

Date:	19 June 2002
Venue:	Committee Room , National Assembly for Wales
Title:	NHS Reform and Health Care Professions Bill – Proposed Draft Orders Local Health Board (Wales) Regulations

Purpose

1. This paper provides an opportunity for the Health and Social Services Committee to comment on the draft proposed Regulations for the functions Local Health Boards. The draft order for their constitution, membership and procedures are to be discussed at the meeting on 27th June.

Background

2. The provisions contained in the proposed draft functions regulations reflect the commitment I gave in February 2001 in 'Improving Health in Wales – A Plan for the NHS with its Partners' to abolish health authorities and create Local Health Boards (LHBs).

3. The NHS Reform and Healthcare Professions Bill was introduced to Parliament in November 2001. It contains provisions in clause 6 which, on commencement, will create the statutory framework for the establishment of LHBs in Wales. Royal Assent is anticipated in the Summer.

Content of the Regulations

4. The Functions regulations cover a wide range of provisions with regard the powers of LHBs and adopt an excluded function approach. LHBs would be responsible for all functions as were exercised by the relevant health authority, as at the time of abolition, save for specified exceptions (functions of regional offices).

5. This would remove the need for including long "shopping" lists in the legislation which would be difficult to amend without subsequent amending legislation. Lists could be included by way of instructions/guidance. This approach does not preclude specifying health-related functions of the Assembly which are to be the responsibility of LHGs. It also recognises work in progress where final decisions are awaited – e.g. shared services; public health. The general areas covered would include securing and providing primary and community services; securing secondary services; planning and improving the health of communities; partnership; public engagement and provision of services. Particular provision will be needed for Powys and other pathfinder proposals. These cannot yet be quantified and will need to await the outcome of the consultation exercise that begins on 14 June and will conclude on 26th July. Depending on the outcome of the consultation, it may be clearer to draft a separate Powys functions order.

6. The draft is likely to be subject to additional drafting amendments as a result of the consultation exercise. The draft will issue for full consultation from July to September.

Timetable

7. The main stages which I propose are:

- i. Draft proposed Regulations to be revised in light of the Committee's views, and will then be subject to an eight week consultation exercise from 15 July until 13 September;
- ii. Following scrutiny of consultation responses and inclusion of any proposed amendments, the draft Regulations will be submitted to Business Committee on 15 October and Legislative Committee on 14 January;
- iii. Plenary debate is scheduled for 28 January;
- iv. Subject to Assembly approval, the Regulations will come into force on 10 February 2003.

Action

8. I would welcome the views of the Health and Social Services Committee on the proposed draft regulations.

JANE HUTT

Minister for Health and Social services

May 2002

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NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2002 No. (W.)

**NATIONAL HEALTH
SERVICE, WALES**

**The Local Health Boards
(Functions) Regulations 200[2]**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the functions of Local Health Boards established for all areas of Wales pursuant to section 16BA of the National Health Service Act 1977 (see SI 200[2]/xxx).

Local Health Boards will be responsible for exercising functions, subject to certain specified exceptions relating to [], which were exercised by former Health Authorities in relation to any part of the area for which the Local Health Board is established and which have been transferred to the National Assembly for Wales pursuant to an order made under section 27 of the Government of Wales Act 1998 (see SI 200[2]/xxx). (Regulation 3(a)[and Part 1 of the Schedule]).

Additionally, Local Health Boards will exercise certain health-related functions of the National Assembly for Wales. (Regulation 3(b) [and Part 2 of the Schedule]).

Local Health Boards will exercise their functions for the benefit of those persons usually resident in their area (Regulation 1(2)).

2002 No. (W.)

**NATIONAL HEALTH
SERVICE, WALES**

**The Local Health Boards
(Functions) Regulations 200[2]**

Made

200[2]

Coming into force

1st April 2003

The National Assembly for Wales, in exercise of powers conferred upon it by sections 16BB(1), (2), (3) and (5) and 126(1) and (4) of the National Health Service Act 1977(1) hereby makes the following Regulations:

1 Citation, commencement and extent

These Regulations may be cited as the Local Health board (Functions) Regulations 200[2] and shall come into force on 1st April 2003 and shall apply to Wales only.

2 Interpretation

(1) In these Regulations, unless the context otherwise requires –

(1) 1977 c.49; see section 128(1) as amended by the National Health Service and Community Care act 1990 (c.19) (“the 1990 Act”), section 26(2)(g) and (i) and by the Health Act 1999 (c.8) (“the 1999 Act”), Schedule 4, paragraph 38(“)(b), for the definition of “prescribed” and “regulations”.

Section 126(4) was amended by the 1990 Act, section 65(2) and the 1999 Act, Schedule 4, and paragraph 37(6).

The functions of the Secretary of State under sections 126(4) of the 1977 Act were transferred to the National assembly for Wales by the National Assembly for Wales (transfer of functions) Order 1999 SI 1999/672, article 2 and Schedule 1, as amended by the 1999 Act, section 66(5).

Section 16BB was inserted by section 6 of the National Health Service Reform and Health Care Professions Act 2002 (c.xx)

“the Act” means the National Health Service Act 1977;

“LHB order” shall be construed in accordance with section 16BA(2) of the Act;

“the relevant date” means-

- (a) 1st April 2003; or
 - (b) the date on which the Local Health board in question was established,
- whichever is the latest;

“relevant Health Authority” means the Health Authority previously in existence for the area for which the LHB is established;

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

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

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

3 Functions to be exercised by Local Health Boards

(1) Subject to regulation 4 and to any prohibitions or restrictions in a LHB order, the functions specified in paragraph (2) are to be exercised by a Local Health Board [to the extent specified in paragraphs [] to []] as from the relevant date.

(2) The functions referred to in paragraph (1) are-
[(a)] the functions which were exercised by a relevant Health Authority as at midnight 31st March 2003 and

which have been transferred to the National Assembly for Wales by order⁽²⁾ made pursuant to section 27 of the Government of Wales Act⁽³⁾ except those functions referred to in [Part 1] of the Schedule;

[(b) those functions specified in [Part 2 of] the Schedule (being other functions of the Assembly relating to the health service).]

(4) In exercising the functions referred to in paragraph (3)(a) and (b) above, a Local Health Board may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of the said functions.

4. Restriction on the exercise of functions by Local Health Boards

The exercise by a Local Health Boards of the functions specified in regulation 3(2)(a) and (b) is subject to such limitations as the National Assembly may direct, and must be in accordance with any directions which are given by the National Assembly.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998.

Date

The Presiding Officer of the National Assembly

Regulation 3(2)(a) and (b)

SCHEDULE

Part 1

Excepted functions of a relevant Health Authority

[Insert table –need final instructions – need to make specific exceptions for specific LHBs?]

Part 2

Other health related functions of Local Health Boards

⁽²⁾ SI 200[2]/[](W.)
⁽³⁾ 1998 c.38

[Insert table]