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## SCHEDULES

VALID FROM 10/10/2002

### [<sup>F1</sup>SCHEDULE 5B

#### LOCAL HEALTH BOARDS

##### Textual Amendments

**F1** Sch. 5B inserted (10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss 6(2), 42(3), **Sch. 4**; S.I. 2002/2532, **art. 2** Sch.

#### PART 1

##### LHB ORDERS

- 1 (1) An LHB order shall specify—
  - (a) the name of the Board; and
  - (b) the operational date of the Board.
- (2) The operational date of a Local Health Board is the date on which functions exercisable by it may first be undertaken fully by the Board.
- 2 (1) An LHB order may provide for the establishment of a Local Health Board with effect from a date earlier than the operational date.
- (2) During the period beginning with that earlier date and ending with the day immediately preceding the operational date (referred to in this Schedule as the preparatory period), the exercise of any functions by the Board shall be limited to such exercise as may be specified in the LHB order for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date.
- (3) Sub-paragraphs (4) and (5) below apply for so long as there is a Health Authority for any part of the area of Wales specified in a particular LHB order.
- (4) That LHB order may require such a Health Authority to meet the costs of the Board performing its functions during the preparatory period by doing either or both of the following—
  - (a) discharging such liabilities of the Board as may be incurred during the preparatory period and are of a description specified in the order;
  - (b) paying the Board sums to enable it to meet expenditure of a description specified in the order.
- (5) An LHB order may require such a Health Authority or an NHS trust in Wales to make available to the Local Health Board during the preparatory period—
  - (a) premises and other facilities of the authority or NHS trust;

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- (b) officers of the authority;
- (c) staff of the NHS trust.

## PART 2

### STATUS, CONSTITUTION AND MEMBERSHIP

#### *Status*

- 3 A Local Health Board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and a Local Health Board's property is not to be regarded as property of, or property held on behalf of, the Crown.
- 4 Every Local Health Board shall be a body corporate.

#### *Membership*

- 5 The members of a Local Health Board shall be—
- (a) a chairman appointed by the National Assembly for Wales;
  - (b) if the Assembly thinks fit, a vice-chairman appointed by the Assembly;
  - (c) officers of the Board; and
  - (d) a number of persons who are not officers of the Board.
- 6 (1) The National Assembly for Wales may by regulations make provision about—
- (a) the appointment of the chairman, vice-chairman and other members of a Local Health Board (including any conditions to be fulfilled for appointment);
  - (b) the tenure of office of the chairman, vice-chairman and other members of a Local Health Board (including the circumstances in which they cease to hold office or may be removed or suspended from office);
  - (c) how many persons may be appointed as members of a Local Health Board and how many of those members may be officers (a minimum and maximum number may be specified for both purposes);
  - (d) the appointment and constitution of any committees of a Local Health Board (which may include or consist of persons who are not members of the Board);
  - (e) the appointment and tenure of office of the members of any committees of a Local Health Board;
  - (f) the procedure to be followed by a Local Health Board, and by any committee of the Board, in the exercise of its functions;
  - (g) the circumstances in which a person who is not an officer of the Local Health Board is to be treated as if he were such an officer.
- (2) The power to make provision under paragraphs (c) and (f) of sub-paragraph (1) above includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period.
- (3) Any regulations under this paragraph may, in particular, make provision to deal with cases where the post of any officer of a Local Health Board is held jointly by

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two or more persons or where the functions of such an officer are in any other way performed by more than one person.

7 Any reference in this Part of this Schedule to a committee of a Local Health Board includes a reference to sub-committees of, and joint committees and joint sub-committees including, the Board.

8 The validity of proceedings of a Local Health Board, or of any of its committees, shall not be affected by any vacancy among the members or by any defect in the appointment of any member.

#### *Staff*

9 (1) A Local Health Board may employ such officers as it thinks fit.

(2) Subject to sub-paragraph (3) below, a Board may—

- (a) pay its officers such remuneration and allowances; and
- (b) employ them on such other terms and conditions,

as it thinks fit.

(3) A Board shall—

- (a) in exercising its powers under sub-paragraph (2) above; and
- (b) otherwise in connection with the employment of its officers,

act in accordance with regulations made by the National Assembly for Wales and any directions given by the Assembly.

(4) Before making any regulations under sub-paragraph (3) above, the Assembly shall consult such bodies as it may recognise as representing persons who, in its opinion, are likely to be affected by the regulations.

10 (1) Without prejudice to the generality of section 16BB above the National Assembly for Wales may direct a Local Health Board—

- (a) to make the services of any of its officers available to another Local Health Board; or
- (b) to employ any person who is or was employed by another Local Health Board and is specified in the direction.

(2) Before it gives a direction under sub-paragraph (1) above the Assembly shall—

- (a) consult the person whose services are to be made available or who is to be employed;
- (b) satisfy itself that the Board has consulted that person; or
- (c) consult any such body as the Assembly may recognise as representing that person.

(3) Sub-paragraph (2) above does not apply in relation to a direction under sub-paragraph (1)(a) above if the Assembly—

- (a) considers it necessary to give the direction for the purpose of dealing temporarily with an emergency; and
- (b) has previously consulted bodies recognised by the Assembly as representing the person whose services are to be made available about the giving of directions for that purpose.

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- 11 In addition to making provision in relation to Strategic Health Authorities, Health Authorities and Special Health Authorities, regulations under paragraph 10(2) of Schedule 5 to this Act may also provide—
- (a) for the transfer of officers of one Local Health Board to another; and
  - (b) for arrangements under which the officers of a Local Health Board are placed at the disposal of another Local Health Board or a local authority.

*Remuneration, pensions etc of members*

- 12 (1) A Local Health Board may pay the chairman, the vice-chairman (if any) and any other members of the Board such remuneration and such travelling and other allowances as may be determined by the National Assembly for Wales.
- (2) A Board may pay the chairman or any person who has been chairman of the Board such pension, allowance or gratuity as may be determined by the National Assembly for Wales.
- (3) A Board may pay the members of any committee of a Board such travelling and other allowances as may be determined by the National Assembly for Wales.
- (4) If, when a person ceases to be chairman of a Board, the National Assembly for Wales determines that there are special circumstances which make it right that that person should receive compensation, the Board shall pay to him a sum by way of compensation of such amount as the Assembly may determine.

**PART 3**

OTHER MATTERS

*General powers*

- 13 (1) Subject to sub-paragraph (3), 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 its functions.
- (2) That includes, in particular—
- (a) acquiring and disposing of land and other property;
  - (b) entering into contracts;
  - (c) accepting gifts of money, land and other property, including money, land or other property held on trust, either for the general or any specific purposes of the Local Health Board or for all or any purposes relating to the health service.
- (3) A Local Health Board may not do anything mentioned in sub-paragraph (2) without the consent of the Assembly (which may, if the Assembly thinks fit, be given in general terms covering one or more descriptions of case).
- 14 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Local Health Board of any function exercisable by it by virtue of section 16BB or 16BC above are enforceable by or (as the case may be) against that Board (and not against any other health service body or the National Assembly for Wales).

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- (2) This paragraph does not apply in relation to the joint exercise of any functions by a Local Health Board with another body under section 16BC(2)(c) above.

*Specific powers and duties*

- 15 (1) A Local Health Board may conduct, commission or assist the conduct of research.
- (2) A Board may, in particular, make officers available or provide facilities under subparagraph (1) above.
- 16 A Local Health Board may—
- (a) make officers available in connection with any instruction provided under section 63 of the Health Services and Public Health Act 1968;
  - (b) make officers and facilities available in connection with training by a university or any other body providing training in connection with the health service.
- 17 The National Assembly for Wales may by regulations make provision in relation to—
- (a) reports to be prepared by Local Health Boards;
  - (b) information to be supplied by them;
  - (c) their accounts, and the audit and publication of their accounts;
  - (d) the publication of any other document.

*Compulsory acquisition*

- 18 (1) A Local Health Board may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the Board and confirmed by the National Assembly for Wales.
- (2) The Acquisition of Land Act 1981 applies to the compulsory purchase of land under this paragraph.
- (3) No order is to be made by a Local Health Board under Part 2 of the Acquisition of Land Act 1981 in respect of any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the National Assembly for Wales in the form, and with the information, required by the Assembly; and
  - (b) has been approved by the Assembly.

*Dissolution*

- 19 (1) The National Assembly for Wales may, if a Local Health Board is dissolved, by order transfer (or provide for the transfer) to itself or to another Local Health Board any property, rights or liabilities of the dissolved Board.
- (2) If any consultation requirements apply, they must be complied with before the order is made.
- (3) In this paragraph, “consultation requirements” means requirements about consultation contained in regulations made by the Assembly.

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### *Transfer of property*

- 20 (1) The National Assembly for Wales may by order (referred to in this paragraph and paragraph 21 below as a transfer order)—
- (a) transfer (or provide for the transfer of) any of the property, rights and liabilities of a health service authority to a Local Health Board;
  - (b) create or impose (or provide for the creation or imposition of) new rights or liabilities in respect of property transferred or retained.
- (2) Any property, rights and liabilities which—
- (a) belong to a health service authority other than the National Assembly for Wales or are used or managed by a Health Authority; and
  - (b) are to be transferred to a Local Health Board by or under a transfer order, must be identified by agreement between the health service authority (or Health Authority) and the Local Health Board or, in default of agreement, by direction of the Assembly.
- (3) Where a transfer order transfers (or provides for the transfer of)—
- (a) land held on lease from a third party; or
  - (b) any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer is binding on the third party despite the fact that, apart from this sub-paragraph, the transfer would have required the third party's consent or concurrence.
- (4) In sub-paragraph (3) above, “third party” means a person other than a health service authority.
- (5) In this paragraph and paragraph 21 below, “health service authority” means the National Assembly for Wales, a Health Authority, a Local Health Board or an NHS trust in Wales.
- 21 (1) Stamp duty is not chargeable in respect of any transfer to a Local Health Board effected by or under a transfer order.
- (2) Where it becomes necessary, for the purpose of a transfer by or under a transfer order, to apportion any property, rights or liabilities, the order may contain such provisions as appear to the National Assembly for Wales to be appropriate for the purpose.
- (3) Where a transfer order transfers (or provides for the transfer of) any property or rights to which paragraph 20(3) above applies, the order must contain such provisions as appear to the National Assembly for Wales to be appropriate to safeguard the interests of third parties (within the meaning of that sub-paragraph), including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (4) A certificate issued by the National Assembly for Wales that—
- (a) any specified property;
  - (b) any specified interest in or right over any property; or
  - (c) any specified right or liability,
- has been vested in a Local Health Board by or under a transfer order is conclusive evidence of that fact for all purposes.
- In this sub-paragraph, “specified” means specified in the certificate.

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- (5) A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (6) Paragraph 20 above and this paragraph do not prejudice—
  - (a) any existing power of a health service authority to transfer property, rights or liabilities to a Local Health Board;
  - (b) the extent of the power conferred by section 126(4) above.

#### *Transfer of staff*

- 22 (1) The National Assembly for Wales may by order transfer to a Local Health Board any specified description of employees to which this paragraph applies.
- (2) This paragraph applies to employees of—
  - (a) a Health Authority;
  - (b) an NHS trust in Wales;
  - (c) a Local Health Board.
- (3) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.
- 23 (1) The contract of employment of an employee transferred under paragraph 22 above—
  - (a) is not terminated by the transfer; and
  - (b) has effect from the date of the transfer as if originally made between the employee and the Local Health Board to which he is transferred.
- (2) Without prejudice to sub-paragraph (1) above—
  - (a) all the rights, powers, duties and liabilities of the body from which an employee is transferred under paragraph 22 above under or in connection with his contract of employment shall by virtue of this sub-paragraph be transferred to the Local Health Board to which the employee is transferred under that paragraph; and
  - (b) anything done before the date of the transfer by or in relation to the body from which he is so transferred in respect of the employee or the contract of employment shall be deemed from that date to have been done by or in relation to the Local Health Board to which he is transferred.
- (3) Sub-paragraphs (1) and (2) above do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the body from which they would be transferred, or the Local Health Board to which they would be transferred, that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3) above his contract of employment with the body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur; but he shall not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph is without prejudice to any right of an employee to which paragraph 22 above applies to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise merely because, under this paragraph, the identity of his employer changes unless

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the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

- 24 (1) Where an employee is to be transferred by an order under paragraph 22 above but is to continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee shall, on the date on which the employee is transferred, be divided so as to constitute two separate contracts of employment between the employee and the transferor and the employee and the Local Health Board in question.
- (2) Where an employee's contract of employment is divided as provided under subparagraph (1) above, the order shall provide for paragraph 23 above to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 25 Where a Local Health Board is dissolved, an order under paragraph 19 above includes power to transfer employees of the Board and the order may make any provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under paragraph 22 above.

*Interpretation*

- 26 In this Schedule, "NHS trust in Wales" means an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales.]



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