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SCHEDULES

SCHEDULE 1

Section 5

FURTHER PROVISION ABOUT THE WELSH MINISTERS AND SERVICES UNDER THIS ACT

Medical inspection of pupils

- 1 The Welsh Ministers must provide for the medical inspection at appropriate intervals of pupils in attendance at schools maintained by [^{F1}local authorities] and for the medical treatment of such pupils.

Textual Amendments

- F1** Words in Sch. 1 para. 1 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 5(1), **Sch. 2 para. 61(5)(a)**

Modifications etc. (not altering text)

- C1** Sch. 1 para. 1: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

- 2 (1) The Welsh Ministers may, by arrangement with any [^{F2}local authority], provide for any medical inspection or treatment of—
- (a) senior pupils in attendance at any educational establishment, other than a school, which is maintained by the authority and at which full-time further education is provided, or
 - (b) any child or young person who, in pursuance of section 19 or 319 of the Education Act 1996 (c. 56), is receiving primary or secondary education otherwise than at a school.
- (2) The Welsh Ministers may, by arrangement with the proprietor of any educational establishment which is not maintained by a [^{F2}local authority], provide for any medical inspection or treatment of junior or senior pupils in attendance at the establishment.
- (3) Sub-paragraphs (1) and (2) do not affect the Welsh Ministers' powers apart from those sub-paragraphs.

Textual Amendments

- F2** Words in Sch. 1 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 5(1), **Sch. 2 para. 61(5)(b)**

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Modifications etc. (not altering text)

- C2** Sch. 1 para. 2: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

- 3 An arrangement under paragraph [^{F3}2(2)] may provide for payments by the proprietor in question.

Textual Amendments

- F3** Word in Sch. 1 para. 3 substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 160, 170, **Sch. 14 para. 7; S.I. 2009/462, art. 5**

- 4 A [^{F4}local authority] may not make an arrangement under paragraph 2(1)(a) unless the governing body of the educational establishment agrees to the arrangement.

Textual Amendments

- F4** Words in Sch. 1 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 5(1), **Sch. 2 para. 61(5)(b)**

- 5 (1) Sub-paragraph (2) applies to—
- (a) each [^{F5}local authority], in respect of the schools which it maintains (other than foundation, voluntary or foundation special schools), and
 - (b) each governing body of a foundation, voluntary or foundation special school, in respect of the school.
- (2) The [^{F5}local authority] or governing body must make available to the Welsh Ministers such accommodation as is appropriate for the purpose of assisting them to make provision under paragraph 1 in relation to the pupils in attendance at the schools or school in question.

Textual Amendments

- F5** Words in Sch. 1 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 5(1), **Sch. 2 para. 61(5)(b)**

- 6 In paragraphs 1 to 5 any expression to which a meaning is given for the purposes of the Education Act 1996 (c. 56) or the School Standards and Framework Act 1998 (c. 31) has that meaning.

- 7 Any charge made under regulations under this Act in respect of the supply of drugs, medicines or appliances must be disregarded for the purposes of paragraphs 1 and 2.

[^{F6}Weighing and measuring of children

Textual Amendments

- F6** Sch. 1 paras. 7A, 7B and cross-heading inserted (21.7.2008 for specified purposes, 1.8.2011 in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 144, 170; S.I. 2011/986, art. 2(2)

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- 7A (1) The Welsh Ministers may, by arrangement with any local education authority, provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.
- (2) The Welsh Ministers may, by arrangement with the proprietor of any school which is not maintained by a local education authority, provide for the weighing and measuring of junior pupils in attendance at that school.
- (3) The Welsh Ministers may, by arrangement with any person who is registered under [F7Part 2 of the Children and Families (Wales) Measure 2010] (child minding and day care for children in Wales) in respect of child minding or the provision of day care, provide for the weighing and measuring of children looked after by that person.
- (4) In sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of [F8Part 2 of the Children and Families (Wales) Measure 2010] has the same meaning as in that Part.

Textual Amendments

- F7** Words in Sch. 1 para. 7A(3) substituted (1.4.2011) by Children and Families (Wales) Measure 2010 (nawm 1), ss. 72, 75(3), Sch. 1 para. 26(a); [S.I. 2010/2582, art. 2, Sch. 1](#)
- F8** Words in Sch. 1 para. 7A(4) substituted (1.4.2011) by Children and Families (Wales) Measure 2010 (nawm 1), ss. 72, 75(3), Sch. 1 para. 26(b); [S.I. 2010/2582, art. 2, Sch. 1](#)

- 7B (1) The Welsh Ministers may by regulations—
- authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,
 - require any weighing and measuring provided for by the Welsh Ministers under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,
 - make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and
 - make other provision regulating the processing of information resulting from any weighing or measuring provided for by the Welsh Ministers under paragraph 7A.
- (2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring to have regard to any guidance given from time to time by the Welsh Ministers.
- (3) In sub-paragraph (1)(d), “ processing ”, in relation to information, has the same meaning as in the Data Protection Act 1998.
- (4) Regulations under this paragraph cannot include provision by virtue of section 203(10)(a) amending or repealing an Act.]

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Contraceptive services

- 8 The Welsh Ministers must arrange, to such extent as they consider necessary to meet all reasonable requirements, for—
- (a) the giving of advice on contraception,
 - (b) the medical examination of persons seeking advice on contraception,
 - (c) the treatment of such persons, and
 - (d) the supply of contraceptive substances and appliances.

Modifications etc. (not altering text)

- C3** Sch. 1 para. 8: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

Provision of vehicles for disabled persons

- 9 The Welsh Ministers may provide vehicles (including wheelchairs) for persons appearing to them to be persons who have a physical impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Modifications etc. (not altering text)

- C4** Sch. 1 para. 9: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

- 10 (1) Sub-paragraphs (2) and (3) apply in respect of—
- (a) a vehicle provided under paragraph 9, and
 - (b) a vehicle belonging to a person mentioned in that paragraph.
- (2) The Welsh Ministers may—
- (a) adapt the vehicle to make it suitable for the circumstances of the person in question,
 - (b) maintain and repair the vehicle,
 - (c) take out insurance policies relating to the vehicle and pay any duty with which the vehicle is chargeable under the Vehicle Excise and Registration Act 1994 (c. 22),
 - (d) provide a structure in which the vehicle may be kept, and provide all material and execute all works necessary to erect the structure.
- (3) The Welsh Ministers may make payments by way of grant towards costs incurred by a person mentioned in paragraph 9 in respect of any matter mentioned in sub-paragraph (4) in relation to the vehicle.
- (4) The matters are—
- (a) the taking of action referred to in sub-paragraph (2),
 - (b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel, and
 - (c) the taking of instruction in the driving of the vehicle.

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- (5) The powers under sub-paragraph (2) and sub-paragraph (3) may be exercised on such terms and subject to such conditions as the Welsh Ministers may determine.

Modifications etc. (not altering text)

- C5** Sch. 1 para. 10: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

- 11 Regulations may provide for any incidental or supplementary matter for which it appears to the Welsh Ministers necessary or expedient to provide in connection with—
- (a) the taking of action under paragraph 10(2), or
 - (b) the making of any payment under paragraph 10(3).

Provision of a microbiological service by the Welsh Ministers

- 12 (1) The Welsh Ministers may—
- (a) provide a microbiological service for the control of the spread of infectious diseases, and
 - (b) carry on such other activities as in their opinion can conveniently be carried on in conjunction with that service.
- (2) The service may include the provision of laboratories.
- (3) Charges may be made for services or materials supplied.
- (4) A power under this paragraph may be exercised both for the purposes of the health service and for other purposes.

Modifications etc. (not altering text)

- C6** Sch. 1 para. 12: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

Powers of the Welsh Ministers in relation to research

- 13 (1) The Welsh Ministers may conduct research, or may assist any person to conduct research, into—
- (a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and
 - (b) any such other matters connected with any service provided under this Act as the Welsh Ministers consider appropriate.
- (2) Assistance may be given by grants or otherwise.

Modifications etc. (not altering text)

- C7** Sch. 1 para. 13: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

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SCHEDULE 2

Section 11

LOCAL HEALTH BOARDS

PART 1

CONSTITUTION AND MEMBERSHIP

Status

- 1 Each Local Health Board is a body corporate.
- 2 (1) A Local Health Board must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) A Local Health Board's property must not be regarded as property of, or property held on behalf of, the Crown.

Membership

- 3 The members of a Local Health Board are—
- (a) a chairman appointed by the Welsh Ministers,
 - (b) if the Welsh Ministers consider it appropriate, a vice-chairman appointed by them,
 - (c) officers of the Local Health Board, and
 - (d) a number of persons who are not officers of the Local Health Board.
- 4 (1) Regulations may make provision about—
- (a) the appointment of the chairman, vice-chairman and other members of a Local Health Board (including any conditions to be fulfilled for appointment),
 - (b) the tenure of office of the chairman, vice-chairman and other members of a Local Health Board (including the circumstances in which they cease to hold office or may be removed or suspended from office),
 - (c) how many persons may be appointed as members of a Local Health Board and how many of those members may be officers (a minimum and maximum number may be specified for both purposes),
 - (d) the appointment and constitution of any committees of a Local Health Board (which may include or consist of persons who are not members of the Local Health Board),
 - (e) the appointment and tenure of office of the members of any committees of a Local Health Board,
 - (f) the procedure to be followed by a Local Health Board, and by any committee of the Board, in the exercise of its functions,
 - (g) the circumstances in which a person who is not an officer of the Local Health Board must be treated as if he were such an officer.
- (2) The power to make provision under paragraphs (c) and (f) of sub-paragraph (1) includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period.

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- (3) Any regulations under this paragraph may, in particular, make provision to deal with cases where the post of any officer of a Local Health Board is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- 5 Any reference in this Schedule to a committee of a Local Health Board includes a reference to sub-committees of, and joint committees and joint sub-committees including, the Local Health Board.
- 6 The validity of any proceedings of a Local Health Board, or of any of its committees, is not affected by any vacancy among the members or by any defect in the appointment of any member.

Staff

- 7 (1) A Local Health Board may employ such officers as it considers appropriate.
- (2) A Local Health Board may—
- (a) pay its officers such remuneration and allowances, and
 - (b) employ them on such other terms and conditions,
- as it considers appropriate.
- (3) A Local Health Board must—
- (a) in exercising its powers under sub-paragraph (2), and
 - (b) otherwise in connection with the employment of its officers,
- act in accordance with regulations, and any directions given by the Welsh Ministers.
- (4) Before making any regulations under sub-paragraph (3), the Welsh Ministers must consult such bodies as they may recognise as representing persons who, in their opinion, are likely to be affected by the regulations.
- 8 (1) The Welsh Ministers may direct a Local Health Board—
- (a) to make the services of any of its officers available to another Local Health Board, or
 - (b) to employ any person who is or was employed by another Local Health Board and is specified in the direction.
- (2) Sub-paragraph (1) does not affect the generality of section 12.
- (3) Before they give a direction under sub-paragraph (1) the Welsh Ministers must—
- (a) consult the person whose services will be made available or who will be employed,
 - (b) satisfy themselves that the Local Health Board has consulted that person, or
 - (c) consult any such body as the Welsh Ministers may recognise as representing that person.
- (4) Sub-paragraph (2) does not apply in relation to a direction under sub-paragraph (1)
- (a) if the Welsh Ministers—
- (a) consider it necessary to give the direction for the purpose of dealing temporarily with an emergency, and
 - (b) have previously consulted bodies recognised by the Welsh Ministers as representing the person whose services are to be made available about the giving of directions for that purpose.

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- 9 In addition to making provision in relation to Strategic Health Authorities and Special Health Authorities, regulations under paragraph 7(8) of Schedule 2 to the National Health Service Act 2006 (c. 41) and under paragraph 3(8) of Schedule 6 to that Act may also provide—
- (a) for the transfer of officers of one Local Health Board to another, and
 - (b) for arrangements under which the officers of a Local Health Board are placed at the disposal of another Local Health Board or a local authority.

Remuneration, pensions etc of members

- 10 (1) A Local Health Board may pay the chairman, the vice-chairman (if any) and any other members of the Board such remuneration and such travelling and other allowances as may be determined by the Welsh Ministers.
- (2) A Local Health Board may pay the chairman or any person who has been chairman of the Board such pension, allowance or gratuity as may be determined by the Welsh Ministers.
- (3) A Local Health Board may pay the members of any committee of a Board such travelling and other allowances as may be determined by the Welsh Ministers.
- (4) If, when a person ceases to be chairman of a Local Health Board, the Welsh Ministers determine that there are special circumstances which make it right that that person should receive compensation, the Board must pay to him a sum by way of compensation of such amount as the Welsh Ministers may determine.

PART 2

LHB ORDERS

- 11 (1) An LHB order must specify—
- (a) the name of the Local Health Board, and
 - (b) the operational date of the Local Health Board.
- (2) The operational date of a Local Health Board is the date on which functions exercisable by it may be undertaken fully by the Board.
- 12 (1) An LHB order may provide for the establishment of a Local Health Board with effect from a date earlier than the operational date.
- (2) During the period beginning with that earlier date and ending with the day immediately preceding the operational date (referred to in this Schedule as the preparatory period), the exercise of any functions by the Board must be limited to such exercise as may be specified in the LHB order for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date.

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PART 3

OTHER MATTERS

General power

- 13 (1) Subject to sub-paragraph (3), a Local Health Board may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.
- (2) In particular it may—
- (a) acquire and dispose of property,
 - (b) enter into contracts,
 - (c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Local Health Board or for any purposes relating to the health service).
- (3) A Local Health Board may not do anything mentioned in sub-paragraph (2) without the consent of the Welsh Ministers (which may be given in general terms covering one or more descriptions of case).

Rights and liabilities

- 14 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Local Health Board of any function exercisable by it by virtue of section 12 or 13 are enforceable by or against that Local Health Board (and not against any other body or the Welsh Ministers).
- (2) This paragraph does not apply in relation to the joint exercise of any functions by a Local Health Board with another body under section 13(2)(c).

Making accommodation or services available

- 15 (1) A Local Health Board may—
- (a) make available at a hospital for which it has responsibility accommodation or services for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Local Health Board in respect of the accommodation or services, and
 - (b) make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis.
- (2) A Local Health Board may exercise the power conferred by sub-paragraph (1) only if it is satisfied that its exercise—
- (a) does not to any significant extent interfere with the performance by the Local Health Board of any function conferred on it under this Act to provide accommodation or services of any kind, and
 - (b) does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

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- (3) Before a Local Health Board decides to make accommodation or services available under sub-paragraph (1), it must consult organisations representative of the interests of persons likely to be affected by the decision.
- (4) A Local Health Board may allow accommodation or services which are made available under sub-paragraph (1) to be so made available in connection with treatment in pursuance of arrangements—
 - (a) made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital,
 - (b) for the treatment of private patients of that practitioner.
- (5) References in this paragraph to a health service hospital include references to such a hospital within the meaning of section 275 of the National Health Service Act 2006 (c. 41), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.

Powers of Local Health Boards to enter into externally financed development agreements

- 16 (1) The powers of a Local Health Board include power to enter into externally financed development agreements.
- (2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Welsh Ministers.
- (3) The Welsh Ministers may give a certificate under this paragraph if—
 - (a) in their opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the Local Health Board of any of its functions, and
 - (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
- (4) If a Local Health Board enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.
- (5) “Another party” means any party to the agreement other than the Local Health Board.
- (6) The fact that an agreement made by a Local Health Board has not been certified under this paragraph does not affect its validity.

Research

- 17 (1) A Local Health Board may conduct, commission or assist the conduct of research.
- (2) A Local Health Board may, in particular, make officers available or provide facilities under sub-paragraph (1).

Training

- 18 A Local Health Board may—
 - (a) make officers available in connection with any instruction provided under section 63 of the Health Services and Public Health Act 1968 (c. 46),

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- (b) make officers and facilities available in connection with training by a university or any other body providing training in connection with the health service.

Regulations about duties

- 19 Regulations may make provision in relation to—
- (a) reports to be prepared by Local Health Boards,
 - (b) information to be supplied by them,
 - (c) their accounts, and the audit and publication of their accounts,
 - (d) the publication of any other document.

Compulsory acquisition

- 20 (1) A Local Health Board may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the Local Health Board and confirmed by the Welsh Ministers.
- (2) The Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.
- (3) No order may be made by a Local Health Board under Part 2 of the Acquisition of Land Act 1981 in respect of any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the Welsh Ministers in the form, and with the information, required by them, and
 - (b) has been approved by the Welsh Ministers.

Dissolution

- 21 (1) The Welsh Ministers may, if a Local Health Board is dissolved, by order transfer (or provide for the transfer) to themselves or to another Local Health Board any property or liabilities of the dissolved Board.
- (2) The liabilities which may be transferred by virtue of sub-paragraph (1) to another Local Health Board include criminal liabilities.
- (3) If any consultation requirements apply, they must be complied with before the order is made.
- (4) “Consultation requirements” means requirements about consultation contained in regulations.

Transfer of property

- 22 (1) The Welsh Ministers may by order (referred to in this paragraph and paragraph 23 as a transfer order)—
- (a) transfer (or provide for the transfer of) any of the property and liabilities of a health service authority to a Local Health Board,
 - (b) create or impose (or provide for the creation or imposition of) new rights or liabilities in respect of property transferred or retained.
- (2) Any property and liabilities which—

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- (a) belong to a health service authority other than the Welsh Ministers or are used or managed by a Local Health Board, and
 - (b) will be transferred to a Local Health Board by or under a transfer order, must be identified by agreement between the health service authority and the Local Health Board or, in default of agreement, by direction of the Welsh Ministers.
- (3) Where a transfer order transfers (or provides for the transfer of)—
- (a) land held on lease from a third party, or
 - (b) any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer is binding on the third party despite the fact that, apart from this sub-paragraph, the transfer would have required the third party's consent or concurrence.
- (4) “Third party” means a person other than a health service authority.
- (5) In this paragraph and paragraph 23, “health service authority” means the Welsh Ministers, a Local Health Board or an NHS trust in Wales.
- 23 (1) Stamp duty is not chargeable in respect of any transfer to a Local Health Board effected by or under a transfer order.
- (2) Where it becomes necessary, for the purpose of a transfer by or under a transfer order, to apportion any property or liabilities, the order may contain such provisions as appear to the Welsh Ministers to be appropriate for the purpose.
- (3) Where a transfer order transfers (or provides for the transfer of) any property or rights to which paragraph 22(3) applies, the order must contain such provisions as appear to the Welsh Ministers to be appropriate to safeguard the interests of third parties (within the meaning of that sub-paragraph), including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (4) A certificate issued by the Welsh Ministers that—
- (a) any specified property,
 - (b) any specified interest in or right over any property, or
 - (c) any specified right or liability,
- has been vested in a Local Health Board by or under a transfer order is conclusive evidence of that fact for all purposes.
- (5) “Specified” means specified in the certificate.
- (6) A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (7) Paragraph 22 and this paragraph do not affect—
- (a) any existing power of a health service authority to transfer property or liabilities to a Local Health Board,
 - (b) the extent of the power conferred by section 203(10).

Transfer of staff

- 24 (1) The Welsh Ministers may by order transfer to a Local Health Board any specified description of employees to which this paragraph applies.

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- (2) This paragraph applies to employees of—
- (a) an NHS trust in Wales,
 - (b) a Local Health Board.
- (3) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.
- 25 (1) The contract of employment of an employee transferred under paragraph 24—
- (a) is not terminated by the transfer, and
 - (b) has effect from the date of the transfer as if originally made between the employee and the Local Health Board to which he is transferred.
- (2) In particular—
- (a) all the rights, powers, duties and liabilities of the body from which an employee is transferred under paragraph 24 under or in connection with his contract of employment are by virtue of this sub-paragraph transferred to the Local Health Board to which the employee is transferred under that paragraph, and
 - (b) anything done before the date of the transfer by or in relation to the body from which he is so transferred in respect of the employee or the contract of employment is deemed from that date to have been done by or in relation to the Local Health Board to which he is transferred.
- (3) Sub-paragraphs (1) and (2) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the body from which they would be transferred, or the Local Health Board to which they would be transferred, that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3) his contract of employment with the body from which he would be transferred is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph does not affect any right of an employee to which paragraph 24 applies to terminate his contract of employment if a substantial change is made to his detriment in his working conditions.
- (6) But no such right arises by reason only that under this paragraph the identity of his employer changes, unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- 26 (1) Where an employee will be transferred by an order under paragraph 24 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, divided so as to constitute two separate contracts of employment between the employee and the transferor and the employee and the Local Health Board in question.
- (2) Where an employee's contract of employment is divided as provided under sub-paragraph (1), the order must provide for paragraph 25 to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 27 Where a Local Health Board is dissolved, an order under paragraph 21 includes power to transfer employees of the Local Health Board and the order may make any

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provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under paragraph 24.

Interpretation

- 28 In this Schedule, “NHS trust in Wales” means an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales.

SCHEDULE 3

Section 18

NHS TRUSTS ESTABLISHED UNDER SECTION 18

PART 1

CONSTITUTION, ESTABLISHMENT, ETC

Status

- 1 Each NHS trust is a body corporate.
- 2 (1) An NHS trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) An NHS trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Board of directors

- 3 (1) Each NHS trust has a board of directors consisting of—
- (a) a chairman appointed by the Welsh Ministers, and
 - (b) executive and non-executive directors.
- (2) Sub-paragraph (1)(b) is subject to paragraph 7(2).
- (3) An executive director is a director who is an employee of the NHS trust, and a non-executive director is a director who is not an employee of the NHS trust.
- (4) Sub-paragraph (3) is subject to any provision made by regulations under paragraph 4(1)(d).

Regulations

- 4 (1) The Welsh Ministers may by regulations make provision with respect to—
- (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they cease to hold, or may be removed from, office or may be suspended from performing the functions of the office),
 - (b) the persons by whom the directors and any of the officers must be appointed and the manner of their appointment,
 - (c) the maximum and minimum numbers of the directors,

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- (d) the circumstances in which a person who is not an employee of the NHS trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director,
 - (e) the proceedings of the NHS trust (including the validation of proceedings in the event of a vacancy or defect in appointment), and
 - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the NHS trust (whether or not consisting of or including any members of the board).
- (2) Regulations under sub-paragraph (1) may, in particular, make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

Provision to be made by first NHS trust order

- 5 (1) The first NHS trust order made in relation to any NHS trust must specify—
- (a) the name of the NHS trust,
 - (b) the functions of the NHS trust,
 - (c) the number of executive directors and non-executive directors,
 - (d) where the NHS trust has a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order,
 - (e) the operational date of the NHS trust, and
 - (f) if a scheme is to be made under paragraph 8, the Primary Care Trust, Special Health Authority or Local Health Board which is to make the scheme.
- (2) The functions which may be specified in an NHS trust order include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.
- (3) For the purposes of sub-paragraph (1)(d), an NHS trust has a significant teaching commitment in the following cases—
- (a) if the NHS trust is established to provide services at a hospital or other establishment or facility which, in the opinion of the Welsh Ministers, has a significant teaching and research commitment, and
 - (b) in any other case, if the Welsh Ministers so provide in the order.
- (4) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—
- (a) is employed by the university in question, and
 - (b) would also, apart from this sub-paragraph, be regarded as employed by the NHS trust,
- his employment by the NHS trust must be disregarded in determining whether, if appointed, he will be a non-executive director of the NHS trust.
- (5) The operational date of the NHS trust is the date on which it will begin to undertake the whole of the functions conferred on it.
- (6) An NHS trust order must specify the accounting date of the NHS trust.

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Temporary availability of staff etc.

- 6 (1) An NHS trust order may require a Strategic Health Authority, Special Health Authority, Primary Care Trust or Local Health Board to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the NHS trust and the transfer of premises or other facilities to the NHS trust.
- (2) An NHS trust order making provision under this paragraph may make provision with respect to the time when the functions of the Strategic Health Authority, Special Health Authority, Primary Care Trust or Local Health Board under the provision are to come to an end.

Establishment of NHS trust prior to operational date

- 7 (1) An NHS trust order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust and, during the period between that earlier date and the operational date, the NHS trust has such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.
- (2) If an NHS trust order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust must be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.
- (3) If an NHS trust order makes the provision referred to in sub-paragraph (1), the order may require a Strategic Health Authority, Special Health Authority or Local Health Board to discharge such liabilities of the NHS trust as—
- (a) may be incurred during the period referred to in that sub-paragraph, and
 - (b) are of a description specified in the order.

Transfer of staff to NHS trusts

- 8 (1) This paragraph applies to any person who, immediately before an NHS trust's operational date—
- (a) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work solely at, or for the purposes of, a hospital or other establishment or facility which will become the responsibility of the NHS trust, or
 - (b) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this paragraph by a scheme made by the Special Health Authority, Primary Care Trust or Local Health Board specified as mentioned in paragraph 5(1)(f).
- (2) Sub-paragraph (1) is subject to sub-paragraph (6).
- (3) A scheme under this paragraph does not have effect unless approved by the Welsh Ministers.
- (4) Subject to sub-paragraphs (9) to (11), the contract of employment between a person to whom this paragraph applies and the Special Health Authority, Primary Care Trust or Local Health Board by whom he is employed has effect from the operational date as if originally made between him and the NHS trust.

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- (5) In particular—
- (a) all the rights, powers, duties and liabilities of the Special Health Authority, Primary Care Trust or Local Health Board under or in connection with a contract to which sub-paragraph (4) applies are by virtue of this paragraph transferred to the NHS trust on its operational date, and
 - (b) anything done before that date by or in relation to the Special Health Authority, Primary Care Trust or Local Health Board in respect of that contract or the employee is deemed from that date to have been done by or in relation to the NHS trust.
- (6) In any case where—
- (a) an NHS trust order provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust,
 - (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the NHS trust to a person who at that time is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which will become the responsibility of the NHS trust, and
 - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,
- sub-paragraphs (4) and (5) have effect in relation to that person's contract of employment as if he were a person to whom this paragraph applies and as if any reference in those sub-paragraphs to the operational date of the NHS trust were a reference to the date on which he takes up employment with the NHS trust.
- (7) Sub-paragraphs (4) and (5) do not affect any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only of the change in employer effected by this paragraph.
- (8) A scheme under this paragraph may designate a person either individually or as a member of a class or description of employees.
- (9) In the case of a person who falls within sub-paragraph (1)(b), a scheme under this paragraph may provide that, with effect from the NHS trust's operational date, his contract of employment (his “original contract”) must be treated, in accordance with the scheme, as divided so as to constitute—
- (a) a contract of employment with the NHS trust, and
 - (b) a contract of employment with the Special Health Authority, Primary Care Trust or Local Health Board by whom he was employed before that date (the “transferor authority”).
- (10) Where a scheme makes provision as mentioned in sub-paragraph (9)—
- (a) the scheme must secure that the benefits to the employee under the two contracts referred to in that sub-paragraph, when taken together, are not less favourable than the benefits under his original contract,
 - (b) this paragraph applies in relation to the contract referred to in sub-paragraph (9)(a) as if it were a contract transferred under this paragraph from the transferor authority to the NHS trust, and

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- (c) so far as necessary to preserve any rights and obligations, the contract referred to in sub-paragraph (9)(b) must be regarded as a continuation of the employee's original contract.
- (11) Where, as a result of the provisions of this paragraph, by virtue of his employment during any period after the operational date of the NHS trust—
 - (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
 - (b) he also has statutory rights against the trust under Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy payments),
 any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) must be taken as satisfying his entitlement to benefits under that Part of that Act.

Transfer of property and liabilities to NHS trusts

- 9 (1) The Welsh Ministers may by order transfer, or provide for the transfer of, any of the property and liabilities of a Strategic Health Authority, a Primary Care Trust, a Special Health Authority, a Local Health Board, or the Welsh Ministers, to an NHS trust, with effect from any date as may be specified in the order.
- (2) An order under this paragraph may create or impose such new rights or liabilities in respect of what is transferred or what is retained as appear to the Welsh Ministers to be necessary or expedient.
- (3) Nothing in this paragraph affects the power of the Welsh Ministers or any power of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board to transfer property or liabilities to an NHS trust otherwise than under sub-paragraph (1).
- (4) Stamp duty is not chargeable in respect of any transfer to an NHS trust effected by or by virtue of an order under this paragraph.
- (5) Where an order under this paragraph provides for the transfer—
 - (a) of land held on lease from a third party, or
 - (b) of any other asset leased or hired from a third party or in which a third party has an interest,
 the transfer is binding on the third party notwithstanding that, apart from this sub-paragraph, it would have required his consent or concurrence.
- (6) “Third party” means a person other than the Welsh Ministers, a Strategic Health Authority, a Primary Care Trust, a Special Health Authority or a Local Health Board.
- (7) Any property and liabilities which—
 - (a) belong to, or are used or managed by, a Strategic Health Authority, Special Health Authority or Local Health Board or belong to a Primary Care Trust, and
 - (b) will be transferred to an NHS trust by or by virtue of an order under this paragraph,
 must be identified by agreement between the Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board and the NHS trust or, in default of agreement, by direction of the Welsh Ministers.

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- (8) Where, for the purpose of a transfer pursuant to an order under this paragraph, it becomes necessary to apportion any property or liabilities, the order may contain such provisions as appear to the Welsh Ministers to be appropriate for the purpose.
- (9) Where any such property or rights fall within sub-paragraph (5), the order must contain such provisions as appear to the Welsh Ministers to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (10) In the case of any transfer made by or pursuant to an order under this paragraph, a certificate issued by the Welsh Ministers that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order is conclusive evidence of that fact for all purposes.
- (11) An order under this paragraph may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (12) Sub-paragraph (11) does not affect section 203(10).

Trust funds and trustees

- 10 (1) The Welsh Ministers may by order provide for the appointment of trustees for an NHS trust to hold property on trust—
 - (a) for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the NHS trust), or
 - (b) for any purposes relating to the health service.
- (2) An order under sub-paragraph (1) may—
 - (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Welsh Ministers),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Welsh Ministers after consultation with such persons as they consider appropriate, and
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where under sub-paragraph (1) trustees have been appointed for an NHS trust, the Welsh Ministers may by order provide for the transfer of any trust property from the NHS trust to the trustees.

Pay and allowances

- 11 (1) An NHS trust must pay—
 - (a) to the chairman and any non-executive director of the NHS trust remuneration of an amount determined by the Welsh Ministers,

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- (b) to the chairman and any non-executive director of the NHS trust such travelling and other allowances as may be determined by the Welsh Ministers,
 - (c) to any member of a committee or sub-committee of the NHS trust who is not also a director such travelling and other allowances as may be determined by the Welsh Ministers.
- (2) If an NHS trust so determines in the case of a person who is or has been a chairman of the NHS trust, the NHS trust must pay such pension, allowances or gratuities to or in respect of him as may be determined by the Welsh Ministers.
- (3) A determination under sub-paragraph (2), so far as it relates to pensions, may be made only with the approval of the Treasury.
- (4) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) in relation to different cases or descriptions of cases.

Reports and other information

- 12 (1) For each accounting year an NHS trust must prepare and send to the Welsh Ministers an annual report in such form as may be determined by the Welsh Ministers.
- (2) At such time or times as may be prescribed, an NHS trust must hold a public meeting at which must be presented—
- (a) its audited accounts and annual report, and
 - (b) any report on the accounts made pursuant to section 8 of the Audit Commission Act 1998 (c. 18) or paragraph 19 of Schedule 8 to the Government of Wales Act 2006 (c. 32).
- (3) In such circumstances and at such time or times as may be prescribed, an NHS trust must hold a public meeting at which such documents as may be prescribed must be presented.

Modifications etc. (not altering text)

C8 Sch. 3 para. 12(2)(b) modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 5, 8(2), [Sch. 3 para. 10\(4\)\(b\)](#) (with Sch. 3 Pt. 1)

- 13 An NHS trust must furnish to the Welsh Ministers such reports, returns and other information, including information as to its forward planning, as, and in such form as, they may require.

PART 2

POWERS AND DUTIES

General

- 14 (1) An NHS trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.
- (2) In particular it may—
- (a) acquire and dispose of property,

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- (b) enter into contracts, and
- (c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the NHS trust or for any purposes relating to the health service).

(3) The reference in sub-paragraph (2)(c) to specific purposes of the NHS trust includes a reference to the purposes of a specific hospital or other establishment or facility at or from which services are provided by the NHS trust.

NHS contracts

- 15 (1) In addition to carrying out its other functions, an NHS trust may, as the provider, enter into NHS contracts.
- (2) An NHS trust may not, as the provider, enter into an NHS contract for the provision of high security psychiatric services (within the meaning of section 4) unless the NHS trust is approved for the purpose of this paragraph by the Welsh Ministers.
- (3) Such approval—
- (a) must be for a period specified in the approval,
 - (b) may be given subject to conditions, and
 - (c) may be amended or revoked at any time.

Research

- 16 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

Training

- 17 An NHS trust may—
- (a) provide training for persons employed or likely to be employed by the NHS trust or otherwise in the provision of services under this Act, and
 - (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.

Joint exercise of functions

- 18 An NHS trust may enter into arrangements for the carrying out, on such terms as the NHS trust considers appropriate, of any of its functions jointly with any Strategic Health Authority, Primary Care Trust, Special Health Authority, Local Health Board or other NHS trust, or any other body or individual.

Payment for accommodation or services

- 19 (1) According to the nature of its functions, an NHS trust may make accommodation or services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS trust in respect of the accommodation or services.
- (2) An NHS trust may exercise the power conferred by sub-paragraph (1) only—

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- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
- (b) in circumstances specified in directions under section 19, with the consent of the Welsh Ministers.

Additional income

- 20 (1) For the purpose of making additional income available in order better to perform its functions, an NHS trust has the powers specified in section 7(2) of the Health and Medicines Act 1988 (c. 49) (extension of powers of Welsh Ministers for financing the health service).
- (2) The power conferred by sub-paragraph (1) may be exercised only—
- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
 - (b) in circumstances specified in directions under section 19, with the consent of the Welsh Ministers.

Provision of accommodation and services outside England and Wales

- 21 An NHS Trust may arrange for the provision of accommodation and services outside England and Wales.

Conferral of further powers by order

- 22 The Welsh Ministers may by order confer specific powers on NHS trusts, further to those provided for by paragraphs 15 to 21.

Powers of NHS trusts to enter into externally financed development agreements

- 23 (1) The powers of an NHS trust include power to enter into externally financed development agreements.
- (2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Welsh Ministers.
- (3) The Welsh Ministers may give a certificate under this paragraph if—
- (a) in their opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the NHS trust of any of its functions, and
 - (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
- (4) If an NHS trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.
- (5) “Another party” means any party to the agreement other than the NHS trust.
- (6) The fact that an agreement made by an NHS trust has not been certified under this paragraph does not affect its validity.

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Agreements under section 50 or 64

- 24 An NHS trust may provide services under an agreement made under section 50 (primary medical services) or section 64 (primary dental services) and may do so as a member of a qualifying body (within the meaning given by section 51 or section 65).

Staff

- 25 (1) An NHS trust may employ such staff as it considers appropriate.
- (2) An NHS trust may—
- (a) pay its staff such remuneration and allowances, and
 - (b) employ them on such other terms and conditions,
- as it considers appropriate.
- (3) An NHS trust must—
- (a) in exercising its powers under sub-paragraph (2), and
 - (b) otherwise in connection with the employment of its staff,
- act in accordance with regulations and any directions given by the Welsh Ministers.
- (4) Before making any regulations under sub-paragraph (3), the Welsh Ministers must consult such bodies as they may recognise as representing persons who, in their opinion, are likely to be affected by the regulations.

Pensions, etc.

- 26 (1) An NHS trust may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.
- (2) Such arrangements may include the establishment and administration, by the NHS trust or otherwise, of one or more pension schemes.
- (3) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the NHS trust's employees who suffer loss of office or employment or loss or diminution of emoluments.
- (4) This paragraph does not affect the generality of paragraphs 14 and 25.

Compulsory acquisition

- 27 (1) An NHS trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the NHS trust and confirmed by the Welsh Ministers.
- (2) Subject to sub-paragraph (3), the Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.
- (3) No order may be made by an NHS trust under Part 2 of the Acquisition of Land Act 1981 with respect to any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the Welsh Ministers in such form and together with such information as they may require, and

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- (b) has been approved by them.

PART 3

DISSOLUTION

- 28 (1) The Welsh Ministers may by order dissolve an NHS trust.
- (2) An order under this paragraph may be made—
- (a) on the application of the NHS trust concerned, or
 - (b) if the Welsh Ministers consider it appropriate in the interests of the health service.
- (3) Except where it appears to the Welsh Ministers necessary to make an order under this paragraph as a matter of urgency, no such order may be made until after the completion of such consultation as may be prescribed.
- 29 (1) If an NHS trust is dissolved under paragraph 28, the Welsh Ministers may by order transfer, or provide for the transfer, to themselves or an NHS body of such of the property and liabilities of the NHS trust which is dissolved as in the opinion of the Welsh Ministers is appropriate; and any such order may include provisions corresponding to those of paragraph 9.
- (2) The liabilities which may be transferred by virtue of sub-paragraph (1) to an NHS body include criminal liabilities.
- (3) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of paragraph 8, including provision for the making of a scheme by such Strategic Health Authority, Special Health Authority, Local Health Board or other body as may be specified in the order.
- (4) No order may be made under this paragraph until after completion of such consultation as may be prescribed.
- 30 (1) If an NHS trust is dissolved under paragraph 28, the Welsh Ministers or such other NHS trust, Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board as the Welsh Ministers may direct must undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 11(2) or paragraph 26, would otherwise have been the responsibility of the NHS trust which has been dissolved.
- (2) Sub-paragraph (1) does not affect the generality of paragraph 29.
- 31 An NHS trust may not be dissolved or wound up except in accordance with paragraph 28.

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PART 4

MISCELLANEOUS

Use and development of consecrated land and burial grounds

- 32 Section 128 of the Town and Country Planning Act 1971 (c. 78) (use and development of consecrated land and burial grounds) applies to consecrated land and land comprised in a burial ground, within the meaning of that section, which an NHS trust holds for any of its purposes as if—
- (a) that land had been acquired by the NHS trust as mentioned in subsection (1) of that section, and
 - (b) the NHS trust were a statutory undertaker, within the meaning of that Act.

Instruments etc.

- 33 (1) The fixing of the seal of an NHS trust must be authenticated by the signature—
- (a) of the chairman or of some other person authorised (whether generally or specifically) by the NHS trust for that purpose, and
 - (b) of one other director.
- (2) A document purporting to be duly executed under the seal of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so executed.
- (3) A document purporting to be signed on behalf of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so signed.

Interpretation

- 34 In this Schedule—
- “provide” includes manage,
- “operational date” has the meaning given by paragraph 5(5).

SCHEDULE 4

Section 21

FINANCIAL PROVISION ABOUT NHS TRUSTS ESTABLISHED UNDER SECTION 18

Modifications etc. (not altering text)

- C9** Sch. 4 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006](#) (c. 43), ss. 5, 8(2), [Sch. 3 para. 10\(6\)](#) (with Sch. 3 Pt. 1)

Originating capital of NHS trusts

- 1 (1) Each NHS trust has an originating capital of an amount specified in an order made by the Welsh Ministers.
- (2) The originating capital of an NHS trust is an amount representing the excess of the valuation of its assets over the amounts of its liabilities.

Status: Point in time view as at 14/03/2012.

Changes to legislation: National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) In determining the originating capital of an NHS trust, there must be left out of account such assets or liabilities as are, or are of a class, determined for the purposes of this paragraph by the Welsh Ministers with the consent of the Treasury.
- (4) An NHS trust's originating capital is deemed to have been issued out of moneys paid out of the Welsh Consolidated Fund and is an asset of the Welsh Consolidated Fund.
- (5) An NHS trust's originating capital is public dividend capital.
- (6) With the consent of the Treasury, the Welsh Ministers may determine—
 - (a) the dividend which is payable at any time on any public dividend capital issued, or treated as issued, to an NHS trust under this Act,
 - (b) the amount of any such public dividend capital which must be repaid at any time,
 - (c) any other terms on which any public dividend capital is so issued, or treated as issued.
- (7) An order under sub-paragraph (1) may be made only with the consent of the Treasury.
- (8) In this paragraph—

“assets” means the assets which, on or in connection with the establishment of the NHS trust, are or will be transferred to it (whether before, on or after its operational date), and

“liabilities” means the liabilities which are or will be so transferred.

Financial obligations of NHS trusts

- 2 (1) Each NHS trust must ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.
- (2) Each NHS trust must achieve such financial objectives as may from time to time be set by the Welsh Ministers with the consent of the Treasury and as are applicable to it.
- (3) Any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.

Borrowing

- 3 (1) For the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Welsh Ministers or from any other person.
- (2) Sub-paragraph (1) is subject to any direction given by the Welsh Ministers under section 19, to the provisions of this paragraph and to any limit imposed under this Schedule.
- (3) An NHS trust may not mortgage or charge any of its assets or in any other way use any of its assets as security for a loan.
- (4) The Welsh Ministers must determine the terms of any loan made by them to an NHS trust (including terms as to the payment of interest, if any).

Status: Point in time view as at 14/03/2012.

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Guarantees of borrowing

- 4 (1) The Welsh Ministers may guarantee, in such manner and on such conditions as they consider appropriate the repayments of the principal of, and the payment of interest on, any sums which an NHS trust borrows from a person other than the Welsh Ministers.
- (2) Immediately after a guarantee is given under this paragraph, a statement of the guarantee must be laid before the National Assembly for Wales.
- (3) Where any sum is issued for fulfilling a guarantee so given, a statement relating to that sum must be laid before the National Assembly for Wales as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned must make to the Welsh Ministers, at such times and in such manner as they may from time to time direct—
- (a) payments of such amounts as the Welsh Ministers so direct in or towards repayment of the sums so issued, and
 - (b) payments of interest, at such rates as the Welsh Ministers so direct, on what is outstanding for the time being in respect of sums so issued.

Limits on indebtedness

- 5 The aggregate of all sums borrowed by NHS trusts which are required to provide or manage services at or from hospitals or other establishments or facilities which are situated in Wales must not exceed £300 million or such other sum not exceeding £600 million as may be specified by order made by the Welsh Ministers.

Additional public dividend capital

- 6 The Welsh Ministers may, with the consent of the Treasury, instead of making a loan to an NHS trust under paragraph 3, pay an amount to the NHS trust as public dividend capital.

Supplementary payments

- 7 (1) The Welsh Ministers may make a payment to an NHS trust.
- (2) The payment may be subject to such conditions as they consider appropriate, including conditions as to repayment.

Surplus funds

- 8 (1) If it appears to the Welsh Ministers that any sum held by an NHS trust otherwise than as trustee is surplus to its foreseeable requirements, the trust must, if the Welsh Ministers after consultation with the NHS trust so direct, pay that sum to the Welsh Ministers.
- (2) Sub-paragraph (1) applies only where the NHS trust is established to assume responsibility for the ownership and management of, or to provide and manage, hospitals or other establishments or other facilities which are situated in Wales; otherwise, the payment must be made to the Consolidated Fund.

Status: Point in time view as at 14/03/2012.

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Investment

- 9 (1) An NHS trust has power to invest money held by it in any investments, including investments which do not produce income, specified in directions under section 19.
- (2) Sub-paragraph (1) does not apply in relation to money held by an NHS trust as trustee.
- 10 Any direction under section 19 with respect to the maximum amount which an NHS trust may invest in any investments or class of investments may be given only with the consent of the Treasury.

SCHEDULE 5

Section 22

SPECIAL HEALTH AUTHORITIES ESTABLISHED UNDER SECTION 22

Corporate status

- 1 Each Special Health Authority is a body corporate.

Pay and allowances

- 2 (1) The Welsh Ministers may pay to—
- (a) the chairman of a Special Health Authority, and
 - (b) any member of a Special Health Authority who is appointed by the Welsh Ministers,
- such remuneration as the Welsh Ministers may determine.
- (2) The Welsh Ministers may provide as they may determine for the payment of a pension, allowance or gratuity to or in respect of the chairman of a Special Health Authority.
- (3) A determination under sub-paragraph (2), so far as it relates to a pension, may be made only with the approval of the Treasury.
- (4) Where a person ceases to be chairman of a Special Health Authority, and it appears to the Welsh Ministers that there are special circumstances which make it right for that person to receive compensation, the Welsh Ministers may make him a payment of such amount as the Welsh Ministers may determine.
- (5) The Welsh Ministers may pay to a member of a Special Health Authority, or of a committee or sub-committee of, or joint committee or joint sub-committee including a Special Health Authority, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as the Welsh Ministers may determine.
- (6) Allowances may not be paid under sub-paragraph (5) except in connection with the exercise, in such circumstances as the Welsh Ministers may determine, of such functions as they may determine.
- (7) Payments under this paragraph must be made at such times, and in such manner and subject to such conditions, as the Welsh Ministers may determine.

Status: Point in time view as at 14/03/2012.

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Staff

- 3 (1) A Special Health Authority may employ such officers as it may determine.
- (2) A Special Health Authority may—
 - (a) pay its officers such remuneration and allowances, and
 - (b) employ them on such other terms and conditions,as it may determine.
- (3) A Special Health Authority must, in exercising its powers under sub-paragraph (1) or (2), act in accordance with regulations and any directions given by the Welsh Ministers.
- (4) Regulations and directions under sub-paragraph (3) may make provision with respect to any matter connected with the employment by a Special Health Authority of its officers, including in particular provision—
 - (a) with respect to the qualifications of persons who may be employed as officers of a Special Health Authority,
 - (b) requiring a Special Health Authority to employ a chief officer and officers of such other descriptions as may be prescribed and to employ, for the purpose of performing prescribed functions of the Special Health Authority or any other body, officers having prescribed qualifications or experience, and
 - (c) as to the manner in which any officers of a Special Health Authority must be appointed.
- (5) A direction under sub-paragraph (3) may relate to a particular officer or class of officer specified in the direction.
- (6) Regulations and directions under sub-paragraph (3) may provide for approvals or determinations to have effect from a date specified in them.
- (7) The date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate.
- (8) Regulations may provide for the transfer of officers from one Special Health Authority to another Special Health Authority or to a Strategic Health Authority, and for arrangements under which the services of an officer of a Special Health Authority are placed at the disposal of another Special Health Authority, a Strategic Health Authority or a local authority.
- (9) Sub-paragraph (11) applies where the registration of a dental practitioner in the dentists register is suspended—
 - (a) by an interim suspension order under section 32 of the Dentists Act 1984 (c. 24) (interim orders), or
 - (b) by a direction or an order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.
- (10) For the purposes of sub-paragraph (9), a “relevant determination” that a practitioner's fitness to practice is impaired is a determination which is based solely on—
 - (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),

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- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or
 - (c) both those grounds.
- (11) The suspension does not terminate any contract of employment made between the dental practitioner and a Special Health Authority, but a person whose registration is so suspended must not perform any duties under a contract made between him and a Special Health Authority which involves the practice of dentistry within the meaning of the Dentists Act 1984.
- (12) Directions may be given—
- (a) by the Welsh Ministers to a Special Health Authority to place the services of any of its officers at the disposal of another Special Health Authority or of a Strategic Health Authority,
 - (b) by the Welsh Ministers to any Special Health Authority to employ as an officer of the Special Health Authority any person who is or was employed by another Special Health Authority or by a Strategic Health Authority and is specified in the direction.
- (13) Regulations made in pursuance of this paragraph may not require that all consultants employed by a Special Health Authority must be so employed whole-time.
- 4 (1) The Welsh Ministers must, before they make regulations under paragraph 3, consult such bodies as they may recognise as representing persons who, in their opinion, are likely to be affected by the regulations.
- (2) The Welsh Ministers must, before they give directions to a Special Health Authority under paragraph 3(12) in respect of any officer of a Special Health Authority—
- (a) consult the officer about the directions,
 - (b) satisfy themselves that the Special Health Authority of which he is an officer has consulted the officer about the placing or employment in question, or
 - (c) in the case of a direction under paragraph 3(12)(a), consult with respect to the directions such body as they may recognise as representing the officer.
- (3) But if the Welsh Ministers—
- (a) consider it necessary to give directions under paragraph 3(12)(a) for the purpose of dealing temporarily with an emergency, and
 - (b) have previously consulted bodies recognised by them as representing the relevant officers about the giving of directions for that purpose,
- the Welsh Ministers may disregard sub-paragraph (2) in relation to the directions.

Miscellaneous

- 5 Provision may be made by regulations as to—
- (a) the appointment and tenure of office of the chairman, vice-chairman and members of a Special Health Authority,
 - (b) the appointment and tenure of office of any members of a committee or sub-committee of a Special Health Authority who are not members of the Special Health Authority,
 - (c) the appointment and tenure of office of any members of a joint committee or joint sub-committee including a Special Health Authority who are not members of the Special Health Authority,

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- [^{F9}(d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office,]
- (e) the appointment and constitution of committees and sub-committees (and joint committees and joint sub-committees) of (or including) a Special Health Authority (including any such committees consisting wholly or partly of persons who are not members of the Special Health Authority in question), and
- (f) the procedure of a Special Health Authority and of such committees and sub-committees as are mentioned in paragraph (e).

Textual Amendments

- F9** Sch. 5 para. 5(d) substituted (1.4.2010) by Health Act 2009 (c. 21), ss. 19, 40, Sch. 3 paras. 15, 18(1) (b) (with para. 19); S.I. 2010/930, art. 2

- 6 Regulations made under this Schedule may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Special Health Authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- 7 A Special Health Authority may pay subscriptions, of such amounts as the Welsh Ministers may approve, to the funds of such bodies as the Welsh Ministers may approve.
- 8 A Special Health Authority has power to accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Special Health Authority or for any purposes relating to the health service).
- 9 (1) The Welsh Ministers may by order provide for the appointment of trustees for a Special Health Authority to hold property on trust—
- (a) for the general or any specific purposes of the Special Health Authority (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the Special Health Authority), or
 - (b) for any purposes relating to the health service.
- (2) An order under sub-paragraph (1) may—
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Welsh Ministers),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Welsh Ministers after consultation with such persons as they consider appropriate, and
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where under sub-paragraph (1) trustees have been appointed for a Special Health Authority, the Welsh Ministers may by order provide for the transfer of any trust property from the Special Health Authority to the trustees.

Status: Point in time view as at 14/03/2012.

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- 10 The proceedings of a Special Health Authority are not invalidated by any vacancy in its membership or by any defect in a member's appointment.
- 11 (1) A Special Health Authority may—
- (a) make available at a hospital for which it has responsibility accommodation or services for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Special Health Authority in respect of the accommodation or services, and
 - (b) make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis.
- (2) A Special Health Authority may exercise the power conferred by sub-paragraph (1) only if it is satisfied that its exercise—
- (a) does not to any significant extent interfere with the performance by the Special Health Authority of any function conferred on it under this Act to provide accommodation or services of any kind, and
 - (b) does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.
- (3) Before a Special Health Authority decides to make accommodation or services available under sub-paragraph (1), it must consult organisations representative of the interests of persons likely to be affected by the decision.
- (4) A Special Health Authority may allow accommodation or services which are made available under sub-paragraph (1) to be so made available in connection with treatment in pursuance of arrangements—
- (a) made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital,
 - (b) for the treatment of private patients of that practitioner.
- (5) References in this paragraph to a health service hospital include references to such a hospital within the meaning of section 275 of the National Health Service Act 2006 (c. 41), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.
- 12 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Special Health Authority of any function exercisable by it by virtue of section 24 or section 25 are enforceable by or against that Special Health Authority (and no other body).
- (2) This paragraph does not apply in relation to the joint exercise of any functions by a Special Health Authority with another body under section 25(1)(b).
- 13 Provision may be made by regulations with respect to the recording of information by a Special Health Authority, and the furnishing of information by a Special Health Authority to the Welsh Ministers, another Special Health Authority or a Strategic Health Authority.

Status: Point in time view as at 14/03/2012.

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SCHEDULE 6

Section 93

PILOT SCHEMES

How pilot schemes may be initiated

- 1 (1) A pilot scheme may be made—
 - (a) on the initiative of a Local Health Board, or
 - (b) in response to a request made by a person wishing to participate in the scheme.
- (2) The request referred to in sub-paragraph (1)(b) must—
 - (a) be made in writing, and
 - (b) comply with such requirements (if any) as may be prescribed.

Modifications etc. (not altering text)

C10 Sch. 6 para. 1: Functions made exercisable (1.10.2009) by Local Health Boards by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

Preliminary steps to be taken

- 2 (1) Before making a pilot scheme, the Local Health Board concerned must prepare proposals for the scheme and submit them to the Welsh Ministers.
- (2) But proposals may be submitted by a Local Health Board only with the agreement of the other proposed participants.
- (3) In preparing proposals for a pilot scheme, a Local Health Board must comply with any directions given to it by the Welsh Ministers as to—
 - (a) the matters to be dealt with, and information to be included, in the proposals, and
 - (b) the procedure to be followed by the Local Health Board.
- (4) Before submitting proposals for a pilot scheme, a Local Health Board must (in addition to complying with any requirements about consultation imposed by or under any other enactment) comply with any directions given to it by the Welsh Ministers about the extent to which, and manner in which, it must consult on the proposals.
- (5) The Welsh Ministers may give directions—
 - (a) requiring a Local Health Board to submit proposals to them,
 - (b) as to the matters to which a Local Health Board must have regard in making any recommendation to the Welsh Ministers when submitting proposals for a pilot scheme,
 - (c) as to the form in which any such recommendation must be made,
 - (d) requiring Local Health Boards to provide the Welsh Ministers with summaries (prepared and presented in the manner specified in the directions) of all requests received by the Local Health Boards during the period specified in the directions.
- (6) A direction under this paragraph may be given so as to apply—
 - (a) generally in circumstances specified in the direction, or

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- (b) in relation to a particular case.

Modifications etc. (not altering text)

C11 Sch. 6 para. 2: Functions made exercisable (1.10.2009) by Local Health Boards by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

Approval

- 3 (1) If proposals for a pilot scheme are submitted under paragraph 2, the Welsh Ministers must—
- (a) approve them as submitted,
 - (b) make such modifications as they consider appropriate and approve them as modified, or
 - (c) reject them.
- (2) The Welsh Ministers may not approve proposals for a pilot scheme unless satisfied that they include satisfactory provision for any participant other than the Local Health Board to withdraw from the scheme if he wishes to do so.
- (3) When the Welsh Ministers make a decision under this paragraph—
- (a) they must notify the Local Health Board concerned of the decision, and
 - (b) the Local Health Board must, without delay, notify the other participants in the proposed scheme.

Modifications etc. (not altering text)

C12 Sch. 6 para. 3: Functions made exercisable (1.10.2009) by Local Health Boards by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

Preliminary approval

- 4 (1) This paragraph applies if a Local Health Board proposes to make a pilot scheme but has not determined who the participants, or who all of the participants, will be.
- (2) The Local Health Board may apply to the Welsh Ministers for preliminary approval to be given to its proposals.
- (3) If such an application is made, the Welsh Ministers must—
- (a) give preliminary approval to the proposals as submitted,
 - (b) make such modifications as they consider appropriate and give preliminary approval to them as modified, or
 - (c) reject them.
- (4) If a Local Health Board is given preliminary approval, it must take such steps, with a view to obtaining final approval for the proposed pilot scheme, as the Welsh Ministers may direct.
- (5) The fact that the Welsh Ministers have given preliminary approval to proposals for a pilot scheme does not affect their right to refuse to approve the completed proposals when they are submitted under paragraph 2.

Status: Point in time view as at 14/03/2012.

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- (6) Sub-paragraphs (3) to (6) of paragraph 2 apply in relation to an application for preliminary approval of proposals under this paragraph as they apply in relation to proposals under that paragraph.

Modifications etc. (not altering text)

C13 Sch. 6 para. 4: Functions made exercisable (1.10.2009) by Local Health Boards by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

Effect of proposals on existing services

- 5 (1) Proposals for a pilot scheme submitted under paragraph 2, or included in an application for preliminary approval of proposals under paragraph 4, must include—
- (a) an assessment by the Local Health Board of the likely effect of the implementation of the proposals in the area of the Local Health Board on the services mentioned in sub-paragraph (2),
 - (b) any assessment supplied to the Local Health Board by another Local Health Board under sub-paragraph (4).
- (2) The services are—
- (a) pharmaceutical services,
 - (b) local pharmaceutical services provided under existing pilot schemes or LPS schemes,
 - (c) primary medical services.
- (3) If it appears to a Local Health Board that the proposals would, if implemented, affect any of the services mentioned in sub-paragraph (2) provided in the area of another Local Health Board, it must consult that other Local Health Board about the proposals before submitting them under paragraph 2 or including them in an application for preliminary approval under paragraph 4.
- (4) A Local Health Board consulted under sub-paragraph (3) must prepare an assessment of the likely effect of the implementation of the proposals on those services and supply it to the Local Health Board which consulted it.

Modifications etc. (not altering text)

C14 Sch. 6 para. 5: Functions made exercisable (1.10.2009) by Local Health Boards by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

Guidance

- 6 The Welsh Ministers may issue guidance about the criteria by reference to which, as a general rule, powers under paragraph 3 or 4 are likely to be exercised.

Making a scheme

- 7 (1) If the Welsh Ministers approve proposals for a pilot scheme under paragraph 3 and notify the Local Health Board concerned in accordance with that paragraph, the Local Health Board must implement the proposals in accordance with directions given by the Welsh Ministers.

Status: Point in time view as at 14/03/2012.

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- (2) A proposed participant in a pilot scheme (other than the Local Health Board concerned) may withdraw at any time before the proposals relating to him are implemented.
- (3) A pilot scheme, as implemented, may differ from the proposals for the scheme approved by the Welsh Ministers only if they agree to the variation or—
 - (a) directions given by them (either under sub-paragraph (1) or generally) authorise variations that satisfy specified requirements, and
 - (b) the variation satisfies those requirements.
- (4) As soon as is reasonably practicable after implementing proposals for a pilot scheme, the Local Health Board concerned must (in accordance with any directions given to it by the Welsh Ministers) publish details of the scheme.

Modifications etc. (not altering text)

C15 Sch. 6 para. 7: Functions made exercisable (1.10.2009) by Local Health Boards by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

SCHEDULE 7

Section 102

LPS SCHEMES

Provision of local pharmaceutical services

- 1 (1) Local Health Boards may establish LPS schemes.
- (2) In this Act, an “LPS scheme” means one or more agreements—
 - (a) made by a Local Health Board in accordance with this Schedule,
 - (b) under which local pharmaceutical services will be provided (otherwise than by the Local Health Board), and
 - (c) the parties to which do not include any other Local Health Board.
- (3) An LPS scheme may include arrangements—
 - (a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Act, other than under Part 6 or Chapter 1 of this Part, and whether or not of the kind usually provided by pharmacies,
 - (b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).
- (4) An LPS scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services or primary dental services.
- (5) In determining the arrangements it needs to make in order to comply with section 80, a Local Health Board may take into account arrangements under an LPS scheme made by it.

Status: Point in time view as at 14/03/2012.

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- (6) The functions of an NHS trust and an NHS foundation trust include power to provide any services to which an LPS scheme applies.
- (7) In this Schedule—
- "local pharmaceutical services" means such services of a kind which may be provided under section 80, or by virtue of section 81 (other than practitioner dispensing services) as may be prescribed for the purposes of this Schedule, and
- "LP services" means services provided under an LPS scheme (including any services to which the scheme applies as a result of sub-paragraph (3)).
- (8) "Practitioner dispensing services" means the provision of drugs, medicines or listed appliances (within the meaning of section 80) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 86(1).

Designation of priority neighbourhoods or premises

- 2 (1) The Welsh Ministers may make regulations allowing a Local Health Board to designate—
- (a) neighbourhoods,
- (b) premises, or
- (c) descriptions of premises,
- for the purposes of this paragraph.
- (2) The regulations may, in particular, make provision—
- (a) as to the circumstances in which, and the neighbourhoods or premises in relation to which, designations may be made or maintained,
- (b) allowing a Local Health Board to defer consideration of pharmaceutical list applications relating to neighbourhoods, premises or descriptions of premises that have been designated,
- (c) allowing a designation to be cancelled in prescribed circumstances,
- (d) requiring a designation to be cancelled—
- (i) if the Welsh Ministers give a direction to that effect, or
- (ii) in prescribed circumstances.
- (3) "Pharmaceutical list applications" means applications for inclusion in a pharmaceutical list.

Regulations

- 3 (1) The Welsh Ministers may make regulations with respect to LP services.
- (2) The regulations must include provision for participants other than Local Health Boards to withdraw from an LPS scheme if they wish to do so.
- (3) The regulations may, in particular—
- (a) provide that an LPS scheme may be made only—
- (i) in prescribed circumstances,
- (ii) in relation to an area, a community or a category of persons determined in accordance with the regulations, or

Status: Point in time view as at 14/03/2012.

Changes to legislation: *National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (iii) in relation to premises determined in accordance with the regulations,
- (b) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with an LPS scheme,
- (c) make provision as to the services, or categories of service, for which an LPS scheme must provide,
- (d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons providing LP services,
- (e) require details of each LPS scheme to be published,
- (f) make provision with respect to the variation and termination of an LPS scheme,
- (g) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both LP services and pharmaceutical services from the same premises,
- (h) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list,
- (i) provide for parties to an LPS scheme to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 7,
- (j) provide for directions, as to payments, made under section 7(11) (as it has effect as a result of regulations made by virtue of paragraph (i)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court,
- (k) authorise Local Health Boards to make payments of financial assistance for prescribed categories of preparatory work undertaken—
 - (i) in connection with preparing proposals for an LPS scheme, or
 - (ii) in preparation for the provision of services under a proposed LPS scheme.

SCHEDULE 8

Section 177

FURTHER PROVISION ABOUT THE EXPENDITURE OF LOCAL HEALTH BOARDS

General ophthalmic^{F10}. . . services expenditure

Textual Amendments

F10 Sch. 8 para. 1: words in preceding cross-heading repealed (21.5.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 140, 166, 170, Sch. 12 para. 10(4), [Sch. 15 Pt. 4](#); S.I. 2010/1457, [art. 2](#)

- 1 (1) In section 174 to 176 and this Schedule, “general ophthalmic^{F11}. . . services expenditure” means expenditure of a Local Health Board which—
- (a) is attributable to the payment of remuneration to persons providing [^{F12}general ophthalmic services], and
 - (b) is not excluded by sub-paragraph (2).
- (2) Expenditure is excluded if it is attributable to—

Status: Point in time view as at 14/03/2012.

Changes to legislation: National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) the reimbursement of expenses of persons providing [^{F13}general ophthalmic services] which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
- (b) ^{F14}
- (c) ^{F14}

Textual Amendments

- F11** Words in Sch. 8 para. 1(1) repealed (21.5.2010) by Health and Social Care Act 2008 (c. 14), ss. 140, 166, 170, Sch. 12 para. 10(2)(a), Sch. 15 Pt. 4; S.I. 2010/1457, art. 2
- F12** Words in Sch. 8 para. 1(1)(a) substituted (21.5.2010) by Health and Social Care Act 2008 (c. 14), ss. 140, 170, Sch. 12 para. 10(2)(b); S.I. 2010/1457, art. 2
- F13** Words in Sch. 8 para. 1(2)(a) substituted (21.5.2010) by Health and Social Care Act 2008 (c. 14), ss. 140, 170, Sch. 12 para. 10(3)(a); S.I. 2010/1457, art. 2
- F14** Sch. 8 para. 1(2)(b)(c) repealed (21.5.2010) by Health and Social Care Act 2008 (c. 14), ss. 140, 166, 170, Sch. 12 para. 10(3)(b), Sch. 15 Pt. 4; S.I. 2010/1457, art. 2

Main expenditure

- [^{F152} In section 174 “main expenditure”, in relation to a Local Health Board and the year in question, means—
- (a) expenditure of the Local Health Board attributable to the reimbursement in that year of expenses of persons providing general ophthalmic services which are designated expenses incurred in connection with the provision of those services (or in giving instruction in matters relating to those services), and
 - (b) any other expenditure of the Local Health Board attributable to the performance of its functions in that year (other than general ophthalmic services expenditure).]

Textual Amendments

- F15** Sch. 8 para. 2 substituted (21.5.2010) by Health and Social Care Act 2008 (c. 14), ss. 140, 170, Sch. 12 para. 10(5); S.I. 2010/1457, art. 2

- 3
- (1) For each financial year, the Welsh Ministers must apportion among all Local Health Boards, in such manner as they consider appropriate, the total of the remuneration referable to the cost of drugs which is paid by each Local Health Board in that year.
 - (2) A Local Health Board is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (1).
 - (3) Where in any financial year any remuneration referable to the cost of drugs for which a Local Health Board is accountable is paid by another Local Health Board, the remuneration must be treated (for the purposes of sections 174 and 175) as having been paid by the first Local Health Board in the performance of its functions.
 - (4) The Welsh Ministers may, in particular, exercise their discretion under sub-paragraph (1)—

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- (a) so that any apportionment reflects, in the case of each Local Health Board, the financial consequences of orders for the provision of drugs, being orders which in the opinion of the Welsh Ministers are attributable to the Board in question,
 - (b) by reference to averaged or estimated amounts.
- (5) The Welsh Ministers may make provision for any remuneration referable to the cost of drugs which is paid by a Local Health Board other than the Board which is accountable for the payment to be reimbursed in such manner as the Welsh Ministers may determine.
- [^{F16}3A (1) The Welsh Ministers may designate any element of the remuneration paid by Local Health Boards to persons providing pharmaceutical services or local pharmaceutical services which is not remuneration referable to the cost of drugs.
- (2) If an element is so designated, the Welsh Ministers must for each financial year apportion among all Local Health Boards, in such manner as the Welsh Ministers consider appropriate, the total of the remuneration referable to that element which is paid by each Local Health Board in that year.
- (3) A Local Health Board is accountable in any year for remuneration referable to that element to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (2).
- (4) Where in any financial year any remuneration referable to that element for which a Local Health Board is accountable is paid by another Local Health Board, the remuneration must be treated (for the purposes of sections 174 and 175) as having been paid by the first Local Health Board in the performance of its functions.
- (5) The Welsh Ministers may, in particular, exercise their discretion under sub-paragraph (2)—
- (a) so that any apportionment relating to services associated with the provision of drugs reflects, in the case of each Local Health Board, the financial consequences of orders for the provision of drugs, being orders which in the opinion of the Welsh Ministers are attributable to the Board in question,
 - (b) by reference to averaged or estimated amounts.
- (6) The Welsh Ministers may make provision for any remuneration referable to an element designated under sub-paragraph (1) which is paid by a Local Health Board other than the Board which is accountable for the payment to be reimbursed in such manner as the Welsh Ministers may determine.]

Textual Amendments

F16 Sch. 8 para. 3A inserted (21.5.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 140, 170, [Sch. 12 para. 10\(6\)](#); S.I. 2010/1457, [art. 2](#)

Interpretation

- 4 (1) In this Schedule—
- “designated” means designated in writing by the Welsh Ministers (and different designations may be made for different purposes) [^{F17} and “designate” must be read accordingly],

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Changes to legislation: National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

“drugs” includes medicines and listed appliances (within the meaning given by section 80),

^{F18}

“remuneration referable to the cost of drugs” includes (^{F19} . . . subject to sub-paragraph (2)) remuneration payable to persons providing local pharmaceutical services.

- (2) The Welsh Ministers must determine what remuneration paid by Local Health Boards to persons providing pharmaceutical services or local pharmaceutical services must be treated for the purposes of this Schedule as remuneration referable to the cost of drugs.
- (3) The Welsh Ministers may treat all remuneration paid by Local Health Boards to such persons, so far as it is met by an NHS trust under section 180(4), as remuneration referable to the cost of drugs for those purposes.
- [^{F20}(4) If the Welsh Ministers do not treat such remuneration, so far as it is so met by an NHS trust, as remuneration referable to the cost of drugs, they may treat it as remuneration falling within paragraph 3A(1).]

Textual Amendments

- F17** Sch. 8 para. 4(1): words in definition of "designated" inserted (21.5.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 140, 170, [Sch. 12 para. 10\(7\)\(a\)](#); S.I. 2010/1457, [art. 2](#)
- F18** Sch. 8 para. 4(1): definition of "pharmaceutical services" repealed (21.5.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 140, 166, 170, [Sch. 12 para. 10\(7\)\(b\)](#), [Sch. 15 Pt. 4](#); S.I. 2010/1457, [art. 2](#)
- F19** Sch. 8 para. 4(1): words in definition of "remuneration referable to the cost of drugs" repealed (21.5.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 140, 166, 170, [Sch. 12 para. 10\(7\)\(c\)](#), [Sch. 15 Pt. 4](#); S.I. 2010/1457, [art. 2](#)
- F20** Sch. 8 para. 4(4) inserted (21.5.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 140, 170, [Sch. 12 para. 10\(8\)](#); S.I. 2010/1457, [art. 2](#)

SCHEDULE 9

Section 178

ACCOUNTS AND AUDIT

NHS bodies

- 1 The following are NHS bodies for the purposes of this Schedule—
 - (a) any Special Health Authority performing functions only or mainly in respect of Wales,
 - (b) any Local Health Board,
 - (c) any NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales,
 - (d) any trustees for such an NHS trust appointed in pursuance of paragraph 10 of Schedule 3,
 - (e) any special trustees appointed as mentioned in section 160(1) for a trust all or most of whose hospitals, establishments and facilities are situated in Wales.

Status: Point in time view as at 14/03/2012.

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Accounts to be kept by NHS bodies

- 2 (1) Each NHS body must keep proper accounts and proper records in relation to the accounts.
- (2) If the Welsh Ministers so direct with the approval of the Treasury, the accounts of any such body of a description specified in the direction must be kept in such form as is so specified.
- (3) This paragraph is subject to paragraph 6(2).

Preparation of annual accounts

- 3 (1) Each NHS body must prepare in respect of each financial year annual accounts in such form as the Welsh Ministers may direct with the approval of the Treasury.
- (2) This paragraph is subject to paragraph 6(3).

Transmission of annual accounts

- 4 Section 61(1) of the Public Audit (Wales) Act 2004 (c. 23) (audit of Welsh NHS bodies) makes provision for the annual accounts of Welsh NHS bodies to be submitted to the Auditor General for Wales in order for them to be examined by him.

Summarised accounts of NHS bodies

- 5 (1) This paragraph applies in relation to NHS bodies that are not Special Health Authorities.
- (2) The Welsh Ministers must prepare summarised accounts relating to such bodies in respect of each financial year.
- (3) Sub-paragraph (2) is subject to paragraphs 6(3) and 7(2).
- (4) The summarised accounts must be prepared in such form as the Treasury may direct.
- (5) The Welsh Ministers must transmit the summarised accounts to the Auditor General for Wales not later than the end of the month of November following the financial year to which they relate.
- (6) The Auditor General for Wales must —
- (a) examine and certify the summarised accounts, and
 - (b) send copies of them and his report on them to the Welsh Ministers.
- (7) This paragraph has effect subject to any provision made under section 14(1) of the Government Resources and Accounts Act 2000 (c. 20) (power to disapply this paragraph in relation to specified bodies and years).

Modifications etc. (not altering text)

C16 Sch. 9 para. 5(6) modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 5, 8(2), **Sch. 3 para. 10(7)** (with Sch. 3 Pt. 1)

Status: Point in time view as at 14/03/2012.

Changes to legislation: National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Exceptions for accounts of charitable trusts

- 6 (1) For the purposes of this paragraph a “relevant charitable trust”, in relation to an NHS body, means a charitable trust whose trustee or trustees is or are that body.
- (2) Nothing in paragraph 2, so far as it applies to an NHS body of any description, has effect in relation to accounts relating to a relevant charitable trust.
- (3) Nothing in paragraph 3 or 5, so far as it applies to an NHS body of any description, requires any annual or summarised accounts prepared by or in relation to the body to include matters relating to a relevant charitable trust.

Exceptions for accounts of non-charitable trusts

- 7 (1) For the purposes of this paragraph a “relevant non-charitable trust”, in relation to an NHS body, means a trust which is not a charitable trust and whose trustee or trustees is or are that body.
- (2) Nothing in paragraph 5, so far as it applies to an NHS body of any description, requires any summarised accounts prepared in relation to the body to include matters relating to a relevant non-charitable trust.

SCHEDULE 10

Section 182

FURTHER PROVISION ABOUT COMMUNITY HEALTH COUNCILS

- 1 Each Community Health Council must —
- (a) represent the interests in the health service of the public in its district, and
 - (b) perform such other functions as may be conferred on it by regulations under paragraph 2.
- 2 Regulations may make provision about—
- (a) the membership of Councils ^{F21} . . . ,
 - (b) the proceedings of Councils,
 - (c) the staff, premises and expenses of Councils,
 - (d) the discharge of any function of a Council by a committee of the Council or by a joint committee appointed with another Council,
 - (e) the appointment, as members of a committee or joint committee, of persons who are not members of the Council or Councils concerned,
 - (f) the consultation of Councils by Local Health Boards, Strategic Health Authorities, Primary Care Trusts and NHS trusts with respect to such matters, and on such occasions, as may be prescribed,
 - (g) the consideration by Councils of matters relating to the operation of the health service within their districts, and the giving of advice by Councils to Local Health Boards and NHS trusts on such matters,
 - (h) the preparation and publication of reports by Councils,
 - (i) matters to be included in any such report,
 - (j) the furnishing and publication by Local Health Boards and NHS trusts of comments on reports of Councils,

Status: Point in time view as at 14/03/2012.

Changes to legislation: National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (k) the provision of information (including descriptions of information which are or are not to be provided) to Councils by Local Health Boards, Strategic Health Authorities, Primary Care Trusts or NHS trusts,
- (l) the provision of information (including descriptions of information which are or are not to be provided) by Councils to other persons (including other Councils),
- (m) the provision by Councils on behalf of the Welsh Ministers of the independent advocacy services required to be provided under section 187,
- (n) the functions to be exercised by Councils in addition to those exercisable otherwise than by virtue of this Schedule.

Textual Amendments

F21 Words in [Sch. 10 para. 2\(a\)](#) repealed (1.4.2010) by [Health Act 2009 \(c. 21\)](#), ss. 19, 38, 40, [Sch. 3 para. 16\(2\)](#), [Sch. 6](#) (with [Sch. 3 para. 19](#)); S.I. 2010/930, [art. 2](#)

- [^{F22}2A Regulations made under paragraph 2(a) may make provision about—
- (a) the election by members of a Council of a member to chair the Council, and
 - (b) the appointment by the Welsh Ministers of a member to chair the Council on an interim basis in cases where the member so elected is removed or suspended from office.]

Textual Amendments

F22 [Sch. 10 para. 2A](#) inserted (1.4.2010) by [Health Act 2009 \(c. 21\)](#), ss. 19, 40, [Sch. 3 para. 16\(3\)](#) (with [para. 19](#)); S.I. 2010/930, [art. 2](#)

- 3 (1) The Welsh Ministers may make regulations requiring—
- (a) Local Health Boards,
 - (b) Strategic Health Authorities,
 - (c) Primary Care Trusts,
 - (d) NHS trusts,
 - (e) local authorities,
 - (f) persons providing primary medical services, primary dental services or pharmaceutical services under this Act or the National Health Service Act 2006 (c. 41),
 - (g) persons providing general ophthalmic services under this Act, or
 - (h) persons providing piloted services (within the meaning of section 92(7) of this Act or section 134(7) of the National Health Service Act 2006 (c. 41)) or LP services (within the meaning of paragraph 1(7) of Schedule 7 to this Act or paragraph 1(7) of Schedule 12 to that Act),
- to allow members of a Council authorised by or under the regulations to enter and inspect, for the purposes of any of the Council's functions, premises owned or controlled by those referred to in paragraphs (a) to (h).
- (2) The Welsh Ministers may also make regulations requiring any other person who owns or controls premises where services are provided as mentioned in sub-paragraph (1) (f), (g) or (h) to allow members of a Council authorised by or under the regulations to enter and inspect the premises for the purposes of any of the Council's functions.

Status: Point in time view as at 14/03/2012.

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- (3) The regulations may in particular make provision as to—
- (a) cases and circumstances in which access must be permitted,
 - (b) limitations or conditions to which access must be subject.
- 4 The Welsh Ministers may by regulations—
- (a) provide for the establishment of a body—
 - (i) to advise Councils with respect to the performance of their functions, and to assist Councils in the performance of their functions, and
 - (ii) to perform such other functions as may be prescribed, and
 - (b) provide for the membership, proceedings, staff, premises and expenses of that body.
- 5 The Welsh Ministers may pay to members of Councils and any body established under paragraph 4 such travelling and other allowances (including compensation for loss of remunerative time) as the Welsh Ministers may determine.

SCHEDULE 11

Section 186

EXEMPT INFORMATION RELATING TO HEALTH SERVICES

Modifications etc. (not altering text)

C17 Sch. 11 applied (with modifications) (1.3.2007) by [National Health Service Act 2006 \(c. 41\)](#), ss. 247(2)(4), 277

PART 1

DESCRIPTIONS OF EXEMPT INFORMATION

- 1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, a relevant body.
- 2 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of a relevant body.
- 3 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by a relevant body.
- 4 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by a relevant body.
- 5 The amount of any expenditure proposed to be incurred by a relevant body under any particular contract for the acquisition of property or the supply of goods and services.
- 6 Any terms proposed or to be proposed by or to a relevant body in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.

Status: Point in time view as at 14/03/2012.

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- 7 The identity of a relevant body (as well as of any other person, by virtue of paragraph 6) as the person offering any particular tender for a contract for the supply of goods or services.
- 8 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between a relevant body or a Minister of the Crown and employees of, or office-holders under, a relevant body.
- 9 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with—
- (a) any legal proceedings by or against a relevant body, or
 - (b) the determination of any matter affecting a relevant body,
- (whether, in either case, proceedings have been commenced or are in contemplation).
- 10 Information relating to a particular person who was included in a list of persons undertaking to provide services under Part 2 of the National Health Service Act 1977 (c. 49).
- 11 Information relating to a particular person who is, or was formerly, included in, or is an applicant for inclusion in—
- (a) a pharmaceutical list or an ophthalmic list, or
 - (b) a pharmaceutical list under the National Health Service Act 2006 (c. 41).
- 12 Information relating to a particular person who—
- (a) provided primary medical services, primary dental services or primary ophthalmic services under a contract under section 28K, 28Q or 28WA of the National Health Service Act 1977, or
 - (b) was included in a list under section 28X of that Act.
- 13 (1) Information relating to a particular person who—
- (a) is, or was formerly, providing primary medical services or primary dental services under a contract under section 42 or 57,
 - (b) is, or was formerly, providing primary ophthalmic services under a contract under section 117 of the National Health Service Act 2006, or
 - (c) is, or was formerly, included in, or is an applicant for inclusion in, a list under section 49 or 63.
- (2) In this paragraph—
- (a) references to primary medical services and primary dental services include such services provided under the National Health Service Act 2006, and
 - (b) references to provisions of this Act include references to corresponding provisions of that Act (including in particular in sub-paragraph (1)(c) a reference to a list under section 123 or section 146 of that Act).
- 14 Information relating to any particular employee, former employee, or applicant to become an employee, of a person referred to in paragraph 10, 11, 12 or 13.
- 15 Information relating to the physical or mental health of a particular individual.

Status: Point in time view as at 14/03/2012.

Changes to legislation: National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

PART 2

QUALIFICATIONS

- 16 Information relating to a person of a description specified in any of paragraphs 1 to 4 and 10 to 14 of Part 1 is not exempt information by virtue of that paragraph unless it relates to an individual of that description in the capacity indicated by the description.
- 17 Information falling within paragraph 5 of Part 1 is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with a relevant body in respect of the property, goods or services, whether the advantage would arise as against that body or as against other such persons.
- 18 Information falling within paragraph 6 of Part 1 is exempt information if and so long as disclosure to the public of the terms would prejudice a relevant body in those or any other negotiations concerning the property or goods or services.
- 19 Information falling within paragraph 8 of Part 1 is exempt information if and so long as disclosure to the public of the information would prejudice a relevant body in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.

PART 3

INTERPRETATION

- 20 In this Schedule—
- “disposal”, in relation to property, includes the granting of an interest in or right over it,
 - “employee” means a person employed under a contract of service,
 - “labour relations matter” means—
 - (a) any of the matters specified in paragraphs (a) to (g) of section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (matters which may be the subject of a collective agreement), or
 - (b) any dispute about a matter falling within paragraph (a),
- and for the purposes of this definition the enactments mentioned in paragraph (a), with the necessary modifications, apply in relation to office-holders under a relevant body as they apply in relation to employees of a relevant body,
- “office-holder”, in relation to a relevant body, means the holder of any paid office appointments to which are or may be made or confirmed by the body or by any person who holds any such office or is an employee of the body.

Status: Point in time view as at 14/03/2012.

Changes to legislation: National Health Service (Wales) Act 2006 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULE 12

Section 33

SECTION 33 ARRANGEMENTS: TRANSFER OF STAFF

Application of Schedule

- 1 This Schedule applies where, under any arrangements under regulations under section 33, any functions of a body (“the transferor”) will be exercised by another body (“the transferee”).

Orders transferring staff

- 2 (1) The Welsh Ministers may by order transfer to the transferee any specified description of employees of the transferor.
- (2) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.

Effect of order on contracts of employment

- 3 (1) The contract of employment of an employee transferred by an order under paragraph 2—
- (a) is not terminated by the transfer, and
 - (b) has effect from the date of the transfer as if originally made between the employee and the transferee.
- (2) In particular—
- (a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee's contract of employment are by virtue of this sub-paragraph transferred to the transferee, and
 - (b) anything done before the date of the transfer by or in relation to the transferor in respect of the employee or his contract of employment is deemed from that date to have been done by or in relation to the transferee.
- (3) Sub-paragraphs (1) and (2) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the transferor or the transferee that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph does not affect any right of an employee transferred by an order under paragraph 2 to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

Status: Point in time view as at 14/03/2012.

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Effect of order on pension rights

- 4 (1) An order under paragraph 2 may provide that, in the case of an employee of any specified description who is transferred by the order, paragraph 3 does not apply in relation to—
- (a) so much of the employee's contract of employment as relates to relevant pension provisions, or
 - (b) any rights, powers, duties or liabilities under or in connection with that contract, or otherwise arising in connection with the employee's employment, and relating to such provisions.
- (2) If an order under paragraph 2 provides as mentioned in sub-paragraph (1), the order may in relation to any such employee make such provision (if any) as the Welsh Ministers consider appropriate with respect to all or any of the matters mentioned in paragraphs (a) and (b) of that sub-paragraph.
- (3) The provision which may be made by virtue of sub-paragraph (2) includes provision—
- (a) for any such employee's contract of employment with the transferee to have effect with any specified modifications,
 - (b) for relevant pension provisions of any specified description to have effect in the case of any such employee with any such modifications.
- (4) In this paragraph “relevant pension provisions” means the provisions of an occupational pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48), with the exception (if the order under paragraph 2 so provides) of any provisions of such a scheme falling within a description specified in the order.

Divided employments

- 5 (1) Where an employee will be transferred by an order under paragraph 2 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, divided so as to constitute two separate contracts of employment between the employee and the transferor and between the employee and the transferee.
- (2) Where an employee's contract of employment is divided as provided under sub-paragraph (1)—
- (a) the order must provide for paragraph 3 to have effect in the case of the employee and his contract of employment subject to appropriate modifications, and
 - (b) paragraph 4 similarly applies only so far as appropriate in connection with the employee's employment by the transferee.

SCHEDULE 13

Section 189

FURTHER PROVISION ABOUT STANDING ADVISORY COMMITTEES

- 1 Regulations may make provision with respect to—
- (a) the appointment,
 - (b) the tenure of office [^{F23}(including removal or suspension from office)], and

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- (c) the vacation of office,
 of the members of any standing advisory committee.

Textual Amendments

F23 Words in Sch. 13 para. 1(b) inserted (1.4.2010) by Health Act 2009 (c. 21), ss. 19, 40, Sch. 3 paras. 17(2), 18(1)(b) (with para. 19); S.I. 2010/930, art. 2

- 2 The Welsh Ministers must appoint a secretary to each standing advisory committee.
- 3 Each standing advisory committee may appoint such sub-committees as it considers appropriate, and as are approved by the Welsh Ministers, to consider and report on questions referred to it by the standing advisory committee.
- 4 Any such sub-committee may include persons who are not members of the standing advisory committee.
- 5 Each standing advisory committee must elect one of the members of the committee to be chairman of the committee.
- [^{F24}5A But regulations under paragraph 1(b) may make provision about the appointment by the Welsh Ministers of an interim chairman of a standing advisory committee in cases where the chairman elected under paragraph 5 is removed or suspended from office.]

Textual Amendments

F24 Sch. 13 para. 5A inserted (1.4.2010) by Health Act 2009 (c. 21), ss. 19, 40, Sch. 3 paras. 17(3), 18(1)(b) (with para. 19); S.I. 2010/930, art. 2

- 6 Each standing advisory committee has power to regulate its own procedure.
- 7 The proceedings of a standing advisory committee are not invalidated by any vacancy in the membership of the committee, or by any defect in a member's appointment or qualification.
- 8 The Welsh Ministers may make such payments in respect of expenses incurred by a standing advisory committee as they may determine.
- 9 The Welsh Ministers may pay to the members of a standing advisory committee, or a sub-committee of a standing advisory committee, such travelling and other allowances, including compensation for loss of remunerative time, as they may determine.
- 10 Payments under this Schedule are subject to such conditions as to records, certificates, or otherwise as the Welsh Ministers may determine.

SCHEDULE 14

Section 190

FURTHER PROVISION ABOUT ADVISORY COMMITTEES FOR WALES

- 1 (1) Sub-paragraph (2) applies where the Welsh Ministers are satisfied that a committee formed for Wales is representative of—

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- (a) any category of persons (other than a category mentioned in section 190(2)) who provide services forming part of the health service, or
 - (b) two or more of any of the categories mentioned in that subsection and paragraph (a).
 - (2) Where this sub-paragraph applies and the Welsh Ministers are satisfied that it is in the interests of the health service to recognise the committee, the Welsh Ministers must recognise the committee and specify a name for it.
 - (3) Where a committee recognised under sub-paragraph (2) appears to the Welsh Ministers to represent categories of persons which include a category mentioned in section 190(2), the Welsh Ministers are not required by virtue of that subsection to recognise a committee representing persons of that category.
- 2 The Welsh Ministers may, by notice in writing served on any member of a committee, withdraw their recognition of the committee if they consider it expedient to do so—
- (a) where the committee is recognised under section 190 or paragraph 1(1)(a), with a view to recognising under paragraph 1(1)(b) another committee representing categories of persons which include the category represented by the recognised committee, or
 - (b) where the committee is recognised under paragraph 1(1)(b), with a view to recognising under section 190 and paragraph 1 other committees which together are representative of the categories in question.
- 3 A committee recognised under section 190 or this Schedule must—
- (a) advise the Welsh Ministers on the provision by them of services of a kind provided by the categories of persons of whom the committee is representative, and
 - (b) perform such other functions as may be prescribed.
- 4 The Welsh Ministers may defray such expenses incurred by a committee in performing the duty imposed on it by paragraph 3 as the Welsh Ministers consider reasonable, and those expenses may include travelling and other allowances and compensation for loss of remunerative time.

SCHEDULE 15

Section 192

FURTHER PROVISION ABOUT LOCAL SOCIAL SERVICES AUTHORITIES

Modifications etc. (not altering text)

C18 Sch. 15 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 5, 8(2), [Sch. 3 para. 9](#) (with [Sch. 3 Pt. 1](#))

Care of mothers and young children

- 1 A local social services authority may, with the approval of the Welsh Ministers, and to such extent as they may direct must, make arrangements for the care of pregnant women and women who are breast feeding (other than for the provision of residential accommodation for them).

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Prevention, care and after-care

- 2 (1) A local social services authority may, with the approval of the Welsh Ministers, and to such extent as they may direct must, make the arrangements mentioned in sub-paragraph (2).
- (2) The arrangements are for the purpose of the prevention of illness, for the care of persons suffering from illness and for the after-care of persons who have been suffering from illness and in particular for—
- (a) the provision, for persons whose care is undertaken with a view to preventing them from becoming ill, persons suffering from illness and persons who have been suffering from illness, of centres or other facilities for training them or keeping them suitably occupied and the equipment and maintenance of such centres,
 - (b) the provision, for the benefit of such persons as are mentioned in paragraph (a), of ancillary or supplemental services, and
 - (c) the exercise of the functions of the local social services authority in respect of persons suffering from mental disorder who are received into guardianship under Part 2 or 3 of the Mental Health Act 1983 (c. 20) (whether the guardianship of the authority or of other persons).
- (3) A local social services authority may not, and is not under a duty to, make under this paragraph arrangements to provide facilities for any of the purposes mentioned in section 15(1) of the Disabled Persons (Employment) Act 1944 (c. 10).
- (4) No arrangements under this paragraph may provide for the payment of money to persons for whose benefit they are made, except in so far as they fall within sub-paragraph (5).
- (5) Arrangements fall within this sub-paragraph if—
- (a) they provide for the remuneration of such persons engaged in suitable work in accordance with the arrangements of such amounts as the local social services authority considers appropriate in respect of their occasional personal expenses, and
 - (b) it appears to the authority that no such payment would otherwise be made.
- (6) No arrangements under this paragraph may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (c. 33) (exclusion from benefits) applies solely—
- (a) because he is destitute, or
 - (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- (7) Section 95(2) to (7) of that Act apply for the purposes of sub-paragraph (6); and for that purpose a reference to the Secretary of State in section 95(4) or (5) is a reference to a local social services authority.
- (8) The Welsh Ministers may make regulations as to the conduct of premises in which facilities are provided in pursuance of arrangements made under this paragraph for persons—
- (a) who are or have been suffering from mental disorder within the meaning of the Mental Health Act 1983, or
 - (b) whose care is undertaken with a view to preventing them from becoming sufferers from mental disorder.

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- (9) “Facilities” means facilities for training such persons or keeping them suitably occupied.
- (10) This paragraph does not apply in relation to persons under the age of 18.
- (11) No authority is authorised or may be required under this paragraph to provide residential accommodation for any person.

Research

- 3 (1) A local social services authority may conduct or assist other persons in conducting research into matters relating to the functions of local social services authorities under this Schedule.
- (2) Sub-paragraph (1) does not affect any powers conferred by any other Act.

Status:

Point in time view as at 14/03/2012.

Changes to legislation:

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