



# National Health Service (Wales) Act 2006

## 2006 CHAPTER 42

### PART 2

#### HEALTH SERVICE BODIES

### CHAPTER 4

#### MISCELLANEOUS

##### *Intervention orders and default powers*

#### **26 Intervention orders**

- (1) This section applies to NHS bodies other than NHS foundation trusts.
- (2) If the Welsh Ministers—
  - (a) consider that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and
  - (b) are satisfied that it is appropriate for them to intervene under this section, they may make an order under this section in respect of the body (an “intervention order”).
- (3) An intervention order may make any provision authorised by section 27 (including any combination of such provisions).

#### **27 Effect of intervention orders**

- (1) In this section—
  - (a) “member” means a member of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board, or a member of the board of directors of an NHS trust,

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*Status: This is the original version (as it was originally enacted).*

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- (b) “employee member” means a member of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board who is an officer of the body, or an executive director of an NHS trust.
- (2) An intervention order may provide for the removal from office of—
- (a) all the members, or
  - (b) those specified in the order,
- and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).
- (3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—
- (a) all the members, or
  - (b) those specified in the order,
- and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).
- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
- (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified, and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.
- (6) If the person referred to in subsection (5)(a) is a body to which section 26 applies, the functions of that body include the performance of the functions specified in the directions under subsection (5).
- (7) Subsection (8) applies in relation to any provision in this Act, or in any order or regulations made, or directions given, under this Act, relating to—
- (a) the membership of the body to which an intervention order relates (or in the case of an NHS trust to the membership of its board of directors), or
  - (b) the procedure of the body.
- (8) The intervention order may provide in relation to any provision specified in the order—
- (a) that it does not apply in relation to the body while the order remains in force, or
  - (b) that it applies in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Welsh Ministers consider appropriate for the purpose of giving full effect to the order.

## **28 Default powers**

- (1) This section applies to NHS bodies other than NHS foundation trusts.

- (2) If the Welsh Ministers consider that a body to which this section applies—
- (a) has failed to carry out any functions conferred or imposed on it by or under this Act, or
  - (b) has in carrying out those functions failed to comply with any regulations or directions relating to those functions,
- they may after such inquiry as they consider appropriate make an order declaring it to be in default.
- (3) The members of the body in default must immediately vacate their office, and the order—
- (a) must provide for the appointment, in accordance with the provisions of this Act, of new members of the body, and
  - (b) may contain such provisions as seem to the Welsh Ministers expedient for authorising any person to act in the place of the body pending the appointment of new members.
- (4) An order under this section may contain such supplementary and incidental provisions as appear to the Welsh Ministers to be necessary or expedient, including—
- (a) provision for the transfer to the Welsh Ministers of property and liabilities of the body in default, and
  - (b) where any such order is varied or revoked by a subsequent order, provision in the subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Welsh Ministers in discharging any of the functions transferred to them.

*Transfer of residual liabilities*

**29 Transfer of residual liabilities**

- (1) If a Local Health Board, an NHS trust or a Special Health Authority ceases to exist, the Welsh Ministers must exercise their functions so as to secure that all of the body's liabilities (other than any criminal liabilities) are dealt with.
- (2) A liability is dealt with by being transferred to an NHS body, the Welsh Ministers or the Secretary of State.

*Losses and liabilities of certain health service bodies*

**30 Schemes for meeting losses and liabilities etc of certain health service bodies**

- (1) The Welsh Ministers may by regulations establish a scheme whereby any of the bodies specified in subsection (2) may make provision to meet—
  - (a) expenses arising from any loss of or damage to their property, and
  - (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies concerned.
- (2) The bodies referred to in subsection (1) are—
  - (a) Local Health Boards,
  - (b) NHS trusts,
  - (c) Special Health Authorities,

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- (d) the Commission for Healthcare Audit and Inspection, and
  - (e) the Health Protection Agency,
- but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.
- (3) A scheme under this section may, in particular—
- (a) provide for the scheme to be administered by the Welsh Ministers or by an NHS trust or Special Health Authority specified in the scheme,
  - (b) require any body which participates in the scheme to make payments in accordance with the scheme, and
  - (c) provide for the making of payments for the purposes of the scheme by the Welsh Ministers.
- (4) If the Welsh Ministers so direct, a body which is eligible to participate in a scheme must do so.
- (5) Where a scheme provides for the scheme to be administered by the Welsh Ministers, a Special Health Authority or NHS trust must carry out such functions in connection with the administration of the scheme as the Welsh Ministers may direct.
- (6) Subsections (4) and (5) do not affect any other power of direction of the Welsh Ministers.
- (7) A person or body administering a scheme under this section does not require permission under any provision of the Financial Services and Markets Act 2000 (c. 8) as respects activities carried out under the scheme.

*Directions and regulations under this Part*

**31 Directions and regulations under this Part**

- (1) This section applies to directions and regulations under any of—
- (a) section 12,
  - (b) section 13,
  - (c) section 19,
  - (d) section 23,
  - (e) section 24,
  - (f) section 25.
- (2) Except in prescribed cases, the directions and regulations must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function.