



# Health Act 2006

## 2006 CHAPTER 28

### PART 5

#### APPOINTMENTS COMMISSION

VALID FROM 01/10/2006

#### *The Appointments Commission*

#### **57 The Appointments Commission**

- (1) There is to be a body corporate known as the Appointments Commission.
- (2) The Commission is to have the functions conferred on it by or under this or any other Act.
- (3) Schedule 4 makes further provision about the Commission.
- (4) The National Health Service Appointments Commission is abolished on the appointed day.
- (5) “The appointed day” means the day appointed under section 83 for the coming into force of subsection (4).

*Status: Point in time view as at 19/07/2006. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Health Act 2006, Part 5. (See end of Document for details)*

VALID FROM 28/09/2006

### *Delegation of appointment functions*

#### **58 Commission to exercise Secretary of State's appointment functions**

- (1) The Commission is to exercise so much of any function of the Secretary of State relating to the appointment of any persons within subsection (2), (3) or (4) as may be specified in a direction given by the Secretary of State.
- (2) The persons within this subsection are—
  - (a) chairmen and non-executive members of Strategic Health Authorities, Primary Care Trusts, NHS trusts or Special Health Authorities;
  - (b) trustees for NHS trusts or Primary Care Trusts; and
  - (c) special trustees to which section 95 of the 1977 Act applies (special trustees for university and teaching hospitals).
- (3) The persons within this subsection are chairmen and non-executive members of any of the statutory bodies listed in Schedule 5.
- (4) The persons within this subsection are chairmen and non-executive members of any other body (however established) which has functions relating to—
  - (a) health,
  - (b) social care, or
  - (c) the regulation of professions associated with health or social care.
- (5) For the purposes of subsection (4) it is immaterial—
  - (a) that a body has functions relating to matters other than those specified in that subsection, or
  - (b) that the body's functions are not exercisable only in relation to England.

#### **59 Cases where appointment functions exercisable jointly etc.**

- (1) This section applies if a function of the Secretary of State relating to the appointment of any persons within section 58(2), (3) or (4) is exercisable by the Secretary of State jointly or concurrently with—
  - (a) a devolved authority, or
  - (b) any other 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 giving a direction under section 58 in respect of the function, but he must not do so unless he first consults the devolved authority or other person.
- (3) If the Secretary of State gives such a direction, so much of the functions of the Secretary of State and the devolved authority or other person as is specified in the direction is exercisable by the Commission acting alone.
- (4) Subsections (2) and (3) do not apply if the function is exercisable jointly or concurrently with the Scottish Ministers, but the Secretary of State may nevertheless give a direction under section 58 in respect of the exercise of any function that he has.

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*Changes to legislation: There are currently no known outstanding effects for the Health Act 2006, Part 5. (See end of Document for details)*

## **60 Commission to exercise Privy Council's appointment functions**

- (1) The Commission is to exercise so much of any function of the Privy Council relating to the appointment of members to any of the regulatory bodies listed in Schedule 6 as may be specified in a direction given by the Privy Council.
- (2) The Commission is to exercise so much of any function of the Privy Council relating to the appointment of members to the Council of the Royal Pharmaceutical Society of Great Britain as may be specified in a direction given by the Privy Council.

## **61 Commission to exercise Assembly's appointment functions**

The Commission is to exercise so much of any function of the National Assembly for Wales relating to the appointment of members to the Commission for Healthcare Audit and Inspection or the Health Protection Agency as may be specified in a direction given by the Assembly.

## **62 Exercise of appointments functions**

- (1) This section applies where any function is exercisable by the Commission in relation to an appointment by virtue of a direction under section 58, 60 or 61.
- (2) Subject to the following provisions of this section, the function is exercisable by the Commission in relation to the appointment in such manner as it thinks fit, having regard to the provisions of any enactment or instrument relating to the making of the appointment (as they have effect in accordance with subsection (3)).
- (3) References in any such provisions to things done, or falling to be done, by or in relation to the Secretary of State, the Privy Council or the National Assembly for Wales have effect, so far as necessary in connection with the function being exercisable by the Commission, as references to things done, or falling to be done, by or in relation to the Commission.
- (4) The direction mentioned in subsection (1) may contain provisions relating to the manner in which the function is to be exercised.
- (5) Those provisions may, in particular, include provisions relating to—
  - (a) matters to which the Commission is to have regard,
  - (b) any criteria to be used, or
  - (c) the procedure to be followed,in relation to making appointments in exercise of the function.
- (6) The Commission must take into account any guidance which—
  - (a) is issued by the Commissioner for Public Appointments or any government department, and
  - (b) relates to the making of appointments to public bodies.

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*Changes to legislation: There are currently no known outstanding effects for the Health Act 2006, Part 5. (See end of Document for details)*

### Other functions

VALID FROM 01/10/2006

#### **63 Commission to assist other bodies with appointments**

- (1) The Commission may enter into arrangements under subsection (2) with the board of governors of an NHS foundation trust.
- (2) Arrangements under this subsection are arrangements providing for the Commission to assist the board in connection with the exercise of their powers relating to—
  - (a) the appointment of the chairman and non-executive directors under paragraph 17 of Schedule 1 to the 2003 Act; or
  - (b) the appointment of the initial chairman and the initial non-executive directors in accordance with paragraph 19 of that Schedule.
- (3) The Commission may enter into arrangements under subsection (4) with—
  - (a) any Minister of the Crown exercising functions in relation to England, or
  - (b) any officer acting on behalf of such a Minister.
- (4) Arrangements under this subsection are arrangements providing for the Commission to assist the Minister or officer in connection with the exercise by him of any power relating to—
  - (a) the appointment of the chairman of any body specified in the arrangements, or
  - (b) the appointment of non-executive members of such a body.
- (5) For the purposes of subsections (3) and (4) it is immaterial that the body's functions are not exercisable only in relation to England.
- (6) But arrangements may not be entered into under subsection (4) in relation to any powers that are exercisable by a Minister of the Crown jointly or concurrently with, or after consultation with—
  - (a) a devolved authority, or
  - (b) any other person who is not a Minister of the Crown.
- (7) In this section—
  - (a) “arrangements” means arrangements, whether contractual or otherwise;
  - (b) references to assistance in connection with the exercise of any power of appointment do not include the making of any appointment.

VALID FROM 01/10/2006

#### **64 Functions connected with appointments to bodies to which section 58 or 60 applies**

- (1) The Commission may provide chairmen and non-executive members of relevant bodies with general advice on matters relating to recruitment, selection, appraisal, training or development and conditions of service (including remuneration).

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- (2) The Commission may provide persons appointed by it to be chairmen and non-executive members of relevant bodies with mentoring and other assistance in relation to the exercise of their functions.
- (3) The Commission may provide chairmen and executive and non-executive members of relevant bodies with training in connection with their respective roles and responsibilities.
- (4) Arrangements under section 63(2) or (4) may provide for the Commission to exercise functions corresponding to those in subsection (1), (2) or (3) above in relation to the persons in connection with whose appointments the Commission provides assistance under the arrangements.
- (5) In this section “relevant body” means any body in relation to which a direction is in force under section 58 or 60.

## 65 Prescribed functions

- (1) Regulations may make provision for or in connection with conferring functions on the Commission in relation to appointments to applicable bodies and matters relating to such appointments.
- (2) The functions which may be so conferred include—
  - (a) administering schemes relating to the payment, to chairmen and non-executive members of applicable bodies, of remuneration and allowances falling to be determined by the Secretary of State;
  - (b) publishing or otherwise making available information as to the terms and conditions applying to chairmen and non-executive members of applicable bodies, including information as to such remuneration and allowances;
  - (c) assisting the Secretary of State in connection with the implementation of decisions as to the payment of such remuneration to such persons;
  - (d) advising the Secretary of State in connection with the payment of such allowances to such persons;
  - (e) advising the Secretary of State generally on matters relating to appointments to applicable bodies.
- (3) Nothing in subsection (2) is to be read as prejudicing the generality of subsection (1).

### Commencement Information

**II** S. 65 partly in force; s. 65 in force for certain purposes at Royal Assent, see s. 83

VALID FROM 01/10/2006

*Functions: supplementary*

## 66 Exercise of functions

- (1) The Commission must exercise its functions—

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- (a) efficiently and cost-effectively, and
  - (b) in such a way as to ensure the maintenance of public confidence in the making of appointments to public bodies.
- (2) In connection with the exercise of its functions the Commission may—
- (a) engage in or commission research;
  - (b) obtain and analyse data and other information;
  - (c) make available to any body or person such persons, materials and facilities as it may determine;
  - (d) provide information, advice and guidance, whether generally or to such bodies or persons as it may determine.
- (3) The information, advice and guidance which may be provided as mentioned in subsection (2)(d) includes—
- (a) information relating to appointments to applicable bodies, and
  - (b) advice and guidance on matters relating to appointments to applicable bodies or the governance of such bodies.
- (4) The Commission may do anything which it thinks is—
- (a) appropriate for facilitating, or
  - (b) incidental or conducive to,
- the exercise of its functions.
- (5) The power under subsection (4) includes power—
- (a) to enter into contracts;
  - (b) to acquire, and dispose of, land and other property;
  - (c) to form, or participate in the forming of, companies;
  - (d) to develop and make available for sale (otherwise than for profit) material for use in connection with appointments to applicable bodies;
  - (e) to provide accommodation.
- (6) The power under subsection (4) is not restricted by subsection (2), but—
- (a) so far as it relates to functions conferred on the Commission under section 61, is exercisable subject to directions given by the National Assembly for Wales;
  - (b) so far as it relates to any other functions of the Commission, is exercisable subject to directions given by the Secretary of State.

VALID FROM 01/10/2006

*Reports etc.*

**67 Annual reports**

- (1) The Commission must prepare in respect of each financial year a report relating to its performance of its functions during that year.
- (2) The report must in particular—

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- (a) set out the practices adopted by the Commission during the year with a view to ensuring equal opportunities,
  - (b) contain information about complaints made to the Commission during the year, and about how complaints made to the Commission were resolved during the year, and
  - (c) deal with any such other matters as the Secretary of State may direct.
- (3) The Commission must—
- (a) send the Secretary of State and the National Assembly for Wales copies of the report as soon as possible after the end of the year, and
  - (b) publish the report in such manner as the Commission considers appropriate.
- (4) The Secretary of State must lay before each House of Parliament a copy of every report sent to him under subsection (3).

## **68 Other reports and information**

- (1) If requested to do so by—
- (a) the Secretary of State,
  - (b) the Privy Council,
  - (c) a government department, or
  - (d) the Commissioner for Public Appointments,
- the Commission must provide him or it with such a report or information relating to any aspect of the Commission's performance of its functions as is specified in the request.
- (2) If requested to do so by the National Assembly for Wales, the Commission must provide it with such a report or information relating to any aspect of the Commission's performance of its functions under section 61 as is specified in the request.
- (3) If requested to do so by a body to which this subsection applies, the Commission must provide the body with such a report or information relating to the Commission's performance of its functions in relation to the body as is specified in the request.
- (4) Subsection (3) applies to any body in relation to which—
- (a) functions are exercisable by the Commission by virtue of a direction under section 58, 60 or 61, or
  - (b) arrangements are in force under section 63.

### *Miscellaneous and supplementary*

VALID FROM 01/10/2006

## **69 Transfer of staff and property etc.**

Schedule 7 makes provision in relation to the transfer to the Appointments Commission of staff, property, rights and liabilities of the National Health Service Appointments Commission.

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VALID FROM 28/09/2006

## 70 Directions

- (1) Any direction given by the Secretary of State, the Privy Council or the National Assembly for Wales under this Part—
  - (a) must be given in writing, and
  - (b) may be varied or revoked by a subsequent such direction.
- (2) Where a function of the Secretary of State, the Privy Council or the Assembly is exercisable by the Commission by virtue of a direction under this Part, the direction does not preclude the Secretary of State, the Privy Council or the Assembly (as the case may be) from exercising the function.
- (3) Section 126(4) of the 1977 Act (supplementary provisions about subordinate legislation) applies in relation to any power to give directions under this Part as it applies in relation to the powers mentioned in that subsection.

## 71 Interpretation

- (1) In this Part—
  - “applicable body” is to be read in accordance with subsections (4) and (5);
  - “appointment” is to be read in accordance with subsections (2) and (3);
  - “the Commission” means the Appointments Commission;
  - “devolved authority” is to be read in accordance with subsection (7);
  - “financial year”, in relation to the Commission, means—
    - (a) the period starting on the day the Commission is established and ending with the next 31st March, or
    - (b) any succeeding period of 12 months;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
  - “the National Health Service Appointments Commission” means the Special Health Authority known by that name;
  - “NHS trust” has the same meaning as in the 1977 Act;
  - “non-executive members” is to be read in accordance with subsection (6);
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State.
- (2) In this Part “appointment” includes—
  - (a) any process involving an appointment (whether described as re-appointment or replacement or otherwise) including a temporary appointment; and
  - (b) nomination for appointment;
 and also includes removal or suspension from office.
- (3) References in this Part to functions relating to the appointment of a person include functions relating to a person's tenure of office.
- (4) In this Part “applicable body” means—



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- (a) any body in relation to which a direction may be given under section 58, 60 or 61, and
  - (b) (except in section 65(2)(a) and (b)) any NHS foundation trust and any body which falls within subsection (5).
- (5) A body falls within this subsection if arrangements providing for the Commission to assist in the exercise of any power relating to appointment of the body's chairman, or any non-executive member of the body, may be entered into under section 63(4).
- (6) In this Part “non-executive members”—
- (a) in relation to a body whose members are known as directors, means non-executive directors, and
  - (b) in relation to a body in the case of which no distinction is made between executive and non-executive members, means members of the body (apart from the chairman).
- (7) Each of the following is a “devolved authority” for the purposes of this Part—
- (a) the Scottish Ministers,
  - (b) the National Assembly for Wales, and
  - (c) any Northern Ireland department.

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**Commencement Information**

**I2** S. 71 in force for certain purposes at Royal Assent, see s. 83

**Status:**

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**Changes to legislation:**

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