

APPENDIX A

APPENDIX: LEGAL FRAMEWORK OF HEALTH SERVICE IN WALES

1. The Secretary of State for Wales is the Minister with responsibility in Wales for the provision and administration of Health Services insofar as they relate to Wales only. This is a function founded in Section 1 of the National Health Service Act 1977 ("The Act"). The function can be regarded as vested in the Secretary of State for Wales either by virtue of the Transfer of Functions (Wales) Order 1969 (SI 388) or, by virtue of the Royal prerogative, as an administrative arrangement between the various office holders of the office of Secretary of State. (Insofar as Health Service functions in England and Wales jointly and, of course, England alone are involved then this is a function vested in the Secretary of State for Health).

2. The District Health Authorities in Wales are constituted by order under section 8 of and Part 1 of Schedule 5 to the Act. (As amended by Section 1 of the Health Services Act 1980). The relevant Orders are:-

NHS (Constitution of DHAs) Order 1981 (SI 1838) and

NHS (Determination of Districts) Order 1981 (SI 1837).

3. The Secretary of State has power, under Section 13(1) of the Act to give directions to, inter alia, DHAs as to the exercise on his behalf of (most of) his functions in the Health Service. As there is in Wales no regional tier of Health Authority administration between the Secretary of State and DHAs (unlike England) the delegation of duties by Direction by the Secretary of State for Wales is direct from him to DHAs in Wales.

4. The power vested in the Secretary of State to issue directions under Section 13 should be read in conjunction with his ancillary powers under Sections 17 and 18 which vest in him power to give ancillary directions to

a DHA as to the exercise of any functions which he has directed it to exercise on his behalf under Section 13..

5. In addition to the above method of control over DHAs in Wales the Secretary of State does have two further powers of a more draconian nature namely his power to declare a DHA in default of carrying out its functions etc under Section 85 and his ability to exercise emergency powers under Section 86.

6. By virtue of the NHS functions (Directions to Authorities and Administration Arrangements) Regulations 1989 (SI 51) (replacing similar provisions in earlier Regulations - (SI 1982 287, as amended), and made under, inter alia, Sections 13 and 17 of the Act, the Secretary of State has directed DHAs in Wales to exercise on his behalf, those functions which are delegated to an RHA in England.

7. The property and finance arrangements of the Health Service in England and Wales are generally to be found in Part IV of the Act.

8. The Secretary of State for Wales is voted a sum by Parliament to provide for the Health Service in Wales. Out of that sum it is the Secretary of State's duty, under Section 97(1)(a) to pay to each District Health Authority in Wales the amount(s) allotted by him to that Authority for the year. The Secretary of State can give directions as to the application of the sums allotted under Section 97(3) and under Section 97(5). It is a duty of any such Health Authority to comply with such directions.