
WELSH STATUTORY INSTRUMENTS

2009 No. 1511 (W.147)

NATIONAL HEALTH SERVICE, WALES

The Local Health Boards (Directed Functions) (Wales) Regulations 2009

<i>Made</i>	- - - -	<i>18 June 2009</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>19 June 2009</i>
<i>Coming into force</i>	- -	<i>1 October 2009</i>

The Welsh Ministers, in exercise of powers conferred on them by sections 12, 203(9) and (10) and 204 of the National Health Service (Wales) Act 2006⁽¹⁾ make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Local Health Boards (Directed Functions) (Wales) Regulations 2009.

(2) These Regulations come into force on 1 October 2009.

Interpretation

2.—(1) In these Regulations —

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

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989⁽²⁾;

“continuing care” (“*gofal parhaus*”) means care provided over an extended period of time to a person to meet physical or mental health needs which have arisen as a result of illness;

“former Local Health Boards” (“*Byrddau Iechyd Lleol blaenorol*”) means the twenty two Local Health Boards which were established on 10 February 2003 by the Local Health Boards (Establishment) (Wales) Order 2003⁽³⁾;

“general ophthalmic services” (“*gwasanaethau offthalmig cyffredinol*”) has the same meaning as in section 71(10) of the Act;

⁽¹⁾ 2006 c. 42.

⁽²⁾ 1989 c. 41.

⁽³⁾ S.I. 2003/148 (W.18).

“Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Local Health Board established in accordance with section 11(2) of the Act(4);

“LHB Order” (“*Gorchymyn BILL*”) is to be construed in accordance with section 11(2) of the Act;

“pharmaceutical services” (“*gwasanaethau fferyllol*”) has the same meaning as in section 80(8) of the Act;

“primary dental services” (“*gwasanaethau deintyddol sylfaenol*”) has the same meaning as in section 56 of the Act;

“primary medical services” (“*gwasanaethau meddygol sylfaenol*”) has the same meaning as in section 41 of the Act; and

“the relevant date” (“*y dyddiad perthnasol*”) means 1 October 2009.

(2) For the purposes of these Regulations, and subject to regulation 3, the persons for whom a Local Health Board is responsible in any year are the persons usually resident in the area for which the Local Health Board is established.

(3) Subject to any direction which the Welsh Ministers may give as to any particular case or classes of case, if there is doubt as to where a person is usually resident for the purposes of paragraph (2) —

- (a) the person is to be treated as usually resident at the address given by him or her to the person or body providing him or her with services, as being that at which the person usually resides;
- (b) where the person gives no such address, he or she is to be treated as usually resident at the address which he or she gives to the person or body providing him or her with services, as being the person’s most recent address;
- (c) where the person’s usual address cannot be determined under sub-paragraphs (a) and (b) above, he or she is to be treated as usually resident in the area in which the person is present.

Exception to regulation 2(2)

3.—(1) A Local Health Board of origin continues to be responsible for the persons specified in paragraph (3) who have been usually resident in the area for which it is established, in the circumstances set out in paragraph (2).

(2) The circumstances are that —

- (a) on or after 1 July 2007
 - (i) the Local Health Board of origin has made an arrangement in the exercise of its functions, or
 - (ii) a local authority has made an arrangement by virtue of which a person to whom paragraph (3) applies is provided with services which consist of or include the provision of accommodation situated in the area of another Local Health Board or a Primary Care Trust; and
- (b) the person is thereby living in the accommodation.

(3) This paragraph applies

- (a) to a person who is under the age of 18 and

(4) Powys Teaching LHB was established under the Local Health Boards (Establishment) (Wales) Order 2003 (S.I. 2003/148 (W.18)) and Abertawe Bro Morgannwg University LHB, Aneurin Bevan LHB, Betsi Cadwaladr University LHB, Cardiff and Vale University LHB, Cwm Taf LHB and Hywel Dda LHB were established under the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009 (S.I. 2009/778 (W.66)).

- (i) is looked after by a local authority within the meaning of section 22(1) of the 1989 Act,
 - (ii) is a relevant child within the meaning of section 23A of the 1989 Act,
 - (iii) qualifies for advice and assistance under section 24(1A) or section 24(1B) of the 1989 Act,
 - (iv) is placed at a school in accordance with a statement of special educational needs made under section 324 of the Education Act 1996(5) that names the school, or
 - (v) requires accommodation to meet continuing care needs; and
- (b) to a person under the age of 21 who was, immediately prior to his or her eighteenth birthday, a person within one of the sub-categories of sub-paragraph (a).
- (4) The responsibility of a Local Health Board of origin under this regulation does not extend to its functions in relation to primary medical, primary dental, pharmaceutical and general ophthalmic services.
- (5) In this regulation “Local Health Board of origin” (“*Bwrdd Iechyd Lleol gwreiddiol*”) means the Local Health Board which made the arrangement under sub-paragraph (2)(a)(i) or the Local Health Board which corresponds to the geographical area of the local authority which made the arrangement under sub-paragraph (2)(a)(ii).

Functions to be exercised by Local Health Boards

- 4.—(1) Subject to regulation 5, the functions to be exercised by a Local Health Board as from the relevant date are, subject to any prohibitions or restrictions in a LHB Order:
- (a) functions of former Health Authorities in Wales which were transferred to the National Assembly for Wales by the Health Authorities (Transfer of Functions, Staff, Property, Rights and Liabilities and Abolition) (Wales) Order 2003(6) and which former Local Health Boards were directed to exercise on 1 April 2003 by the Local Health Boards (Functions) (Wales) Regulations 2003(7); and
 - (b) functions of the Welsh Ministers insofar as they are not functions under sub-paragraph (a) as are specified in the Schedule.
- (2) The functions referred to in paragraph (1)(a) in particular include but are not limited to such of those functions as are specified in the Schedule.

Restriction on the exercise of functions by Local Health Boards

5. Nothing in these Regulations is to be taken as giving directions for the exercise of any functions conferred on or vested in the Welsh Ministers with respect to —
- (a) the making of any Order or Regulations; or
 - (b) the giving of any directions.

Revocations

6. The following Regulations are revoked —

(5) 1996 c. 56.
(6) S.I. 2003/813 (W.98). This Order provided that from 1 April 2003 all functions of Health Authorities in Wales were transferred to the National Assembly for Wales and that all such Health Authorities were abolished.
(7) The Local Health Boards (Functions) (Wales) Regulations 2003 (S.I. 2003/150 (W.20)) provided that from 1 April 2003 the functions of former Health Authorities in Wales, which transferred to the National Assembly for Wales pursuant to S.I. 2003/813 (W.98), were (subject to certain exceptions relating to specialist commissioning functions) made exercisable by Local Health Boards.

National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996 (S.I.1996/708);
Local Health Boards (Functions) (Wales) Regulations 2003 (S.I. 2003/150 (W.20));
Local Health Boards (Functions) (Amendment) Regulations 2003 (S.I. 2003/816 (W.101));
The Powys Local Health Board (Additional Functions) Regulations 2003 (S.I. 2003/815 (W.100)); and
Local Health Boards (Functions) (Wales) (Amendment) Regulations 2007 (S.I. 2007/315 (W.29)).

Consequential Amendments

7. The following consequential amendments are made —
- (a) in paragraph 16 of Part 2 of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006⁽⁸⁾—
 - (i) for “Local Health Boards (Functions) (Wales) Regulations 2003” substitute “Local Health Boards (Directed Functions) (Wales) Regulations 2009”,
 - (ii) in sub-paragraph (c) for “3(1)” substitute “4”,
 - (iii) delete sub-paragraph (d); and
 - (b) in the Directions to Cardiff Local Health Board, Swansea Local Health Board and Monmouthshire Local Health Board (2006) which came into force on 1 April 2006, in direction 2(1) for “Local Health Boards (Functions) (Wales) Regulations 2003” substitute “Local Health Boards (Directed Functions) (Wales) Regulations 2009”.

18 June 2009

Edwina Hart
Minister for Health and Social Services, one of
the Welsh Ministers

⁽⁸⁾ 2006 c. 43.

SCHEDULE

Regulation 4

Enactments Conferring Functions Exercisable by Local Health Boards

(1) ENACTMENT	(2) SUBJECT MATTER
Health Services and Public Health Act 1968 (c. 46)	
section 63(1), (5) and (6)	Providing for instruction of officers of Local Health Boards and other persons employed or contemplating employment in activities connected with health or welfare.
section 64(1)	Giving financial assistance to voluntary organisations.
Chronically Sick and Disabled Persons Act 1970 (c. 44)	
section 17	Provisions with respect to separation of younger from older patients in hospital.
Mental Health Act 1983 (c. 20)	
section 12(2)	Approving medical practitioners as having special experience in the diagnosis or treatment of mental disorder.
Copyright, Designs and Patents Act 1988 (c. 48)	
section 48	Making publicly available copyright material.
National Health Service and Community Care Act 1990 (c. 19)	
section 18	Specifying indicative amounts of the costs of drugs and medicines.
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	
section 45	Putting and keeping in place arrangements for the purposes of monitoring and improving quality of health care.
section 47(4)	Taking into account the standards set out in statements published by the Welsh Ministers.
National Health Service (Wales) Act 2006 (c. 42)	
section 1	Providing or securing the provision of services in accordance with the Act.
section 2	Providing services considered appropriate for discharging duties imposed on the Welsh Ministers and doing anything else calculated to facilitate the discharge of such duties.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(1) ENACTMENT	(2) SUBJECT MATTER
section 3(1)(a) and (b)	Providing hospital and other accommodation.
section 3(1)(c)	Providing medical, dental, ophthalmic, nursing and ambulance services.
section 3(1)(d)	Providing services or facilities for the care of pregnant women, women who are breastfeeding and young children.
section 3(1)(e)	Providing services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness.
section 3(1)(f)	Providing other services or facilities required for the diagnosis and treatment of illness.
section 4	Providing high security psychiatric services.
section 5 and paragraphs 1 and 2 of Schedule 1	Providing for the medical inspection and treatment of pupils.
section 5 and paragraph 8 of Schedule 1	Arranging for the giving of advice on contraception, for the medical examination of persons seeking such advice, for the treatment of such persons and for the supply of contraceptive substances and appliances.
section 5 and paragraphs 9 and 10 of Schedule 1	Provision of vehicles (including wheelchairs) for disabled persons.
section 5 and paragraph 12 of Schedule 1	Provision of a microbiological service for the control of the spread of infectious diseases.
section 5 and paragraph 13 of Schedule 1	Conducting or assisting, by grants or otherwise, persons to conduct research into matters relating to illness or other matters connected with a service provided under the Act.
section 6	Provision of services outside Wales.
section 10(1) and (2)	Arranging with any person or body (including a voluntary organisation) for that person or body to provide or assist in providing any service under the Act.
section 10(3) and (4)	Making available to certain persons or bodies (including voluntary organisations) facilities and services of persons employed in connection with such facilities.
section 10(5)	Agreeing terms and payments in connection with arrangements made under section 10 of the Act.
section 14(1)	Performing functions in relation to primary medical services and primary dental services.

(1) ENACTMENT	(2) SUBJECT MATTER
section 15	Administration and management of services relating to primary medical services, primary dental services, general ophthalmic services and pharmaceutical services.
section 17	Preparing and reviewing plans for improving the health of the people for whom it is responsible and the provision of health care to such people.
section 38(1)—(4)	Supplying goods, services and other facilities to local authorities and other public bodies and carrying out maintenance work in connection with any land or building the maintenance of which is a local authority responsibility.
section 38(5)	Supplying prescribed goods, materials or other facilities to persons providing general medical services, primary dental services, general ophthalmic services or pharmaceutical services.
section 38(6)	Making available to local authorities any services or other facilities and the services provided as part of the health service of employed persons and the services of any medical or dental practitioner or nurse employed otherwise than to provide services which are part of the health service to enable local authorities to discharge their functions relating to social services, education and public health.
section 38(7)	Making available to local authorities the services of practitioners to enable such authorities to discharge their functions relating to social services, education and public health.
section 39(1) and (2)	Providing for consultation before the services of any officer are made available to a local authority.
section 39(4) and (5)	Agreeing terms and charging for services and facilities provided under section 38 of the Act.
section 39(6)	Power when supplying goods or materials to purchase and store them and arrange for supply of goods or materials by third parties.
section 41(1) — (4).	Providing primary medical services.
section 42	Entering into contracts under which primary medical services are provided.
section 44	Entering into general medical services contracts with eligible persons.

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(1) ENACTMENT	(2) SUBJECT MATTER
section 50(1)—(5)	Arranging for the provision of primary medical services.
section 51(1)	Making agreements with eligible persons under section 50.
section 53	Providing assistance and support in relation to primary medical services.
section 54(1) and (9)	Recognising Local Medical Committees and allotting monies to Committees.
section 55	Making accommodation available for use in connection with primary medical services.
section 56(1)—(4)	Providing primary dental services.
section 57	Entering into general dental services contracts.
section 59	Entering into general dental services contracts with eligible persons.
section 64(1)—(5)	Arranging for the provision of primary dental services.
section 65(1)	Making agreements with eligible persons under section 64.
section 67(1) and (3)	Functions in relation to dental public health.
section 68(1) and (2)	Providing assistance and support to any person providing primary dental services.
section 69(1) and (9)	Recognising Local Dental Committees and allotting monies to Committees.
section 70	Making accommodation available for use in connection with primary dental services.
section 71(1)	Arranging general ophthalmic services.
section 75	Where authorised making other arrangements in relation to ophthalmic services.
section 78(1), (7), (8) and (9)	Recognising Local Optical Committees and allotting monies to Committees.
section 79	Making accommodation available for use in connection with the provision of general ophthalmic services.
section 80 (1), (3) and (6)	Arranging for pharmaceutical services.
section 82	Providing and publishing details of arrangements relating to additional pharmaceutical services.
section 87	Where authorised making other arrangements in relation to pharmaceutical services.

(1) ENACTMENT	(2) SUBJECT MATTER
section 90(1), (7), (8) and (9)	Recognising Local Pharmaceutical Committees and allotting monies to Committees.
section 91	Making accommodation available for use in connection with the provision of pharmaceutical services.
section 92	Establishing pilot schemes.
section 93 and paragraphs 1,2,3,4,5 and 7 of Schedule 6	Making pilot schemes
section 107	Disqualifying practitioners from an ophthalmic or pharmaceutical list.
section 108	Removing practitioners contingently.
section 110(1), (3), (4), (5), (6) and (8)	Suspending practitioners.
section 111	Suspending practitioners pending appeal.
section 113(1) and (3)	Reviewing of decisions.
section 114(5) and (6)	Applying for variation, imposition or contingent removals of practitioners from lists.
section 115(4),(5) and (6)	Applying for national disqualification.
section 137	Authorising use of hospital accommodation, determining the extent to which it is to be made available and determining and recovering charges in respect of the use of such accommodation.
section 138	Recovering expenses payable by employed patients.
section 159	Acquiring land or other property required for the purposes of the Act and the use or maintenance of any property by virtue of the Act.
section 163(2)(b)	Being a body responsible for a hospital.
section 166	Use of property vested in the Welsh Ministers.
section 183	Involving the public and consultation on the planning and operation of services.
section 197	Securing the availability of facilities for clinical teaching and research connected with clinical medicine or dentistry.
section 198	Making available health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients.

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(1) ENACTMENT	(2) SUBJECT MATTER
section 200(2), (4), (6), (7), (9) and (10)	Receiving and registering information in relation to births and deaths.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the directed functions of Local Health Boards established for all areas of Wales pursuant to section 11 of the National Health Service (Wales) Act 2006 (c. 42) (see S.I. 2003/148 (W.18) and S.I. 2009/778 (W.66)) (regulation 4 and the Schedule). The Local Health Boards are Abertawe Bro Morgannwg University Local Health Board, Aneurin Bevan Local Health Board, Betsi Cadwaladr University Local Health Board, Cardiff and Vale University Local Health Board, Cwm Taf Local Health Board, Hywel Dda Local Health Board and Powys Teaching Local Health Board.

Local Health Boards are responsible for persons usually resident in their area (regulation 2(2)). A Local Health Board maintains its responsibility for certain categories of children who come from their area but are then placed out of area and who would otherwise become the responsibility of another Local Health Board by virtue of being usually resident in that area. The children concerned are children looked after by local authorities, local authority care leavers, children resident at a school named in their statement of special educational needs and children with ongoing health needs and who, for any of those reasons are placed out of their area (regulation 3).

From 1 October 2009 seven Local Health Boards are responsible for the provision of health services in Wales and exercise the functions previously exercised by twenty two Local Health Boards on 30 September 2009, together with other functions of the Welsh Ministers including certain functions which were exercised by National Health Service Trusts. On 1 October 2009 seven National Health Service Trusts which delivered hospital services are dissolved. The Welsh Ambulance Services National Health Service Trust and Velindre National Health Service Trust remain in existence.

Health Authorities in Wales were abolished with effect from 1 April 2003. Under section 27 of the Government of Wales Act 1998 (c. 38) the National Assembly for Wales made the Health Authorities (Transfer of Functions, Staff, Property, Rights and Liabilities and Abolition) (Wales) Order 2003 (S.I. 2003/813 (W.98)) which provided that from 1 April 2003 all functions of Health Authorities in Wales were transferred to the National Assembly for Wales and that all such Health Authorities were abolished.

The Local Health Boards (Functions) (Wales) Regulations 2003 (S.I. 2003/150 (W.20)) came into force on 1 April 2003. The functions of Health Authorities in Wales which had been transferred to the National Assembly for Wales were (with some specified exceptions) made exercisable by (rather than being transferred to) Local Health Boards. On 1 April 2003 all references to Health Authorities in Wales, insofar as they related to Health Authority functions, were construed as references to the National Assembly for Wales, although not textually amended in legislation.

There were numerous provisions in the National Health Service Act 1977 (c. 49) under which functions were stated to be exercisable by Health Authorities even though there were no longer any Health Authorities in existence and no power for any new ones to be created. In light of this, when

National Health Service legislation was consolidated, the National Health Service (Wales) Act 2006 (“the Act”) enacted the effect of the Local Health Boards (Functions) (Wales) Regulations 2003. The Act provides for functions which were exercisable by Local Health Boards by virtue of the Local Health Boards (Functions) (Wales) Regulations 2003 to be treated as functions of Local Health Boards for the purposes of the Act. These Regulations specifically direct Local Health Boards to exercise those functions despite appearing as Local Health Board functions on the face of the Act because they are functions of the Welsh Ministers.

The National Health Service (Consequential Provisions) Act 2006 (c. 43) provides that nothing in the Act by virtue of the Local Health Boards (Functions) (Wales) Regulations 2003 affects the power of the Welsh Ministers to exercise the functions under those Regulations and preserves the power to revoke those Regulations. The Local Health Boards (Functions) (Wales) Regulations 2003 are revoked on 1 October 2009 (regulation 6) and this is reflected in consequential amendments (regulation 7).

The Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”) amended the National Health Service Act 1977 to include provisions that are now in the Act. The 2003 Act amendments had effect, in part, as textual amendments to references to Health Authorities in the relevant provisions of the National Health Service Act 1977. References to Local Health Boards were inserted by the 2003 Act at a stage when the Local Health Boards (Functions) (Wales) Regulations 2003 had come into force and the effect of those Regulations was disregarded when dealing with references to Health Authorities. References in the 2003 Act should have been to National Assembly for Wales functions and not to Local Health Board functions. Therefore, Local Health Boards are directed to exercise such functions under these Regulations because despite appearing as Local Health Board functions on the face of legislation, they are functions of the Welsh Ministers.

Certain functions are conferred on Local Health Boards outside of these Regulations. The References to Health Authorities Order 2007 (S.I 2007/961 (W.85)) was made pursuant to section 75 of the Health Act 2006 (c. 28) to change references to Health Authorities to references to Local Health Boards in non-health related legislation to reflect the fact that certain functions previously exercised by Health Authorities are exercised by Local Health Boards. Local Health Boards also continue to exercise functions directly conferred on Local Health Boards in legislation such as those in the Health and Social Care Act 2001 (c. 15), the National Health Service Reform and Health Care Professions Act 2002 (c. 17) and the Health Act 2006 and provisions in the Act inserted by those Acts.

A regulatory impact assessment has been prepared in connection with these Regulations. A copy can be obtained from the Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ.