

NATIONAL ASSEMBLY FOR WALES

LEGISLATION COMMITTEE REPORT

The Health Act 1999 (Fund-holding Practices) (Transfer of Assets, Savings, Rights and Liabilities and Transitional Provisions) (Wales) Order 2000

Background

The Health Act 1999 contains provision for the abolition of GP fund-holding practices. They are, in due course, to be replaced by Primary Care Trusts.

The legislation for the abolition of fund-holding practices has been commenced in England slightly earlier than in Wales, so that abolition in England took place on 1st October 1999. Abolition in Wales will take effect at the end of the current financial year.

In connection with this abolition the present Order makes provision for the transfer of the assets, rights and liabilities of fund-holding practices, and for the preparation of final accounts.

The Order is to be made under section 63 of the Health Act 1999 which empowers the Assembly to make consequential and transitional provision as necessary for giving effect to the Act. Although, in some instances, Acts of Parliament contain specific power for the transfer of property and rights by statutory instrument, the established practice in relation to NHS legislation is for such transfers to be made under general powers such as those contained in section 63.

The provision in the present Order is the same as that which has been made for England.

As the legal advisers to the Committee have had the opportunity of looking at an early draft of this Order, a number of small drafting points which had been identified have now been

corrected in the current draft.

Additionally, there are a few drafting points which have been explained, and it may be helpful to record these explanations.

Article 9(3) contains a saving for section 98(2B) of the 1977 Act. Although section 98(2B) has not been repealed in Wales, this saving has been included as there is concern that the repeal of the fund-holding provisions (by section 1 of the 1999 Act) could otherwise render section 98(2B) confusing or possibly meaningless.

Article 11 contains provision which is to apply as though section 3(1B) of the Health Service Commissioners Act 1993 "still had effect". This wording covers the possibility that although section 3(1B) will cease to have effect, it may not be repealed. Paragraph 85(3) of Schedule 4 to the 1999 Act provides for section 3 (1B) to be "omitted". This is paralleled by a reference in Schedule 5 which provides for that subsection to be repealed. The power to commence paragraph 85(3) of Schedule 4 is vested in the Assembly, however, whereas the power to commence Schedule 5 is vested in the Secretary of State. The two provisions should be commenced at the same time but the wording used in article 11 covers the possibility that with the commencement of Schedule 5 being outside the powers of the Assembly, there could be some slight delay.

The England Order includes an additional article 17 providing for the continuity of NHS contracts notwithstanding the repeal of certain provisions in the National Health Service and Community Care Act 1990. This has not been included in the Wales Order, however, since the provision in the 1990 Act for which it provides a saving has not yet been repealed in Wales.

Standing Order 11

No points have been identified as matters to which the Committee would need to invite the Assembly to pay special attention under SO 11.5.

There are some comments to be made on the Order, however, and these are set out below.

Comments on the Order

Explanatory Note

The first paragraph uses the abbreviation GP in the English text, and this appears as YC in the Welsh text. Whilst this is in common use in English, YC in Welsh may not be readily understood.

Footnotes

The English text footnotes appear on their appropriate pages whereas the Welsh text footnotes are grouped together at the end of the Order. This will need to be rectified in the printed copy, with all footnotes allocated to their appropriate pages and in dual column form.

Article 1(2) "fund-holding provisions"

Given that the defined term is hardly any longer than the definition, the definition itself could have been used in the text thus obviating the need for users to refer back to an interpretation provision.

Article 3(1) – final provision

There is a typing error in the Welsh text. The wording "i'r Awdurdod" wrongly starts with a capital letter.

Article 4(1)

In the English text "where" can be used as a direct introduction to paragraph (b) as well as paragraph (a). This has not been reflected in the Welsh text, however. Substitution of "lle" for "pan fydd" would have achieved the necessary effect.

Article 5

The number (2) is omitted from the paragraph numbering. This is an error which is also in the England Order which has already been made.

Article 5(4)

In the reference to paragraph (1) in the Welsh text the brackets have been omitted.

Article 15(1)

This would read better if "shall" was inserted after "determination".

M. GERMAN OBE AM

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14th March 2000