



# Health and Safety at Work etc. Act 1974

## 1974 CHAPTER 37

### PART II

#### THE EMPLOYMENT MEDICAL ADVISORY SERVICE

#### **55 Functions of, and responsibility for maintaining, employment medical advisory service**

- (1) There shall continue to be an employment medical advisory service, which shall be maintained for the following purposes, that is to say—
  - (a) securing that the Secretary of State, the Health and Safety Commission, the Manpower Services Commission and others concerned with the health of employed persons or of persons seeking or training for employment can be kept informed of, and adequately advised on, matters of which they ought respectively to take cognisance concerning the safeguarding and improvement of the health of those persons;
  - (b) giving to employed persons and persons seeking or training for employment information and advice on health in relation to employment and training for employment;
  - (c) other purposes of the Secretary of State's functions relating to employment.
- (2) The authority responsible for maintaining the said service shall be the Secretary of State; but if arrangements are made by the Secretary of State for that responsibility to be discharged on his behalf by the Health and Safety Commission or some other body, then, while those arrangements operate, the body so discharging that responsibility (and not the Secretary of State) shall be the authority responsible for maintaining that service.
- (3) The authority for the time being responsible for maintaining the said service may also for the purposes mentioned in subsection (1) above, and for the purpose of assisting employment medical advisers in the performance of their functions, investigate or assist in, arrange for or make payments in respect of the investigation of problems arising in connection with any such matters as are so mentioned or otherwise in connection with the functions of employment medical advisers, and for the purpose

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of investigating or assisting in the investigation of such problems may provide and maintain such laboratories and other services as appear to the authority to be requisite.

- (4) Any arrangements made by the Secretary of State in pursuance of subsection (2) above may be terminated by him at any time, but without prejudice to the making of other arrangements at any time in pursuance of that subsection (including arrangements which are to operate from the time when any previous arrangements so made cease to operate).
- (5) Without prejudice to sections 11(4)(a) and 12(b), it shall be the duty of the Health and Safety Commission, if so directed by the Secretary of State, to enter into arrangements with him for the Commission to be responsible for maintaining the said service.
- (6) In subsection (1) above—
  - (a) the reference to persons training for employment shall include persons attending industrial rehabilitation courses provided by virtue of the Employment and Training Act 1973 ; and
  - (b) the reference to persons (other than the Secretary of State and the Commissions there mentioned) concerned with the health of employed persons or of persons seeking or training for employment shall be taken to include organisations representing employers, employees and occupational health practitioners respectively.

## **56 Functions of authority responsible for maintaining the service**

- (1) The authority for the time being responsible for maintaining the employment medical advisory service shall for the purpose of discharging that responsibility appoint persons to be employment medical advisers, and may for that purpose appoint such other officers and servants as it may determine, subject however to the requisite approval as to numbers, that is to say—
  - (a) where that authority is the Secretary of State, the approval of the Minister for the Civil Service;
  - (b) otherwise, the approval of the Secretary of State given with the consent of that Minister.
- (2) A person shall not be qualified to be appointed, or to be, an employment medical adviser unless he is a fully registered medical practitioner.
- (3) The authority for the time being responsible for maintaining the said service may determine the cases and circumstances in which the employment medical advisers or any of them are to perform the duties or exercise the powers conferred on employment medical advisers by or under this Act or otherwise.
- (4) Where as a result of arrangements made in pursuance of section 55(2) the authority responsible for maintaining the said service changes, the change shall not invalidate any appointment previously made under subsection (1) above, and any such appointment subsisting when the change occurs shall thereafter have effect as if made by the new authority.

## **57 Fees**

- (1) The Secretary of State may by regulations provide for such fees as may be fixed by or determined under the regulations to be payable for or in connection with the performance by the authority responsible for maintaining the employment medical

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advisory service of any function conferred for the purposes of that service on that authority by virtue of this Part or otherwise.

- (2) For the purposes of this section, the performance by an employment medical adviser of his functions shall be treated as the performance by the authority responsible for maintaining the said service of functions conferred on that authority as mentioned in the preceding subsection.
- (3) The provisions of subsections (4), (5) and (8) of section 43 shall apply in relation to regulations under this section with the modification that references to subsection (2) of that section shall be read as references to subsection (1) of this section.
- (4) Where an authority other than the Secretary of State is responsible for maintaining the said service, the Secretary of State shall consult that authority before making any regulations under this section.

## **58 Other financial provisions**

- (1) The authority for the time being responsible for maintaining the employment medical advisory service may pay—
  - (a) to employment medical advisers such salaries or such fees and travelling or other allowances; and
  - (b) to other persons called upon to give advice in connection with the execution of the authority's functions under this Part such travelling or other allowances or compensation for loss of remunerative time; and
  - (c) to persons attending for medical examinations conducted by, or in accordance with arrangements made by, employment medical advisers (including pathological, physiological and radiological tests and similar investigations so conducted) such travelling or subsistence allowances or such compensation for loss of earnings,as the authority may, with the requisite approval, determine.
- (2) For the purposes of the preceding subsection the requisite approval is—
  - (a) where the said authority is the Secretary of State, the approval of the Minister for the Civil Service ;
  - (b) otherwise, the approval of the Secretary of State given with the consent of that Minister.
- (3) Where an authority other than the Secretary of State is responsible for maintaining the said service, it shall be the duty of the Secretary of State to pay to that authority such sums as are approved by the Treasury and as he considers appropriate for the purpose of enabling the authority to discharge that responsibility.

## **59 Duty of responsible authority to keep accounts and to report**

- (1) It shall be the duty of the authority for the time being responsible for maintaining the employment medical advisory service—
  - (a) to keep, in relation to the maintenance of that service, proper accounts and proper records in relation to the accounts;
  - (b) to prepare in respect of each accounting year a statement of accounts relating to the maintenance of that service in such form as the Secretary of State may direct with the approval of the Treasury; and

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- (c) to send copies of the statement to the Secretary of State and the Comptroller and Auditor General before the end of the month of November next following the accounting year to which the statement relates.
- (2) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of subsection (1) above and shall lay copies of each statement and of his report before each House of Parliament.
- (3) It shall also be the duty of the authority responsible for maintaining the employment medical advisory service to make to the Secretary of State, as soon as possible after the end of each accounting year, a report on the discharge of its responsibilities in relation to that service during that year; and the Secretary of State shall lay before each House of Parliament a copy of each report made to him in pursuance of this subsection.
- (4) Where as a result of arrangements made in pursuance of section 55(2) the authority responsible for maintaining the employment medical advisory service changes, the change shall not affect any duty imposed by this section on the body which was responsible for maintaining that service before the change.
- (5) No duty imposed on the authority for the time being responsible for maintaining the employment medical advisory service by subsection (1) or (3) above shall fall on the Commission (which is subject to corresponding duties under Schedule 2) or on the Secretary of State.
- (6) In this section " accounting year " means, except so far as the Secretary of State otherwise directs, the period of twelve months ending with 31st March in any year.

## **60 Supplementary**

- (1) It shall be the duty of the Secretary of State to secure that each Area Health Authority arranges for one of its officers who is a fully registered medical practitioner to furnish, on the application of an employment medical adviser, such particulars of the school medical record of a person who has not attained the age of eighteen and such other information relating to his medical history as the adviser may reasonably require for the efficient performance of his functions; but no particulars or information about any person which may be furnished to an adviser in pursuance of this subsection shall (without the consent of that person) be disclosed by the adviser otherwise than for the efficient performance of his functions.
- (2) In its application to Scotland the preceding subsection shall have effect with the substitution of the words " every Health Board arrange for one of their " for the words from " each " to " its ".
- (3) The Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament modify the provisions of section 7(3) and (4) of the Employment and Training Act 1973 (which require a person's period of continuous employment by a relevant body or in the civil service of the State to be treated, for the purposes of sections 1 and 2 of the Contracts of Employment Act 1972 and of certain provisions of the Industrial Relations Act 1971 affecting the right of an employee not to be unfairly dismissed, as increased by reference to previous periods of continuous employment by such a body or in that service) for the purpose of securing that employment as an employment medical adviser by an authority other than the Secretary of State is similarly treated for those purposes.

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An order under this subsection may be varied or revoked by a subsequent order thereunder.

- (4) References to the chief employment medical adviser or a deputy chief employment medical adviser in any provision of an enactment or instrument made under an enactment shall be read as references to a person appointed for the purposes of that provision by the authority responsible for maintaining the employment medical advisory service.
- (5) The following provisions of the Employment Medical Advisory Service Act 1972 (which are superseded by the preceding provisions of this Part or rendered unnecessary by provisions contained in Part I), namely sections 1 and 6 and Schedule 1, shall cease to have effect; but—
  - (a) in so far as anything done under or by virtue of the said section 1 or Schedule 1 could have been done under or by virtue of a corresponding provision of Part I or this Part, it shall not be invalidated by the repeal of that section and Schedule by this Act but shall have effect as if done under or by virtue of that corresponding provision; and
  - (b) any order made under the said section 6 which is in force immediately before the repeal of that section by this Act shall remain in force notwithstanding that repeal, but may be revoked or varied by regulations under section 43(2) or 57, as if it were an instrument containing regulations made under section 43(2) or 57, as the case may require.
- (6) Where any Act (whether passed before, or in the same Session as, this Act) or any document refers, either expressly or by implication, to or to any enactment contained in any of the provisions of the said Act of 1972 which are mentioned in the preceding subsection, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.
- (7) Nothing in subsection (5) or (6) above shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).