
WELSH STATUTORY INSTRUMENTS

2004 No. 1016

**The General Medical Services Transitional and
Consequential Provisions (Wales) (No. 2) Order 2004**

PART 6

**TRANSITIONAL ARRANGEMENTS: THE NATIONAL HEALTH SERVICE
(SERVICE COMMITTEES AND TRIBUNAL) REGULATIONS 1992**

Interpretation

70.—(1) In this Part—

“the Service Committees Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1992⁽¹⁾;

“amendments” in respect of any regulation or regulations in the Service Committees Regulations means amendments made to that regulation or those regulations by paragraph 10 of Schedule 1 to this Order;

“appropriate Local Health Board” has the same meaning as “appropriate Health authority” in the Service Committees Regulations;

“contracting LHB” means a Local Health Board that has entered into a default contract or a general medical services contract (as the case may be) with—

- (a) a doctor who is the subject of the allegation,
- (b) a partnership, where a doctor who is the subject of the allegation is a partner,
- (c) a limited company, where a doctor who is the subject of the allegation is a legal and beneficial shareholder of shares in that company;

“doctor” has the same meaning as in the Service Committees Regulations;

“the Performers List LHB” means the Local Health Board in whose medical performers list the doctor’s name appears on 1st April 2004;

“relevant contractor” means a party to a general medical services contract or default contract with a contracting LHB, where that contractor is—

- (a) a doctor who is the subject of the allegation,
- (b) a partnership, and a doctor who is or was the subject of the allegation is a partner in that partnership,
- (c) a limited company, where a doctor who is or was the subject of the allegation is a legal and beneficial shareholder of shares in that company; and

“relevant date” means 1st April 2004.

(2) Unless the contract otherwise requires, any reference in this Part to—

⁽¹⁾ S.I. 1992/664 as amended by S.I.1996/703, 1998/674, 2002/2469 and 2003/1397.

- (a) A numbered regulation is to the regulation bearing that number in the Service Committees Regulations; and
- (b) A numbered Schedule is to the Schedule to the Service Committees Regulations bearing that number.

Cases where no decision has been made before the relevant date as to whether disciplinary action should be taken (regulation 4 of the Service Committees Regulations)

71.—(1) Where, before the relevant date, or on or after the relevant date in respect of a matter that occurred before the relevant date, a Local Health Board receives, or has received information that could amount to an allegation that a doctor had failed to comply with his or her terms of service and—

- (a) that Local Health Board, or its reference committee (as the case may be), has not taken a final decision pursuant to regulation 4(1) of the Service Committees Regulations before the relevant date as to whether it will take no action or take one or both of the courses of action set out in regulation 4(2) of the Service Committees Regulations; and
- (b) any time limit specified in regulation 6 of the Service Committees Regulations has not expired,

paragraph (2) shall apply.

(2) Where this paragraph applies, the Local Health Board shall—

- (a) if it is the appropriate Local Health Board, continue to be the appropriate Local Health Board for the purposes of the Service Committees Regulations, and consider and take such action as it sees fit pursuant to the Service Committees Regulations, subject to article 74, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; or
- (b) if it is not the appropriate Local Health Board, forward the information to that Trust as soon as is reasonably practicable, and that Trust shall consider the information received and take such action as it sees fit pursuant to the Service Committees Regulations, subject to the time limits specified in the Service Committees Regulations, and article 74, as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect.

(3) If the appropriate Local Health Board, or its reference committee, decides, pursuant to paragraph (2)(a) or (b), to refer the matter to the discipline committee of another Local Health Board (B) in accordance with regulation 4(2)(a) or (7)—

- (a) that Local Health Board (B) shall investigate the matter and report to the appropriate Local Health Board as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect; and
- (b) the appropriate Local Health Board shall be entitled, subject to article 74, to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect.

Referrals to investigating discipline committees before the relevant date (regulation 5 of the Service Committees Regulations)

72. Where a Local Health Board (A) has, before the relevant date, referred a matter in respect of a doctor to another Local Health Board (B) in accordance with regulation 4(2)(a) or (7)—

- (a) that matter has not been finally determined by the discipline committee of that Local Health Board (B) before the relevant date—
 - (i) the discipline committee of that Local Health Board (B) shall investigate the matter and report to the Local Health Board (A) as if the amendments to regulations 2 to 8 and Schedules 2 and 4 had not taken effect, and

- (ii) the Local Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect, subject to article 74; or
- (b) that Local Health Board (A) has received the report of the discipline committee of the Local Health Board (B) but has not yet determined what (if any) action to take as a result of the report, the Local Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if the amendments to regulations 2 to 8 had not taken effect, subject to article 74.

Determination of a Local Health Board or the Assembly made before the relevant date (regulation 8, 9, 10 and 11 of the Service Committees Regulations)

73.—(1) Where, before the relevant date, a Local Health Board (or where relevant, the Assembly) has determined pursuant to regulation 8(5)(a) and 9(3) or regulation 11 (as the case may be) that an amount should be recovered from the doctor, insofar as any of that amount has not been recovered before the relevant date, it shall continue to be recoverable by the Local Health Board that was the appropriate Local Health Board for the purposes of the Service Committees Regulations in respect of that matter, and it shall be treated as a debt owed by that doctor to that Trust.

(2) Where a contracting LHB has record of, or receives notification of, an adverse determination made before the relevant date pursuant to regulation 8, 9, 10 or 11 in respect of a doctor (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal), paragraph (3) shall apply without prejudice to any other rights the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(3) Where this paragraph applies, the contracting LHB—

- (a) may take into account that adverse determination in relation to a relevant contractor if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract; but
- (b) shall not, pursuant to sub-paragraph (a), take into account any adverse determination that was made that occurred more than 6 years prior to the date upon which the contracting LHB is considering terminating the general medical services contract or the default contract (as the case may be).

(4) Where a Performers List LHB has record of, or receives notification of, an adverse determination pursuant to regulation 8, 9, 10 or 11 made before the relevant date in respect of a doctor (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal) it may take that determination into account in determining what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

Determination of a Local Health Board made on or after the relevant date (regulation 8 of the Service Committees Regulations)

74.—(1) Where, on or after the relevant date, an appropriate Local Health Board is determining what (if any) action to take pursuant to regulation 8 in accordance with provision made in this Part, it shall make such a determination in accordance with such limitations and modifications to that regulation as are specified in this article.

(2) The appropriate Local Health Board may—

- (a) pursuant to regulation 8(1)(c)(i), determine that no further action should be taken;

- (b) pursuant to regulation 8(3), determine after consultation with the Local Medical Committee that it would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;
- (c) pursuant to regulation 8(5)(a), determine that an amount shall be recovered from the doctor; or
- (d) pursuant to regulation 8(5)(c), determine that it would have warned the doctor to comply more closely with his or her terms of service in future, if those terms of service were still applicable,

and if it makes any one or more of the decisions specified in sub-paragraphs (b) to (d), it shall, after the period specified in regulation 8(11)(a) or (b) (as applicable) has expired, notify in writing the contracting LHB and the Performers List LHB (if any) of its decision and the reasons for it, if either one is a different Local Health Board to the appropriate Local Health Board.

(3) Where, pursuant to paragraph (2)(c), the appropriate Local Health Board determines that an amount should be recovered from the doctor, regulation 8(8) shall not apply and that amount shall be recoverable by the appropriate Local Health Board and it shall be treated as a debt owed by that doctor to that appropriate Local Health Board.

(4) Where the appropriate Local Health Board has notified the contracting LHB that it has made any of the determinations specified in paragraph (2)(b) to (d), or where the appropriate Local Health Board is the contracting LHB, paragraph (5) shall apply without prejudice to any other rights the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(5) Where this paragraph applies, the contracting LHB—

- (a) may, in relation to a relevant contractor, take into account the determination of the appropriate Local Health Board if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract; but
- (b) shall not, pursuant to sub-paragraph (a), take into account any determination of an appropriate Local Health Board that was made more than 6 years prior to the date upon which the contracting LHB is considering terminating the general medical services contract or the default contract (as the case may be).

(6) Where—

- (a) a Performers List LHB has received notification from an appropriate Local Health Board pursuant to paragraph (2); or
- (b) where an appropriate Local Health Board that has taken a decision pursuant to paragraph (2) is also the Performers List LHB,

it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

Appeals to the Assembly against determinations of Local Health Boards (regulations 9, 10 and 11 of the Service Committees Regulations)

75.—(1) Where a doctor has—

- (a) appealed against a determination of a Local Health Board in accordance with regulation 9 before the relevant date, but that appeal has not been finally determined before that date; or
- (b) in respect of a determination made by a Local Health Board in accordance with regulation 8 before the relevant date, the time limit specified in regulation 9(2) for appealing that

determination has not expired before the relevant date, and the doctor serves a notice of appeal on or after the relevant date but within the time limit specified in regulation 9(2), that appeal shall be determined pursuant to regulations 9, 10 and 11, as if the amendments to those regulations and Schedule 5 had not taken effect.

(2) Where an appropriate Local Health Board has made a determination in respect of a doctor on or after the relevant date pursuant to this Part—

(a) the doctor shall be entitled to appeal against that determination in accordance with regulation 9; and

(b) that appeal shall be determined pursuant to regulations 9, 10 and 11,

as if the amendments to those regulations and to Schedule 5 had not taken effect.

(3) Where, on or after the relevant date, the Assembly is determining pursuant to regulation 9, 10 or 11 (as the case may be) what (if any) action to take in respect of a doctor, it shall make a determination pursuant to those regulations as if the amendments to those regulations and to Schedule 5 had not taken effect and that determination shall have effect in accordance with this article.

(4) If, in accordance with paragraph (3), the Assembly determines pursuant to—

(a) regulation 8(3), that it would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;

(b) pursuant to regulation 9(3)(d), that there has been an overpayment and, if so, what amount;

(c) pursuant to regulation 8(5)(a) and 9(3) or 11, that an amount shall be recovered from the doctor; or

(d) pursuant to regulation 8(5)(c), that it would have warned the practitioner to comply more closely with his or her terms of service in future, if those terms of service were still applicable,

it shall, in addition to the persons specified in regulation 10(14), notify the Local Health Boards specified in paragraph (5).

(5) The Assembly shall, pursuant to paragraph (4)(a) to (d), notify the contracting LHB and the Performers List LHB (if any) of its determination if those Local Health Boards are different to the Local Health Board referred to in regulation 10(14).

(6) Where, pursuant to regulation 8(5)(a) and 9(3) or 11, the Assembly has determined that an amount shall be recovered from a doctor it shall direct the appropriate Local Health Board, to recover that amount from the doctor and that amount shall be a debt owed to that appropriate Local Health Board.

(7) Where, pursuant to paragraph (5), the Assembly has notified the contracting LHB that it has taken any of the decisions specified in paragraph (4)(a) to (d), whether or not the contracting LHB is also the appropriate Local Health Board, paragraph (8) shall apply without prejudice to any other right the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(8) Where this paragraph applies, the contracting LHB may, in relation to a relevant contractor, take into account the determination of the Assembly if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(9) The contracting LHB shall not, pursuant to paragraph (8), take into account any notification received that relates to a determination that was made by the Assembly that occurred more than

6 years prior to the date upon which the contracting LHB is considering the matter pursuant to paragraph (8).

(10) Where a Performers List LHB has received notification from the Assembly pursuant to paragraph (4) or (5), whether or not the Performers List LHB is also the appropriate Local Health Board, it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

Excessive prescribing (regulation 15 of the Service Committees Regulations)

76.—(1) Where, on 31st March 2004, a Local Health Board had—

- (a) referred a question of excessive prescribing for investigation and determination by a professional committee under regulation 15 of the Service Committees Regulations(2); and
- (b) that committee had not yet made its determination,

the investigation by the committee shall continue and its determination be made as if that regulation were still in force.

(2) Where, on 31st March 2004, a professional committee had given notice of its determination to a medical practitioner under paragraph (18) of regulation 15 but—

- (a) the medical practitioner had not given notice of appeal in accordance with paragraph (20) of that regulation; and
- (b) the time for appealing in paragraph (19) of that regulation had not yet expired,

the time for appealing shall continue as if regulation 15 were still in force.

(3) Where—

- (a) on 31st March 2004, a medical practitioner had given notice of appeal against the determination of a professional committee in accordance with paragraph (20) of regulation 15 but that appeal had not been determined or withdrawn; or
- (b) a medical practitioner has given notice of such an appeal after 31st March 2004, pursuant to paragraph (2),

that appeal shall continue to be dealt with as if regulation 15 were still in force.

(4) In this article “professional committee” has the same meaning as in regulation 15.

Investigation of certification (regulation 16 of the Service Committees Regulations)

77.—(1) Where the Assembly has—

- (a) before the relevant date, or on or after the relevant date in respect of an investigation that took place before the relevant date, received information in relation to an investigation of medical certificates issued under and for the purposes of the Social Security Act 1975 by a doctor, but he or she has not yet determined whether to refer the matter for consideration pursuant to regulation 16(1); or
- (b) before the relevant date, pursuant to regulation 16(1), referred a matter to a Local Medical Committee, or to a joint committee of two or more Local Medical Committees and the Local Medical Committee has not yet finally determined the matter pursuant to regulation 16(6),

the Assembly may, in a case falling within sub-paragraph (a), refer the matter as if the amendments to regulation 16 had not taken effect and, in relation to both sub-paragraphs, the Local Medical Committee or joint committee of Local Medical Committees shall consider or continue to consider

(2) Regulation 15 was amended by [S.I. 2003/1937](#).

(as the case may be) and determine the matter in accordance with regulation 16, subject to the provisions in this article.

(2) Where, pursuant to paragraph (1), the Local Medical Committee makes a determination pursuant to regulation 16(6), it shall forward its report to the contracting LHB and the Performers List LHB (if any), in addition to the persons specified in regulation 16(6), unless the doctor exercises his or her right of appeal pursuant to regulation 16.

(3) Where—

(a) a doctor—

- (i) has appealed against a finding of a Local Medical Committee made before the relevant date pursuant to regulation 16(7), and within the time limit specified in that paragraph, and that appeal has not been determined before the relevant date, or
- (ii) appeals against a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1) within the time limit specified in regulation 16(7); or

(b) the Assembly —

- (i) has referred a finding of a Local Medical Committee made before the relevant date pursuant to regulation 16(10), and that referral has not been determined before the relevant date, or
- (ii) referred a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1), that appeal or referral shall be determined in accordance with regulation 16 as if the amendments to that regulation had not taken effect, save that written notification of the determination made by the referee or referees shall be given to the contracting LHB and the Performers List LHB (if any).

(4) The Assembly may, on or after the relevant date, determine that, pursuant to regulation 16(12), an amount should be recovered from a doctor, and shall, in determining whether an amount should be recovered, act as if the amendments to regulations 11(3), (4) and (5) and 16 and Schedule 5 had not taken effect.

(5) Where pursuant to regulation 16(12), the Assembly has determined that an amount should be recovered from a doctor—

- (a) before the relevant date, where that amount has not been fully recovered before the relevant date; or
- (b) on or after the relevant date pursuant to this article,

that amount shall be recoverable by the appropriate Local Health Board, insofar as it has not already been recovered before the relevant date in respect of an amount falling within sub-paragraph (a), and that amount shall be a debt owed to that Local Health Board.

(6) Where the contracting LHB has received notification pursuant to this article of an adverse determination in respect of the doctor pursuant to regulation 16, paragraph (7) shall apply without prejudice to any other right the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(7) Where this paragraph applies, the contracting LHB may, in relation to a relevant contractor, take into account the adverse determination of the Assembly if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(8) The contracting LHB shall not, pursuant to paragraph (7), take into account any notification that relates to a determination that was made more than 6 years prior to the date upon which the contracting LHB is considering the matter pursuant to paragraph (7).

(9) Where a Performers List LHB has received notification of an adverse determination pursuant to regulation 16, it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

Investigation of record keeping (regulation 17 of the Service Committees Regulations)

78.—(1) Where the Assembly has—

- (a) before the relevant date, or on or after the relevant date in respect of an examination of record cards by a medical officer that took place before the relevant date, received information in relation to an examination of record cards held by a doctor, but he or she has not yet determined whether to refer the matter for consideration pursuant to regulation 17(1); or
- (b) before the relevant date, pursuant to regulation 17(1), referred a matter to a Local Medical Committee and the Local Medical Committee has not yet finally determined the matter pursuant to regulation 17(8),

the Assembly may, in a case falling within sub-paragraph (a), refer the matter as if the amendments to regulation 17 had not taken effect and, in relation to both sub-paragraphs, the Local Medical Committee shall consider or continue to consider (as the case may be) and determine the matter in accordance with regulation 17, subject to the provisions in this article.

(2) Where, pursuant to paragraph (1), the Local Medical Committee makes a determination pursuant to regulation 17(8), it shall forward its report to the contracting LHB and the Performers List LHB, in addition to the persons specified in regulation 17(8), unless the doctor exercises his or her right of appeal pursuant to regulation 17(10).

(3) Where—

- (a) a doctor—
 - (i) has appealed against a finding of a Local Medical Committee made before the relevant date pursuant to regulation 17(10), and within the time limit specified in that paragraph, and that appeal has not been determined before the relevant date, or
 - (ii) appeals against a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1) within the time limit specified in regulation 17(10); or

(b) the Assembly —

- (i) has referred a finding of a Local Medical Committee made before the relevant date pursuant to regulation 17(12), and that referral has not been determined before the relevant date, or
- (ii) referred a finding of a Local Medical Committee on or after the relevant date in respect of a finding of a Local Medical Committee made pursuant to paragraph (1), that appeal or referral shall be determined in accordance with regulation 17 as if the amendments to that regulation (and regulation 16(8) and (9) where applicable) had not taken effect, save that written notification of the determination made by the referee or referees shall be given to the contracting LHB and the Performers List LHB (if any).

(4) The Assembly may, on or after the relevant date, determine that, pursuant to regulation 17(14), an amount should be recovered from a doctor and shall, in determining whether an amount should be recovered, act as if the amendments to regulations 11(3), (4) and (5) and 17 and Schedule 5 had not taken effect.

(5) Where pursuant to regulation 17(14), the Assembly has determined that an amount should be recovered from a doctor—

- (a) before the relevant date, where that amount has not been fully recovered before the relevant date; or
- (b) on or after the relevant date pursuant to this article,

that amount shall be recoverable by the appropriate Local Health Board, insofar as it has not already been recovered before the relevant date in respect of an amount falling within sub-paragraph (a), and that amount shall be a debt owed to that Local Health Board.

(6) Where the contracting LHB has received notification pursuant to this article of an adverse determination in respect of the doctor pursuant to regulation 17, paragraph (7) shall apply without prejudice to any other right the contracting LHB may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(7) Where this paragraph applies, the contracting LHB may, in relation to a relevant contractor, take into account the adverse determination of the Assembly if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 113(7) of Schedule 6 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(8) The contracting LHB shall not, pursuant to paragraph (7), take into account any notification that relates to a determination that was made more than 6 years prior to the date upon which the contracting LHB is considering the matter pursuant to paragraph (7).

(9) Where a Performers List LHB has received notification of an adverse determination pursuant to regulation 17, it shall consider what (if any) action it should take in respect of that doctor pursuant to its powers under the Performers Lists Regulations.

Decision as to treatment for which fees may be charged by doctors (regulation 18 of the Service Committees Regulations)

79.—(1) Where a question has arisen as to whether any treatment given by a doctor to a patient is treatment for which he or she may demand or accept a fee from a patient within the meaning of regulation 18(1), and that question has arisen before the relevant date, or on or after the relevant date in respect of any fee charged by a doctor before the relevant date, and that question—

- (a) has not been referred for consideration by the Local Medical Committee; or
- (b) has been referred to the Local Medical Committee and the Local Medical Committee has not yet finally determined the matter pursuant to regulation 18,

the question may, in a case falling within sub-paragraph (a), be referred as if the amendments to that regulation and Schedule 7 had not taken effect and, in relation to both sub-paragraphs, the Local Medical Committee shall consider or continue to consider (as the case may be) and determine the matter in accordance with regulation 18 and Schedule 7, subject to the provisions in this article.

(2) Where a Local Medical Committee makes a determination pursuant to paragraph (1), regulation 18(6) shall apply to the Local Health Board.

(3) Where a Local Health Board—

- (a) has referred a finding of a Local Medical Committee made before the relevant date to the Assembly pursuant to regulation 18(2), and that referral has not been determined before the relevant date; or
- (b) refers a finding of a Local Medical Committee on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 7 as if the amendments to that regulation and Schedule 7 had not taken effect.

(4) Where the Assembly—

(a) has referred a finding of a Local Medical Committee made before the relevant date pursuant to regulation 18(6), and that referral has not been determined before the relevant date; or

(b) refers a finding of a Local Medical Committee on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 7 as if the amendments to that regulation and Schedule had not taken effect.

Functions of Local Medical Committees

80. Where—

(a) a Local Medical Committee has, before the relevant date had any matter referred to it for its consideration that it had not finally determined before the relevant date; and

(b) pursuant to this Part, that matter is to be determined by the Local Medical Committee on or after the relevant date,

the Local Medical Committee that had had the matter referred to it shall be deemed to be a Local Medical Committee that is recognised by a Local Health Board pursuant to section 45A of the 1977 Act for the purpose of exercising the continuing functions conferred on it in relation to the matter by this Part.