WELSH STATUTORY INSTRUMENTS

2009 No. 1511 (W.147)

NATIONAL HEALTH SERVICE, WALES

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

Made - - - -	*18 June 2009*
Laid before the National Assembly for Wales - -	*19 June 2009*
Coming into force - -	*1 October 2009*

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

Title and commencement

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

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

Interpretation

2.—(1) In these Regulations —

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

"the 1989 Act" ("*Deddf 1989*") means the Children Act 1989(**2**);

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

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

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

(**1**) 2006 c. 42.
(**2**) 1989 c. 41.
(**3**) S.I. 2003/148 (W.18).

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

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

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

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

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

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

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

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

(a) the person is to be treated as usually resident at the address given by him or her to the person or body providing him or her with services, as being that at which the person usually resides;

(b) where the person gives no such address, he or she is to be treated as usually resident at the address which he or she gives to the person or body providing him or her with services, as being the person's most recent address;

(c) where the person's usual address cannot be determined under sub-paragraphs (a) and (b) above, he or she is to be treated as usually resident in the area in which the person is present.

Exception to regulation 2(2)

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

(2) The circumstances are that —

(a) on or after 1 July 2007

(i) the Local Health Board of origin has made an arrangement in the exercise of its functions, or

(ii) a local authority has made an arrangement

by virtue of which a person to whom paragraph (3) applies is provided with services which consist of or include the provision of accommodation situated in the area of another Local Health Board or a Primary Care Trust; and

(b) the person is thereby living in the accommodation.

(3) This paragraph applies

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

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

(i) is looked after by a local authority within the meaning of section 22(1) of the 1989 Act,

(ii) is a relevant child within the meaning of section 23A of the 1989 Act,

(iii) qualifies for advice and assistance under section 24(1A) or section 24(1B) of the 1989 Act,

(iv) is placed at a school in accordance with a statement of special educational needs made under section 324 of the Education Act 1996(**5**) that names the school, or

(v) requires accommodation to meet continuing care needs; and

(b) to a person under the age of 21 who was, immediately prior to his or her eighteenth birthday, a person within one of the sub-categories of sub-paragraph (a).

(4) The responsibility of a Local Health Board of origin under this regulation does not extend to its functions in relation to primary medical, primary dental, pharmaceutical and general ophthalmic services.

(5) In this regulation "Local Health Board of origin" ("*Bwrdd Iechyd Lleol gwreiddiol*") means the Local Health Board which made the arrangement under sub-paragraph (2)(a)(i) or the Local Health Board which corresponds to the geographical area of the local authority which made the arrangement under sub-paragraph (2)(a)(ii).

Functions to be exercised by Local Health Boards

4.—(1) Subject to regulation 5, the functions to be exercised by a Local Health Board as from the relevant date are, subject to any prohibitions or restrictions in a LHB Order:

(a) functions of former Health Authorities in Wales which were transferred to the National Assembly for Wales by the Health Authorities (Transfer of Functions, Staff, Property, Rights and Liabilities and Abolition) (Wales) Order 2003(**6**) and which former Local Health Boards were directed to exercise on 1 April 2003 by the Local Health Boards (Functions) (Wales) Regulations 2003(**7**); and

(b) functions of the Welsh Ministers insofar as they are not functions under sub-paragraph (a) as are specified in the Schedule.

(2) The functions referred to in paragraph (1)(a) in particular include but are not limited to such of those functions as are specified in the Schedule.

Restriction on the exercise of functions by Local Health Boards

5. Nothing in these Regulations is to be taken as giving directions for the exercise of any functions conferred on or vested in the Welsh Ministers with respect to —

(a) the making of any Order or Regulations; or

(b) the giving of any directions.

Revocations

6. The following Regulations are revoked —

(**5**) 1996 c. 56.

(**6**) S.I. 2003/813 (W.98). This Order provided that from 1 April 2003 all functions of Health Authorities in Wales were transferred to the National Assembly for Wales and that all such Health Authorities were abolished.

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

National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996 (S.I.1996/708);

Local Health Boards (Functions) (Wales) Regulations 2003 (S.I. 2003/150 (W.20));

Local Health Boards (Functions) (Amendment) Regulations 2003 (S.I. 2003/816 (W.101));

The Powys Local Health Board (Additional Functions) Regulations 2003 (S.I. 2003/815 (W.100)); and

Local Health Boards (Functions) (Wales) (Amendment) Regulations 2007 (S.I. 2007/315 (W.29)).

Consequential Amendments

7. The following consequential amendments are made —

(a) in paragraph 16 of Part 2 of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006(**8**)—

(i) for "Local Health Boards (Functions) (Wales) Regulations 2003" substitute "Local Health Boards (Directed Functions) (Wales) Regulations 2009",

(ii) in sub-paragraph (c) for "3(1)" substitute "4",

(iii) delete sub-paragraph (d); and

(b) in the Directions to Cardiff Local Health Board, Swansea Local Health Board and Monmouthshire Local Health Board (2006) which came into force on 1 April 2006, in direction 2(1) for "Local Health Boards (Functions) (Wales) Regulations 2003" substitute "Local Health Boards (Directed Functions) (Wales) Regulations 2009".

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

18 June 2009

(**8**) 2006 c. 43.

SCHEDULE *Regulation 4*

Enactments Conferring Functions Exercisable by Local Health Boards

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