of Velindre University NHS Trust immediately prior to the transfer date, and
- (b) present in or on the property on the transfer date,

including any vehicle or moveable property which is normally kept on such land or in such buildings when not in use.

Transfer of rights and liabilities

5.—(1) Any rights and liabilities of Velindre University NHS Trust which exist immediately before the transfer date that relate to Velindre University NHS Trust in the exercise of, or in connection with, NWIS's functions are to transfer on the transfer date to DHCW.

(2) Any liabilities of Velindre University NHS Trust which exist immediately before the transfer date that relate to Velindre University NHS Trust in the exercise of, or in connection with, NWIS's functions are enforceable against DHCW.

Transfer of information, data and records

6.—(1) Any property, rights and liabilities that Velindre University NHS Trust has, immediately before the transfer date, in relation to information, data and records that relate to Velindre University NHS Trust in the exercise of, or in connection with, NWIS's functions are to transfer on the transfer date to DHCW.

(2) The transfer of any information, data and records to which this article applies is subject to any third party rights which exist in relation to that information or those data and records.

Provision for continuity in the exercise of functions

7.—(1) Anything which immediately before the transfer date, has been done or is in the process of being done by or in relation to Velindre University NHS Trust in the exercise of, or in connection with NWIS's functions, is on or after the transfer date to have effect as if done by or in relation to DHCW.

(2) So far as is required for giving effect to paragraph (1), a reference in any document to Velindre University NHS Trust is to be construed on and after the transfer date as a reference to DHCW.

(3) Subject to article 3(8), no right to terminate or vary a contract, arrangement or instrument is to operate or become exercisable, and no provision of any contract, arrangement or instrument is to operate or become exercisable or be contravened, by reason of any transfer under or other operation of this Order.

(4) The transfers provided for by this Order are to be made—

- (a) irrespective of any requirement for consent that would otherwise apply (whether arising under any enactment, instrument, agreement or otherwise),
- (b) whether or not they would otherwise be capable of being transferred, and
- (c) regardless of any provision (of whatever nature) which would otherwise prevent or restrict those transfers.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
3 March 2021

SCHEDULE Article 4

Property Transferring to DHCW

Lease dated 4 January 2016 made between Velindre University NHS Trust (1) and Second Horizon Limited (2)

Lease dated 28 January 2020 made between Velindre University NHS Trust (1) and Second Horizon Limited (2) in relation to Bocam Park

Lease dated 18 December 2019 made between Velindre University NHS Trust (1) and Castlebridge Investments Ltd (2) in relation to Castlebridge

Lease dated 29 July 2013 made between Velindre University NHS Trust (1) and Johnsey Estates UK Limited (2) in relation to Mamhilad Park Estate (ground floor)

Lease dated 29 July 2013 made between Velindre University NHS Trust (1) and Johnsey Estates UK Limited (2) in relation to Mamhilad Park Estate (first floor)

Lease dated 29 July 2013 made between Velindre University NHS Trust (1) and Johnsey Estates UK Limited (2) in relation to Mamhilad Park Estate (second floor)

Lease dated 1 April 2016 made between Velindre University NHS Trust (1) and University of Wales: Trinity Saint David (2) in relation to Technium 2 (part of first floor)

Lease dated 1 April 2016 made between Velindre University NHS Trust (1) and University of Wales: Trinity Saint David (2) in relation to Technium 2 (The Madoc room)

Lease dated 8 December 2014 made between Velindre University NHS Trust (1) and Mark Andrews & Others (2) in relation to Tŷ Glan-yr-Afon

Lease dated 14 May 2018 made between Velindre University NHS Trust (1) and Mark Andrews & Others (2) in relation to Tŷ Glan-yr-Afon

Lease dated 10 January 2021 made between Velindre University NHS Trust (1) and Mojo 2 Limited (2) in relation to Media Point