



# Health and Social Care (Community Health and Standards) Act 2003

## 2003 CHAPTER 43

### PART 5

#### MISCELLANEOUS

#### *Welfare Food Schemes*

#### **185 Replacement of the Welfare Food Schemes: Great Britain**

- (1) In the Social Security Act 1988 (c. 7), for section 13 (schemes for the distribution etc of welfare foods), substitute—

**“13 Benefits under schemes for improving nutrition: pregnant women, mothers and children**

- (1) Regulations may establish one or more schemes to provide benefits for prescribed descriptions of—
- (a) pregnant women,
  - (b) mothers, and
  - (c) children,
- with a view to helping and encouraging them to have access to, and to incorporate in their diets, food of a prescribed description.
- (2) Before establishing, or varying, a scheme the Secretary of State must consult the Scottish Ministers and the National Assembly for Wales (“the Assembly”).
- (3) A scheme may, in particular, specify requirements that must be satisfied—
- (a) before a person may become entitled to a benefit;
  - (b) for a beneficiary to remain entitled to a continuing benefit.
- (4) A scheme may also include provision—

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- (a) for a benefit to consist of food of a prescribed description being provided by—
    - (i) a person who supplies, or arranges for the supply of, food of that description for beneficiaries under the scheme;
    - (ii) a person providing a service (such as day care) for the recipient of the benefit; or
    - (iii) a health service body;
  - (b) for the use of vouchers, or similar arrangements, in connection with the provision of benefits;
  - (c) that a person taking part in the scheme, otherwise than as a beneficiary, must be registered under the scheme;
  - (d) for the payment by the Secretary of State of sums to persons registered in accordance with a provision of a kind mentioned in paragraph (c), in respect of things provided or done by them in accordance with the scheme;
  - (e) for the making of payments to such persons entitled to receive benefits as may be determined by or under the scheme;
  - (f) for the delegation, in accordance with provisions of the scheme, of prescribed functions under the scheme;
  - (g) for the scheme, or prescribed provisions of the scheme, to be administered on behalf of the Secretary of State by such health service body, or other description of body, as may be prescribed;
  - (h) requiring prescribed categories of persons to take reasonable steps to provide—
    - (i) to a person authorised for the purpose in accordance with the scheme,
    - (ii) on production, if required, of evidence of his authority, such information or evidence as may be reasonably needed in connection with administering the scheme.
- (5) Provision of a kind mentioned in subsection (4)(h) may, in particular—
- (a) require information or evidence to be provided in a legible form;
  - (b) authorise the taking of copies or making of extracts;
  - (c) require an explanation by the information provider of anything which he has provided;
  - (d) require an information provider to state, to the best of his knowledge and belief, where information or evidence that he has failed to provide is held.
- (6) The power to prescribe descriptions of food (conferred by subsection (1)) is to be exercised, in relation to the operation of a scheme in Wales, by regulations made by the Assembly.
- (7) The Secretary of State may give such directions—
- (a) to a body administering a scheme (or part of a scheme),
  - (b) in relation to matters relating to the operation of the scheme (or that part of the scheme),
- as he considers appropriate.

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- (8) The Assembly may, with the agreement of the Secretary of State, give such directions—
- (a) to a body administering a scheme (or part of a scheme),
  - (b) in relation to matters relating to the operation of the scheme (or that part of the scheme) in Wales,
- as it considers appropriate.
- (9) A scheme may direct that prescribed enactments relating to the administration of benefit under the Social Security Administration Act 1992 (c. 5) (including enactments relating to offences and criminal proceedings) are to have effect for the purpose of administering the scheme subject to such modifications (if any) as may be prescribed.
- (10) The Secretary of State may not make a statutory instrument containing the first set of regulations made under subsection (1) unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (11) In this section—
- “benefit”, in relation to a scheme, means a benefit under the scheme;
  - “children” has such meaning as may be prescribed;
  - “enactment” includes an Act of the Scottish Parliament and a provision made under an enactment;
  - “food” includes vitamins, minerals and other dietary supplements;
  - “health service body” has such meaning as may be prescribed;
  - “information provider” means the person who is required to provide information or, where that person is a body corporate, any person who is, or at any time has been, an officer or employee of the body corporate;
  - “pregnant” includes recently pregnant;
  - “prescribed” means prescribed by regulations;
  - “regulations”, except in subsection (6), means regulations made by the Secretary of State;
  - “scheme” means a scheme made under this section;
  - “women” includes persons under the age of 18.”
- (2) In section 15A of that Act—
- (a) in subsection (2), after the first “instrument” insert “made by the Secretary of State”; and
  - (b) omit subsection (3).

## **186 Replacement of the Welfare Food Schemes: Northern Ireland**

An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of section 185 above—

- (a) is not subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but

- (b) is subject to annulment in pursuance of a resolution of either House of Parliament.

### *Appointments and employment*

#### **187 Appointments to certain health and social care bodies**

- (1) This section applies to a body (however established) which has functions relating to—
  - (a) health;
  - (b) social care;
  - (c) the regulation of professions associated with health or social care.
- (2) The Secretary of State may direct a Special Health Authority to exercise so much of the appointments function relating to a body to which this section applies as is specified in the direction.
- (3) If the Secretary of State gives a direction under subsection (2) the 1977 Act has effect as if—
  - (a) the direction is a direction of the Secretary of State under section 16D of that Act;
  - (b) the function is exercisable by the Special Health Authority under section 16D.
- (4) If the Secretary of State gives a direction under subsection (2) in respect of a body which exercises functions in relation to any part of the United Kingdom other than England and Wales subsection (5) applies—
  - (a) at the time the direction is given;
  - (b) for the purposes of anything done by a Special Health Authority in pursuance of the direction.
- (5) Sections 11 and 16D of and (so far as relating to a Special Health Authority) Schedule 5 to the 1977 Act and any other provision of that Act which relates to the exercise of the function in pursuance of the direction must be taken to extend to any part of the United Kingdom in relation to which the body exercises functions.
- (6) The appointments function is any function exercisable by the Secretary of State in relation to—
  - (a) the appointment of persons to be members of a body to which this section applies;
  - (b) the removal (whether permanently or otherwise) of such persons from the membership of the body,and includes any function relating to the appointment to or removal from (whether permanently or otherwise) any particular office in the membership of the body.
- (7) For the purposes of this section it is immaterial that a body has functions relating to matters other than those specified in subsection (1).
- (8) Schedule 12 amends certain enactments which provide for appointments to be made to certain bodies by or on the advice of the Privy Council.
- (9) If in the exercise of a power conferred by virtue of that Schedule the Privy Council gives a direction corresponding to a direction given by the Secretary of State under subsection (2) above, subsections (3) to (5) above apply for the purposes of the Privy

Council's direction as they apply for the purposes of a direction given by the Secretary of State.

- (10) Nothing in this section applies in relation to the Commission for Healthcare Audit and Inspection or the Commission for Social Care Inspection.

### **188 Appointments to certain health and social care bodies: joint functions**

- (1) This section applies if (apart from section 187) the appointments function in relation to a body is exercisable jointly or concurrently with a person who is not a Minister of the Crown.
- (2) A requirement to exercise the function jointly or concurrently does not prevent the Secretary of State from making a direction in relation to the body but he must not do so unless he first consults the other person.
- (3) If a direction is given as mentioned in subsection (2) so much of the functions of the Secretary of State and of the other person as are specified in the direction is exercisable by the Special Health Authority acting alone.
- (4) Subsections (2) and (3) do not apply if the other person is the Scottish Ministers but that does not prevent the Secretary of State from giving a direction under section 187 in relation to the exercise of any function he has.
- (5) Appointments function has the same meaning as in section 187.

### **189 Validity of clearance for employment in certain NHS posts**

- (1) In section 7 of the Protection of Children Act 1999 (c. 14) (effect of inclusion of person on lists relating to suitability for child care positions) after subsection (3) there are inserted the following subsections—

“(3A) This section does not apply in relation to an offer of relevant NHS employment if each of the following paragraphs applies in respect of the individual to whom the offer is made—

- (a) at the time the offer is made he is employed by an NHS body;
- (b) that NHS body has ascertained that he is not included in the list kept under section 1 above or (during the period that he is employed by that body) another NHS body or an employment agency or employment business has ascertained that he is not included in the list;
- (c) subsection (1A) (inserted by paragraph 26(2) of Schedule 4 to the Care Standards Act 2000) does not apply to him;
- (d) he accepts the offer and for so long as he is employed in the employment to which the offer relates paragraph (c) applies.

(3B) Relevant NHS employment is employment in a child care position with an NHS body.

(3C) Each of the following is an NHS body—

- (a) a National Health Service trust;
- (b) a Strategic Health Authority;
- (c) an NHS foundation trust;
- (d) a Health Authority;
- (e) a Local Health Board;

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- (f) a Special Health Authority;
  - (g) a Primary Care Trust.”
- (2) In section 89 of the Care Standards Act 2000 (c. 14) (effect of inclusion of person on lists relating to suitability for care positions) after subsection (4) there are inserted the following subsections—
- “(4A) This section does not apply in relation to an offer of relevant NHS employment if each of the following paragraphs applies in respect of the individual to whom the offer is made—
- (a) at the time the offer is made he is employed by an NHS body;
  - (b) that NHS body has ascertained that he is not included in the list kept under section 81 above or (during the period that he is employed by that body) another NHS body or an employment agency or employment business has ascertained that he is not included in the list;
  - (c) subsection (2) does not apply to him;
  - (d) he accepts the offer and for so long as he is employed in the employment to which the offer relates paragraph (c) applies.
- (4B) Relevant NHS employment is employment in a care position with an NHS body.
- (4C) Each of the following is an NHS body—
- (a) a National Health Service trust;
  - (b) a Strategic Health Authority;
  - (c) an NHS foundation trust;
  - (d) a Health Authority;
  - (e) a Local Health Board;
  - (f) a Special Health Authority;
  - (g) a Primary Care Trust.”
- (3) Section 7(3A)(b) of the Protection of Children Act 1999 (c. 14) has effect until the coming into force of paragraph 121 of Schedule 21 to the Education Act 2002 (c. 32) as if for “the list kept under section 1 above” there is substituted “any of the lists mentioned in subsection (1)(a)”.
- (4) The effect of subsections (1) to (3) is to be disregarded in determining for the purposes of section 1 of the Regulatory Reform Act 2001 (c. 6) (power by order to make provision reforming law which imposes burdens) whether any provision of either of the following Acts falls within subsection (4)(a) of that section (provision amended by an Act within previous two years)—
- (a) the Protection of Children Act 1999 (c. 14);
  - (b) the Care Standards Act 2000 (c. 14).

*Public Health Laboratory Service Board*

**190 Abolition of Public Health Laboratory Service Board**

- (1) The Public Health Laboratory Service Board is abolished.
- (2) Schedule 13 has effect.

- (3) On the day this section is commenced by order under section 199 the property, rights and liabilities of the Board vest in the Secretary of State.

*Other provisions*

**191 Loans by Secretary of State to NHS trusts**

- (1) Paragraph 1 of Schedule 3 to the National Health Service and Community Care Act 1990 (c. 19) (borrowings of NHS trusts) is amended as follows.
- (2) In sub-paragraph (6), the words “, with the consent of the Treasury,” are omitted.

**192 Amendment of provision relating to reform of Welsh health authorities**

In section 27 of the Government of Wales Act 1998 (c. 38) (reform of Welsh health authorities), in subsection (7), for “(5)(b)” substitute “(7)(b)”.