



# National Health Service Act 2006

## 2006 CHAPTER 41

### PART 1

#### PROMOTION AND PROVISION OF THE HEALTH SERVICE IN ENGLAND

##### *The Secretary of State and the health service in England*

#### [<sup>F1</sup> Secretary of State's duty to promote comprehensive health service

- (1) The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement—
  - (a) in the physical and mental health of the people of England, and
  - (b) in the prevention, diagnosis and treatment of physical and mental illness.
- (2) For that purpose, the Secretary of State must exercise the functions conferred by this Act so as to secure that services are provided in accordance with this Act.
- (3) The Secretary of State retains ministerial responsibility to Parliament for the provision of the health service in England.
- (4) The services provided as part of the health service in England must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.]

#### Textual Amendments

- F1** S. 1 substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 1, 306\(4\)](#); [S.I. 2012/1831](#), [art. 2\(2\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

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### [<sup>F2</sup>1A Duty as to improvement in quality of services

- (1) The Secretary of State must exercise the functions of the Secretary of State in relation to the health service with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
  - (a) the prevention, diagnosis or treatment of illness, or
  - (b) the protection or improvement of public health.
- (2) In discharging the duty under subsection (1) the Secretary of State must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  - (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.
- (4) In discharging the duty under subsection (1), the Secretary of State must have regard to the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.]

#### Textual Amendments

- F2** S. 1A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 2**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### [<sup>F3</sup>1B Duty as to the NHS Constitution

- (1) In exercising functions in relation to the health service, the Secretary of State must have regard to the NHS Constitution.
- (2) In this Act, “NHS Constitution” has the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 1 of that Act).]

#### Textual Amendments

- F3** S. 1B inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 3**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### [<sup>F4</sup>1C Duty as to reducing inequalities

In exercising functions in relation to the health service, the Secretary of State must have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the health service.]

#### Textual Amendments

- F4** S. 1C inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 4**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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### [<sup>F5</sup>1D **Duty as to promoting autonomy**

- (1) In exercising functions in relation to the health service, the Secretary of State must have regard to the desirability of securing, so far as consistent with the interests of the health service—
  - (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner that it considers most appropriate, and
  - (b) that unnecessary burdens are not imposed on any such person.
- (2) If, in the case of any exercise of functions, the Secretary of State considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Secretary of State of the duties under section 1, the Secretary of State must give priority to the duties under that section.]

#### Textual Amendments

- F5** S. 1D inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 5**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### [<sup>F6</sup>1E **Duty as to research**

In exercising functions in relation to the health service, the Secretary of State must promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.]

#### Textual Amendments

- F6** S. 1E inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 6**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### [<sup>F7</sup>1F **Duty as to education and training**

- (1) The Secretary of State must exercise the functions of the Secretary of State under any relevant enactment so as to secure that there is an effective system for the planning and delivery of education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England.
- (2) Any arrangements made with a person under this Act for the provision of services as part of that health service must include arrangements for securing that the person co-operates with the Secretary of State in the discharge of the duty under subsection (1) (or, where a Special Health Authority is discharging that duty by virtue of a direction under section 7, with the Special Health Authority).
- (3) In subsection (1), “relevant enactment” means—
  - (a) section 63 of the Health Services and Public Health Act 1968,
  - (b) this Act,
  - (c) the Health and Social Care Act 2008,
  - (d) the Health Act 2009, and

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(e) the Health and Social Care Act 2012.]

**Textual Amendments**

**F7** S. 1F inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 7, 306\(4\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**[<sup>F8</sup>1G Secretary of State's duty as to reporting on and reviewing treatment of providers**

- (1) The Secretary of State must, within one year of the passing of the Health and Social Care Act 2012, lay a report before Parliament on the treatment of NHS health care providers as respects any matter, including taxation, which might affect their ability to provide health care services for the purposes of the NHS or the reward available to them for doing so.
- (2) The report must include recommendations as to how any differences in the treatment of NHS health care providers identified in the report could be addressed.
- (3) The Secretary of State must keep under review the treatment of NHS health care providers as respects any such matter as is mentioned in subsection (1).
- (4) In this section—
  - (a) “NHS health care providers” means persons providing or intending to provide health care services for the purposes of the NHS, and
  - (b) “health care services for the purposes of the NHS” has the same meaning as in Part 3 of the Health and Social Care Act 2012.]

**Textual Amendments**

**F8** S. 1G inserted (1.6.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 8, 306\(4\)](#); S.I. 2012/1319, art. 2(2)

*[<sup>F9</sup>Role of the Board in the health service in England*

**Textual Amendments**

**F9** S. 1H and cross-heading inserted (1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 9\(1\), 306\(4\)](#) (with [Sch. 6 para. 2](#)); S.I. 2012/1831, art. 2(2) (with art. 3(1)); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**1H The National Health Service Commissioning Board and its general functions**

- (1) There is to be a body corporate known as the National Health Service Commissioning Board (“the Board”).
- (2) The Board is subject to the duty under section 1(1) concurrently with the Secretary of State except in relation to the part of the health service that is provided in pursuance of the public health functions of the Secretary of State or local authorities.
- (3) For the purpose of discharging that duty, the Board—

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- (a) has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act, and
  - (b) must exercise the functions conferred on it by this Act in relation to clinical commissioning groups so as to secure that services are provided for those purposes in accordance with this Act.
- (4) Schedule A1 makes further provision about the Board.
- (5) In this Act—
- (a) any reference to the public health functions of the Secretary of State is a reference to the functions of the Secretary of State under sections 2A and 2B and paragraphs 7C, 8 and 12 of Schedule 1, and
  - (b) any reference to the public health functions of local authorities is a reference to the functions of local authorities under sections 2B and 111 and paragraphs 1 to 7B and 13 of Schedule 1.]

### *[<sup>F10</sup>Role of clinical commissioning groups in the health service in England*

#### **Textual Amendments**

- F10** S. 11 and cross-heading inserted (1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 10](#), [306\(4\)](#); [S.I. 2012/1831](#), [art. 2\(2\)](#); [S.I. 2012/2657](#), [art. 2\(4\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

## **11 Clinical commissioning groups and their general functions**

- (1) There are to be bodies corporate known as clinical commissioning groups established in accordance with Chapter A2 of Part 2.
- (2) Each clinical commissioning group has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act.]

### *[<sup>F11</sup>General power]*

#### **Textual Amendments**

- F11** S. 2 cross-heading substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [s. 306\(4\)](#), [Sch. 4 para. 1\(2\)](#); [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 10](#)) (as amended (22.10.2012) by [S.I. 2012/2657](#), [art. 15](#)); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

## **[<sup>F12</sup> General power**

The Secretary of State, the Board or a clinical commissioning group may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on that person by this Act.]

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#### Textual Amendments

- F12** S. 2 substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 1\(1\)](#); [S.I. 2012/1831](#), art. 2(2) (with art. 10) (as amended (22.10.2012) by [S.I. 2012/2657](#), art. 15); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

*[<sup>F13</sup> Provision for protection or improvement of public health*

#### Textual Amendments

- F13** S. 2A and cross-heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 11](#), 306(4); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

### 2A Secretary of State's duty as to protection of public health

- (1) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of protecting the public in England from disease or other dangers to health.
- (2) The steps that may be taken under subsection (1) include—
  - (a) the conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding;
  - (b) providing microbiological or other technical services (whether in laboratories or otherwise);
  - (c) providing vaccination, immunisation or screening services;
  - (d) providing other services or facilities for the prevention, diagnosis or treatment of illness;
  - (e) providing training;
  - (f) providing information and advice;
  - (g) making available the services of any person or any facilities.
- (3) Subsection (4) applies in relation to any function under this section which relates to—
  - (a) the protection of the public from ionising or non-ionising radiation, and
  - (b) a matter in respect of which the Health and Safety Executive has a function.
- (4) In exercising the function, the Secretary of State must—
  - (a) consult the Health and Safety Executive, and
  - (b) have regard to its policies.]

### [<sup>F14</sup>2B Functions of local authorities and Secretary of State as to improvement of public health

- (1) Each local authority must take such steps as it considers appropriate for improving the health of the people in its area.
- (2) The Secretary of State may take such steps as the Secretary of State considers appropriate for improving the health of the people of England.
- (3) The steps that may be taken under subsection (1) or (2) include—
  - (a) providing information and advice;

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- (b) providing services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);
  - (c) providing services or facilities for the prevention, diagnosis or treatment of illness;
  - (d) providing financial incentives to encourage individuals to adopt healthier lifestyles;
  - (e) providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;
  - (f) providing or participating in the provision of training for persons working or seeking to work in the field of health improvement;
  - (g) making available the services of any person or any facilities.
- (4) The steps that may be taken under subsection (1) also include providing grants or loans (on such terms as the local authority considers appropriate).
- (5) In this section, “local authority” means—
- (a) a county council in England;
  - (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Council of the Isles of Scilly;
  - (e) the Common Council of the City of London.]

#### Textual Amendments

**F14** S. 2B inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 12**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### *[<sup>F15</sup>Arrangements for the provision of certain health services]*

#### Textual Amendments

**F15** S. 3 cross-heading substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 13(7)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 3 *[<sup>F16</sup>Duties of clinical commissioning groups as to commissioning certain health services]*

- (1) *[<sup>F17</sup>A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility] —*
- (a) hospital accommodation,
  - (b) other accommodation for the purpose of any service provided under this Act,
  - (c) medical, dental, ophthalmic, nursing and ambulance services,

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- (d) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children [<sup>F18</sup>as the group considers] are appropriate as part of the health service,
  - (e) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness [<sup>F18</sup>as the group considers] are appropriate as part of the health service,
  - (f) such other services or facilities as are required for the diagnosis and treatment of illness.
- [<sup>F19</sup>(1A) For the purposes of this section, a clinical commissioning group has responsibility for—
- (a) persons who are provided with primary medical services by a member of the group, and
  - (b) persons who usually reside in the group's area and are not provided with primary medical services by a member of any clinical commissioning group.
- (1B) Regulations may provide that for the purposes of this section a clinical commissioning group also has responsibility (whether generally or in relation to a prescribed service or facility) for persons who—
- (a) were provided with primary medical services by a person who is or was a member of the group, or
  - (b) have a prescribed connection with the group's area.
- (1C) The power conferred by subsection (1B)(b) must be exercised so as to provide that, in relation to the provision of services or facilities for emergency care, a clinical commissioning group has responsibility for every person present in its area.
- (1D) Regulations may provide that subsection (1A) does not apply—
- (a) in relation to persons of a prescribed description (which may include a description framed by reference to the primary medical services with which the persons are provided);
  - (b) in prescribed circumstances.
- (1E) The duty in subsection (1) does not apply in relation to a service or facility if the Board has a duty to arrange for its provision.]
- [<sup>F20</sup>(1F) In exercising its functions under this section and section 3A, a clinical commissioning group must act consistently with—
- (a) the discharge by the Secretary of State and the Board of their duty under section 1(1) (duty to promote a comprehensive health service), and
  - (b) the objectives and requirements for the time being specified in the mandate published under section 13A.]

<sup>F21</sup>(2) .....

<sup>F21</sup>(3) .....

#### **Textual Amendments**

- F16** S. 3 heading substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 13(6)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)



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- F17** Words in s. 3(1) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 13(2)(a)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F18** Words in s. 3(1)(d)(e) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 13(2)(b)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F19** S. 3(1A)-(1E) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 13(3)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F20** S. 3(1F) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 13(4)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F21** S. 3(2)(3) omitted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 13(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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

- C1** S. 3(1A) excluded (1.4.2013) by [The National Health Service \(Clinical Commissioning Groups Disapplication of Responsibility\) Regulations 2013 \(S.I. 2013/350\)](#), regs. 1(1), **2(1)(a)**

**[<sup>F22</sup>3A Power of clinical commissioning groups to commission certain health services**

- (1) Each clinical commissioning group may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement—
- (a) in the physical and mental health of the persons for whom it has responsibility, or
  - (b) in the prevention, diagnosis and treatment of illness in those persons.
- (2) A clinical commissioning group may not arrange for the provision of a service or facility under subsection (1) if the Board has a duty to arrange for its provision by virtue of section 3B or 4.
- (3) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of this section as they apply for the purposes of that section.]

**Textual Amendments**

- F22** S. 3A inserted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 14**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**[<sup>F23</sup>3B Secretary of State's power to require Board to commission services**

- (1) Regulations may require the Board to arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of—
- (a) dental services of a prescribed description;
  - (b) services or facilities for members of the armed forces or their families;
  - (c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;
  - (d) such other services or facilities as may be prescribed.

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- (2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for the Board (rather than clinical commissioning groups) to arrange for its provision as part of the health service.
- (3) In deciding whether it would be so appropriate, the Secretary of State must have regard to—
  - (a) the number of individuals who require the provision of the service or facility;
  - (b) the cost of providing the service or facility;
  - (c) the number of persons able to provide the service or facility;
  - (d) the financial implications for clinical commissioning groups if they were required to arrange for the provision of the service or facility.
- (4) Before deciding whether to make regulations under this section, the Secretary of State must—
  - (a) obtain advice appropriate for that purpose, and
  - (b) consult the Board.
- (5) The reference in subsection (1)(b) to members of the armed forces is a reference to persons who are members of—
  - (a) the regular forces within the meaning of the Armed Forces Act 2006, or
  - (b) the reserve forces within the meaning of that Act.]

#### Textual Amendments

**F23** S. 3B inserted (27.3.2012 for specified purposes, 1.2.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 15**, 306(1)(d)(4); [S.I. 2012/2657](#), art. 2(4)

## 4 High security psychiatric services

- (1) [<sup>F24</sup>The Board must arrange for the provision of] hospital accommodation and services for persons who—
    - (a) are liable to be detained under the Mental Health Act 1983 (c. 20), and
    - (b) in the opinion of the Secretary of State require treatment under conditions of high security on account of their dangerous, violent or criminal propensities.
  - (2) The hospital accommodation and services mentioned in subsection (1) are referred to in this section and paragraph 15 of Schedule 4 (NHS trusts) as “high security psychiatric services”.
  - (3) High security psychiatric services may be provided [<sup>F25</sup>—
    - (a)] only at hospital premises at which services are provided only for the persons mentioned in subsection (1)[<sup>F26</sup>, and
    - (b) only by a person approved by the Secretary of State for the purposes of this subsection.]
- [<sup>F27</sup>(3A) The Secretary of State may—
- (a) give directions to a person who provides high security psychiatric services about the provision by that person of those services;
  - (b) give directions to the Board about the exercise of its functions in relation to high security psychiatric services.]

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- (4) “Hospital premises” means—
- (a) a hospital, or
  - (b) any part of a hospital which is treated as a separate unit.

#### Textual Amendments

- F24** Words in s. 4(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 16(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F25** Words in s. 4(3) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 16(3)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F26** S. 4(3)(b) and word inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 16(3)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F27** S. 4(3A) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 16(4)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 5 Other services

Schedule 1 makes further provision [<sup>F28</sup>about the provision of services for the purposes of the health service in England].

#### Textual Amendments

- F28** Words in s. 5 substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### *Provision of services otherwise than in England*

## 6 Performance of functions outside England

[<sup>F29</sup>(1) Where the Secretary of State has a duty or power to provide anything under section 2A or 2B or Schedule 1, that thing may be provided outside England.]

[<sup>F30</sup>(1A) Where a clinical commissioning group or the Board has a duty or power to arrange for the provision of anything under section 3, 3A, 3B or 4 or Schedule 1, it may arrange for that thing to be provided outside England.]

- (2) [<sup>F31</sup>The functions of the Secretary of State, the Board and clinical commissioning groups] may be performed outside England and Wales, in so far as they relate to—
- (a) holidays for patients,
  - (b) the transfer of patients to or from Scotland, Northern Ireland, the Isle of Man or the Channel Islands, or
  - (c) the return of patients who have received treatment in England and Wales, to countries or territories outside the British Islands (including for this purpose the Republic of Ireland).

*Status: Point in time view as at 25/10/2013.*

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#### Textual Amendments

- F29** S. 6(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 2\(2\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F30** S. 6(1A) inserted (1.2.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 2\(3\)](#); [S.I. 2012/2657, art. 2\(4\)](#)
- F31** Words in s. 6(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 2\(4\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

#### [<sup>F32</sup>6A. Reimbursement of cost of services provided in another EEA state

- (1) The Secretary of State must, on an application made by any person, reimburse to that person the amount of any qualifying EEA expenditure incurred by that person on or after 23 August 2010, but this is subject to subsections (5) and (6), to any limit applicable under subsection (8) and to any deduction applicable under subsection (9).

[ But the duty in subsection (1) does not apply where section 6BA applies.]  
<sup>F33</sup>(1A)

- (2) For the purpose of this section, “qualifying EEA expenditure” is expenditure incurred on the provision by an authorised provider, in an EEA state other than the United Kingdom, to a person ordinarily resident in England (“the patient”) of a service as respects which condition A or condition B is met.
- (3) Condition A is that the service—
- was necessary to treat or diagnose a medical condition of the patient,
  - is the same as or equivalent to a service that the Secretary of State [<sup>F34</sup>, the Board] or a responsible authority would make or have made available to the patient under this Act in the circumstances of the patient’s case, and
  - is not a special service.
- (4) Condition B is that before the service was provided the Secretary of State had given authorisation under section 6B for the provision of the service to the patient.
- (5) The duty in subsection (1) does not apply where the applicant incurred the qualifying expenditure in connection with an arrangement which was entered into by the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.
- (6) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 apply.
- (7) Subsections (8) and (9) apply where the service is the same as or equivalent to a service that the Secretary of State [<sup>F35</sup>, the Board ] or a responsible authority would have made available to the patient under this Act in the circumstances of the patient’s case.
- (8) The Secretary of State may limit the amount of any reimbursement under this section—
- in relation to a service other than a dental service, to the cost that the Secretary of State [<sup>F36</sup>, the Board] or a responsible authority would have incurred if the same or an equivalent service had been made available by [<sup>F37</sup>any of them], and

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- (b) in relation to a dental service, to the average cost that the Secretary of State [<sup>F36</sup>, the Board] or a responsible authority would have incurred if the same or an equivalent service had been made available by [<sup>F37</sup> any of them].
- (9) The Secretary of State may deduct from any reimbursement under this section the amount of any NHS charge which would have been payable for the same service or an equivalent service if the service had been made available by the Secretary of State [<sup>F38</sup>, the Board] or a responsible authority; and in determining for this purpose the amount of any NHS charge regard shall be had to any entitlement the patient would have had—
- (a) to any payment or contribution by virtue of regulations made under section 180(1) or (3), or
- (b) to any remission or repayment by virtue of regulations made under section 182.
- (10) The Secretary of State may determine—
- (a) the form in which an application under this section must be made, and
- (b) the information to be provided in support of the application.
- (11) In this section and section 6B—
- “authorised provider”, in relation to any service provided in an EEA state other than the United Kingdom, means a person who is lawfully providing that service;
- “NHS charge” means a charge payable under regulations made under section 172(1), 176(1) or 179(1);
- “responsible authority” means, in relation to a patient, a <sup>F39</sup> ... <sup>F40</sup> ... [<sup>F41</sup> a local authority or clinical commissioning group] responsible under or by virtue of this Act for providing or [<sup>F42</sup> arranging for] the provision of services for the benefit of the patient;
- “special service” means—
- (a) a service that involves a stay in hospital accommodation for at least one night,
- (b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation,
- (c) dental treatment that involves general anaesthesia or intravenously administered sedation, or
- (d) a service whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment;
- “service” includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.

#### Textual Amendments

- F32** Ss. 6A, 6B inserted (1.6.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) Regulations 2010 \(S.I. 2010/915\)](#), regs. 1(1), **2**
- F33** S. 6A(1A) inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), regs. 1(1), **7(1)**
- F34** Words in s. 6A(3)(b) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 4 para. 3(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F35** Words in s. 6A(7) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 4 para. 3(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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- F36** Words in s. 6A(8)(a)(b) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 3\(4\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F37** Words in s. 6A(8)(a)(b) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 3\(4\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F38** Words in s. 6A(9) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 3\(5\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F39** Words in s. 6A(11) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 3\(6\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F40** Words in s. 6A(11) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 3\(6\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F41** Words in s. 6A(11) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 3\(6\)\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F42** Words in s. 6A(11) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 3\(6\)\(d\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## **6B. Prior authorisation for the purposes of section 6A**

- (1) A person may apply to the Secretary of State under this section for prior authorisation for the purposes of section 6A in relation to the provision of a service (“the requested service”) to a person ordinarily resident in England (“the patient”).
- (2) The requested service must be—
  - (a) a special service, or
  - (b) a service that is neither the same as nor equivalent to a service that the Secretary of State [<sup>F43</sup>, the Board] or a responsible authority would make available to the patient under this Act in the circumstances of the patient’s case.
- (3) The Secretary of State may determine—
  - (a) the form in which an application under this section must be made, and
  - (b) the information to be provided in support of the application.
- (4) The Secretary of State—
  - (a) must authorise the provision of the requested service if it is a special service and the conditions in subsection (5) are met, and
  - (b) may authorise the provision of the requested service in any other case where the requested service is necessary to treat or diagnose a medical condition of the patient.
- (5) The conditions referred to in subsection (4)(a) are—
  - (a) that the requested service is necessary to treat or diagnose a medical condition of the patient,
  - (b) that the requested service is the same as or equivalent to a service that the Secretary of State [<sup>F44</sup>, the Board] or a responsible authority would make available to the patient in the circumstances of the patient’s case, and
  - (c) that the Secretary or State [<sup>F44</sup>, the Board] or a responsible authority cannot provide to the patient a service that is the same as or equivalent to the requested service within a period of time that is acceptable on the basis of medical evidence as to the patient’s clinical needs, taking into account the patient’s state of health at the time the decision under this section is made and the probable course of the medical condition to which the service relates.

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- (6) The matters to which the Secretary of State is to have regard in determining for the purpose of subsection (5)(c) whether the length of any delay is acceptable include—
- (a) the patient’s medical history,
  - (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate,
  - (c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks, and
  - (d) the extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.
- (7) Any authorisation under this section must be in writing.]

#### Textual Amendments

- F32** Ss. 6A, 6B inserted (1.6.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) Regulations 2010 \(S.I. 2010/915\)](#), regs. 1(1), 2
- F43** Words in s. 6B(2)(b) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 4\(2\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F44** Words in s. 6B(5)(b)(c) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 4\(3\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

#### [<sup>F45</sup>6BA Reimbursement of cost of services provided in another EEA state where expenditure incurred on or after 25 October 2013.

- (1) This section applies where expenditure is incurred by a person on or after 25 October 2013 (but see subsections (9) and (14)).
- (2) The Secretary of State must, on an application made by the person, reimburse to that person the amount of the qualifying EEA expenditure incurred by that person, but this is subject to subsections (8) and (9), to any limit applicable under subsection (11) and to any deduction applicable under subsection (12).
- (3) For the purpose of this section, “qualifying EEA expenditure” is expenditure incurred on the provision by an authorised provider, in an EEA state other than the United Kingdom, to a person ordinarily resident in England (“the patient”) of a service as respects which condition A or condition B is met.
- (4) Condition A is that the service—
  - (a) was necessary to treat or diagnose a medical condition of the patient, and
  - (b) is the same as or equivalent to a service that the Secretary of State, the Board or a responsible authority would make or have made available to the patient under this Act in the circumstances of the patient's case.
- (5) But in the case of a service which, although meeting the requirements in paragraphs (a) and (b) of subsection (4), falls within subsection (6), condition A is only met if, before the service was provided, the Secretary of State had given authorisation under section 6BB for the provision of the service to the patient.
- (6) A service falls within this subsection if—
  - (a) it is subject to planning requirements relating to the objective of ensuring sufficient and permanent access to a balanced range of high quality treatment

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- or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources, and—
- (i) it involves a stay in hospital accommodation for at least one night, or
  - (ii) it requires the use of highly specialised and cost-intensive medical infrastructure or medical equipment;
- (b) it involves treatments presenting a particular risk for the patient or the population; or
  - (c) it is provided by a healthcare provider that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of a service which is subject to European Union legislation ensuring a minimum level of safety and quality throughout the European Union.
- (7) Condition B is that, before the service was provided, the Secretary of State had given authorisation under section 6BB(4)(b) for the provision of the service to the patient.
  - (8) The duty in subsection (2) does not apply where the applicant incurred the qualifying EEA expenditure in connection with an arrangement which was entered into by the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.
  - (9) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No 883/2004 applies.
  - (10) Subsections (11) and (12) apply where the service is the same as or equivalent to a service that the Secretary of State, the Board or a responsible authority would have made available to the patient under this Act in the circumstances of the patient's case.
  - (11) The Secretary of State may limit the amount of any reimbursement under this section to the cost that the Secretary of State, the Board or a responsible authority would have incurred if the same or an equivalent service had been made available by any of them.
  - (12) The Secretary of State may deduct from any reimbursement under this section the amount of any NHS charge which would have been payable for the same service or an equivalent service if the service had been made available by the Secretary of State, the Board or a responsible authority; and in determining for this purpose the amount of any NHS charge regard shall be had to any entitlement the patient would have had—
    - (a) to any payment or contribution by virtue of regulations made under section 180(1) or (3), or
    - (b) to any remission or repayment by virtue of regulations made under section 182.
  - (13) The Secretary of State may determine—
    - (a) the form in which an application under this section must be made, and
    - (b) the information to be provided in support of the application.
  - (14) This section does not apply where expenditure is incurred in Iceland, Liechtenstein or Norway before Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare applies to those states in accordance with the EEA Agreement.
  - (15) In this section and section 6BB, “authorised provider”, “NHS charge”, “responsible authority” and “service” each have the meaning given in section 6A.



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### Textual Amendments

**F45** Ss. 6BA, 6BB inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), regs. 1(1), 7(2)

## **6BB Prior authorisation for the purposes of section 6BA**

- (1) A person may apply to the Secretary of State under this section for prior authorisation for the purposes of section 6BA in relation to the provision of a service (“the requested service”) to a person ordinarily resident in England (“the patient”).
- (2) The requested service must be—
  - (a) a service which falls within section 6BA(6) and meets the requirements in paragraphs (a) and (b) of section 6BA(4), or
  - (b) a service that is neither the same as nor equivalent to a service that the Secretary of State, the Board or a responsible authority would make available to the patient under this Act in the circumstances of the patient's case.
- (3) The Secretary of State may determine—
  - (a) the form in which an application under this section must be made, and
  - (b) the information to be provided in support of the application.
- (4) The Secretary of State—
  - (a) must authorise the provision of the requested service if it is a service mentioned in subsection (2)(a) (but see subsection (5)), and
  - (b) may authorise the provision of the requested service in any case where—
    - (i) the requested service is necessary to treat or diagnose a medical condition of the patient, and
    - (ii) the duty in paragraph (a) does not apply.
- (5) The duty in subsection (4)(a) does not apply if at least one of the following conditions is met—
  - (a) the patient will, according to a clinical evaluation, be exposed with reasonable certainty to a patient-safety risk that cannot be regarded as acceptable, taking into account the potential benefit for the patient of the requested service;
  - (b) the general public will be exposed with reasonable certainty to a substantial safety hazard as a result of the requested service;
  - (c) the requested service is to be provided by a healthcare provider that raises serious and specific concerns relating to the respect of standards and guidelines on quality of care and patient safety, including provisions on supervision, whether these standards and guidelines are laid down by laws or regulations or through accreditation systems established by the state in which the service will be provided;
  - (d) the Secretary of State, the Board or a responsible authority can provide to the patient a service that is the same as or equivalent to the requested service within a period of time that is medically justifiable, taking into account the patient's state of health at the time the decision under this section is made and the probable course of the medical condition to which the service relates.

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- (6) The matters to which the Secretary of State is to have regard in determining for the purpose of subsection (5)(d) whether the length of any delay is medically justifiable include—
- (a) the patient's medical history,
  - (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate,
  - (c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks, and
  - (d) the extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.
- (7) Any authorisation under this section must be in writing.]

#### Textual Amendments

**F45** Ss. 6BA, 6BB inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), regs. 1(1), 7(2)

*[<sup>F46</sup>Regulations as to the exercise of functions*

#### Textual Amendments

**F46** S. 6C and cross-heading inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **18(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### **6C Regulations as to the exercise by local authorities of certain public health functions**

- (1) Regulations may require a local authority to exercise any of the public health functions of the Secretary of State (so far as relating to the health of the public in the authority's area) by taking such steps as may be prescribed.
- (2) Regulations may require a local authority to exercise its public health functions by taking such steps as may be prescribed.
- (3) Where regulations under subsection (1) require a local authority to exercise any of the public health functions of the Secretary of State, the regulations may also authorise or require the local authority to exercise any prescribed functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).
- (4) The making of regulations under subsection (1) does not prevent the Secretary of State from taking any step that a local authority is required to take under the regulations.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a local authority of any of its functions under regulations under subsection (1) are enforceable by or against the local authority (and no other person).
- (6) In this section, “local authority” has the same meaning as in section 2B.]

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## [<sup>F47</sup>6D Regulations relating to EU obligations

- (1) Regulations may require the Board or a clinical commissioning group to exercise a specified EU health function.
- (2) In subsection (1)—
  - (a) “EU health function” means any function exercisable by the Secretary of State for the purpose of implementing EU obligations that concern, or are connected to, the health service, other than a function of making subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) “specified” means specified in the regulations.
- (3) The Secretary of State may give directions to the Board or a clinical commissioning group about its exercise of any of its functions under regulations under subsection (1).
- (4) The making of regulations under subsection (1) does not prevent the Secretary of State from exercising the specified EU health function.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board or a clinical commissioning group of any of its functions under regulations under subsection (1) are enforceable by or against the Board or (as the case may be) the group (and no other person).
- (6) The Secretary of State may, for the purpose of securing compliance by the United Kingdom with EU obligations, give directions to the Board or a clinical commissioning group about the exercise of any of its functions.]

### Textual Amendments

**F47** S. 6D inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 19, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## [<sup>F48</sup>6E Regulations as to the exercise of functions by the Board or clinical commissioning groups

- (1) Regulations may impose requirements (to be known as “standing rules”) in accordance with this section on the Board or on clinical commissioning groups.
- (2) The regulations may, in relation to the commissioning functions of the Board or clinical commissioning groups, make provision—
  - (a) requiring the Board or clinical commissioning groups to arrange for specified treatments or other specified services to be provided or to be provided in a specified manner or within a specified period;
  - (b) as to the arrangements that the Board or clinical commissioning groups must make for the purpose of making decisions as to—
    - (i) the treatments or other services that are to be provided;
    - (ii) the manner in which or period within which specified treatments or other specified services are to be provided;
    - (iii) the persons to whom specified treatments or other specified services are to be provided;
  - (c) as to the arrangements that the Board or clinical commissioning groups must make for enabling persons to whom specified treatments or other specified

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services are to be provided to make choices with respect to specified aspects of them.

- (3) Regulations by virtue of paragraph (b) of subsection (2) may, in particular, make provision—
  - (a) requiring the Board or a clinical commissioning group to take specified steps before making decisions as to the matters mentioned in that paragraph;
  - (b) as to reviews of, or appeals from, such decisions.
- (4) The regulations may—
  - (a) specify matters for which provision must be made in commissioning contracts entered into by the Board or clinical commissioning groups;
  - (b) require the Board to draft terms and conditions making provision for those matters;
  - (c) require the Board or clinical commissioning groups to incorporate the terms and conditions drafted by virtue of paragraph (b) in commissioning contracts entered into by the Board or (as the case may be) clinical commissioning groups.
- (5) The regulations must—
  - (a) require the Board to draft such terms and conditions as the Board considers are, or might be, appropriate for inclusion in commissioning contracts entered into by the Board or clinical commissioning groups (other than terms and conditions that the Board is required to draft by virtue of subsection (4)(a));
  - (b) authorise the Board to require clinical commissioning groups to incorporate terms and conditions prepared by virtue of paragraph (a) in their commissioning contracts;
  - (c) authorise the Board to draft model commissioning contracts.
- (6) The regulations may require the Board to consult prescribed persons before exercising any of its functions by virtue of subsection (4)(b) or (5).
- (7) The regulations may require the Board or clinical commissioning groups in the exercise of any of its or their functions—
  - (a) to provide information of a specified description to specified persons in a specified manner;
  - (b) to act in a specified manner for the purpose of securing compliance with EU obligations;
  - (c) to do such other things as the Secretary of State considers necessary for the purposes of the health service.
- (8) The regulations may not impose a requirement on only one clinical commissioning group.
- (9) If regulations under this section are made so as to come into force on a day other than 1 April, the Secretary of State must—
  - (a) publish a statement explaining the reasons for making the regulations so as to come into force on such a day, and
  - (b) lay the statement before Parliament.
- (10) In this section—
  - (a) “commissioning contracts”, in relation to the Board or clinical commissioning groups, means contracts entered into by the Board or (as the case may be)

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clinical commissioning groups in the exercise of its or their commissioning functions;

- (b) “commissioning functions”, in relation to the Board or clinical commissioning groups, means the functions of the Board or (as the case may be) clinical commissioning groups in arranging for the provision of services as part of the health service;
- (c) “specified” means specified in the regulations.]

**Textual Amendments**

**F48** S. 6E inserted (27.3.2012 for specified purposes, 1.2.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 20(1)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4)

*[<sup>F49</sup>Functions of Special Health Authorities]*

**Textual Amendments**

**F49** S. 7 cross-heading and heading substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 21(4)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

**7** *[<sup>F49</sup>Functions of Special Health Authorities]*

*[<sup>F50</sup>(1)* The Secretary of State may direct a Special Health Authority to exercise any functions of the Secretary of State or any other person which relate to the health service in England and are specified in the direction.

- (1A) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.
- (1B) Before exercising the power in subsection (1) in relation to a function of a person other than the Secretary of State, the Secretary of State must consult that person.
- (1C) Regulations may provide that a Special Health Authority specified in the regulations is to have such additional functions in relation to the health service in England as may be so specified.]

*<sup>F51</sup>(2)* .....

*<sup>F51</sup>(3)* .....

**Textual Amendments**

**F50** S. 7(1)-(1C) substituted for s. 7(1) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 21(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

**F51** S. 7(2)(3) omitted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 21(3)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

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

**C2** S. 7(1) modified (temp.) (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 6 paras. 3-6**; S.I. 2012/1831, art. 2(2)

*Status: Point in time view as at 25/10/2013.*

*Changes to legislation: National Health Service Act 2006, Part 1 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *[<sup>F52</sup>Exercise of Secretary of State's public health functions*

#### **Textual Amendments**

**F52** S. 7A and cross-heading inserted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 22, 306\(4\)](#); [S.I. 2012/1831, art. 2\(2\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

#### **7A Exercise of Secretary of State's public health functions**

- (1) The Secretary of State may arrange for a body mentioned in subsection (2) to exercise any of the public health functions of the Secretary of State.
- (2) Those bodies are—
  - (a) the Board;
  - (b) a clinical commissioning group;
  - (c) a local authority (within the meaning of section 2B).
- (3) The power conferred by subsection (1) includes power to arrange for such a body to exercise any functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).
- (4) Where the Secretary of State arranges (under subsection (1)) for the Board to exercise a function, the Board may arrange for a clinical commissioning group to exercise that function.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a body mentioned in subsection (2) of any function exercisable by it by virtue of this section are enforceable by or against that body (and no other person).
- (6) Powers under this section may be exercised on such terms as may be agreed, including terms as to payment.]

### *[<sup>F53</sup>Directions to certain NHS bodies]*

#### **Textual Amendments**

**F53** S. 8 cross-heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [s. 306\(4\)](#), [Sch. 4 para. 5\(3\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

#### **8 Secretary of State's directions to [<sup>F54</sup>certain] health service bodies**

- (1) The Secretary of State may give directions to any of the bodies mentioned in subsection (2) about its exercise of any functions.
- (2) The bodies are—
  - <sup>F55</sup>(a) .....
  - <sup>F56</sup>(b) .....
  - (c) NHS trusts, and
  - (d) Special Health Authorities.

*Status: Point in time view as at 25/10/2013.*

*Changes to legislation: National Health Service Act 2006, Part 1 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Nothing in provision made by or under this or any other Act affects the generality of subsection (1).

#### Textual Amendments

- F54** Word in s. 8 heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 5\(2\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F55** [S. 8\(2\)\(a\)](#) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 5\(1\)\(a\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F56** [S. 8\(2\)\(b\)](#) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 5\(1\)\(b\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

### NHS contracts

## 9 NHS contracts

- (1) In this Act, an NHS contract is an arrangement under which one health service body (“the commissioner”) arranges for the provision to it by another health service body (“the provider”) of goods or services which it reasonably requires for the purposes of its functions.
- (2) Section 139(6) (NHS contracts and the provision of local pharmaceutical services under pilot schemes) makes further provision about acting as commissioner for the purposes of subsection (1).
- (3) Paragraph 15 of Schedule 4 (NHS trusts and NHS contracts) makes further provision about an NHS trust acting as provider for the purposes of subsection (1).
- (4) “Health service body” means any of the following—
- [<sup>F57</sup>(za) the Board,
  - (zb) a clinical commissioning group,]
  - [<sup>F58</sup>(a) .....
  - [<sup>F59</sup>(b) .....
  - (c) an NHS trust,
  - (d) a Special Health Authority,
  - (e) a Local Health Board,
  - (f) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
  - [<sup>F60</sup>(fa) a Special Health Board constituted under that section,]
  - (g) a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),
  - (h) the Common Services Agency for the Scottish Health Service,
  - (i) the Wales Centre for Health,
  - [<sup>F61</sup>(j) .....
  - [<sup>F62</sup>(k) the Care Quality Commission,]
  - [<sup>F63</sup>(ka) NICE,]
  - [<sup>F64</sup>(kb) the Health and Social Care Information Centre,]
  - (l) the Scottish Dental Practice Board,
  - (m) the Secretary of State,

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- (n) the Welsh Ministers,
  - [<sup>F65</sup>(na) the Scottish Ministers,
  - (nb) Healthcare Improvement Scotland,]
  - (o) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972,
  - (p) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),
  - (q) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),
  - (r) the Department of Health, Social Services and Public Safety.
- (5) Whether or not an arrangement which constitutes an NHS contract would apart from this subsection be a contract in law, it must not be regarded for any purpose as giving rise to contractual rights or liabilities.
- (6) But if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under this section.
- (7) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—
- (a) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement, or
  - (b) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,
- that health service body may refer the terms of the proposed arrangement to the Secretary of State for determination under this section.
- (8) Where a reference is made to the Secretary of State under subsection (6) or (7), he may determine the matter himself or appoint a person to consider and determine it in accordance with regulations.
- (9) “The appropriate person” means the Secretary of State or the person appointed under subsection (8).
- (10) By the determination of a reference under subsection (7) the appropriate person may specify terms to be included in the proposed arrangement and may direct that it be proceeded with.
- (11) A determination of a reference under subsection (6) may contain such directions (including directions as to payment) as the appropriate person considers appropriate to resolve the matter in dispute.
- (12) The appropriate person may by the determination in relation to an NHS contract vary the terms of the arrangement or bring it to an end (but this does not affect the generality of the power of determination under subsection (6)).
- (13) Where an arrangement is so varied or brought to an end—



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- (a) subject to paragraph (b), the variation or termination must be treated as being effected by agreement between the parties, and
- (b) the directions included in the determination by virtue of subsection (11) may contain such provisions as the appropriate person considers appropriate in order to give effect to the variation or to bring the arrangement to an end.

#### Textual Amendments

- F57** S. 9(4)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(a)**; S.I. 2012/1831, art. 2(2)
- F58** S. 9(4)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F59** S. 9(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F60** S. 9(4)(fa) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 6(a)**; S.I. 2012/2657, art. 2(4)
- F61** S. 9(4)(j) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 18**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F62** S. 9(4)(k) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 82**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F63** S. 9(4)(ka) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F64** S. 9(4)(kb) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 19 para. 9(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F65** S. 9(4)(na)(nb) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 6(b)**; S.I. 2012/2657, art. 2(4)

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

- C3** S. 9 modified (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **103(1)**
- C4** S. 9(4) modified (temp.) (1.10.2008) by Health and Social Care Act 2008 (Consequential Amendments and Transitory Provisions) Order 2008 (S.I. 2008/2250), arts. 1(1), **3(14)**

## 10 Provision for bodies in Northern Ireland

- (1) Subsection (2) applies where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) or a body mentioned in paragraph (o), (p), (q) or (r) of section 9(4) is a party or prospective party to an arrangement or proposed arrangement which—
  - (a) falls within the definition of NHS contract in section 9(1), and
  - (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)).
- (2) Subsections (5) to (13) of section 9 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health, Social Services and Public Safety acting jointly.

*Status: Point in time view as at 25/10/2013.*

*Changes to legislation: National Health Service Act 2006, Part 1 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F66</sup>10A Provision for bodies in Scotland

- (1) Subsection (2) applies where the Scottish Ministers are, or a body mentioned in paragraph (f), (fa), (h), (l) or (nb) of section 9(4) is, a party or prospective party to an arrangement or proposed arrangement which—
  - (a) falls within the definition of NHS contract in section 9(1), and
  - (b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978.
- (2) Subsections (5) to (13) of section 9 apply in relation to the arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State of references to the Secretary of State and the Scottish Ministers acting jointly.
- (3) Subsection (4) applies (and subsection (2) does not apply) where a cross-border Special Health authority is a party or prospective party to an arrangement or proposed arrangement which—
  - (a) falls within the definition of NHS contract in section 9(1), and
  - (b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978 and the definition of NHS contract in section 7(1) of the National Health Service (Wales) Act 2006.
- (4) Subsections (5) to (13) of section 9 apply in relation to that arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State—
  - (a) where the cross-border Special Health Authority is exercising functions in relation to England only, of references to the Secretary of State and the Scottish Ministers acting jointly; and
  - (b) where the Authority is exercising functions in relation to England and Wales, of references to the Secretary of State and the Welsh Ministers acting concurrently with each other and jointly with the Scottish Ministers.
- (5) In subsections (3) and (4), “cross-border Special Health Authority” means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—
  - (a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or
  - (b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together.]

### Textual Amendments

**F66** S. 10A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 21 para. 7](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

## 11 Arrangements to be treated as NHS contracts

- (1) This section applies to any arrangement under which [<sup>F67</sup>the Board,]<sup>F68</sup> ... <sup>F69</sup>... or such other health service body as may be prescribed arrange for the provision to it—
  - (a) by a contractor under a general ophthalmic services contract,
  - (b) by a person on an ophthalmic list,

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- (c) by a person on a pharmaceutical list, or
  - (d) by a person who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978 (c. 29),
- of the goods or services mentioned in subsection (2).
- (2) The goods or services are those that the body reasonably requires for the purposes of its functions, other than functions under—
- (a) section 115 (primary ophthalmic services),
  - (b) Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes), or
  - (c) Part 6 of, or Chapter 1 or 2 of Part 7 of, the National Health Service (Wales) Act 2006 (c. 42) (general ophthalmic services and pharmaceutical services and local pharmaceutical services under pilot schemes).
- (3) Any such arrangement must be treated as an NHS contract for the purposes of section 9 (other than subsections (7) and (10)).
- (4) “Health service body” means a body which is a health service body for the purposes of section 9.
- (5) “Ophthalmic list” means a list published in accordance with regulations made under—
- (a) section 72(1)(a) of the National Health Service (Wales) Act 2006,
  - (b) section 26(2)(a) of the National Health Service (Scotland) Act 1978, or
  - (c) Article 62(2)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).
- (6) The reference to a list published in accordance with regulations made under paragraph (a) of section 26(2) of the National Health Service (Scotland) Act 1978 is a reference to the first part of the list (referred to in sub-paragraph (i) of that paragraph) which is published in accordance with regulations under that paragraph.
- (7) “Pharmaceutical list” includes a list published in accordance with regulations made under—
- (a) section 83(2)(a) of the National Health Service (Wales) Act 2006, or
  - (b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

#### Textual Amendments

- F67** Words in s. 11(1) inserted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 7\(a\)](#); S.I. 2012/1831, art. 2(2)
- F68** Words in s. 11(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 7\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F69** Words in s. 11(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 7\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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

- C5** S. 11 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 3 paras. 2, 3](#) (with [Sch. 3 Pt. 1](#))

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*[<sup>F70</sup>Arrangements with other bodies]*

**Textual Amendments**

**F70** S. 12 cross-heading substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(7\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

**12 Secretary of State's arrangements with other bodies**

(1) The Secretary of State may arrange with any person or body to provide, or assist in providing, [<sup>F71</sup>anything which the Secretary of State has a duty or power to provide, or arrange for the provision of, under section 2A or 2B or Schedule 1].

[<sup>F72</sup>(2) The bodies with whom arrangements may be made under subsection (1) include—

- (a) the Board,
- (b) clinical commissioning groups,
- (c) any other public authorities, and
- (d) voluntary organisations.]

[<sup>F73</sup>(3) The Secretary of State may make available any facilities provided by the Secretary of State under section 2A or 2B or Schedule 1 to any service provider or to any eligible voluntary organisation.

(3A) In subsection (3)—

“eligible voluntary organisation” means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;

“service provider” means a person or body with whom the Secretary of State has made an arrangement under subsection (1).]

(4) Where facilities are made available under subsection (3), the Secretary of State may make available the services of any person employed in connection with the facilities by—

- (a) the Secretary of State,
- [<sup>F74</sup>(aa) the Board,
- (ab) a clinical commissioning group,
- (ac) a local authority,]
- <sup>F75</sup>(b) .....
- <sup>F76</sup>(c) .....
- (d) a Special Health Authority, or
- (e) a Local Health Board.

[<sup>F77</sup>(4A) In subsection (4), “local authority” has the same meaning as in section 2B.]

(5) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Secretary of State.

(6) Goods or materials may be made available either temporarily or permanently.

(7) Any power to supply goods or materials under this section includes—

- (a) a power to purchase and store them, and

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- (b) a power to arrange with third parties for the supply of goods or materials by those third parties.

#### Textual Amendments

- F71** Words in s. 12(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(2\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F72** S. 12(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(3\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F73** S. 12(3)(3A) substituted for s. 12(3) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(4\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F74** S. 12(4)(aa)-(ac) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(5\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F75** S. 12(4)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(5\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F76** S. 12(4)(c) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(5\)\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F77** S. 12(4A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 8\(6\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### [<sup>F78</sup>12ZACommissioning arrangements by the Board or clinical commissioning groups

- (1) This section applies in relation to arrangements made by the Board or a clinical commissioning group in the exercise of functions under section 3, 3A, 3B or 4 or Schedule 1.
- (2) The arrangements may be made with any person or body (including public authorities and voluntary organisations).
- (3) If the Board or a clinical commissioning group arranges for the provision of facilities by a service provider, it may also make arrangements for those facilities to be made available to another service provider or to an eligible voluntary organisation.
- (4) The Board or a clinical commissioning group may make available any of its facilities to—
- a service provider, or
  - an eligible voluntary organisation.
- (5) Where facilities are made available under subsection (4) any of the following persons may make available the services of any employee of that person who is employed in connection with the facilities—
- the Secretary of State,
  - the Board,
  - a clinical commissioning group,
  - a Special Health Authority, or
  - a Local Health Board.
- (6) Goods or materials may be made available under this section either temporarily or permanently.
- (7) Any power to supply goods or materials under this section includes—
- a power to purchase or store them, and

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- (b) a power to arrange with third parties for the supply of goods or materials by those third parties.
- (8) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments.
- (9) In this section—
  - “eligible voluntary organisation” means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;
  - “service provider” means a person or body with whom the Board or a clinical commissioning group has made arrangements in the exercise of the functions mentioned in subsection (1).]

**Textual Amendments**

**F78** S. 12ZA inserted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 9](#); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

*[<sup>F79</sup>Direct payments for health care*

**Textual Amendments**

**F79** Ss. 12A-12D and cross-heading inserted (19.1.2010) by [Health Act 2009 \(c. 21\)](#), [ss. 11](#), 40(1); S.I. 2010/30, art. 2(b)

**12A Direct payments for health care**

- (1) The Secretary of State [<sup>F80</sup>the Board, a clinical commissioning group or a local authority] may, for the purpose of securing the provision to a patient of anything to which this subsection applies, make payments, with the patient's consent, to the patient or to a person nominated by the patient.
- (2) Subsection (1) applies to—
  - [<sup>F81</sup>(a) anything that the Secretary of State or a local authority has a duty or power to provide or arrange under section 2A or 2B or Schedule 1;]
  - [ anything that the Board or a clinical commissioning group may or must
  - <sup>F82</sup>(aa) arrange for the provision of under this Act or any other enactment.]
  - <sup>F83</sup>(b) .....
  - <sup>F83</sup>(c) .....
- (3) Subsection (1) is subject to any provision made by regulations under section 12B.
- (4) If regulations so provide, [<sup>F84</sup>a clinical commissioning group] may, for the purpose of securing the provision for a patient of services that [<sup>F85</sup>the group] must provide under section 117 of the Mental Health Act 1983 (after-care), make payments, with the patient's consent, to the patient or to a person nominated by the patient [<sup>F86</sup>, and the references in this subsection to a clinical commissioning group are, so far as necessary for the purposes of regulations under subsection (2E) of that section, to be read as references to the Board.]

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(5) A payment under subsection (1)<sup>F87</sup>... is referred to in this Part as a “direct payment”.

<sup>F88</sup>(6) .....

[ In this section and sections 12B to 12D, “local authority” has the same meaning as <sup>F89</sup>(7) in section 2B.]

#### Textual Amendments

- F80** Words in s. 12A(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F81** S. 12A(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F82** S. 12A(2)(aa) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F83** S. 12A(2)(b)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F84** Words in s. 12A(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F85** Words in s. 12A(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F86** Words in s. 12A(4) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(4)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F87** Words in s. 12A(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F88** S. 12A(6) repealed (E.) (1.8.2013) by The National Health Service (Direct Payments) (Repeal of Pilot Schemes Limitation) Order 2013 (S.I. 2013/1563), arts. 1, 2
- F89** S. 12A(7) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 12B Regulations about direct payments

- (1) The Secretary of State may make regulations about direct payments.
- (2) The regulations may in particular make provision—
- as to circumstances in which, and descriptions of persons and services in respect of which, direct payments may or must be made;
  - as to circumstances in which direct payments may or must be made to a person nominated by the patient;
  - as to the making of direct payments (and, in particular, as to persons to whom payments may or must be made) where the patient lacks capacity to consent to the making of the payments;
  - as to conditions that the Secretary of State [<sup>F90</sup> the Board, a clinical commissioning group or a local authority] must comply with before, after or at the time of making a direct payment;
  - as to conditions that the patient or (if different) the payee may or must be required to comply with before, after, or at the time when a direct payment is made;
  - as to the amount of any direct payment or how it is to be calculated;

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- (g) as to circumstances in which the Secretary of State <sup>F91</sup>, the Board, a clinical commissioning group or a local authority] may or must stop making direct payments;
  - (h) as to circumstances in which the Secretary of State <sup>F92</sup>, the Board, a clinical commissioning group or a local authority] may or must require all or part of a direct payment to be repaid, by the payee or otherwise;
  - (i) as to monitoring of the making of direct payments, of their use by the payee, or of services which they are used to secure;
  - (j) as to arrangements to be made by the Secretary of State <sup>F93</sup>, the Board, a clinical commissioning group or a local authority] for providing patients, payees or their representatives with information, advice or other support in connection with direct payments;
  - (k) for such support to be treated to any prescribed extent as a service in respect of which direct payments may be made.
- (3) If the regulations make provision in the case of a person who lacks capacity to consent to direct payments being made, they may apply that provision, or make corresponding provision, with or without modifications, in the case of a person who has lacked that capacity but no longer does so (whether because of fluctuating capacity, or regaining or gaining capacity).
- (4) The regulations may provide for a sum which must be repaid to the Secretary of State <sup>F94</sup>, the Board, a clinical commissioning group or a local authority] by virtue of a condition or other requirement imposed by or under the regulations to be recoverable as a debt due to the Secretary of State <sup>F95</sup>, the Board, a clinical commissioning group or a local authority (as the case may be)].
- (5) The regulations may make provision—
- (a) for a service in respect of which a direct payment has been made under section 12A(1) to be regarded, only to such extent and subject to such conditions as may be prescribed, as provided or arranged for by the Secretary of State <sup>F96</sup> or a local authority or as arranged for by the Board or a clinical commissioning group (as the case may be)] under an enactment mentioned in section 12A(2);
  - (b) displacing functions or obligations of <sup>F97</sup>the Board, a clinical commissioning group or a local authority with respect to the arrangement for the provision of] after-care services under section 117 of the Mental Health Act 1983, only to such extent and subject to such conditions as may be prescribed.
- (6) In this section—
- (a) “service” includes anything in respect of which direct payments may be made;
  - (b) references to a person lacking capacity are references to a person lacking capacity within the meaning of the Mental Capacity Act 2005.

#### Textual Amendments

- F90** Words in s. 12B(2)(d) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 11\(2\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F91** Words in s. 12B(2)(g) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 11\(2\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F92** Words in s. 12B(2)(h) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 11\(2\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)



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- F93** Words in s. 12B(2)(j) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 11\(2\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F94** Words in s. 12B(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 11\(3\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F95** Words in s. 12B(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 11\(3\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F96** Words in s. 12B(5)(a) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 11\(4\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F97** Words in s. 12B(5)(b) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 11\(4\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 12C Direct payments pilot schemes

- F98**(1) .....
- F98**(2) .....
- F98**(3) .....
- F98**(4) .....
- (5) Provision as to the review of a pilot scheme may in particular include provision—
- (a) for a review to be carried out by an independent person;
  - (b) for publication of the findings of a review;
  - (c) as to matters to be considered on a review.
- (6) Those matters may in particular include any of the following—
- (a) the administration of the scheme;
  - (b) the effect of direct payments on the cost or quality of care received by patients;
  - (c) the effect of direct payments on the behaviour of patients, carers or persons providing services in respect of which direct payments are made.
- (7) After any review of one or more pilot schemes, the Secretary of State may make an order under subsection (8) or (10).
- (8) An order under this subsection is an order making provision for either or both of the following—
- (a) repealing section 12A(6) and subsections (1) to (4) of this section;
  - (b) amending, repealing, or otherwise modifying any other provision of this Act.
- (9) An order may make provision within subsection (8)(b) only if it appears to the Secretary of State to be necessary or expedient for the purpose of facilitating the exercise of the powers conferred by section 12A(1) or by regulations under section 12A(4).
- (10) An order under this subsection is an order repealing sections 12A, 12B, 12D and this section.

### Textual Amendments

- F98** Ss. 12C(1)-(4) repealed (E.) (1.8.2013) by [The National Health Service \(Direct Payments\) \(Repeal of Pilot Schemes Limitation\) Order 2013 \(S.I. 2013/1563\)](#), arts. 1, 2

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## 12D Arrangements with other bodies relating to direct payments

- (1) The Secretary of State [<sup>F99</sup>, the Board, a clinical commissioning group or a local authority] may arrange with any person or body to give assistance in connection with direct payments.
- (2) Arrangements may be made under subsection (1) with voluntary organisations.
- (3) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by the Secretary of State [<sup>F100</sup>, the Board, a clinical commissioning group or a local authority].]

### Textual Amendments

**F99** Words in s. 12D(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 12\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F100** Words in s. 12D(3) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 12\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### *[<sup>F101</sup> Miscellaneous*

### Textual Amendments

**F101** S. 12E and cross-heading inserted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 147](#), 306(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 12E Secretary of State's duty as respects variation in provision of health services

- (1) The Secretary of State must not exercise the functions mentioned in subsection (2) for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—
  - (a) whether the persons in question are in the public or (as the case may be) private sector, or
  - (b) some other aspect of their status.
- (2) The functions mentioned in this subsection are the functions of the Secretary of State under—
  - (a) sections 6E and 13A, and
  - (b) section 75 of the Health and Social Care Act 2012 (requirements as to procurement, patient choice and competition).]

**Status:**

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