

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

## **EXPLANATORY MEMORANDUM**

### **NATIONAL HEALTH SERVICE, ENGLAND AND WALES**

#### **NHS BLOOD AND TRANSPLANT (GWAED A THRAWSBLANIADAU'R GIG) (ESTABLISHMENT AND CONSTITUTION) ORDER 2005**

##### **Summary**

**This Order provides for the establishment and constitution of a cross-border Special Health Authority, to be known as the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (NHSBT), to exercise functions in connection with the collecting, screening, processing and supplying and analysing of blood, blood products, plasma, stem cells and other tissues, the preparation of blood components reagents and facilitating, providing and securing the provision of services to assist tissue and organ transplantation and such other functions as the Secretary of State and the National Assembly for Wales may direct it to perform.**

**Article 2 of the Order establishes the NHSBT and the functions of the NHSBT are described in Article 3. Article 3 also enables the Assembly to issue directions conferring other functions on the NHSBT in relation to Wales. Provision is also made for the constitution of the NHSBT (Article 4), for the remuneration of its members (Article 5), and for the admission of the public to meetings (Article 6).**

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 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 11(1), (2) and (4) and 126(4) of and paragraph 9(7)(b) 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 National Assembly for Wales 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 NHSBT 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 National Blood Authority (NBA) and UK Transplant (UKT) (both cross-border Special Health Authorities) are 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. The NBA and UKT fall within this description as Special Health Authorities set up in secondary legislation to perform functions delegated to them by the Secretary of State (the National Assembly for Wales) and as such have been reviewed as part of the Department's ALB review and reconfiguration.
5. It is now proposed that UK Transplant will come together with the National Blood Authority to create a new NHSBT. 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 frontline health and social care services.
6. The new body will promote the donation of blood and organs; co-ordinate a 24 hours organ-matching and allocation service, and arrange the collection, screening, preparation and distribution of blood.
7. The Establishment and Constitution Order will establish the body and conferring functions upon it. Article 2 of the Order establishes the NHSBT and its functions are described in Article 3. Article 3 also enables the Assembly to issue directions conferring other functions on the NHSBT in relation to Wales. Provision is also made for the constitution of the NHSBT (Article 4), for the remuneration of its members (Article 5), and for the admission of the public to meetings (Article 6).
8. The NHSBT Regulations, which are being made in tandem with this Order, will provide for such matters as the appointment of members, grounds for their disqualification and conduct of the NHSBT in meetings.

### **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 when the two existing organisations are being abolished.

### **Financial Implications**

10. There are no major financial implications for the Assembly. This Order is the vehicle by which the function of the existing organisations are being combined into one new organisation. Therefore no changes in financial arrangements in terms of costs to Wales will arise as a result of this legislation. The method of financial reimbursement will remain the same. In addition, there will be no costs to Wales arising from the merger, as these will be met by the Department of Health.

## **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. This legislation is as a result of proposals contained within the Arm's Length Body (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 throughout the discussion of the policy changes proposed and the development of this Order.

### With Subject Committee

13. The Order was notified to the Health and Social Services Committee via the list of forthcoming legislation on 25 May 2005 (HSS (2)-07-05 (p. 1a) HSS 09(05)). However, the Order was not identified for detailed scrutiny.

## **Recommended Procedure**

14. Subject to the views of the Business Committee, I recommend that this Order 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 and by the Assembly Compliance Officer (ACO).

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**BRIAN GIBBONS AM  
MINISTER FOR HEALTH AND SOCIAL SERVICES**

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