



# NHS Redress (Wales) Measure 2008

## 2008 nawm 1

A MEASURE of the National Assembly for Wales to make provision about arrangements for redress in relation to liability in tort in connection with services provided as part of the health service in Wales; and for connected purposes. [9th July 2008]

**This Measure, passed by the National Assembly for Wales on 6 May 2008 and approved by Her Majesty in Council on 9 July 2008, enacts the following provisions:—**

### **1 Power of Welsh Ministers to make regulations in respect of NHS redress**

- (1) The Welsh Ministers may make provision by regulations for the purpose of enabling redress to be provided without recourse to civil proceedings in circumstances in which this section applies.
- (2) This section applies where under the law of England and Wales qualifying liability in tort on the part of a body or person mentioned in subsection (3) arises in connection with the provision of qualifying services in Wales or elsewhere as part of the health service in Wales.
- (3) The bodies and persons referred to in subsection (2) are—
  - (a) an NHS Trust in Wales;
  - (b) a Local Health Board;
  - (c) a Special Health Authority;
  - (d) the Welsh Ministers;
  - (e) a body or person providing, or arranging for the provision of, services whose provision is the subject of arrangements with a body or person mentioned in paragraphs (a) to (d).
- (4) The reference in subsection (2) to qualifying liability in tort is to liability in tort owed in respect of, or consequent upon, personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis of illness, or in the care or treatment of any patient—
  - (a) in consequence of any act or omission by a health care professional, or

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*Changes to legislation: There are currently no known outstanding effects for the NHS Redress (Wales) Measure 2008. (See end of Document for details)*

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- (b) in consequence of any act or omission by any other body or person as the Welsh Ministers may specify by the regulations.
- (5) For the purposes of subsection (2), services are qualifying services if they are of such description (including a description involving provision outside Wales) as the Welsh Ministers may specify by the regulations.
- (6) In subsection (3)(e), the reference to a person providing services does not include a person providing services under a contract of employment.

**Annotations:**

**Commencement Information**

**II** [S. 1](#) in force at 7.2.2011 by [S.I. 2011/211](#), [Sch.](#)

## 2 Redress under the regulations

- (1) Subject to subsections (2), (3) and (6), the regulations may make such provision as the Welsh Ministers think fit about redress.
- (2) The regulations must provide for redress ordinarily to comprise—
  - (a) the making of an offer of compensation in satisfaction of any right to bring civil proceedings in respect of the liability concerned;
  - (b) the giving of an explanation;
  - (c) the making of a written apology; and
  - (d) the giving of a report on the action which has been, or will be, taken to prevent similar cases arising;
 but the regulations may specify circumstances in which one or more of those forms of redress is not required.
- (3) The regulations must provide that redress does not apply in relation to a liability that is or has been the subject of civil proceedings.
- (4) The regulations may, in particular—
  - (a) make provision for the compensation that may be offered to take the form of entry into a contract to provide care or treatment or of financial compensation, or both;
  - (b) make provision about the circumstances in which different forms of compensation may be offered.
- (5) If the regulations provide for financial compensation to be offered, they may, in particular—
  - (a) make provision about the matters in respect of which financial compensation may be offered;
  - (b) make provision with respect to the assessment of the amount of any financial compensation.
- (6) The regulations which provide for financial compensation to be offered—
  - (a) may specify an upper limit on the amount of financial compensation that may be included in an offer of redress made in accordance with the regulations;

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- (b) must, if they do not specify a limit under paragraph (a), specify an upper limit on the amount of financial compensation that may be included in such an offer in respect of pain and suffering;
- (c) may not specify any other limit on what may be included in such an offer by way of financial compensation.

**Annotations:**

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**Commencement Information**

**I2** [S. 2](#) in force at 7.2.2011 by [S.I. 2011/211](#), [Sch.](#)

### **3 Accessing redress**

- (1) The regulations may make such provision as the Welsh Ministers think fit about accessing redress.
- (2) The regulations may, in particular, make provision—
  - (a) about who may access redress;
  - (b) about how redress may be accessed;
  - (c) for time limits in relation to accessing redress;
  - (d) about circumstances in which redress may not be accessed.

**Annotations:**

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**Commencement Information**

**I3** [S. 3](#) in force at 7.2.2011 by [S.I. 2011/211](#), [Sch.](#)

### **4 Duty to consider the potential application of redress arrangements**

- (1) The regulations may make such provision as the Welsh Ministers think fit requiring any body or person mentioned in subsection (2)—
  - (a) to consider, in such circumstances as the regulations may provide, whether a case that the body or person is investigating or reviewing involves liability for which redress may be available, and
  - (b) if it appears that it does, to take such steps as the regulations may provide.
- (2) The bodies or persons referred to in subsection (1) are—
  - (a) any body or person to whose liability the regulations apply;
  - (b) any other body or person prescribed by the Welsh Ministers in the regulations.

**Annotations:**

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**Commencement Information**

**I4** [S. 4](#) in force at 7.2.2011 by [S.I. 2011/211](#), [Sch.](#)

### **5 Method of delivering redress**

- (1) Subject to subsections (3) to (6), the regulations may make such provision as the Welsh Ministers think fit regarding how redress is delivered.

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- (2) The regulations may, in particular, make provision—
- (a) regarding the investigation of applications for redress made under the regulations (including provision for the overseeing of the investigation by an individual of a specified description);
  - (b) regarding the form and content of settlement agreements under the regulations;
  - (c) for settlement agreements under the regulations to be subject in cases of a specified description to approval by a court;
  - (d) regarding the procedure to be followed when, and the circumstances in which, applications for redress under the regulations may no longer be pursued.
- (3) The regulations must—
- (a) make provision for time limits and any extensions of them in relation to—
    - (i) the conduct and completion of an investigation;
    - (ii) the making of an offer of redress; and
    - (iii) the acceptance of such an offer,
 under the regulations,
  - (b) make provision for the findings of an investigation of a case where an individual is seeking redress under the regulations to be recorded in a report, and
  - (c) subject to subsection (4), make provision for a copy of the report to be provided to the individual seeking redress.
- (4) The regulations may provide that no copy of an investigation report need be provided—
- (a) before an offer of redress under the regulations is made or proceedings are for any reason terminated;
  - (b) where the report contains information likely to cause the patient or other applicant significant harm or distress; or
  - (c) in such other circumstances as may be specified.
- (5) The regulations must provide for a settlement agreement for redress entered into under the regulations to include a waiver of any right to bring civil proceedings in respect of the liability to which the settlement relates.
- (6) The regulations must provide that redress may no longer be sought under the regulations if the liability in relation to which redress is being sought becomes the subject of civil proceedings.

**Annotations:**

**Commencement Information**

**I5** [S. 5](#) in force at 7.2.2011 by [S.I. 2011/211](#), [Sch.](#)

## 6 Suspension of limitation period

- (1) The regulations must make provision for the period during which a liability is the subject of an application for redress under the regulations to be disregarded for the purposes of calculating whether any relevant limitation period has expired or not.

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- (2) The reference in subsection (1) to any relevant limitation period is to any period of time for the bringing of civil proceedings in respect of the liability which is prescribed by or under the Limitation Act 1980 (c. 58) or any other enactment.
- (3) The regulations may define for the purposes of provision in accordance with subsection (1) when liability is the subject of an application for redress under the regulations.

**Annotations:**

**Commencement Information**

**I6** [S. 6](#) in force at 7.2.2011 by [S.I. 2011/211](#), [Sch.](#)

## **7 Legal advice, etc.**

- (1) Subject to subsections (2) and (4), the regulations may make such provision as the Welsh Ministers think fit—
  - (a) for the provision of legal advice without charge to individuals seeking redress under the regulations;
  - (b) for the provision in connection with an application for redress under the regulations of other services, including the services of medical experts.
- (2) The regulations must make such provision as the Welsh Ministers consider appropriate in order to secure that individuals to whom an offer of redress under the regulations may be made have access to legal advice without charge in relation to—
  - (a) any offer that is made,
  - (b) any refusal to make such an offer; and
  - (c) any settlement agreement.
- (3) Provision under subsection (1)(a) or (2) about who may provide the legal advice may operate by reference to whether a potential provider is included in a list prepared by a specified person or body.
- (4) If the regulations make provision for the services of medical experts, they must also provide for such experts to be instructed jointly by the body or person operating the redress arrangements under the regulations and the individual seeking redress.

**Annotations:**

**Commencement Information**

**I7** [S. 7](#) in force at 7.2.2011 by [S.I. 2011/211](#), [Sch.](#)

## **8 Assistance for individuals seeking redress**

- (1) It is the duty of the Welsh Ministers to arrange, to such extent as they consider necessary to meet all reasonable requirements, for the provision of assistance (by way of representation or otherwise) to individuals seeking, or intending to seek, redress under the regulations.
- (2) The Welsh Ministers may make such other arrangements as they think fit for the provision of assistance (by way of representation or otherwise) to individuals in