

Proposed NHS Redress (Wales) Measure 2008

[AS PASSED]

A MEASURE of the National Assembly for Wales to make provision about arrangements for redress in relation to liability in tort in connection with services provided as part of the health service in Wales; and for connected purposes.

This Measure, passed by the National Assembly for Wales on 6 May 2008 and approved by Her Majesty in Council on [], enacts the following provisions:-

1 Power of Welsh Ministers to make regulations in respect of NHS redress

- (1) The Welsh Ministers may make provision by regulations for the purpose of enabling redress to be provided without recourse to civil proceedings in circumstances in which this section applies.
- (2) This section applies where under the law of England and Wales qualifying liability in tort on the part of a body or person mentioned in subsection (3) arises in connection with the provision of qualifying services in Wales or elsewhere as part of the health service in Wales.
- (3) The bodies and persons referred to in subsection (2) are –
 - (a) an NHS Trust in Wales;
 - (b) a Local Health Board;
 - (c) a Special Health Authority;
 - (d) the Welsh Ministers;
 - (e) a body or person providing, or arranging for the provision of, services whose provision is the subject of arrangements with a body or person mentioned in paragraphs (a) to (d).
- (4) The reference in subsection (2) to qualifying liability in tort is to liability in tort owed in respect of, or consequent upon, personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis of illness, or in the care or treatment of any patient –
 - (a) in consequence of any act or omission by a health care professional, or
 - (b) in consequence of any act or omission by any other body or person as the Welsh Ministers may specify by the regulations.

- (5) For the purposes of subsection (2), services are qualifying services if they are of such description (including a description involving provision outside Wales) as the Welsh Ministers may specify by the regulations.
- (6) In subsection (3)(e), the reference to a person providing services does not include a person providing services under a contract of employment.

2 Redress under the regulations

- (1) Subject to subsections (2), (3) and (6), the regulations may make such provision as the Welsh Ministers think fit about redress.
- (2) The regulations must provide for redress ordinarily to comprise –
 - (a) the making of an offer of compensation in satisfaction of any right to bring civil proceedings in respect of the liability concerned;
 - (b) the giving of an explanation;
 - (c) the making of a written apology; and
 - (d) the giving of a report on the action which has been, or will be, taken to prevent similar cases arising;but the regulations may specify circumstances in which one or more of those forms of redress is not required.
- (3) The regulations must provide that redress does not apply in relation to a liability that is or has been the subject of civil proceedings.
- (4) The regulations may, in particular –
 - (a) make provision for the compensation that may be offered to take the form of entry into a contract to provide care or treatment or of financial compensation, or both;
 - (b) make provision about the circumstances in which different forms of compensation may be offered.
- (5) If the regulations provide for financial compensation to be offered, they may, in particular –
 - (a) make provision about the matters in respect of which financial compensation may be offered;
 - (b) make provision with respect to the assessment of the amount of any financial compensation.
- (6) The regulations which provide for financial compensation to be offered –
 - (a) may specify an upper limit on the amount of financial compensation that may be included in an offer of redress made in accordance with the regulations;
 - (b) must, if they do not specify a limit under paragraph (a), specify an upper limit on the amount of financial compensation that may be included in such an offer in respect of pain and suffering;
 - (c) may not specify any other limit on what may be included in such an offer by way of financial compensation.

3 Accessing redress

- (1) The regulations may make such provision as the Welsh Ministers think fit about accessing redress.
- (2) The regulations may, in particular, make provision—
 - (a) about who may access redress;
 - (b) about how redress may be accessed;
 - (c) for time limits in relation to accessing redress;
 - (d) about circumstances in which redress may not be accessed.

4 Duty to consider the potential application of redress arrangements

- (1) The regulations may make such provision as the Welsh Ministers think fit requiring any body or person mentioned in subsection (2)—
 - (a) to consider, in such circumstances as the regulations may provide, whether a case that the body or person is investigating or reviewing involves liability for which redress may be available, and
 - (b) if it appears that it does, to take such steps as the regulations may provide.
- (2) The bodies or persons referred to in subsection (1) are—
 - (a) any body or person to whose liability the regulations apply;
 - (b) any other body or person prescribed by the Welsh Ministers in the regulations.

5 Method of delivering redress

- (1) Subject to subsections (3) to (6), the regulations may make such provision as the Welsh Ministers think fit regarding how redress is delivered.
- (2) The regulations may, in particular, make provision—
 - (a) regarding the investigation of applications for redress made under the regulations (including provision for the overseeing of the investigation by an individual of a specified description);
 - (b) regarding the form and content of settlement agreements under the regulations;
 - (c) for settlement agreements under the regulations to be subject in cases of a specified description to approval by a court;
 - (d) regarding the procedure to be followed when, and the circumstances in which, applications for redress under the regulations may no longer be pursued.
- (3) The regulations must—
 - (a) make provision for time limits and any extensions of them in relation to—
 - (i) the conduct and completion of an investigation;

- (ii) the making of an offer of redress; and
 - (iii) the acceptance of such an offer,under the regulations,
 - (b) make provision for the findings of an investigation of a case where an individual is seeking redress under the regulations to be recorded in a report, and
 - (c) subject to subsection (4), make provision for a copy of the report to be provided to the individual seeking redress.
- (4) The regulations may provide that no copy of an investigation report need be provided –
- (a) before an offer of redress under the regulations is made or proceedings are for any reason terminated;
 - (b) where the report contains information likely to cause the patient or other applicant significant harm or distress; or
 - (c) in such other circumstances as may be specified.
- (5) The regulations must provide for a settlement agreement for redress entered into under the regulations to include a waiver of any right to bring civil proceedings in respect of the liability to which the settlement relates.
- (6) The regulations must provide that redress may no longer be sought under the regulations if the liability in relation to which redress is being sought becomes the subject of civil proceedings.

6 Suspension of limitation period

- (1) The regulations must make provision for the period during which a liability is the subject of an application for redress under the regulations to be disregarded for the purposes of calculating whether any relevant limitation period has expired or not.
- (2) The reference in subsection (1) to any relevant limitation period is to any period of time for the bringing of civil proceedings in respect of the liability which is prescribed by or under the Limitation Act 1980 (c. 58) or any other enactment.
- (3) The regulations may define for the purposes of provision in accordance with subsection (1) when liability is the subject of an application for redress under the regulations.

7 Legal advice, etc.

- (1) Subject to subsections (2) and (4), the regulations may make such provision as the Welsh Ministers think fit –
 - (a) for the provision of legal advice without charge to individuals seeking redress under the regulations;
 - (b) for the provision in connection with an application for redress under the regulations of other services, including the services of medical experts.

- (2) The regulations must make such provision as the Welsh Ministers consider appropriate in order to secure that individuals to whom an offer of redress under the regulations may be made have access to legal advice without charge in relation to—
 - (a) any offer that is made,
 - (b) any refusal to make such an offer; and
 - (c) any settlement agreement.
- (3) Provision under subsection (1)(a) or (2) about who may provide the legal advice may operate by reference to whether a potential provider is included in a list prepared by a specified person or body.
- (4) If the regulations make provision for the services of medical experts, they must also provide for such experts to be instructed jointly by the body or person operating the redress arrangements under the regulations and the individual seeking redress.

8 Assistance for individuals seeking redress

- (1) It is the duty of the Welsh Ministers to arrange, to such extent as they consider necessary to meet all reasonable requirements, for the provision of assistance (by way of representation or otherwise) to individuals seeking, or intending to seek, redress under the regulations.
- (2) The Welsh Ministers may make such other arrangements as they think fit for the provision of assistance (by way of representation or otherwise) to individuals in connection with cases which are the subject of an application for redress under the regulations.
- (3) The Welsh Ministers may make payments to any person or body in pursuance of arrangements under this section and section 7.
- (4) In making arrangements under this section, the Welsh Ministers must have regard to the principle that the provision of services under the arrangements in connection with a particular case should, as far as practicable, be independent of any person to whose conduct the case relates or who is involved in dealing with the application for redress.

9 Functions with regard to redress arrangements

- (1) The regulations may make provision for any person or body within the health service in Wales to have such functions with regard to the operation of redress arrangements under this Measure as the Welsh Ministers think fit.
- (2) The regulations may, in particular, provide for such persons or bodies to have functions in relation to—
 - (a) accessing redress;
 - (b) payments under settlement agreements by way of redress;
 - (c) the provision in connection with redress arrangements of advice or other guidance about specified matters;
 - (d) the provision in connection with redress arrangements of legal advice without charge;

- (e) the monitoring of the carrying out by persons or bodies of their functions under the regulations;
 - (f) the publication of annual data about the redress arrangements.
- (3) The regulations may require any body or person carrying out functions under the regulations to –
- (a) keep specified records in relation to carrying out such functions;
 - (b) charge an individual of a specified description with responsibility for overseeing the carrying out of specified functions conferred on that body or person under the regulations;
 - (c) charge an individual of a specified description with responsibility for advising the body or person about lessons to be learnt from cases involving that body or person that are dealt with under the regulations.
- (4) The regulations must require that such a body or person prepare and publish an annual report about cases involving that body or person that are dealt with under the regulations and the lessons to be learnt from them.
- (5) The regulations may provide that any function exercisable by a body or person under the regulations may, by arrangement with that body or person and subject to such restrictions and conditions as that body or person may think fit, be exercised on behalf of that body or person by, or jointly with, another body or person.
- (6) The regulations may require any body or person exercising functions under the regulations to have regard to any advice or guidance given from time to time by the Welsh Ministers.
- (7) The provision that may be made under this section includes provision which has the effect that a body or person who has arranged for the provision of services shall have functions under the regulations which relate to someone else's liability in connection with the provision of those services.

10 Complaints

In section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), after paragraph (c) insert –

“(d) the provision of redress by or for a Welsh NHS body under the NHS Redress (Wales) Measure 2008.”

11 Orders and regulations

- (1) Any power to make an order or regulations conferred by this Measure is exercisable by statutory instrument.
- (2) Any power of the Welsh Ministers to make regulations under this Measure includes power –
 - (a) to make provision conferring or imposing functions which involve the exercise of discretion;

- (b) to make provision generally or in relation to specific cases;
 - (c) to make different provision for different cases; and
 - (d) to make such incidental, supplementary, saving or transitional provision as the Welsh Ministers think fit.
- (3) Any power of the Welsh Ministers to make regulations or orders under this Measure (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.
- (4) Any statutory instrument containing regulations made under this Measure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) Subsection (4) does not apply to regulations to which subsection (6) applies.
- (6) A statutory instrument which –
- (a) contains regulations made by the Welsh Ministers under section 12 which amend or repeal any part of the text of an Act of Parliament or an Assembly Measure, or
 - (b) contains the first regulations under section 1(1), or
 - (c) contains regulations making provision under section 1(4)(b), section 1(5), section 3 or section 5, or
 - (d) contains the first regulations to make provision under sections 2, 4, 6, 7 or 9,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (7) Nothing in this Measure is to be regarded as limiting the generality of sections 1(1) and 12(1).

12 Power to make further supplementary and consequential provision etc.

- (1) The Welsh Ministers may at any time by regulations make –
- (a) such supplementary, incidental or consequential provision, or
 - (b) such transitional or saving provision,
- as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Measure.
- (2) Regulations under subsection (1) may, in particular, make provision –
- (a) amending or repealing any enactment passed before, or during the same Assembly year as, this Measure, and
 - (b) amending or revoking any subordinate legislation (within the meaning of the Interpretation Act 1978 (c.30)) made before the passing of this Measure.

13 Interpretation

In this Measure—

“a health care professional” (*“proffesiynolyn gofal iechyd”*) means a member of a profession (whether or not regulated by, or by virtue of, any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals;

“the health service in Wales” (*“y gwasanaeth iechyd yng Nghymru”*) means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006 (c.42);

“illness” (*“salwch”*) has the same meaning as in that Act;

“patient” (*“claf”*) has the same meaning as in that Act;

“personal injury” (*“anaf personol”*) includes any disease and any impairment of a person’s physical or mental health.

14 Short title and commencement

- (1) This Measure may be cited as the NHS Redress (Wales) Measure 2008.
- (2) This section shall come into force on the day on which this Measure is approved by Her Majesty in Council.
- (3) The remaining provisions of this Measure shall come into force on such day as the Welsh Ministers may appoint by order.