



# National Health Service Act 1977

## 1977 CHAPTER 49

### PART III

#### OTHER POWERS OF THE SECRETARY OF STATE AS TO THE HEALTH SERVICE

##### *Control of maximum prices for medical supplies*

#### **57 Maximum price of medical supplies may be controlled.**

- (1) The Secretary of State may by order provide for controlling maximum prices to be charged for any medical supplies required for the purposes of this Act.
- (2) The Secretary of State may by direction given with respect to any undertaking, or by order made with respect to any class or description of undertakings, being an undertaking or class or description of undertakings concerned with medical supplies required for the purposes of this Act, require persons carrying on the undertaking or undertakings of that class or description—
  - (a) to keep such books, accounts and records relating to the undertaking as may be prescribed by the direction or, as the case may be, by the order or a notice served under the order;
  - (b) to furnish at such times, in such manner and in such form as may be so prescribed such estimates, returns or information relating to the undertaking as may be so prescribed.
- (3) The additional provisions set out in Schedule 11 to this Act have effect in relation to this section; and
  - “medical supplies” in this section includes surgical, dental and optical materials and equipment; and
  - “undertaking” in this section and that Schedule means any public utility undertaking or any undertaking by way of trade or business.

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*Additional powers as to services and supplies; and the use of those services and supplies for private patients*

58 ..... F1

**Textual Amendments**  
F1 S. 58 repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

59, 60. .... F2

**Textual Amendments**  
F2 Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)

61 ..... F3

**Textual Amendments**  
F3 S. 61 repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

**62 Restriction of powers under ss. 25, 58 and 61.**

The Secretary of State shall exercise the powers conferred on him by the provisions of section 25 above (supplies not readily obtainable) . . . <sup>F4</sup>only if and to the extent that he is satisfied that anything which he proposes to do or allow under those powers—

- (a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than as private patients.

**Textual Amendments**  
F4 Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

*Further provisions as to payments by patients for health service accommodation and services*

**63 Hospital accommodation on part payment.**

- (1) The Secretary of State may authorise the accommodation described in this section to be made available, [<sup>F5</sup>for patients to such extent as he may determine, and may recover

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such charges as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis].

The accommodation mentioned above is—

- (a) in single rooms or small wards which is not for the time being needed by any patient on medical grounds;
- (b) at any health service hospital or group of hospitals, or a hospital in which patients are treated under arrangements made by virtue of section 23 above, or at the health service hospitals in a particular area or a hospital in which patients are so treated.

[<sup>F6</sup>(1C) References in subsection (1) above to a health service hospital do not include references to a hospital vested in an NHS trust.]

(2) ..... <sup>F7</sup>

#### Textual Amendments

- F5** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 7\(9\)\(a\)](#)
- F6** [S. 63\(1C\)](#) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 18\(3\)](#)
- F7** [S. 63\(2\)](#) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), ss. 7\(9\)\(b\), 25\(2\), Sch. 3](#)

#### Modifications etc. (not altering text)

- C1** [S. 63](#): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747, regs. 2\(1\), 3, 4, Sch. 1](#)

### 64 Expenses payable by remuneratively employed resident patients.

The Secretary of State may require any person—

- (a) who is a resident patient for whom the Secretary of State provides services under this Act; and
- (b) who is absent during the day for the purpose of engaging in remunerative employment from the hospital where he is a patient,

to pay such part of the cost of his maintenance in the hospital and any incidental cost as may seem reasonable to the Secretary of State having regard to the amount of that person's remuneration, and the Secretary of State may recover the amount so required.

### [<sup>F8</sup>65 Accommodation and services for private patients.

- (1) [<sup>F9</sup>If the Secretary of State is satisfied, in the case of a health service hospital or group of such hospitals, that it is reasonable to do so, he may authorise accommodation and services at the hospital or hospitals in question to be made available, to such extent as he may determine][<sup>F9</sup>Subject to the provisions of this section, to such extent as they may determine, a District or Special Health Authority may make available at a hospital or hospitals for which they have responsibility accommodation and services], for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Secretary of State may determine and may make and recover such charges as he may determine in respect of such accommodation and services and calculate them on any basis that he considers to be the appropriate commercial basis; but he shall do so only if and to the extent that he is satisfied that to do so—

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- (a) will not to a significant extent interfere with the performance by <sup>F10</sup>him of any duty imposed on him by <sup>F10</sup>the Authority of any function conferred on the Authority under] this Act to provide accommodation or services of any kind; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

<sup>F11</sup>(1A) [ Before determining to make any accommodation or services available as mentioned in subsection (1) above, a District or Special Health Authority shall consult organisations representative of the interests of persons likely to be affected by the determination.]

(2) <sup>F12</sup>[The Secretary of State]<sup>F12</sup>A District or Special Health Authority] may allow accommodation and services <sup>F13</sup>to which an authorisation under subsection (1) above relates to be made available<sup>F13</sup>which are made available under subsection (1) above to be so made available] in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital for the treatment of private patients of that practitioner.

<sup>X1</sup>(3) [ The Secretary of State shall revoke an authorisation under this section only if and to the extent that he is satisfied that sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at health service hospitals) to meet the reasonable demand for them in the area or areas served by the hospital or hospitals in question.]

<sup>F14</sup>(3) [ The Secretary of State may give directions to a District or Special Health Authority in relation to the exercise of its functions under this section; and it shall be the duty of an authority to whom directions are so given to comply with them.]

<sup>F15</sup>(4) [ References in the preceding provisions of this section to a health service hospital do not include references to a hospital vested in an NHS trust.]]

#### Editorial Information

- X1** S. 65(3) beginning with “The Secretary of State may” substituted (1.4.1991) for subsection (3) beginning with “The Secretary of State shall” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 25\(5\)](#)

#### Textual Amendments

- F8** S. 65 substituted for ss. 65 and 66 by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 7\(10\)](#)
- F9** Words beginning with “Subject” substituted (1.4.1991) for words beginning with “If” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 25\(2\)\(a\)](#)
- F10** Words beginning with “the Authority” substituted (1.4.1991) for words beginning with “him of” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 25\(2\)\(c\)](#)
- F11** S. 65(1A) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 25\(3\)](#)
- F12** Words beginning with “A District” substituted (1.4.1991) for “The Secretary of State” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 25\(4\)\(a\)](#)
- F13** Words beginning with “which are made” substituted (1.4.1991) for words beginning with “to which” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 25\(4\)\(b\)](#)

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**F14** S. 65(3) beginning with “The Secretary of State may” substituted (1.4.1991) for subsection (3) beginning with “The Secretary of State shall” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 25\(5\)](#)

**F15** S. 65(4) added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 18\(4\)](#)

**Modifications etc. (not altering text)**

**C2** S. 65(1): by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\), s. 25\(2\)\(b\)](#) it is provided that for any reference to the Secretary of State in the words beginning “for patients who” and ending “to do so” preceding para. (a) there shall be substituted (1.4.1991) a reference to the District Health Authority or Special Health Authority, as the case may require

**66A** ..... **F16**

**Textual Amendments**

**F16** S. 66A repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(2\), Sch. 3](#)

**67—** ..... **F17**  
**71.**

**Textual Amendments**

**F17** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\), Sch. 7](#)

*Use by practitioners of health service facilities for private Practice*

**72 Permission for use of facilities in private practice.**

- (1) A person to whom this section applies who wishes to use any relevant health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients may apply in writing to the Secretary of State for permission under this section.
- (2) Any application for permission under this section must specify—
  - (a) which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients; and
  - (b) which of the kinds of services mentioned in subsection (1) above he wishes the permission to cover.
- (3) On receiving an application under this section the Secretary of State—
  - (a) shall consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any services provided under this Act; and
  - (b) shall grant the permission applied for unless in his opinion anything for which permission is sought would so interfere.

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- (4) Any grant of permission under this section shall be on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine.
- (5) The persons to whom this section applies are—
  - (a) persons of any of the following descriptions who provide services under Part II of this Act, namely, medical practitioners, dental practitioners, registered pharmacists, and ophthalmic . . . <sup>F18</sup> opticians; and
  - (b) other persons who provide pharmaceutical or ophthalmic services under Part II; and
  - (c) chiroprodists who provide services under this Act at premises where services are provided under Part II.
- (6) In this section—
  - (a) “relevant health service accommodation or facilities”, in relation to a person to whom this section applies, means any accommodation or facilities available at premises provided by the Secretary of State by virtue of this Act, being accommodation or facilities which that person is for the time being authorised to use for purposes of Part II; or
  - (b) in the case of a person to whom this section applies by virtue of paragraph (c) of subsection (5) above, accommodation or facilities which that person is for the time being authorised to use for purposes of this Act at premises where services are provided under Part II.

**Textual Amendments**  
**F18** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. 1](#)

**Modifications etc. (not altering text)**  
**C3** [S. 72\(1\)\(3\)\(4\)](#): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747](#), regs. 2(1), 3, 4, [Sch. 1](#)

73— ..... <sup>F19</sup>  
76.

**Textual Amendments**  
**F19** [Ss. 6\(1\)\(2\)\(6\)\(7\), 30\(2\), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68–70](#) repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)

*Regulations as to certain charges*

**77 Charges for drugs, medicines or appliances, or pharmaceutical services.**

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—
  - (a) the supply under this Act (otherwise than under Part II) of drugs, medicines or appliances (including the replacement and repair of those appliances),
  - (b) such of the pharmaceutical services referred to in Part II as may be prescribed,

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and paragraph (a) and (b) of this subsection may include the supply of substances and appliances mentioned in paragraph (b) of section 5(1) above.

- (2) Regulations under subsection (1) above may provide for the grant, on payment of such sums as may be prescribed by those regulations, of certificates conferring on the persons to whom the certificates are granted exemption from charges otherwise exigible under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed, and different sums may be so prescribed in relation to different periods.
- (3) The additional provisions of paragraphs 1 and 4 of Schedule 12 to this Act have effect in relation to this section.

## 78 Charges for dental or optical appliances.

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of such amounts as are mentioned in sub-paragraph (1) of paragraph 2 of Schedule 12 to this Act, in respect of the supply under the Act of such . . . <sup>F20</sup>optical appliances as are mentioned in that sub-paragraph.

[<sup>F21</sup>(1A) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of amounts calculated in accordance with section 79A below in respect of the supply under this Act of dentures and other dental appliances of prescribed descriptions.]

- (2) If the Secretary of State, after consultation with the university associated with any hospital providing facilities for clinical dental teaching, is satisfied that it is expedient in the interests of dental training or education that the charges imposed by subsection [<sup>F22</sup>(1A)] above should be remitted in the case of dental services provided at that hospital, either generally or subject to limitations or conditions, he may by order provide for that purpose.

Any order made under this subsection may be revoked or varied by a subsequent order made by the Secretary of State after such consultation as is mentioned above.

- (3) The additional provisions of paragraphs 2 and 5 of Schedule 12 have effect in relation to this section.

### Textual Amendments

**F20** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(2\), Sch. 3](#)

**F21** [S. 78\(1A\)](#) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 11\(1\)](#)

**F22** Word substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(1\), Sch. 2 para. 5](#)

## 79 Charges for dental treatment.

- (1) A charge of [<sup>F23</sup>an amount calculated in accordance with section 79A below] may be made and recovered, in such manner as may be prescribed, in respect of any services provided as part of the general dental services under Part II of this Act, not being—

- (a) . . . . . <sup>F24</sup>
- (b) the repair of appliances other than prescribed appliances;
- (c) the arrest of bleeding; . . . <sup>F24</sup>
- (d) . . . . . <sup>F24</sup>

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The additional provisions of paragraphs 3 and 5 of Schedule 12 have effect in relation to this subsection.

- (2) Regulations may provide that, in the case of such special dental treatment as may be prescribed, being treatment provided as part of the general dental services, such charges as may be prescribed may be made and recovered by the person providing the services.

#### Textual Amendments

- F23** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 11\(2\)](#)  
**F24** [S. 79\(a\)\(d\)](#) and the word “or” immediately preceding (d) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 25\(2\)](#), [Sch. 3](#)

#### Modifications etc. (not altering text)

- C4** By [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 11\(7\)](#) it is provided that [s. 79\(1\)](#) shall cease to have effect so far as it provides that a charge may not be authorised for the clinical examination of a patient and any report on that examination

### [<sup>F25</sup>79A Calculation of charges for dental appliances and treatment.

#

- (1) Subject to the following provisions of this section, regulations may make such provision as to the amount of any charge—
- (a) authorised by section 78(1A) above for the supply of dentures or other dental appliances; or
  - (b) authorised by section 79 above for the provision of services, as appears to the Secretary of State to be appropriate.
- (2) Without prejudice to the generality of subsection (1) above, regulations may provide that any charge which is so authorised in respect of appliances or services supplied or provided under Part II of this Act—
- (a) shall be of an amount equal—
    - (i) to the practitioner’s remuneration in respect of the supply or provision; or
    - (ii) to any part of that remuneration; or
  - (b) shall be otherwise calculated by reference to that remuneration.
- (3) Without prejudice to the generality of subsection (1) above, regulations may provide that any charge which is authorised in respect of appliances supplied otherwise than under Part II of this Act—
- (a) shall be of an amount equal—
    - (i) to the remuneration a practitioner would receive for a supply under that Part of this Act of equivalent appliances, or
    - (ii) to any part of such remuneration; or
  - (b) shall be otherwise calculated by reference to such remuneration.
- (4) The charge shall not exceed the amount which the Secretary of State considers to be the cost to the health service of the supply or provision.
- (5) In this section “cost to the health service” does not include—



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- (a) any fee in respect of a visit by a practitioner to a patient; or
- (b) any fee or part of a fee payable by a patient in pursuance of regulations under section 79(2) above or section 81(b) or 82(b) below.]

#### Textual Amendments

**F25** S. 79A inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 11(3)

### 80 Charges for designated facilities.

Regulations may provide for the making and recovery of charges in respect of facilities designated by the regulations as facilities provided in pursuance of paragraph (d) or paragraph (e) of section 3(1) above.

### 81 Charges for more expensive supplies.

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State [<sup>F26</sup>or an NHS trust] in respect of the supply by him [<sup>F27</sup>or, as the case may be, by the trust] of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in paragraph 1 of Schedule 2 to this Act;
- (b) by persons providing general dental services . . . <sup>F28</sup> in respect of the supply, as part of those services, of any dental . . . <sup>F28</sup> appliance which is, at the request of the person supplied, of a more expensive type than the prescribed type or in respect of the replacement or repair of any such appliance.

#### Textual Amendments

**F26** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 5(8), [Sch. 2 para. 22\(a\)](#)

**F27** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 5(8), [Sch. 2 para. 22\(b\)](#)

**F28** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. I](#)

### 82 Charges for repairs and replacements in certain cases.

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State [<sup>F29</sup>or an NHS trust] in respect of the replacement or repair of any appliance or vehicle supplied by him [<sup>F30</sup>or, as the case may be, by the trust], or
- (b) by persons providing general dental services . . . <sup>F31</sup> in respect of the replacement or repair of any dental . . . <sup>F31</sup> appliance supplied as part of those services,

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if it is determined in the prescribed manner that the replacement or repair is necessitated by an act or omission of the person supplied or (if the act or omission occurred when the person supplied was under 16 years of age) of the person supplied or of the person having charge of him when the act or omission occurred.

#### Textual Amendments

- F29** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 5(8), [Sch. 2 para. 22\(a\)](#)
- F30** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 5(8), [Sch. 2 para. 22\(b\)](#)
- F31** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. I](#)

### 83 Sums otherwise payable to those providing services.

Regulations made—

- (a) under sections 77 to 79 and under sections 81 and 82 above providing for the making and recovery of charges in respect of any services, may provide for the reduction of the sums which would otherwise be payable by a Regional Health Authority, an Area Health Authority [<sup>F32</sup>a District Health Authority] or a Family Practitioner Committee to the persons by whom those services are provided by the amount of the charges authorised by the regulations in respect of those services;
- (b) for the purposes of section 78(1) in relation to appliances provided as part of the general dental services . . . <sup>F33</sup> under Part II of this Act, may provide for the reduction of the sums which would otherwise be payable by an Area Health Authority [<sup>F32</sup>a District Health Authority] or a Family Practitioner Committee to the persons by whom those services are provided by the amount of the charges authorised by section 78(1) in respect of those appliances.

#### Textual Amendments

- F32** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1, para. 64](#)
- F33** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. I](#)

### [<sup>F34</sup>83A Remission and repayment of charges and payment of travelling expenses.

- (1) Regulations may provide in relation to prescribed descriptions of persons—
  - (a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 77(1) above, section 78(1) [<sup>F35</sup>or (1A)] above or section 79 above; and
  - (b) for the payment by the Secretary of State [<sup>F36</sup>or an NHS trust] in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act [<sup>F36</sup>and]
  - [<sup>F37</sup>(c) for the reimbursement by a District Health Authority to an NHS trust and, in such cases as may be prescribed to another District Health Authority, of payments made by virtue of exercising the functions conferred under paragraph (b) above].

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- (2) Descriptions of persons may be prescribed for the purposes of paragraph (a) or (b) of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
- (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
  - (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.
- (3) Regulations under this section may direct how a person’s resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—
- (a) by a method set out in the regulations;
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
  - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person’s being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.]

#### Textual Amendments

- F34** S. 83A inserted by Social Security Act 1988 (c. 7, SIF 113:1), s. 14(1)
- F35** Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), Sch. 2 para. 6
- F36** Words inserted and at the end of the paragraph the word “and” added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(5)(a)
- F37** S. 83A(c) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(5)(b)

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### *Inquiries, and default and emergency powers*

#### **84 Inquiries.**

- (1) The Secretary of State may cause an inquiry to be held in any case where he deems it advisable to do so in connection with any matter arising under this Act [<sup>F38</sup>or Part I of the National Health Service and Community Care Act 1990].
- (2) For the purpose of any such inquiry (but subject to subsection (3) below) the person appointed to hold the inquiry—
  - (a) may by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
  - (b) may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make a solemn affirmation.
- (3) Nothing in this section—
  - (a) requires a person, in obedience to a summons under the section, to attend to give evidence or to produce any documents unless the necessary expenses of his attendance are paid or tendered to him; or
  - (b) empowers the person holding the inquiry to require the production of the title, or of any instrument relating to the title, of any land not being the property of a local authority.
- (4) Any person who refuses or deliberately fails to attend in obedience to a summons under this section, or to give evidence, or who deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce for the purposes of this section, shall be liable on summary conviction to a fine not exceeding [<sup>F39</sup>level 3 on the standard scale] or to imprisonment for a term not exceeding 6 months, or to both.
- (5) Where the Secretary of State causes an inquiry to be held under this section—
  - (a) the costs incurred by him in relation to the inquiry (including such reasonable sum not exceeding £30 a day as he may determine for the services of any officer engaged in the inquiry) shall be paid by such local authority or party to the inquiry as he may direct, and
  - (b) he may cause the amount of the costs so incurred to be certified, and any amount so certified and directed to be paid by any authority or person shall be recoverable from that authority or person by the Secretary of State summarily as a civil debt.

No local authority shall be ordered to pay costs under this subsection in the case of any inquiry unless it is a party to that inquiry.

- (6) Where the Secretary of State causes an inquiry to be held under this section he may make orders—
  - (a) as to the costs of the parties at the inquiry, and
  - (b) as to the parties by whom the costs are to be paid,
 and every such order may be made a rule of the High Court on the application of any party named in the order.

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#### Textual Amendments

- F38** Words added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 18\(6\)](#)
- F39** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

#### Modifications etc. (not altering text)

- C5** [S. 84\(2\)–\(4\)](#) applied with modifications by [S.I. 1979/1644](#), [reg. 10\(8\)](#)  
[S. 84\(2\)–\(4\)](#) applied (with modifications) (30.1.1998) by [S.I. 1997/2817](#), [reg. 19\(1\)\(2\)](#), [Sch. 4](#)

VALID FROM 01/08/2001

#### [<sup>F40</sup>84A Intervention orders

- (1) If the Secretary of State—
- (a) is of the opinion that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and
  - (b) is satisfied that it is appropriate for him to intervene under this section,
- he may make an order under this section in respect of the body (an “intervention order”).
- (2) The bodies to which this section applies are—
- (a) Health Authorities,
  - (b) Special Health Authorities,
  - (c) NHS trusts,
  - (d) Primary Care Trusts.
- (3) An intervention order may make any provision authorised by section 84B below (including any combination of such provisions).]

#### Textual Amendments

- F40** [S. 84A](#) inserted (1.8.2001 for E. and otherwise *prosp.*) by [2001 c. 15](#), ss. 13(1), 70(2) (with ss. 64(9), 65(4)); [S.I. 2001/2804](#) art. 2(1)(a)(2)

VALID FROM 01/08/2001

#### [<sup>F41</sup>84B Intervention orders: effect

- (1) In this section—
- (a) “member” means a member of a Health Authority, Special Health Authority or Primary Care Trust, or a member of the board of directors of an NHS trust,
  - (b) “employee member” means a member of a Health Authority, Special Health Authority or Primary Care Trust who is an officer of the Authority or Trust, or an executive director of an NHS trust.

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- (2) An intervention order may provide for the removal from office of—
  - (a) all the members, or
  - (b) those specified in the order,and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).
- (3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—
  - (a) all the members, or
  - (b) those specified in the order,and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).
- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
  - (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified,and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.
- (6) If the person referred to in subsection (5)(a) is a body referred to in section 84A(2) above, the functions of that body include the performance of the functions specified in the directions under subsection (5); and, if that body is a Health Authority, are primary functions of the Authority.
- (7) Subsection (8) applies in relation to any provision—
  - (a) in this Act, the National Health Service and Community Care Act 1990 (c. 19), or the Health and Social Care Act 2001; or
  - (b) in any order or regulations made, or directions given, under any of those Acts,which relates to the membership of the body to which an intervention order relates (or of its board of directors, in the case of an NHS trust), or relates to its procedure.
- (8) If the Secretary of State considers it appropriate, the intervention order may, in relation to any such provision specified in the order, provide—
  - (a) that it is not to apply in relation to the body while the order remains in force; or
  - (b) that it is to apply in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.]

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### Textual Amendments

**F41** S. 84B inserted (1.8.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 13(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/2804 art. 2(1)(a)

## 85 Default powers.

(1) Where the Secretary of State is of opinion, on complaint or otherwise, that—

- (a) any Regional Health Authority;
- (b) any Area Health Authority;
- [<sup>F42</sup>(bb) any District Health Authority;]
- (c) any special health authority;
- (d) any Family Practitioner Committee;
- [<sup>F43</sup>(e) [<sup>F44</sup>an NHS trust]]
- (f) the Medical Practices Committee; or
- (g) the Dental Estimates Board;

have failed to carry out any functions conferred or imposed on them by or under this Act [<sup>F45</sup>or Part I of the National Health Service and Community Care Act 1990], or have in carrying out those functions failed to comply with any regulations or directions relating to those functions, he may after such inquiry as he may think fit make an order declaring them to be in default.

(2) [<sup>F46</sup>The members of the body in default shall] forthwith vacate their office, and the order—

- (a) shall provide for the appointment, in accordance with the provisions of this Act, of new members of the body; and
- (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body in question pending the appointment of new members.

(3) ..... <sup>F47</sup>

(5) An order made under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including—

- (a) provision for the transfer to the Secretary of State of property and liabilities of the body in default; and
- (b) where any such order is varied or revoked by a subsequent order, provision in the revoking order or a subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him.

### Textual Amendments

**F42** S. 85(1)(bb) inserted by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 1, para. 65

**F43** S. 85(1)(e) repealed (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66(2), 67(2), Sch. 10

**F44** S. 85(1)(e) substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(7)(a)

**F45** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(7)(a)

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- F46** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(7)(b)**
- F47** S. 85(3)(4) repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1)(2), Sch. 9 para. 18(7)(c), **Sch. 10**

**Modifications etc. (not altering text)**

- C6** S. 85(3)–(5) extended by Mental Health Act 1983 (c. 20, SIF 85), **Ss. 124(2), 131(1)** (the said s. 124 repealed (prosp.) by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), ss. 66(2), 67(2), **Sch. 10**)

**86 Emergency powers.**

If the Secretary of State—

- (a) considers that by reason of an emergency it is necessary, in order to ensure that a service falling to be provided in pursuance of this Act [<sup>F48</sup>or Part I of the National Health Service and Community Care Act 1990] is provided, to direct that during the period specified by the directions a function conferred on any body or person by virtue of this Act [<sup>F48</sup>or that Part] shall to the exclusion of or concurrently with that body or person be performed by another body or person, then
- (b) he may give directions accordingly and it shall be the duty of the bodies or persons in question to comply with the directions.

The powers conferred on the Secretary of State by this section are in addition to any other powers exercisable by him.

**Textual Amendments**

- F48** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(8)**

**Modifications etc. (not altering text)**

- C7** S. 86 amended (1.4.1998 to the extent it relates to pilot schemes under which personal medical services are provided otherwise 1.10.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 21**; S.I. 1998/631, art. 2(a)(b), **Schs. 1 2** (with arts. 3-5); S.I. 1998/1998, art. 2(2), **Schs. 1 2**



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