

EXPLANATORY MEMORANDUM

THE HEALTH PROTECTION AGENCY (Yr Asiantaeth Diogelu Iechyd) (ESTABLISHMENT) ORDER 2003

Summary

The intended effect of this Instrument is to establish and provide the constitution of a Special Health Authority, to be known as the Health Protection Agency (Yr Asiantaeth Diogelu Iechyd), to exercise such of the Secretary of State's and the National Assembly for Wales' functions in connection with health protection and such other functions as the Secretary of State or National Assembly for Wales may direct it to perform.

The Order incorporates, in broad terms, the functioning of the body, laying down its constitution and the way in which it will operate. This SI also includes abolition of the Microbiological Research Authority whose staff and functions will become part of the HPA.

1. This memorandum is submitted to the Assembly's Business Committee in relation to sections 11(1), (2) and (4) of, and paragraph 9(7)(b) of Schedule 5 to, the National Health Service Act 1977, in accordance with Standing Order 23.9.
2. A copy of the Instrument is submitted with this Memorandum.
3. The power enabling this Instrument to be made is contained in sections 11(1), (2) and (4) of, and paragraph 9(7)(b) of Schedule 5 to, the National Health Service Act 1977.
4. The intended effect of this Instrument is to create a special health authority as an England and Wales body from 1 April 2003 which will take on responsibility for providing or commissioning the NHS Act functions proposed for the agency in the consultation paper *Health Protection: A consultation document on creating a health protection agency* (Issued by DH and Wales Office).
5. This means that in England the proposal is that the special health authority will be responsible for the functions currently performed by:
 - the Public Health Laboratory Service (but not in general its clinical diagnostic microbiology services, which are transferring to the NHS, nor media production, which is planned to remain with PHLS);
 - the Microbiological Research Authority;
 - the National Focus for Chemical Incidents, Regional Service Provider Units and the National Poisons Information Service;
 - the health protection functions provided by consultants in communicable disease control and other health protection staff;

- the advice and other functions provided by regional health emergency planning advisers and their staff.

6. In Wales, the intention is that the special health authority will be responsible for providing some but not all of the functions planned for England. The Assembly and the NPHS-W will also have full access to higher level advice and guidance from the HPA and its expert committees. The health emergency planning function will continue to be provided by the National Assembly for Wales working closely with DH and experts in the HPA. The agency, the National Public Health Service Wales, and the emergency planning functions will work together against terrorist threats or attacks.

7. PHLS laboratories and Communicable Disease Surveillance Centre in Wales, and consultants in communicable disease control and other NHS health protection staff, are transferring to the National Public Health Service – Wales from 31st March 2003. The National Focus for Chemical Incidents, based in Cardiff operate on contract to DH and NAW and are not NHS employees. The HPA will assume the responsibility for the functions of the NFCI on 1st April but staff will not transfer their employment until a staff pensions issue is resolved. The National Poisons Information Service Wales, will continue to provide a service in Wales through a contractual arrangement with HPA as will the Regional Service Provider Unit in Wales - CIMSU.

Financial Implications

8. The Assembly's Financial Planning Division and NHS Finance Division have been consulted about this memorandum and noted that there are no additional financial implications for the Assembly or the National Health Service, arising from this Instrument.

Regulatory Appraisal

9. As there are no additional financial implications for the Assembly or the National Health Service, I considered, having regard to Assembly Guidance, that a regulatory appraisal would be inappropriate in this instance.

Consultation

With Stakeholders

10. Earlier publication of *Getting Ahead of the Curve, a strategy for infectious disease & other aspects of health protection*, allowed consultation in Wales, which led to the view that Wales should not join the Health Protection Agency on the same basis as England. The proposal to establish a Health Protection Agency with different relationships with England and Wales was thereafter outlined in the consultation paper *Health Protection: A consultation document on creating a health protection agency*. This was issued by Department of Health and Wales Office and was circulated widely to all stakeholders and those who might be affected by the proposal. Consultation with staff interest on the proposal to establish the HPA as a special health authority has also taken place, as required by the NHS Act.

With Subject Committee

11. The underpinning policy behind this Order has been brought to the attention of the Health & Social Services Committee on a number of occasions. The following documents and statements have been brought before the Health & Social Services Committee or plenary:

An Infectious disease strategy for England "Getting ahead of the Curve" - Wednesday 27 February 2002

Response to *An Infectious disease strategy for England "Getting ahead of the Curve"* - 17 April 2002

Statement from Jane Hutt - Welsh Assembly Government position on the creation of the Health Protection Agency - Wednesday 29 May 2002

Plenary Business - Statement: Restructuring of services in Wales as a result of the new HPA in England Tuesday 10 December 2002.

Recommended Procedure

12. As the draft Order has no additional financial implications for either the Assembly or the National Health Service, I recommend that the Instrument proceeds to Plenary under the Accelerated procedure, without reference to the Subject Committee.

Compliance/Statutory Cross-Cutting Themes

13. The power enabling this instrument to be made, as set out in 3 above, have been transferred to the National Assembly for Wales and Assembly functions in and under the 1977 Act have been delegated to my Ministerial portfolio of responsibility. Assembly functions introduced under the instrument will therefore stand delegated to my portfolio.

14. The 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);

- be compatible with any international obligations binding the UK Government and the Assembly (Section 108);

15. The information contained in this memorandum has been cleared with the Office of the Counsel General and the Assembly Compliance Officer.

16. Policy division contact (Gaynor Legall, extension 5539).