

To: Business Committee
From: Brian Gibbons AM
Minister for Health & Social Services

EXPLANATORY MEMORANDUM

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

THE NHS BUSINESS SERVICES AUTHORITY (AWDURDOD GWASANAETHAU BUSNES Y GIG) REGULATIONS 2005

Summary

The Regulations make provision concerning the membership and procedure of the NHS Business Services Authority (NHSBSA).

In particular, the Regulations provide for the appointment and tenure of office of the chairman and members of the NHSBSA (regulation 2), for disqualification for appointment (regulations 3 and 4) and for the termination of office (regulation 5). Also, included is provision relating to the appointment of a vice-chairman (regulation 6), the appointment of, and exercise of functions by, committees and sub-committees (regulations 7 and 8), the conduct of proceedings (regulation 9 and the Schedule) and disability on account of a conflict of interest (regulation 10).

Provision is also made for requiring the NHSBSA to furnish reports and certain other information to the Secretary of State and the National Assembly for Wales (regulation 11) and for requiring presentation of an annual report at a public meeting (regulation 12).

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, in accordance with Standing Order 25 (section 3).
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Powers

3. The powers enabling this Instrument to be made are contained in sections 16(4) and 126(4) of, and paragraphs 10, 12 and 16 of Schedule 5, to the National Health Service Act 1977. The functions of the Secretary of State (in practice the Secretary of State for Health) under the above mentioned provisions of the 1977 Act have been transferred to the Assembly by Article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999. As such the functions in relation to the NHSBSA will be exercised by both the Assembly and the Secretary of State on a combined basis. These functions, in so far as they relate to the Assembly, have been delegated to my portfolio as Minister for Health and Social Services.

Effect

4. The Dental Practice Board, the Prescriptions Pricing Agency and the NHS Pensions Agency are all classed as Arm's Length Bodies by the Department of Health. The Department of Health define an Arm's Length Body (ALB) as a stand alone national organisation sponsored by the Department and undertaking executive functions; and as such have been reviewed as part of the Department's ALB review and reconfiguration.
5. All of these bodies undertake basic business processes that are very similar or are specialised in transactions about individuals, particularly payments.
6. It is now proposed that the functions of these bodies, some of which provide services to Wales as well as to England will transfer to the NHSBSA. It will be one of the 20 Arm's Length Bodies working on behalf of the Department of Health and Devolved Administrations in support of some health and social care service functions.
7. The new body will eventually replace the functions of the Dental Practice Board, Pensions Agency and Prescription Pricing Agency when they are abolished in April 2006. With effect from its establishment, it is intended that it will have a role in Wales in the payment of General Dental Services and be responsible for examining efficiencies across the functions currently provided by the Dental Practice Board, Pensions Agency and Prescription Pricing Agency and will also set up a co-ordinated processing agency.
8. The Regulations will provide for such matters as the appointment of members, grounds for their disqualification and conduct of the NHSBSA in meetings. Provision is also made for requiring the NHSBSA to furnish reports and certain other information to the Secretary of State (in practice Secretary of State for Health) and the National Assembly for Wales (regulation 11) and for requiring presentation of an annual report at a public meeting (regulation 12). The Establishment and Constitution Order, which is being made in tandem with these Regulations, will establish the body and confer functions upon it.

Target Implementation

9. It is intended that the proposed Instrument be made on 28 June 2005 and come into force on 1 October 2005. If the proposed making and coming into force dates are not achieved the new cross-border special health authority will not be established as planned on 1 October 2005 to prepare for the assimilation of functions when the existing bodies are abolished in April 2006.

Financial Implications

10. This Order is the vehicle by which the function of the existing organisations are being combined into one new organisation. No additional financial implications to the Assembly or to others in Wales will result from this Order.

Regulatory Appraisal

11. As this Instrument falls outside the definition of Assembly general subordinate legislation in section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Consultation

With Stakeholders

12. No formal consultation has been undertaken as this legislation is being made jointly with the Secretary of State for Health. This legislation is as a result of proposals contained within the ALB review and implementation framework, which has previously been subject to consultation in England. However, key stakeholders, being the existing bodies that will ultimately be abolished, have been involved during the development of these Regulations.

With Subject Committee

13. These Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 25 May 2005 (HSS(2)-07-05 (p.1a – Addendum) (Item Number HSS 11(05))). However the Regulations were not identified for detailed scrutiny.

Recommended Procedure

14. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Accelerated procedure, because this is combined England and Wales legislation, which is seeking to merge the role and function of the existing bodies into one new organisation.

Compliance

15. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

16. The information in this Memorandum has been cleared by the Directorate of Legal Services (DLS) and by the Assembly Compliance Officer (ACO).

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