

NHS REDRESS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 17: Framework power (Wales)

45. *Section 17* gives the National Assembly for Wales a broad power to make regulations establishing arrangements for redress in respect of Wales. The section has its foundation in the principles set out in the Wales Office's White Paper: *Better Governance for Wales*¹, which was presented to Parliament on 15 June 2005. The White Paper contains the Government's proposals for developing the devolution settlement in Wales.
46. The arrangements made under this section may cover people with claims involving qualifying liability in tort arising out of the provision of services as part of the health service in Wales (whether those services are provided in Wales or elsewhere), and connected matters (*subsection (1)*). The Assembly is not under an obligation to set up a "scheme". The arrangements are not restricted to claims arising from harm caused in hospital settings. "Qualifying liability in tort" is defined more widely than in section 1 (*subsection (2)*): it is not restricted to liability arising from acts or omissions on the part of healthcare professionals. The broad scope of this power is intended to allow the National Assembly for Wales to determine arrangements for redress which are most relevant to its policies and plans for the health service in Wales.
47. *Subsection (3)* establishes that regulations made by the National Assembly for Wales under this section may include any provision that could be made by an Act of Parliament, apart from those provisions identified at *subsection (4)*. The scope of the regulation-making power is similar to the regulation-making power in section 2(2) and (4) of the European Communities Act 1972.
48. *Subsection (4)* places a number of restrictions on the National Assembly for Wales in exercising its power under *subsection (1)*. The Assembly cannot:
 - (a) make any provision imposing or increasing taxation;
 - (b) give any of the provisions in the regulations retrospective effect;
 - (c) sub-delegate the power to legislate;
 - ((d) create a new criminal offence;
 - ((e) make provision extending otherwise than to England and Wales; or
 - ((f) make any provision which applies to England, without the consent of the Secretary of State.
49. *Subsection (5)* provides that *subsection (4)(c)* does not preclude the modification of a power to legislate granted otherwise than under *subsection (1)*, nor does *subsection (4)(c)* preclude the extension of any such power to purposes of a like nature as those for which it was conferred.

¹ Cm 6582; see in particular paragraphs 1.24 and 3.12

*These notes refer to the NHS Redress Act 2006 (c.44)
which received Royal Assent on 8th November 2006*

50. *Subsection (6)* provides that sub-delegating a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of *subsection (4)(c)*. *Subsection (7)* allows the National Assembly for Wales to exercise the power under *subsection (1)(a)* in respect only of some of the cases covered by the power, if it sees fit.