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SCHEDULES

SCHEDULE 2

Section 11

LOCAL HEALTH BOARDS

PART 1

CONSTITUTION AND MEMBERSHIP

Status

- 1 Each Local Health Board is a body corporate.
- 2 (1) A Local Health Board must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
(2) A Local Health Board's property must not be regarded as property of, or property held on behalf of, the Crown.

Membership

- 3 The members of a Local Health Board are—
 - (a) a chairman appointed by the Welsh Ministers,
 - (b) if the Welsh Ministers consider it appropriate, a vice-chairman appointed by them,
 - (c) officers of the Local Health Board, and
 - (d) a number of persons who are not officers of the Local Health Board.
- 4 (1) Regulations may 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 Local Health 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,

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- (g) the circumstances in which a person who is not an officer of the Local Health Board must be treated as if he were such an officer.
 - (2) The power to make provision under paragraphs (c) and (f) of sub-paragraph (1) 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 two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- 5 Any reference in 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 Local Health Board.
- 6 The validity of any proceedings of a Local Health Board, or of any of its committees, is not affected by any vacancy among the members or by any defect in the appointment of any member.

Staff

- 7 (1) A Local Health Board may employ such officers as it considers appropriate.
- (2) A Local Health Board may—
- (a) pay its officers such remuneration and allowances, and
 - (b) employ them on such other terms and conditions,
- as it considers appropriate.
- (3) A Local Health Board must—
- (a) in exercising its powers under sub-paragraph (2), and
 - (b) otherwise in connection with the employment of its officers,
- act in accordance with regulations, and any directions given by the Welsh Ministers.
- (4) Before making any regulations under sub-paragraph (3), the Welsh Ministers must consult such bodies as they may recognise as representing persons who, in their opinion, are likely to be affected by the regulations.
- 8 (1) The Welsh Ministers 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) Sub-paragraph (1) does not affect the generality of section 12.
- (3) Before they give a direction under sub-paragraph (1) the Welsh Ministers must—
- (a) consult the person whose services will be made available or who will be employed,
 - (b) satisfy themselves that the Local Health Board has consulted that person, or
 - (c) consult any such body as the Welsh Ministers may recognise as representing that person.
- (4) Sub-paragraph (2) does not apply in relation to a direction under sub-paragraph (1)
- (a) if the Welsh Ministers—

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- (a) consider it necessary to give the direction for the purpose of dealing temporarily with an emergency, and
 - (b) have previously consulted bodies recognised by the Welsh Ministers as representing the person whose services are to be made available about the giving of directions for that purpose.
- 9 In addition to making provision in relation to Strategic Health Authorities and Special Health Authorities, regulations under paragraph 7(8) of Schedule 2 to the National Health Service Act 2006 (c. 41) and under paragraph 3(8) of Schedule 6 to that 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

- 10 (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 Welsh Ministers.
- (2) A Local Health 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 Welsh Ministers.
- (3) A Local Health Board may pay the members of any committee of a Board such travelling and other allowances as may be determined by the Welsh Ministers.
- (4) If, when a person ceases to be chairman of a Local Health Board, the Welsh Ministers determine that there are special circumstances which make it right that that person should receive compensation, the Board must pay to him a sum by way of compensation of such amount as the Welsh Ministers may determine.

PART 2

LHB ORDERS

- 11 (1) An LHB order must specify—
- (a) the name of the Local Health Board, and
 - (b) the operational date of the Local Health Board.
- (2) The operational date of a Local Health Board is the date on which functions exercisable by it may be undertaken fully by the Board.
- 12 (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 must 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.

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PART 3

OTHER MATTERS

General power

- 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 purposes of or in connection with its functions.
- (2) In particular it may—
- (a) acquire and dispose of property,
 - (b) enter into contracts,
 - (c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Local Health Board or for 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 Welsh Ministers (which may be given in general terms covering one or more descriptions of case).

Rights and liabilities

- 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 12 or 13 are enforceable by or against that Local Health Board (and not against any other body or the Welsh Ministers).
- (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 13(2)(c).

Making accommodation or services available

- 15 (1) A Local Health Board may—
- (a) make available at a hospital for which it has responsibility accommodation or services for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Local Health Board in respect of the accommodation or services, and
 - (b) make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis.
- (2) A Local Health Board may exercise the power conferred by sub-paragraph (1) only if it is satisfied that its exercise—
- (a) does not to any significant extent interfere with the performance by the Local Health Board of any function conferred on it under this Act to provide accommodation or services of any kind, and
 - (b) does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

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- (3) Before a Local Health Board decides to make accommodation or services available under sub-paragraph (1), it must consult organisations representative of the interests of persons likely to be affected by the decision.
- (4) A Local Health Board may allow accommodation or services which are made available under sub-paragraph (1) to be so made available in connection with treatment in pursuance of arrangements—
 - (a) made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital,
 - (b) for the treatment of private patients of that practitioner.
- (5) References in this paragraph to a health service hospital include references to such a hospital within the meaning of section 275 of the National Health Service Act 2006 (c. 41), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.

Powers of Local Health Boards to enter into externally financed development agreements

- 16
- (1) The powers of a Local Health Board include power to enter into externally financed development agreements.
 - (2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Welsh Ministers.
 - (3) The Welsh Ministers may give a certificate under this paragraph if—
 - (a) in their opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the Local Health Board of any of its functions, and
 - (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
 - (4) If a Local Health Board enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.
 - (5) “Another party” means any party to the agreement other than the Local Health Board.
 - (6) The fact that an agreement made by a Local Health Board has not been certified under this paragraph does not affect its validity.

Research

- 17
- (1) A Local Health Board may conduct, commission or assist the conduct of research.
 - (2) A Local Health Board may, in particular, make officers available or provide facilities under sub-paragraph (1).

Training

- 18
- 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 (c. 46),

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- (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.

Regulations about duties

- 19 Regulations may 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

- 20 (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 Local Health Board and confirmed by the Welsh Ministers.
- (2) The Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.
- (3) No order may 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 Welsh Ministers in the form, and with the information, required by them, and
 - (b) has been approved by the Welsh Ministers.

Dissolution

- 21 (1) The Welsh Ministers may, if a Local Health Board is dissolved, by order transfer (or provide for the transfer) to themselves or to another Local Health Board any property or liabilities of the dissolved Board.
- (2) The liabilities which may be transferred by virtue of sub-paragraph (1) to another Local Health Board include criminal liabilities.
- (3) If any consultation requirements apply, they must be complied with before the order is made.
- (4) “Consultation requirements” means requirements about consultation contained in regulations.

Transfer of property

- 22 (1) The Welsh Ministers may by order (referred to in this paragraph and paragraph 23 as a transfer order)—
- (a) transfer (or provide for the transfer of) any of the property 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 and liabilities which—

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- (a) belong to a health service authority other than the Welsh Ministers or are used or managed by a Local Health Board, and
 - (b) will be transferred to a Local Health Board by or under a transfer order,must be identified by agreement between the health service authority and the Local Health Board or, in default of agreement, by direction of the Welsh Ministers.
- (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) “Third party” means a person other than a health service authority.
- (5) In this paragraph and paragraph 23, “health service authority” means the Welsh Ministers, a Local Health Board or an NHS trust in Wales.
- 23 (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 or liabilities, the order may contain such provisions as appear to the Welsh Ministers 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 22(3) applies, the order must contain such provisions as appear to the Welsh Ministers 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 Welsh Ministers 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.
- (5) “Specified” means specified in the certificate.
- (6) A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (7) Paragraph 22 and this paragraph do not affect—
 - (a) any existing power of a health service authority to transfer property or liabilities to a Local Health Board,
 - (b) the extent of the power conferred by section 203(10).

Transfer of staff

- 24 (1) The Welsh Ministers may by order transfer to a Local Health Board any specified description of employees to which this paragraph applies.

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- (2) This paragraph applies to employees of—
- (a) an NHS trust in Wales,
 - (b) 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.
- 25 (1) The contract of employment of an employee transferred under paragraph 24—
- (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) In particular—
- (a) all the rights, powers, duties and liabilities of the body from which an employee is transferred under paragraph 24 under or in connection with his contract of employment are by virtue of this sub-paragraph 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 is 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) 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) his contract of employment with the body from which he would be transferred is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph does not affect any right of an employee to which paragraph 24 applies to terminate his contract of employment if a substantial change is made to his detriment in his working conditions.
- (6) But no such right arises by reason only that under this paragraph the identity of his employer changes, unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- 26 (1) Where an employee will be transferred by an order under paragraph 24 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, 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 sub-paragraph (1), the order must provide for paragraph 25 to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 27 Where a Local Health Board is dissolved, an order under paragraph 21 includes power to transfer employees of the Local Health Board and the order may make any

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provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under paragraph 24.

Interpretation

28 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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