

2003 No. 505

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) (Establishment) Order 2003

Made - - - - - *5th March 2003*

Laid before Parliament *6th March 2003*

Coming into force - - *1st April 2003*

The Secretary of State for Health in respect of England, and the National Assembly for Wales in respect of Wales, in exercise of powers conferred by sections 11(1), (2) and (4) of, and paragraph 9(7)(b) of Schedule 5 to, the National Health Service Act 1977(a), and now vested in them and of all other powers enabling them in that behalf, and after consultation with such bodies as they recognise represent officers who in their opinion are likely to be transferred or affected by transfers in pursuance of this Order, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) (Establishment) Order 2003 and shall come into force on 1st April 2003.

(2) In this Order—

“the Act” means the National Health Service Act 1977;

“the Agency” means the Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) established by this Order;

“appropriate authority” means—

(a) in relation to England, the Secretary of State for Health, and

(b) in relation to Wales, the National Assembly for Wales;

“PHLS” means the Public Health Laboratory Service Board that was continued in being by section 5(4) of the Act(b).

Establishment of the Agency

2. There is hereby established a Special Health Authority which shall be known—

(a) in English as the Health Protection Agency; and

(b) in Welsh as Yr Asiantaeth Diogelu Iechyd.

(a) 1977 c. 49; section 11 was amended by paragraph 31 of Schedule 1 to the Health Services Act 1980 (c. 53), by Schedule 10 to the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), by section 2(1) of, and paragraph 2 of Schedule 1 to, the Health Authorities Act 1995 (c. 17) (“the 1995 Act”) and by paragraphs 4 and 6 of Schedule 4 to the Health Act 1999 (c. 8) (“the 1999 Act”); sub-paragraph (7) was inserted in paragraph 9 of Schedule 5 by paragraph 7(2) of Schedule 1 to the 1990 Act and was amended by paragraph 60(b) of Schedule 1 to the 1995 Act and by paragraph 34 of Schedule 1 to the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”). The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, as amended by section 66(5) of the 1999 Act.

(b) Section 5(4) was amended by section 1 of the Public Health Laboratory Service Act 1979 (c. 23).

Functions of the Agency

3. Subject to and in accordance with such directions as the appropriate authority may give to the Agency(a), the Agency shall perform—

- (a) such functions in connection with health protection; and
- (b) such other functions,

as the appropriate authority may direct the Agency to perform on its behalf.

Constitution of the Agency

4. The Agency shall consist of—

- (a) a chairman;
- (b) not less than 10 and not more than 25 members who are not officers of the Agency; and
- (c) not less than 3 and not more than 8 members who are officers of the Agency.

Remuneration of members

5. The Agency is hereby specified for the purposes of paragraph 9(7)(b) of Schedule 5 to the Act (definition of “relevant authority” for the purposes of paying remuneration to members of Strategic Health Authorities, Health Authorities and certain Special Health Authorities).

Public meetings

6. The Public Bodies (Admission to Meetings) Act 1960(b) shall apply to the Agency.

Transfer of staff

7.—(1) This paragraph applies in relation to any officer who is included in the Schedule.

(2) Any officer in relation to whom paragraph (1) applies shall, on 1st April 2003, be transferred to the employment of the Agency.

(3) The contract of employment of an officer transferred under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) has effect from the time of the transfer as if originally made between the officer and the Agency.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the body from which an officer is transferred under or in connection with that officer’s contract of employment shall by virtue of this paragraph be transferred to the Agency; and
- (b) anything done before the date of the transfer by or in relation to the body from which that officer is so transferred in respect of the officer or the contract of employment shall be deemed from that time to have been done by or in relation to the Agency.

(5) Paragraphs (2) to (4) do not transfer an officer’s contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that officer objects to the transfer and informs the body from which they would be transferred, or the Agency, of that objection.

(6) Where an officer objects as mentioned in paragraph (5), 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.

(a) See, in particular, sections 16D, 17 and 18 of the National Health Service Act 1977 (c. 49); sections 16D and 17 were inserted by section 12(1) of the 1999 Act and were amended by section 3 of , and paragraphs 1,6 and 7 of Schedule 1 to, the 2002 Act; subsection (3) of section 17 was substituted by paragraph 5 of Schedule 5 to the Health and Social Care Act 2001 (c. 15). Section 18 was amended by sections 2(1), 5(1) and 3(8) of the 1995 Act, by paragraph 9 of Schedule 1 to, and Schedule 3 to, the 1995 Act, by section 12(3) and (4) of the 1999 Act and by sections 3 and 37(2) of, paragraphs 1 and 9 of Schedule 1 to, and Schedule 9 to, the 2002 Act.

(b) 1960 c. 67; see paragraph 1(g) of the Schedule to the Act, which was inserted by paragraph 91 of Schedule 1 to the 1995 Act.

(7) This article is without prejudice to any right of an officer 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 by reason only that, under this article, the identity of his employer changes unless the officer shows that, in all the circumstances, the change is a significant change and is to his detriment.

Abolition of the Microbiological Research Authority and revocation of Order and Regulations

8.—(1) The Microbiological Research Authority (Establishment and Constitution) Order 1994(a) is revoked and the Microbiological Research Authority is accordingly abolished.

(2) The Microbiological Research Authority Regulations 1994(b) are revoked.

Enforceability of rights and transfer of property and liabilities of Microbiological Research Authority

9.—(1) Any right that was, immediately before 1st April 2003, enforceable by or against the Microbiological Research Authority shall, on or after that date be enforceable by or against the Agency.

(2) All property and liabilities of the Microbiological Research Authority shall be transferred on 1st April 2003 to the Agency.

Enforceability of rights and transfer of property and liabilities of PHLS

10.—(1) Except where paragraph (2) applies—

(a) any right that was immediately before 1st April 2003, enforceable by or against the PHLS shall, on or after that date be enforceable by or against the Agency;

(b) all property and liabilities of the PHLS shall be transferred on 1st April 2003 to the Agency.

(2) This paragraph applies to—

(a) rights enforceable by or against the PHLS; and

(b) property and liabilities of the PHLS,

related to such functions under section 5(2)(c) of the Act as the Secretary of State has determined will continue to be exercised by the PHLS.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(c)

4th March 2003

Daffydd Ellis-Thomas
The Presiding Officer of the National Assembly

Signed by authority of the Secretary of State for Health

4th March 2003

Hazel Blears
Parliamentary Under Secretary of State
Department of Health

(a) S.I. 1994/603.

(b) S.I. 1994/602, as amended by regulation 17(4) of, and paragraph 10 of Schedule 5 to, S.I. 1996/707, regulation 4 of S.I. 1998/1576 and regulation 7 of, and paragraph 5 of the Schedule to, S.I. 2000/696.

(c) 1998 c. 38.

SCHEDULE

Article 7

Schedule of staff transferring to the agency

1. All officers of the Microbiological Research Authority, immediately prior to 1st April 2003.
2. Officers of the PHLS, except for any officers notified in writing on or before 31st March 2003 that they are to be retained to provide such functions under section 5(2)(c) of the Act as the Secretary of State has determined will continue to be exercised by the PHLS.
3. All officers of the Chemical Incidents Response Service Unit employed immediately prior to 1st April 2003, by the Guy's and St Thomas' National Health Service Trust^(a).
4. All officers of Strategic Health Authorities and Primary Care Trusts who are wholly or mainly engaged in health protection and who were notified in writing on or before 31st March 2003 that they were to be transferred to the Agency.
5. All officers who were—
 - (a) employed immediately prior to 1st April 2003 by Strategic Health Authorities or Primary Care Trusts as Regional Health Emergency Planning Advisors or their support staff; and
 - (b) notified in writing on or before 31st March 2003 that they were to be transferred to the Agency.

(a) S.I. 1993/693.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the establishment and constitution of a Special Health Authority, to be known as the Health Protection Agency (or, in Welsh as Yr Asiantaeth Diogelu Iechyd) (“the Agency”), to exercise such functions of the Secretary of State and the National Assembly for Wales (“NAW”) in connection with health protection, and such other functions, as the Secretary of State or NAW may direct it to perform.

Article 2 of the Order establishes the Agency, the functions of which are described in article 3 and are to be specified more particularly in directions given by the Secretary of State and NAW. Provision is also made for the constitution of the Agency (article 4), for the remuneration of members of the Agency (article 5), for the admission of the public to meetings (article 6), and for the transfer of staff (article 7 and the Schedule). Article 8 provides for the abolition of the Microbiological Research Authority (“MRA”). Articles 9 and 10 provide for the transfer of rights, property and liabilities from the MRA and the Public Health Laboratory Service Board to the Agency.

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