



# National Health Service Act 1977

## 1977 CHAPTER 49

An Act to consolidate certain provisions relating to the health service for England and Wales; and to repeal certain enactments relating to the health service which have ceased to have any effect. [29th July 1977]

### Extent Information

**E1** For the extent of this Act see s. 130

### Modifications etc. (not altering text)

- C1** Act modified (27.8.2002) by [National Health Service Reform and Health Care Professions Act 2002](#) (c. 17), s. 25(4), [Sch. 7 para. 5\(2\)](#); S.I. 2002/2202, [art. 2\(1\)](#)  
Act modified (1.1.2003 for E.) by [National Health Service Reform and Health Care Professions Act 2002](#) (c. 17), s. 20(11), [Sch. 6 para. 6\(2\)](#); S.I. 2002/3190, [art. 2\(2\)](#)
- C2** Act explained by [Health Services Act 1980](#) (c. 53, SIF 113:2), s. 1(5)
- C3** Act modified by [Mental Health Act 1983](#) (c. 20, SIF 85), [ss. 122\(2\)](#), 131(1)
- C4** Power to amend Act conferred by [Health Services Act 1980](#) (c. 53, SIF 113:2), s. 1(8) and [Health and Social Security Act 1984](#) (c. 48, SIF 113:1), s. 28(2)
- C5** Act: definition of "health authority" restricted by [National Health Service and Community Care Act 1990](#) (c. 19, SIF 113:2), s. 2(6)
- C6** Power to modify conferred by [National Health Service and Community Care Act 1990](#) (c. 19, SIF 113:2), s. 23(8)
- C7** Power to modify conferred (1.4.1991) by [National Health Service and Community Care Act 1990](#) (c. 19, SIF 113:2), s. 17(3)
- C8** Act extended by S.I. 1991/1236, [art. 2](#) which revoked S.I. 1991/577 on 23.5.1991
- C9** Act modified (1.4.1992) by S.I. 1992/635, [reg. 25\(16\)](#).  
Act applied (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1968 c. 46, s. 63(8A) (as inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, [ss. 2\(1\)\(3\)](#), 8(1), [Sch. 1 para. 95\(2\)](#) (with [Sch. 2 para. 6](#)))  
Act extended (15.8.1997) by 1997 c. 46, s. 9(1); S.I. 1997/1780, [art. 2\(1\)](#), [Sch.](#)  
Act modified (15.8.1997) by 1997 c. 46, s. 9(2); S.I. 1997/1780, [art. 2\(1\)](#), [Sch.](#)  
Act: power to restrict conferred (1.4.1998) by 1997 c. 46, s. 13(9), [Sch. 1 para. 4\(1\)\(b\)\(i\)\(2\)\(a\)](#); S.I. 1998/631, [art. 2\(1\)\(a\)](#), [Sch. 1](#)  
Act (with specified exceptions): transfer of functions (W.) (1.7.1999) by S.I. 1999/672, [art. 2](#), [Sch. 1](#) (as amended (30.6.1999) by 1999 c. 8, [ss. 66\(4\)\(5\)](#), 67(4))

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- Act: power to modify conferred (15.3.2000) by 1999 c. 8, s. 61(1)(2); S.I. 2000/779, art. 2(1)
- Act: power to modify conferred (15.3.2000) by 1999 c. 8, s. 60(4), Sch. 3 para. 11(2)(a)(c)(d)(3); S.I. 2000/779, art. 2(1)
- Act construed with 1997 c. 46, Pt. I (E.W.) (21.3.1997) by 1997 c. 46, s. 40(1)(a)
- Act: amended (8.2.2000) by S.I. 2000/89, reg. 12(1)
- Act: restricted (1.4.2000) by S.I. 2000/695, reg. 3(6)
- C10** By Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(1), Sch. 12 para. 23; S.I. 1991/2208, art. 2(1), Sch. 1 it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, art. 2(2), Sch. 2) references in any enactment amended by that 1991 act, to youth courts shall be construed as references to juvenile courts.
- C11** Act: modified as to exercise of functions of a Health Authority (E.) (1.4.2001) by S.I. 2001/747, regs. 5(1), 6(3)(a)(b)
- C12** Act applied in part (8.3.2002 for E. and 1.7.2002 for W.) by 2001 c. 15, s. 36(1)(1A), 70(2) (with ss. 64(9), 65(4)) (as s. 36 is amended (1.10.2002) by 2002 c. 17, s. 4(2); S.I. 2002/2478, art. 3(1)(a)); S.I. 2002/1095, art. 2(4); S.I. 2002/1475, art. 2(1), Sch. Pt. I
- C13** Act applied (with modifications) (8.3.2002 for E. and 1.7.2002 for W.) by 2001 c. 15, s. 36(2) (with ss. 64(9), 65(4)); S.I. 2002/1095, art. 2(4); S.I. 2002/1475, art. 2(1), Sch. Pt. I

## PART I

### SERVICES AND ADMINISTRATION

#### *Functions of the Secretary of State*

#### **1 Secretary of State's duty as to health service.**

- (1) It is the Secretary of State's duty to continue the promotion in England and Wales of a comprehensive health service designed to secure improvement—
- (a) in the physical and mental health of the people of those countries, and
  - (b) in the prevention, diagnosis and treatment of illness,
- and for that purpose to provide or secure the effective provision of services in accordance with this Act.
- (2) The services so provided shall 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.

#### **2 Secretary of State's general power as to services.**

Without prejudice to the Secretary of State's powers apart from this section, he has power—

- (a) to provide such services as he considers appropriate for the purpose of discharging any duty imposed on him by this Act; and
- (b) to do any other thing whatsoever which is calculated to facilitate, or is conducive or incidental to, the discharge of such a duty.

This section is subject to section 3(3) below.

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

- C14** S. 2: transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**
- C15** S. 2: functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I.2000/695, reg. 3(2)(a), **Sch. 1**

**3 Services generally.**

- (1) It is the Secretary of State's duty to provide throughout England and Wales, to such extent as he considers necessary to meet all reasonable requirements—
- (a) hospital accommodation;
  - (b) other accommodation for the purpose of any service provided under this Act;
  - (c) medical, dental, nursing and ambulance services;
  - (d) such other facilities for the care of expectant and nursing mothers and young children as he considers are appropriate as part of the health service;
  - (e) such facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service;
  - (f) such other services as are required for the diagnosis and treatment of illness.
- (2) Where any hospital provided by the Secretary of State in accordance with this Act was a voluntary hospital transferred by virtue of the <sup>M1</sup>National Health Service Act 1946, and—
- (a) the character and associations of that hospital before its transfer were such as to link it with a particular religious denomination, then
  - (b) regard shall be had in the general administration of the hospital to the preservation of that character and those associations.
- (3) Nothing in section 2 above or in this section affects the provisions of Part II of this Act (which relates to arrangements with practitioners for the provision of medical, dental, ophthalmic and pharmaceutical services).

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

- C16** S. 3(1)(a)-(f): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(a), **Sch. 1**
- C17** S. 3(1)(a)-(f): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

**Marginal Citations**

- M1** 1946 c. 81.

**4 Special hospitals.**

The duty imposed on the Secretary of State by section 1 above to provide services for the purposes of the health service includes a duty to provide and maintain establishments (in this Act referred to as "special hospitals") for persons subject to detention under [<sup>F1</sup>the <sup>M2</sup>Mental Health Act 1983] who in his opinion require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.

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### Textual Amendments

**F1** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), ss. 131(1), 148, [Sch. 4 para. 47\(a\)](#)

### Marginal Citations

**M2** [1983 c. 20\(85\)](#).

## 5 Other services.

(1) It is the Secretary of State's duty—

- (a) to provide for the medical . . . <sup>F2</sup> inspection at appropriate intervals of pupils in attendance at schools maintained by local education authorities <sup>F3</sup> . . . and for the medical . . . <sup>F2</sup> treatment of such pupils . . . <sup>F4</sup>;
- (b) to arrange, to such extent as he considers necessary to meet all reasonable requirements in England and Wales, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances and appliances.

[<sup>F5</sup>(1A) It is also the Secretary of State's duty to provide, to such extent as he considers necessary to meet all reasonable requirements—

- (a) for the dental inspection of pupils in attendance at schools maintained by local education authorities <sup>F3</sup> . . .;
- (b) for the dental treatment of such pupils; and
- (c) for the education of such pupils in dental health.

(1B) Schedule 1 to this Act shall have effect.]

(2) The Secretary of State may—

- (a) provide invalid carriages for persons appearing to him to be suffering from severe physical defect or disability and, at the request of such a person, may provide for him a vehicle other than an invalid carriage (and the additional provisions set out in Schedule 2 to this Act have effect in relation to this paragraph);
- (b) arrange to provide accommodation and treatment outside Great Britain for persons suffering from respiratory tuberculosis;
- (c) provide a microbiological service, which may include the provision of laboratories, for the control of the spread of infectious diseases [<sup>F6</sup>and carry on such other activities as in his opinion can conveniently be carried on in conjunction with that service];
- (d) conduct, or assist by grants or otherwise (without prejudice to the general powers and duties conferred on him under the <sup>M3</sup>Ministry of Health Act 1919) any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness, and into any such other matters connected with any service provided under this Act as he considers appropriate.

[<sup>F7</sup>(2A) Charges may be made for service or materials supplied by virtue of paragraph (c) of subsection (2) above; and the powers conferred by that paragraph may be exercised both for the purposes of the health service and for other purposes.]

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[<sup>F8</sup>(2B) The Secretary of State’s functions may be performed outside England and Wales, in so far as they relate—

- (a) to holidays for patients;
- (b) to the transfer of patients to or from Scotland, Northern Ireland, the Isle of Man or the Channel Islands; or
- (c) to the return of patients who have received treatment in England and Wales to countries or territories outside the British Islands.]

(3) ..... <sup>F9</sup>

(4) The Public Health Laboratory Service Board continues in being for the purpose of exercising such functions with respect to the [<sup>F10</sup> powers conferred by paragraph (c) of subsection (2) above as the Secretary of State may determine].

(5) The Board shall continue to be constituted in accordance with Part I of Schedule 3 to this Act, and the additional provisions set out in Part II of that Schedule have effect in relation to the Board.

#### Textual Amendments

- F2** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), ss. 10(1)(a), 25(2), **Sch. 3**
- F3** Words in s. 5(1)(a)(1A)(a) repealed (1.9.1999) by 1998 c. 31, s. 140(3), **Sch. 31**; S.I. 1999/2323, art. 2(1), **Sch. 1** (with arts. 3-23)
- F4** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), **Sch. 3**
- F5** S. 5(1A)(1B) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 10(1)(b)
- F6** Words substituted by [Public Health Laboratory Service Act 1979 \(c. 23, SIF 113:1\)](#), s. 1(1)
- F7** S. 5(2A) inserted by [Public Health Laboratory Service Act 1979 \(c. 23, SIF 113:1\)](#), s. 1(2)
- F8** S. 5(2B) added by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 9(1)
- F9** S. 5(3) repealed by [Social Security Act 1988 \(c. 7, SIF 113:1\)](#), s. 16(2), **Sch. 5**
- F10** Words substituted by [Public Health Laboratory Service Act 1979 \(c. 23, SIF 113:1\)](#), s. 1(3)

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

- C18** S. 5(1)-(1B) applied (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**  
S. 5(1)-(1B) applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**
- C19** S. 5(1)(a)(b)(1A): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**
- C20** S. 5(2)(d): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(a), **Sch. 1** (as amended (E.) (1.4.2002) by S.I. 2002/555, reg. 3(3))
- C21** S. 5(2)(b)(d): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**
- C22** S. 5(2B) modified (23.5.1991) by S.I. 1991/1236, art. 2(b) (which S.I. revoked S.I. 1991/577)

#### Marginal Citations

- M3** 1919 c. 21(57).

### Central Health Services Council and Medical Practices Committee

6 <sup>X1</sup>Central Health Services Council, and standing advisory committees.

(1) ..... <sup>F11</sup>

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- (3) The Secretary of State may, . . . <sup>F12</sup> by order constitute standing advisory committees for the purpose of advising him . . . <sup>F12</sup> on such of the services provided under this Act as may be specified in the order [<sup>F13</sup> and the provisions of Schedule 4 to this Act shall have effect in relation to such committees].
- [<sup>F14</sup>(4) Any committee so constituted shall consist of persons appointed by the Secretary of State after consultation with such representative organisations as he recognises for the purpose.]
- (5) It shall be the duty of a committee so constituted to advise the Secretary of State and . . . <sup>F12</sup>—
- (a) upon such matters relating to the services with which the committee are concerned as they think fit, and
  - (b) upon any questions referred to them by the Secretary of State . . . <sup>F12</sup> relating to those services,
- ..... <sup>F12</sup>
- (6) ..... <sup>F11</sup>

#### Editorial Information

**X1** Unreliable marginal note

#### Textual Amendments

- F11** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67-71, 73-76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68-70 repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)
- F12** Words repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)
- F13** Words added by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [s. 8\(3\)\(a\)](#)
- F14** [S. 6\(4\)](#) substituted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [s. 8\(3\)\(b\)](#)

## 7 Medical Practices Committee.

- (1) [<sup>F15</sup>Subject to subsection (1A) below] the Medical Practices Committee—
- (a) shall consist of a chairman and eight other members appointed by the Secretary of State after consultation with such organisations as he may recognise as representative of the medical profession; and
  - (b) [<sup>F16</sup>five of the] members shall be medical practitioners, and [<sup>F17</sup>four] at least of those [<sup>F17</sup>five] shall be actively engaged in medical practice.
- [<sup>F18</sup>(1A) The Secretary of State may by order make such modifications as he considers appropriate of paragraphs (a) and (b) of subsection (1) above.]
- (2) The Secretary of State may—
- (a) make regulations as to the appointment, tenure of office and vacation of office of the members of the Committee; and
  - (b) provide the services of such officers as the Committee may require.
- (3) The Committee's proceedings shall not be invalidated by any vacancy in its membership or by any defect in a member's appointment or qualification.

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[<sup>F19</sup>(4) After consulting the Medical Practices Committee, the Secretary of State may give the Committee directions with respect to the exercise of its functions; and it shall be the duty of the Committee to comply with any such directions.]

#### Textual Amendments

**F15** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 22(2)

**F16** Words in s. 7(1)(b) substituted (1.4.1994) by S.I. 1995/545, art. 2

**F17** Words in s. 7(1)(b) substituted (21.4.1993) by S.I. 1993/887, art. 2

**F18** S. 7(1A) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 22(3)

**F19** S. 7(4) added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 22(4)

### Local administration

#### [<sup>F20</sup>8 Health Authorities.

- (1) It is the duty of the Secretary of State by order to establish, in accordance with Part I of Schedule 5 to this Act, authorities to be called Health Authorities.
- (2) Subject to subsection (4) below, a Health Authority shall [<sup>F21</sup>be established] for such area of England or of Wales as is specified in the order establishing the authority [<sup>F22</sup>or, if the order so provides, for the whole of Wales].
- (3) A Health Authority shall be known by such name, in addition to the title "Health Authority", as—
  - (a) appears to the Secretary of State appropriately to signify the connection of the Health Authority with the area for which the authority are to [<sup>F23</sup>be established]; and
  - (b) is specified in the order establishing the authority.
- (4) The Secretary of State may by order—
  - (a) vary a Health Authority's area;
  - (b) abolish a Health Authority; or
  - (c) establish a new Health Authority.
  - [<sup>F24</sup>(d) change the name by which a Health Authority are known]
- (5) The Secretary of State shall act under this section so as to secure—
  - (a) that the areas for which Health Authorities are at any time [<sup>F25</sup>established] together comprise the whole of England and Wales; but
  - (b) that no area for which a Health Authority [<sup>F26</sup>are established] extends both into England and into Wales.
- (6) The power to make incidental or supplemental provision conferred by section 126(4) below includes in particular, in its application to orders made under this section, power to make provision for the transfer of staff, property, rights and liabilities.]

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### Textual Amendments

- F20** S. 8 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) for ss. 8, 10 by 1995 c. 17, ss. 1(1)(2), 8(1) (with Sch. 2 para. 6)
- F21** Words in s. 8(2) substituted (1.12.1999 for W., 4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, s. 65(1), Sch. 4 para. 5(a); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(3), Sch. 2
- F22** Words in s. 8(2) inserted (1.12.1998) by 1998 c. 38, s. 148; S.I. 1998/2789, art. 2
- F23** Words in s. 8(3)(a) substituted (1.12.1999 for W., 4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, s. 65(1), Sch. 4 para. 5(b); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(3), Sch. 2
- F24** S. 8(4)(d) inserted (1.12.1999 for W., 4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, s. 65(1), Sch. 4 para. 5(c); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(3), Sch. 2
- F25** Word in s. 8(5)(a) substituted (1.12.1999 for W., 4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, s. 65(1), Sch. 4 para. 5(d)(i); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(3), Sch. 2
- F26** Words in s. 8(5)(b) substituted (1.12.1999 for W., 4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, s. 65(1), Sch. 4 para. 5(d)(ii); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(3), Sch. 2

### Modifications etc. (not altering text)

- C23** S. 8(1)(5)(a) modified (1.12.1998) by 1998 c. 38, s. 27(7)(a); S.I. 1998/2789, art. 2

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F27

### Textual Amendments

- F27** S. 9, Sch. 5 Pt. I para. 4, Sch. 8 paras. 1(2), 2(5), 3(2), repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 13, 30, Sch. 10 Pt. I

## 11 <sup>[F31]</sup>Special Health Authorities.]

- <sup>[F32]</sup>(1) The Secretary of State may by order establish special bodies for the purpose of exercising any functions which may be conferred on them by or under this Act.]
- (2) The Secretary of State may, subject to the provisions of Part III of Schedule 5 to this Act, make such further provision relating to that body as he thinks fit.
- (3) A body established in pursuance of this section shall (without prejudice to the power conferred by subsection (4) below allocate a particular name to the body) be called a <sup>[F33]</sup>Special Health Authorities].
- (4) Without prejudice to the generality of the power conferred by this section to make an order (or of section 126(4) below), that order may in particular contain provisions as to—
- the membership of the body established by the order;
  - the transfer to the body of officers, property, rights and liabilities; and
  - the name by which the body is to be known.



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- (5) It is the Secretary of State's duty before he makes such an order to consult with respect to the order such bodies as he may recognise as representing officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the order.

#### Textual Amendments

- F31** S. 11 sidenote substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 2(c)** (with **Sch. 2 para. 6**)
- F32** S. 11(1) substituted (1.9.1999 for E. and 1.12.1999 for W.) by 1999 c. 8, s. 65(1), **Sch. 4 para. 6**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** (with art. 3)
- F33** Words in s. 11(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 2(b)** (with **Sch. 2 para. 6**)

## 12 Supplementary provisions for ss. 8 <sup>F34</sup>and] 11.

<sup>F35</sup>(1) . . . . .

<sup>F36</sup>(2) The provisions of Part III of Schedule 5 to this Act have effect, so far as applicable, in relation to—

- <sup>F37</sup>(a) Health Authorities established under section 8 above; and  
(b) any Special Health Authority established under section 11 above.]

#### Textual Amendments

- F34** Word in s. 12 sidenote substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 3(c)** (with **Sch. 2 para. 6**)
- F35** S. 12(1) omitted (4.1.2000 for E. and otherwise prosp.) and repealed (prosp.) by 1999 c. 8, s. 65, **Sch. 4 para. 7**, **Sch. 5**; S.I. 1999/2342, art. 2(3), **Sch. 2**
- F36** S. 12 renumbered as s. 12(2) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 3** (with **Sch. 2 para. 6**)
- F37** S. 12(2)(a)(b) (as so renumbered) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) for s. 12(2)(a)-(c) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 3(b)** (with **Sch. 2 para. 6**)

## <sup>F38</sup>13 Secretary of State's directions.

(1) The Secretary of State may direct a [<sup>F39</sup>Health Authority or Special Health Authority] to exercise on his behalf such of his functions relating to the health service as are specified in the directions, and <sup>F40</sup>. . . it shall be the duty of the [<sup>F41</sup>Health Authority or Special Health Authority] to comply with the directions.

(2) The Secretary of State's functions under subsection (1) above—

- (a) include any of his functions under enactments relating to mental health and nursing homes, <sup>F42</sup>. . . . .  
(b) . . . . .

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**Textual Amendments**

**F38** S. 13 ceased to have effect (1.9.1999 for E. and 1.12.1999 for W.) by 1999 c. 8, ss. 12(5), 65, **Sch. 5**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** (with art. 3); S.I. 2000/1041, art. 2(d), **Sch.**

**F39** Words in s. 13(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 4(a)(i)** (with **Sch. 2 para. 6**)

**F40** Words in s. 13(1) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), **Sch. 1 Pt. I para. 4(a)(ii)**, **Sch. 3** (with **Sch. 2 paras. 6, 16**)

**F41** Words in s. 13(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 4(a)(iii)** (with **Sch. 2 para. 6**)

**F42** S. 13(2)(b) and preceding word omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), **Sch. 1 Pt. I para. 4(b)**, **Sch. 3** (with **Sch. 2 paras. 6, 16**)

<sup>F43</sup> 14 .....

**Textual Amendments**

**F43** S. 14 omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, 8(1), **Sch. 1 Pt. I para. 5**, **Sch. 3** (with **Sch. 2 paras. 6, 16**)

**15** [<sup>F44</sup>**Duty of Health Authority in relation to family health services.**]

- (1) It is the duty of [<sup>F45</sup>each Health Authority, in accordance with regulations]—
- [<sup>F46</sup>(a) to administer the arrangements made in pursuance of this Act for the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services for their [<sup>F47</sup>area];]
  - (b) to perform such [<sup>F48</sup>management and] other functions relating to those services as may be prescribed.

..... <sup>F49</sup>

[<sup>F50</sup>(1ZA) It is the duty of each Health Authority, in accordance with regulations, to perform such functions in relation to section 28C arrangements as may be prescribed.

- (1ZB) Regulations under subsection (1ZA) may, in particular—
- (a) prescribe functions in relation to training;
  - (b) provide for appeals to the Secretary of State or a prescribed body in relation to functions prescribed by the regulations.]

<sup>F51</sup>(1A) .....

- [<sup>F52</sup>In relation to a Part II medical practitioner—
- <sup>F53</sup>(1B) (a) whose name is included in the medical list of only one Health Authority, and
- (b) who practises on his own or in partnership with others all of whom are Part II medical practitioners whose names are included only in that Authority's medical list,

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any reference in this Act or the <sup>M4</sup>National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to that Authority.

(1BA) In relation to a medical practitioner who is not within subsection (1B), any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to the Authority in whose area most of the practice patients live.]

[ In relation to the operation of a fund-holding practice by medical practitioners the <sup>F54</sup>(1C) relevant Health Authority in respect of one or more of whom would (apart from this subsection) be different from that in respect of the other or others, the relevant Health Authority for each of them shall be determined for the purposes of the application of any provision relating to fund-holding practices as if they were all practising in a single partnership.]

[ In this section— <sup>F55</sup>(1D) ”Part II medical practitioner” means a medical practitioner who provides general medical services under Part II and does not perform personal medical services under section 28C arrangements; and

”practice patient” means—

- (a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner’s list of patients (or, if that practitioner and one or more other medical practitioners together have a single list of patients in connection with section 28C arrangements, an individual who is on that single list);
- (b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of those practitioners together have a single list of patients in connection with section 28C arrangements, an individual who is on that single list).]]

(2) ..... <sup>F56</sup>

### Textual Amendments

- F44** S. 15 sidenote substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 6(e)** (with Sch. 2 para. 6)
- F45** Words in s. 15(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 6(a)(i)** (with Sch. 2 para. 6)
- F46** S. 15(1)(a) substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), **s. 5(2)**
- F47** Words in s. 15(1)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 6(a)(ii)** (with Sch. 2 para. 6)
- F48** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 12(1)(b)**
- F49** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F50** S. 15(1ZA)-(1ZB) inserted (1.4.1998) by 1997 c. 46, s. 41(10)(11), **Sch. 2 Pt. I para. 4(2)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F51** S. 15(1A) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), Sch. 1 Pt. I para. 6(b), **Sch. 3** (with Sch. 2 paras. 6, 16)
- F52** S. 15(1B)-(1D) repealed (1.10.1999 for specified purposes for E., 1.4.2000 for specified purposes for W. and otherwise prosp.) by 1999 c. 8, s. 65, Sch. 4 para. 8, **Sch. 5**; S.I. 1999/2540, art. 2(1), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch. 1**; S.I. 2000/1041, art. 2(d), **Sch.**

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- F53** S. 15(1B)(1BA) substituted (1.4.1998) for s. 15(1B) by 1997 c. 46, s. 41(10)(11), **Sch. 2 Pt. I para. 4(3)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F54** S. 15(1C) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 6(d)** (with Sch. 2 para. 6)
- F55** S. 15(1D) inserted (1.4.1998) by 1997 c. 46, s. 41(10)(11), **Sch. 2 Pt. I para. 4(4)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F56** S. 15(2), Sch. 12 para. 2(5) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

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

- C24** S. 15(1)(b) modified (1.4.1995) by S.I. 1995/692, **art. 2**

#### Marginal Citations

- M4** 1990 c. 19.

### [<sup>F57</sup>16 Exercise of functions by Health Authorities and Special Health Authorities.

- (1) This subsection applies to functions which are exercisable by a Health Authority under or by virtue of this Act (including this section), the <sup>M5</sup>National Health Service and Community Care Act 1990 or any prescribed provision of any other Act.
- (2) Regulations may provide for any functions to which subsection (1) above applies to be exercised—
- by another Health Authority,
  - by a Special Health Authority, or
  - jointly with any one or more of the following: Primary Care Trusts and other Health Authorities.
- (3) Regulations may provide for any functions which are exercisable by a Special Health Authority under section 16D below to be exercised—
- by another Special Health Authority, or
  - jointly with one or more other Special Health Authorities.
- (4) Regulations may provide—
- for any functions to which subsection (1) above applies to be exercised, on behalf of the Health Authority by whom they are exercisable, by a committee, sub-committee or officer of the Health Authority,
  - for any functions which, under section 16D below or this section, are exercisable by a Special Health Authority to be exercised, on behalf of that authority, by a committee, sub-committee or officer of the authority,
  - for any functions exercisable jointly under subsection (2)(c) or (3)(b) above to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.]

#### Textual Amendments

- F57** S. 16 substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise prosp.) by 1999 c. 8, s. 65, **Sch. 4 para. 9**; S.I. 1999/2342, art. 2(1)(3), Schs. 1, 2; S.I. 1999/3184, art. 2(2), **Sch. 2** (with art. 3)

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### Marginal Citations

M5 1990 c.19.

## [<sup>F58</sup>16A Primary Care Trusts.

- (1) The Secretary of State may establish bodies to be known as Primary Care Trusts with a view, in particular, to their—
  - (a) providing or arranging for the provision of services under this Part of this Act,
  - (b) exercising functions in relation to the provision of general medical services under Part II of this Act, and
  - (c) providing services in accordance with section 28C arrangements.
- (2) Each Primary Care Trust shall be established by an order made by him (referred to in this Act as a PCT order).
- (3) A Primary Care Trust shall be established for the area specified in its PCT order and shall exercise its functions in accordance with any prohibitions or restrictions in the order.
- (4) If any consultation requirements apply, they must be complied with before a PCT order is made.
- (5) In this section, "consultation requirements" means requirements about consultation contained in regulations (and the regulations must impose requirements where a PCT order establishes a Primary Care Trust).
- (6) Schedule 5A to this Act (which makes further provision about Primary Care Trusts) shall have effect.]

### Textual Amendments

**F58** Ss. 16A, 16B inserted (8.9.1999 for specified purposes for E. and 4.1.2000 insofar as not already in force for E.) by 1999 c. 8, s. 2(1); S.I. 1999/2342, art. 2(2)(a)(3), Sch. 2

### Modifications etc. (not altering text)

**C25** S. 16A extended (19.12.2001 for E.) by 2001 c. 15, ss. 45(5), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/4149, art. 2(a)

## <sup>F59</sup>16B Exercise of functions by Primary Care Trusts.

- (1) This section applies to functions which are exercisable by a Primary Care Trust under or by virtue of this Act (including this section), the <sup>M6</sup>National Health Service and Community Care Act 1990 or any prescribed provision of any other Act.
- (2) Regulations may provide for any functions to which this section applies to be exercised—
  - (a) by another Primary Care Trust,
  - (b) by a Special Health Authority, or
  - (c) jointly with any one or more of the following: Health Authorities, NHS trusts and other Primary Care Trusts.
- (3) Regulations may provide—

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- (a) for any functions to which this section applies to be exercised, on behalf of the Primary Care Trust by whom they are exercisable, by a committee, sub-committee or officer of the trust,
- (b) for any functions which, under this section, are exercisable by a Special Health Authority to be exercised, on behalf of that authority, by a committee, sub-committee or officer of the authority,
- (c) for any functions which, under this section, are exercisable by a Primary Care Trust jointly with one or more Health Authorities or other Primary Care Trusts (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.

#### Textual Amendments

**F59** Ss. 16A, 16B inserted (8.9.1999 for specified purposes for E., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) by 1999 c. 8, s. 2(1); S.I. 1999/2342, art. 2(2)(a)(3), Sch. 2

#### Marginal Citations

**M6** 1990 c.19

VALID FROM 10/10/2002

### [<sup>F60</sup>16B] Local Health Boards

- (1) The National Assembly for Wales may establish bodies to be known as Local Health Boards with a view, in particular, to their exercising—
  - (a) functions of Health Authorities transferred or to be transferred to the Assembly by order under section 27 of the Government of Wales Act 1998 (reform of Welsh health authorities),
  - (b) other functions of the Assembly relating to the health service.
- (2) Each Local Health Board shall be established by order made by the Assembly (referred to in this Act as an LHB order), and an order may establish more than one Local Health Board.
- (3) A Local Health Board shall be established for the area of Wales specified in its LHB order.
- (4) If any consultation requirements apply, they must be complied with before an LHB order is varied or revoked.
- (5) In this section, “consultation requirements” means requirements about consultation contained in regulations made by the Assembly.
- (6) Schedule 5B to this Act (which makes further provision about Local Health Boards) shall have effect.

#### Textual Amendments

**F60** Ss. 16BA, 16BB, 16BC inserted (10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 6(1), 42(3); S.I. 2002/2532, art. 2

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VALID FROM 10/10/2002

### **16BB Local Health Boards: functions**

- (1) The National Assembly for Wales may direct a Local Health Board to exercise in relation to its area any functions which—
  - (a) were exercised by a Health Authority in relation to any part of the same area, and
  - (b) have been transferred to the Assembly as mentioned in section 16BA(1) above.
- (2) The Assembly may also direct a Local Health Board to exercise in relation to its area such other functions of the Assembly relating to the health service as are specified in the directions.
- (3) The functions which may be specified in directions under this section include functions under enactments relating to mental health and nursing homes.
- (4) The Assembly may give directions to a Local Health Board about its exercise of any functions.
- (5) Directions under subsection (1) above must be given in regulations made by the Assembly; but other directions under this section and directions under section 16BC below may be given in such regulations or by instrument in writing.

#### **Textual Amendments**

**F60** Ss. 16BA, 16BB, 16BC inserted (10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 6(1), 42(3); S.I. 2002/2532, art. 2

VALID FROM 10/10/2002

### **16BC Exercise of functions by Local Health Boards**

- (1) This section applies to functions which are exercisable by a Local Health Board under or by virtue of section 16BB above or this section.
- (2) The Assembly may give directions providing for any functions to which this section applies to be exercised—
  - (a) by another Local Health Board;
  - (b) by a Special Health Authority; or
  - (c) jointly with any one or more of the following: Health Authorities, NHS trusts, Primary Care Trusts and other Local Health Boards.
- (3) Directions given by the Assembly may provide—
  - (a) for any functions to which this section applies to be exercised, on behalf of the Local Health Board by whom they are exercisable, by a committee, sub-committee or officer of the Board,

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- (b) for any functions which, under this section, are exercisable by a Special Health Authority to be exercised, on behalf of that authority, by a committee, sub-committee or officer of the authority,
- (c) for any functions which, under this section, are exercisable by a Local Health Board jointly with one or more Health Authorities or other Local Health Boards (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.]

#### Textual Amendments

**F60** Ss. 16BA, 16BB, 16BC inserted (10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 6(1), 42(3); S.I. 2002/2532, art. 2

### [<sup>F61</sup>16C Advice for Health Authorities and Primary Care Trusts.

- (1) Every Health Authority shall make arrangements with a view to securing that they receive advice appropriate for enabling them effectively to exercise the functions exercisable by them from persons with professional expertise relating to the physical or mental health of individuals.
- (2) This section applies to Primary Care Trusts as it applies to Health Authorities.]

#### Textual Amendments

**F61** S. 16C inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, s. 65, Sch. 4 para. 10; S.I. 1999/2342, art. 2(3)(a), Sch. 2

[<sup>F62</sup> Directions as to distribution and exercise of functions]

#### Textual Amendments

**F62** Ss. 16D, 17, 17A, 17B and preceding cross-heading substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) for s. 17 by 1999 c. 8, s. 12(1); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(1)(3), Sch. 1, Sch. 2

### [<sup>F63</sup>16D Secretary of State's directions: distribution of functions.

- (1) The Secretary of State may direct a Health Authority or Special Health Authority to exercise any of his functions relating to the health service which are specified in the directions.
- (2) The Secretary of State may direct a Special Health Authority to exercise any functions of a Health Authority or a Primary Care Trust which are specified in the directions.
- (3) The functions which may be specified in directions under this section include functions under enactments relating to mental health and nursing homes.]



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#### Textual Amendments

**F63** Ss. 16D, 17, 17A, 17B and preceding cross-heading substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) for s. 17 by 1999 c. 8, s. 12(1); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(1)(3), Sch. 1, Sch. 2

#### [<sup>F64</sup>17 Secretary of State's directions: exercise of functions.

- (1) The Secretary of State may give directions to any of the bodies mentioned in subsection (2) below about their exercise of any functions.
- (2) The bodies are—
  - (a) Health Authorities;
  - (b) Special Health Authorities;
  - (c) Primary Care Trusts;
  - (d) NHS trusts.
- (3) The power conferred by subsection (1) above shall not be exercised so as to give any directions which may be given under—
  - (a) section 27, 28A, 41A, 97, 97A or 99 of, or paragraph 10 of Schedule 5 or paragraph 9 of Schedule 5A to, this Act;
  - (b) section 7(3)(ii) of the <sup>M7</sup>Health and Medicines Act 1988 (directions about the exercise of powers for financing the health service); or
  - (c) section 28 of the <sup>M8</sup>Health Act 1999 (plans for improving health etc.).]

#### Textual Amendments

**F64** Ss. 16D, 17, 17A, 17B and preceding cross-heading substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) for s. 17 by 1999 c. 8, s. 12(1); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(1)(3), Sch. 1, Sch. 2

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

**C26** S. 17(3) extended (1.9.1999 for E., 1.12.1999 for W. and otherwise *prosp.*) by 1999 c. 8, s. 12(2); S.I. 1999/2342, art. 2(1), Sch. 1; S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3) (which amendment falls (*prosp.*) by reason of the repeal of 1999 c. 8, s. 12(2) by 2001 c. 15, s. 67, Sch. 6 Pt. 1)

#### Marginal Citations

**M7** 1988 c.49.  
**M8** 1999 c.8.

#### [<sup>F65</sup>17A Health Authority's directions: distribution of functions.

- (1) A Health Authority may direct a Primary Care Trust whose area falls within their area to exercise any specified delegable functions.
- (2) A function is a delegable function for the purposes of this section if it is a function exercisable by the Health Authority which is not an excepted function.

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- (3) In subsection (2) above "excepted function" means a function under—
- (a) section 4 above;
  - (b) section 15 above (except in so far as it relates to general medical services);
  - (c) section 44 or 45(1C) to (4) below; or
  - (d) any of the other provisions of Part II of this Act—
    - (i) unless it is a function under section 51, 52 or 53; or
    - (ii) in relation to the remaining provisions of Part II, except in so far as the function relates to general medical services,
 or a function referred to in section 28EE(1)(a) to (d) below.
- (4) The Secretary of State may direct Health Authorities that specified delegable functions—
- (a) are to be exercisable, or exercisable to (or only to) any specified extent, by Primary Care Trusts; or
  - (b) are not to be exercisable by Primary Care Trusts,
- and that the power under subsection (1) above is to be exercised accordingly.
- (5) In this section "specified" means specified in directions.]

#### Textual Amendments

**F65** Ss. 16D, 17, 17A, 17B and preceding cross-heading substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) for s. 17 by 1999 c. 8, s. 12(1); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(1)(3), Schs. 1, 2

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

**C27** S. 17A modified (4.1.2000 for E. and otherwise *prosp.*) by 1997 c. 46, s. 8A(1) (as inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, s. 6(1); S.I. 1999/2342, art. 2(3), Sch. 2)

**C28** S. 17A(1) restricted (1.5.2000) by S.I. 2000/1168, art. 8  
 S. 17A(1) restricted (18.2.2000) by S.I. 2000/307, art. 8  
 S. 17A(1) restricted (14.8.2000) by S.I. 2000/2154, art. 8  
 S. 17A(1) restricted (7.7.2000) by S.I. 2000/1718, art. 8

#### [<sup>F66</sup>17B Health Authority's directions: exercise of functions.

- (1) A Health Authority may give directions to a Primary Care Trust about its exercise of any functions which the authority have directed the trust to exercise under section 17A above.
- (2) Directions under this section have effect subject to any directions given under section 17 above.]

#### Textual Amendments

**F66** Ss. 16D, 17, 17A, 17B and preceding cross-heading substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) for s. 17 by 1999 c. 8, s. 12(1); S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3); S.I. 1999/2342, art. 2(1)(3), Sch. 1, Sch. 2

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[<sup>F67</sup> Directions and regulations: general]

**Textual Amendments**

**F67** S. 18: cross-heading, sidenote and subsections (1)-(1B) substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) for s. 18 down to the end of subsection (1) by 1999 c. 8, s. 12(3); S.I. 1999/2343, art. 2(1)(3), Schs. 1, 2; S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3)

[<sup>F68</sup>18 Directions and regulations under preceding provisions.

(1) Any directions given by the Secretary of State under section 16D, 17 or 17A above shall be given by regulations or by an instrument in writing.

(1A) But any directions given by him—

- (a) under section 16D above about functions under section 4 above;
- (b) under section 17A(4) above about functions relating to general medical services; or
- (c) under section 16D, 17 or 17A above about functions conferred on the Secretary of State by section 20(1) or (2) below,

shall be given by regulations.

(1B) Directions given by a Health Authority under section 17A or 17B above shall be given by an instrument in writing.]

<sup>F69</sup>(2) . . . . .

(3) Directions given and regulations made under sections [<sup>F70</sup>16 to 17B above] in respect of any function—

- (a) shall not, except in prescribed cases, preclude [<sup>F71</sup>an authority or a] person by whom the function is exercisable apart from the directions or regulations from exercising the function, and
- (b) may in the case of directions given by an instrument in writing be varied or revoked by subsequent directions given in pursuance of those sections and this section (without prejudice to the operation of [<sup>F72</sup>section 14 of the <sup>M9</sup>Interpretation Act 1978] in the case of directions given by regulations),

<sup>F73</sup> . . . . .

**Textual Amendments**

**F68** S. 18: cross-heading, sidenote and subsections (1)-(1B) substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) for s. 18 down to the end of subsection (1) by 1999 c. 8, s. 12(3); S.I. 1999/2342, art. 2(1)(3), Schs. 1, 2; S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3)

**F69** S. 18(2) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), Sch. 1 Pt. I para. 9(b), Sch. 3 (with Sch. 2 paras. 6, 16)

**F70** Words in s. 18(3) substituted (1.9.1999 for specified purposes for E., 1.12.1999 for specified purposes for W., 4.1.2000 insofar as not already in force for E. and otherwise *prosp.*) by 1999 c. 8, s. 12(4); S.I. 1999/2343, art. 2(1)(3), Schs. 1, 2; S.I. 1999/3184, art. 2(2), Sch. 2 (with art. 3)

**F71** Words in s. 18(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 9(c)(ii) (with Sch. 2 para. 6)

**F72** Words substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), s. 17(2)(a)

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**F73** Words in s. 18(3) repealed (28.6.1995) by 1995 c. 17, ss. 3(8)(10), 5(1), **Sch. 3** (with Sch. 2 para. 6s, 16)

#### Marginal Citations

**M9** 1978 c. 30(115:1).

### <sup>F74</sup> Primary Care Trusts: further functions

#### Textual Amendments

**F74** S. 18A and preceding cross-heading inserted (4.1.2000 for specified purposes for E. and otherwise *prosp.*) by 1999 c. 8, s. 5; S.I. 1999/2342, art. 2(3), **Sch. 2**

### <sup>F75</sup> 18A Provision of services etc.

- (1) A Primary Care Trust may provide services under an agreement made under section 28C below, and may do so as a member of a qualifying body (within the meaning of section 28D).
- (2) A Primary Care Trust may arrange for the provision by the trust to another health service body of goods or services (including accommodation) which are of the same description as those which, at the time of making the arrangement, the trust has power to provide in carrying out its other functions.
- (3) A Primary Care Trust may provide premises for the use of persons—
  - (a) providing general medical, general dental, general ophthalmic or pharmaceutical services, or
  - (b) performing personal medical or personal dental services under an agreement made under section 28C below,
 on any terms it thinks fit.
- (4) A Primary Care Trust which manages any hospital may make accommodation or services available there for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the trust in respect of the accommodation or services.
- (5) A Primary Care Trust has power to do anything specified in section 7(2) of <sup>M10</sup>the Health and Medicines Act 1988 (provision of goods, services etc.), other than make accommodation or services available for patients at any hospital it manages, for the purpose of making additional income available for improving the health service.
- (6) A Primary Care Trust may only exercise a power conferred by subsection (4) or (5) above—
  - (a) to the extent that its exercise does not to any significant extent interfere with the performance by the trust of its functions or of its obligations under NHS contracts, and
  - (b) in circumstances specified in directions under section 17 above, with the Secretary of State's consent.
- (7) In this section "hospital" means a health service hospital and includes any establishment or facility managed for the purposes of the health service.]

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### Textual Amendments

**F75** S. 18A and preceding cross-heading inserted (4.1.2000 for specified purposes for E. and otherwise *prosp.*) by 1999 c. 8, s. 5; S.I. 1999/2342, art. 2(3), **Sch. 2**

### Marginal Citations

**M10** 1988 c.49

*[<sup>F76</sup> Advisory committees for Wales] and Community Health Councils*

### Textual Amendments

**F76** Words in the cross-heading substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 10(e)** (with Sch. 2 paras. 6, 16)

## 19 [<sup>F77</sup> Advisory committees for Wales].

(1) Where the Secretary of State is satisfied that a committee formed for Wales, <sup>F78</sup> . . . is representative of persons of any of the following categories—

- (a) the medical practitioners, or
- (b) the dental practitioners, or
- (c) the nurses and midwives, or
- (d) the registered pharmacists, or
- (e) the ophthalmic and dispensing opticians,

of Wales <sup>F79</sup> . . . , then it shall be his duty to recognise the committee.

(2) A committee recognised in pursuance of subsection (1) above shall be called—

- (a) the Welsh Medical, Dental, Nursing and Midwifery, Pharmaceutical or Optical Committee, as the case may be;

<sup>F80</sup>(b) . . . . .

<sup>F81</sup>(3) . . . . .

(4) The Secretary of State's duty under [<sup>F82</sup> subsection (1)] above is subject to paragraph 1 of Schedule 6 to this Act, and that Schedule has effect in relation to a committee recognised in pursuance of this section.

### Textual Amendments

**F77** Words in the sidenote to s. 19 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 10 para. 10(e)** (with Sch. 2 paras. 6, 16)

**F78** Words in s. 19(1) repealed (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), **Sch. 1 para. 10(a)(i)**, **Sch. 3** (with Sch. 2 paras. 6, 16)

**F79** Words in s. 19(1) repealed (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), **Sch. 1 para. 10(a)(ii)**, **Sch. 3** (with Sch. 2 paras. 6, 16)

**F80** S. 19(2)(b) repealed (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), **Sch. 1 para. 10(b)**, **Sch. 3** (with Sch. 2 paras. 6, 16)

**F81** S. 19(3) repealed (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), **Sch. 1 para. 10(c)**, **Sch. 3** (with Sch. 2 paras. 6, 16)

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**F82** Words in s. 19(4) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 10(d)** (with Sch. 2 paras. 6, 16)

PROSPECTIVE

### **[<sup>F83</sup>19A Independent advocacy services**

- (1) It is the duty of the Secretary of State to arrange, to such extent as he considers necessary to meet all reasonable requirements, for the provision of independent advocacy services.
- (2) “Independent advocacy services” are services providing assistance (by way of representation or otherwise) to individuals making or intending to make—
  - (a) a complaint under a procedure operated by a health service body or independent provider,
  - (b) a complaint to the Health Service Commissioner for England or the Health Service Commissioner for Wales,
  - (c) a complaint of a prescribed description which relates to the provision of services as part of the health service and—
    - (i) is made under a procedure of a prescribed description, or
    - (ii) gives rise, or may give rise, to proceedings of a prescribed description.
- (3) In subsection (2)—
 

“health service body” means a body which, under section 2(1) or (2) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England or the Health Service Commissioner for Wales;

“independent provider” means a person who, under section 2B(1) or (2) of that Act, is subject to such investigation.
- (4) The Secretary of State may make such other arrangements as he thinks fit for the provision of assistance to individuals in connection with complaints relating to the provision of services as part of the health service.
- (5) In making arrangements under this section the Secretary of State must have regard to the principle that the provision of services under the arrangements should, so far as practicable, be independent of any person who is the subject of a relevant complaint or is involved in investigating or adjudicating on such a complaint.
- (6) The Secretary of State may make payments to any person in pursuance of arrangements under this section.]

#### **Textual Amendments**

**F83** S. 19A inserted (*prosp.*) by 2001 c. 15, ss. 12, 70(2) (with ss. 64(9), 65(4))

## **20 Community Health Councils.**

- (1) It is the Secretary of State’s duty to establish in accordance with this [<sup>F84</sup>section, in the case of the area of each Health Authority, a council for the area, or separate councils

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for such separate parts of the area] as he thinks fit, and such a council shall be called a Community Health Council.

(2) The Secretary of State—

- (a) may if he thinks fit discharge this duty by establishing a Community Health Council for a district which includes the areas or parts of the areas of two or more [<sup>F85</sup>Health Authorities], but
- (b) shall be treated as not having discharged that duty unless he secures that there is no part of the area of [<sup>F86</sup>a Health Authority] which is not included in some Community Health Council's district.

(3) The additional provisions of Schedule 7 to this Act have effect in relation to Community Health Councils.

#### Textual Amendments

**F84** Words in s. 20(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 11(a)** (with Sch. 2 paras. 6, 16)

**F85** Words in s. 20(2)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 11(b)(i)** (with Sch. 2 paras. 6, 16)

**F86** Words in s. 20(2)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 11(b)(ii)** (with Sch. 2 paras. 6, 16)

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

**C29** S. 20 modified (1.12.1998) by 1998 c. 38, s. 27(7)(b) (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2789, art. 2

### Co-operation and assistance

#### 21 Local social services authorities.

(1) Subject to paragraphs (d) and (e) of section 3(1) above, the services described in Schedule 8 to this Act in relation to—

- (a) care of mothers <sup>F87</sup> . . . ,
- (b) prevention, care and after-care,
- (c) home help and laundry facilities,

are functions exercisable by local social services authorities, and that Schedule has effect accordingly.

(2) A local social services authority who provide premises, furniture or equipment for any of the purposes of this Act may permit the use of the premises, furniture or equipment—

- (a) by any other local social services authority, or
- (b) by any of the bodies constituted under this Act, or
- (c) by a local education authority.

This permission may be on such terms (including terms with respect to the services of any staff employed by the authority giving permission) as may be agreed.

(3) A local social services authority may provide (or improve or furnish) residential accommodation—

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- (a) for officers employed by them for the purposes of any of their functions as a local social services authority, or
- (b) for officers employed by a voluntary organisation for the purposes of any services provided under this section and Schedule 8.

#### Textual Amendments

**F87** Words in s. 21(1)(a) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with s. 108(6), Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

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

**C30** S. 21 restricted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 54, 162(2), **Sch. 3**; S.I. 2002/2811, **art. 2**, Sch.

## 22 Co-operation between health authorities and local authorities.

- (1) In exercising their respective functions [<sup>F88</sup>Health Authorities and Special Health Authorities (on the one hand) and local authorities (on the other)] shall co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.
- (2) There shall be committees, to be called joint consultative committees, who shall [<sup>F89</sup>advise][<sup>F90</sup>bodies represented on them] on the performance of their duties under subsection (1) above, and on the planning and operation of services of common concern to those authorities. <sup>F91</sup> . . .
- [<sup>F92</sup>(3) Except as provided by an order under the following provisions of this section, each joint consultative committee shall represent one or more Health Authorities together with, in the case of each, one or more associated local authorities; and a Health Authority shall be represented together with each of the local authorities associated with that Health Authority in one or other of the committees (but not necessarily the same committee).
- (3ZA) For the purposes of subsection (3) above a local authority is associated with a Health Authority if it is a local authority whose area is wholly or partly within the area of the Health Authority.]
- [<sup>F93</sup>(3A) It is the Secretary of State's duty by order to secure as respects each joint consultative committee that it includes additional members appointed in a manner specified in the order by voluntary organisations.]
- (4) The Secretary of State shall have power by order to provide for any matter relating to joint consultative committees, and such an order may in particular—
  - (a) provide for the way in which the provisions of subsections (2) and (3) above are to be carried out, or provide for varying the arrangements set out in those subsections;
  - (b) provide, where it appears to the Secretary of State appropriate, for [<sup>F94</sup>a Health Authority to be represented on a joint consultative committee together with a local authority none of whose area is within the area of the Health Authority;]
  - (c) afford a choice to any authorities as to the number of joint consultative committees on which they are to be represented, and provide for the case where the authorities cannot agree on the choice;



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- (d) authorise or require a joint consultative committee to appoint any sub-committee or to join with another joint consultative committee or other joint consultative committees in appointing a joint sub-committee;
  - (e) authorise or require the appointment to a joint consultative committee, or to any sub-committee, of persons who are <sup>F95</sup>neither—
    - (i) members of the authorities represented by the joint consultative committee; nor
    - (ii) appointed by virtue of an order under subsection (3A) above];
  - (f) require the authorities represented on a joint consultative committee to defray the expenses of the committee, and of any sub-committee, in such shares as may be determined by or under the order, and provide for the way in which any dispute between those authorities concerning the expenses is to be resolved; and
  - (g) require those authorities to make reports to the Secretary of State on the work of the joint consultative committee and of any sub-committee.
- (5) Before making an order under this section the Secretary of State shall consult with such associations of local authorities as appear to him to be concerned, and with any local authority with whom consultation appears to him to be desirable.
- <sup>F96</sup>(6) Without prejudice to the generality of section 126(4) below, the power to make an order conferred by subsection (3A) above may be exercised so as to make different provision for England and Wales and different provision for different communities in either.]

#### Textual Amendments

- F88** Words in s. 22(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 12(a)** (with Sch. 2 paras. 6, 16)
- F89** Word in s. 22(2) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 12(b)** (with Sch. 2 paras. 6, 16)
- F90** Words substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 3(b)**
- F91** Table in s. 22(2) repealed (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), 8(1), Sch. 1 para. 12(c), **Sch. 3** (with Sch. 2 paras. 6, 16)
- F92** S. 22(3)(3ZA) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) for s. 22(3) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 12(d)** (with Sch. 2 paras. 6, 16)
- F93** S. 22(3A) inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 12, **Sch. 5 para. 2(a)**
- F94** Words in s. 22(4)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 12(e)** (with Sch. 2 paras. 6, 16)
- F95** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 12, Sch. 5 para. 2(b)
- F96** S. 22(6) inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 12, **Sch. 5 para. 2(c)**

## 23 Voluntary organisations and other bodies.

- (1) The Secretary of State may, where he considers it appropriate, arrange with any person or body (including a voluntary organisation) for that person or body to provide, or assist in providing, any service under this Act.

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- (2) The Secretary of State may make available—
- (a) to any person or body (including a voluntary organisation) carrying out any arrangements under subsection (1) above, or
  - (b) to any voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968 (assistance made available by the Secretary of State or local authorities),
- any facilities (including goods or materials, or the use of any premises and the use of any vehicle, plant or apparatus) provided by him for any service under this Act; and, where anything is so made available, the services of persons employed by the Secretary of State or by a [<sup>F98</sup>Health Authority [<sup>F99</sup>, Special Health Authority or Primary Care Trust,]] in connection with it.
- (3) The powers conferred by 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, and any goods or materials may be made available either temporarily or permanently.
- (4) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so made available, [<sup>F100</sup>the Vehicle Excise and Registration Act 1994] and [<sup>F101</sup>Part VI of the Road Traffic Act 1988] shall have effect with such modifications as are specified in the order.
- (5) Any power to supply goods or materials conferred by this section includes a power to purchase and store them and includes a power to arrange with third parties for the supply of goods or materials by those third parties.

#### Textual Amendments

- F97** Para. repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)
- F98** Words in s. 23(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 para. 13](#) (with [Sch. 2 paras. 6, 16](#))
- F99** Words in s. 23(2) substituted (8.2.2000) by [S.I. 2000/90, art. 3\(1\)](#), [Sch. 1 para. 13\(2\)](#) (with [art. 2\(5\)](#))
- F100** Words in s. 23(4) substituted (1.9.1994) by [1994 c. 22, ss. 63, 66\(1\)](#), [Sch. 3 para. 10](#) (with [s. 57\(4\)](#))
- F101** Words substituted by [Road Traffic \(Consequential Provisions\) Act 1988 \(c. 54, SIF 107:1\)](#), s. 4, [Sch. 3 para. 18\(1\)](#)

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

- C31** [S. 23\(1\)-\(3\)](#): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of [S.I. 2000/695, reg. 3\(2\)\(a\)](#), [Sch. 1](#)
- C32** [S. 23\(1\)-\(3\)](#): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747, regs. 2\(1\), 3, 4](#), [Sch. 1](#)

#### Textual Amendments

- F102** [S. 24](#) repealed by [Overseas Development and Co-operation Act 1980 \(c. 63, SIF 88\)](#), s. 18, [Sch. 2 Pt. I](#)

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## 25 Supplies not readily obtainable.

Where the Secretary of State has acquired—

- (a) supplies of human blood for the purposes of any service under this Act, or
- (b) any part of a human body for the purpose of, or in the course of providing, any such service, or
- (c) supplies of any other substances or preparations not readily obtainable,

he may arrange to make such supplies or that part available (on such terms, including terms as to charges, as he thinks fit) to any person.

This section is subject to section 62 below (restriction of powers under [F103section 25]).

### Textual Amendments

**F103** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(1), [Sch. 2 para. 2](#)

## 26 Supply of goods and services by Secretary of State.

(1) The Secretary of State may—

- (a) supply to local authorities, and to such public bodies or classes of public bodies as he may determine, any goods or materials of a kind used in the health service;
- (b) make available to local authorities, and to those bodies or classes of bodies, any facilities (including the use of any premises and the use of any vehicle, plant or apparatus) provided by him [F104or by a Primary Care Trust] for any service under this act, and the services of persons employed by the Secretary of State or by a [F105Health Authority [F106Special Health Authority or Primary Care Trust]];
- (c) carry out maintenance work in connection with any land or building for the maintenance of which a local authority is responsible.

In this subsection—

“maintenance work” includes minor renewals, minor improvements and minor extensions; and

“public bodies” includes public bodies in Northern Ireland.

[F107(2) The Secretary of State may supply or make available to persons—

- (a) providing general medical services, general dental services, general ophthalmic services or pharmaceutical services, or
- (b) providing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part,

such goods, materials or other facilities as may be prescribed.]

(3) The Secretary of State shall make available to local authorities—

- (a) any services or other facilities (excluding the services of any person but including goods or materials, the use of any premises and the use of any vehicle, plant or apparatus) provided under this Act,
- (b) the services provided as part of the health service by any person employed by the Secretary of State or a [F105Health Authority [F108Special Health Authority or Primary Care Trust]], and

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- (c) the services of any medical practitioner, dental practitioner or nurse employed by the Secretary of State or a [<sup>F105</sup>Health Authority [<sup>F108</sup>Special Health Authority or Primary Care Trust]] otherwise than to provide services which are part of the health service,

so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

[<sup>F109</sup>(4) The Secretary of State may arrange to make available to local authorities the services of persons of the following descriptions, that is to say—

- (a) persons providing general medical services, general dental services, general ophthalmic services or pharmaceutical services,

[<sup>F110</sup>(aa) persons performing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part,] and

- (b) persons providing [<sup>F111</sup>Health Authorities [<sup>F112</sup>Special Health Authorities or Primary Care Trusts]] with services of a kind provided as part of the health service,

so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.]

#### Textual Amendments

**F104** Words in s. 26(1)(b) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 4 para. 11(a)**; S.I. 1999/2342, art. 2(3), **Sch. 2**

**F105** Words in s. 26 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 14(a)**

**F106** Words in s. 26(1)(b) substituted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 4 para. 11(a)**; S.I. 1999/2342, art. 2(3), **Sch. 2**

**F107** S. 26(2) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 5(2)**; S.I. 1998/631, art. 2(b), **Sch. 2** (subject to arts. 3-5) (as amended (13.8.1998) by S.I. 1998/1998, **art. 3(3)**)

**F108** Words in s. 26(3)(b)(c) substituted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 11(b)**; S.I. 1999/2342, art. 2(3), **Sch. 2**

**F109** S. 26(4) added by Health Services Act 1980 (c. 53, SIF 113:2), **s. 3(1)**

**F110** S. 26(4)(aa) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 5(3)**; S.I. 1998/631, art. 2(b), **Sch. 2** (subject to arts. 3-5) (as amended (13.8.1998) by S.I. 1998/1998, **art. 3(3)**)

**F111** Words in s. 26(4)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 14(b)**

**F112** Words in s. 26(4)(b) substituted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 11(c)**; S.I. 1999/2342, art. 2(3), **Sch. 2**

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

**C33** S. 26: functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(a), **Sch. 1**

**C34** S. 26(1)-(4): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

## 27 Conditions of supply under s. 26.

- (1) It is the Secretary of State's duty, before he makes the services of any officer of a [<sup>F113</sup>Health Authority [<sup>F114</sup>Special Health Authority or Primary Care Trust]] available in pursuance of subsection (1)(b) or subsection (3)(b) or (c) of section 26 above, to consult the officer or a body recognised by the Secretary of State as representing the

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- officer about the matter, or to satisfy himself that the <sup>F113</sup>Health Authority <sup>F114</sup>Special Health Authority or Primary Care Trust]] has consulted the officer about the matter.
- (2) The Secretary of State shall be entitled to disregard the provisions of subsection (1) above in a case where he considers it necessary to make the services of an officer available as mentioned in that subsection for the purpose of dealing temporarily with an emergency, and has previously consulted such a body about the making available of services in an emergency.
- (3) For the purposes of subsection (1)(b) or subsection (3)(b) or (c) of section 26 the Secretary of State may give such directions to <sup>F115</sup>Health Authorities <sup>F116</sup>Special Health Authorities and Primary Care Trusts]] to make the services of their officers available as he considers appropriate; <sup>F117</sup>. . .].
- (4) The powers conferred by this section and section 26 may be exercised on such terms as may be agreed, including terms as to the making of payments to the Secretary of State, and such charges may be made by the Secretary of State in respect of services or facilities provided under subsection (3) of section 26 as may be agreed between the Secretary of State and the local authority or, in default of agreement, as may be determined by arbitration.
- (5) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of section 26 and is used in accordance with the terms on which it is so made available, <sup>F118</sup>the Vehicle Excise and Registration Act 1994] and <sup>F119</sup>Part VI of the <sup>M11</sup>Road Traffic Act 1988] shall have effect with such modifications as are specified in the order.
- (6) Any power to supply goods or materials conferred by section 26 includes a power to purchase and store them, and a power to arrange with third parties for the supply of goods or materials by those third parties.

#### Textual Amendments

- F113** Words in s. 27(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 15(a)**
- F114** Words in s. 27(1) substituted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 12(2)**; S.I. 1999/2342, art. 2(3), **Sch. 2**
- F115** Words in s. 27(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 15(b)(i)**
- F116** Words in s. 27(3) substituted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 12(3)(a)**; S.I. 1999/2342, art. 2(3), **Sch. 2**
- F117** Words in s. 27(3) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, ss. 65(1), **Sch. 4 para. 12(3)(b)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and repealed (1.4.2000) by 1999 c. 8, ss. 65(2), **Sch. 5**; S.I. 2000/1041, art. 2(d), **Sch.**
- F118** Words in s. 27(5) substituted (1.9.1994) by 1994 c. 22, ss. 63, 66(1), **Sch. 3 para. 10** (with s. 57(4))
- F119** Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 18(2)**

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

- C35** S. 27(1)(2)(4): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(a), **Sch. 1**
- C36** S. 27(1)(2)(4): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

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### Marginal Citations

**M11** 1988 c. 52(107:1).

## 28 Supply of goods and services by local authorities.

- (1) In the <sup>M12</sup>Local Authorities (Goods and Services) Act 1970 the expression “public body” includes any [<sup>F120</sup>Health Authority [<sup>F121</sup>Special Health Authority or Primary Care Trust]] and so far as relates to his functions under this Act includes the Secretary of State.
- (2) The provisions of subsection (1) above have effect as if made by an order under section 1(5) of that Act of 1970, and accordingly may be varied or revoked by such an order.
- (3) Every local authority shall make available to [<sup>F122</sup>Health Authorities, Special Health Authorities [<sup>F123</sup>Primary Care Trusts]] [<sup>F124</sup>and NHS trusts] acting in the area of the local authority the services of persons employed by the local authority for the purposes of the local authority’s functions under the <sup>M13</sup>Local Authorities Social Services Act 1970 so far as is reasonably necessary and practicable to enable [<sup>F122</sup>Health Authorities, Special Health Authorities [Primary Care Trusts]] [<sup>F124</sup>and NHS trusts] to discharge their functions under this Act [<sup>F125</sup>and the National Health Service and Community Care Act 1990].
- (4) . . . . . <sup>F126</sup>

### Textual Amendments

- F120** Words in s. 28(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 16(a)**
- F121** Words in s. 28(1) substituted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 13(a)**; S.I. 1999/2342, art. 2(3), **Sch. 2**
- F122** Words in s. 28(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 16(b)**
- F123** Words in s. 28(3) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 13(b)**; S.I. 1999/2342, art. 2(3), **Sch. 2**
- F124** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 21**
- F125** Words added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 21**
- F126** S. 28(4) repealed (*retrospectively*) by Health and Medicines Act 1988 (c. 49, SIF 113:2), ss. 19, 25(2), **Sch. 3**

### Marginal Citations

- M12** 1970 c. 39(81:4).
- M13** 1970 c. 42(81:3).

## [<sup>F127</sup>28A Power to make payments towards expenditure on community services.

- (1) This section applies to the following [<sup>F128</sup>[<sup>F129</sup>bodies]]—
  - (a) a Health Authority; and

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- (b) a Special Health Authority established] for a London Post-Graduate Teaching Hospital.
- (2) <sup>F130</sup>A body to which] this section applies may, if they think fit, make payments—
- (a) to a local social services authority towards expenditure incurred or to be incurred by them in connection with any function which, by virtue of section 2(1) or (2) of the <sup>M14</sup>Local Authority Social Services Act 1970, is to be performed through their social services committee, other than functions under section 3 of the <sup>M15</sup>Disabled Persons (Employment) Act 1958;
  - (b) to a district council, [<sup>F131</sup>or to a Welsh county council or county borough council,] towards expenditure incurred or to be incurred by them in connection with their functions under section 8 of the <sup>M16</sup>Residential Homes Act 1980 or Part II of Schedule 9 to the <sup>M17</sup>Health and Social Services and Social Security Adjudications Act 1983 (meals and recreation for old people);
  - (c) to an authority who are a local education authority for the purposes of [<sup>F132</sup>the Education Act 1996], towards expenditure incurred or to be incurred by them in connection with their functions under [<sup>F133</sup>the Education Acts (within the meaning of that Act)], in so far as they perform those functions for the benefit of disabled persons;
  - <sup>F134</sup>(d) [ to a local housing authority within the meaning of the <sup>M18</sup>Housing Act 1985, towards expenditure incurred or to be incurred by them in connection with their functions under Part II of that Act (provision of housing); and]
  - (e) to the following bodies, in respect of expenditure incurred or to be incurred by them in connection with the provision of housing accommodation,—
    - [ a registered social landlord within the meaning of the Housing Act <sup>F135</sup>(i) 1985 (see section 5(4) and (5) of that Act);.]
    - (ii) the Commission for the New Towns;
    - (iii) a new town development corporation;
    - (iv) an urban development corporation established under the <sup>M19</sup>Local Government, Planning and Land Act 1980;
    - (v) the Housing Corporation; <sup>F136</sup> . . .
    - <sup>F136</sup>(vi) . . . . .
    - <sup>F137</sup>(vii) . . . . .
- <sup>F138</sup>(2A) [ A body to which this section applies may, if they think fit, make payments to a local authority towards expenditure incurred or to be incurred by the authority in connection with the performance of any of the authority’s functions which, in the opinion of the body,—
- (a) have an effect on the health of any individuals,
  - (b) have an effect on, or are affected by, any NHS functions, or
  - (c) are connected with any NHS functions.
- (2B) In this section “NHS functions” means functions exercised by a Health Authority, Special Health Authority, Primary Care Trust or NHS trust.]
- (3) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.
- <sup>F139</sup>(4) [ No payment shall be made under this section in respect of any expenditure unless the expenditure has been recommended for a payment under this section by a joint consultative committee on which the authority proposing to make the payment are represented.]

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- (5) The Secretary of State may by directions prescribe conditions relating to payments under this section.
- (6) The power to give such directions may be exercised so as to make, as respects the cases in relation to which it is exercised, the same provision for all cases, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes.
- (7) Without prejudice to the generality of subsection (5) above, the power may be exercised—
- (a) so as to make different provision for England and Wales and different provision for different <sup>F140</sup>areas] in either; and
  - (b) so as to require, in such circumstances as may be specified,—
    - (i) repayment of the whole or any part of a payment under this section;
    - (ii) payment, in respect of property acquired with money paid under this section, of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.
- (8) No payment shall be made under this section in respect of any expenditure unless the conditions relating to it—
- <sup>F139</sup>(a) [ accord with the advice given by the joint consultative committee in making the recommendation for a payment under this section in respect of the expenditure in question; and]
  - (b) conform with the conditions prescribed for payments of that description under subsection (5) above.
- (9) Where <sup>F141</sup>the expenditure in respect of which a payment under this section is proposed to be made] is expenditure in connection with services to be provided by a voluntary organisation—
- (a) the <sup>F142</sup>body] who are to make the payment may make payments to the voluntary organisation towards the expenditure incurred or to be incurred by the organisation in connection with the provision of those services, instead of or in addition to making payments under subsection (2) above; and
  - (b) an authority of one of the descriptions specified in paragraph (a), (b), (c) or (d) of subsection (2) above and who have received payments under that subsection may make out of the sums paid to them payments to the voluntary organisation towards expenditure incurred or to be incurred by the organisation in connection with the provision of those services,
- but no payment shall be made under this subsection except subject to conditions <sup>F143</sup>which conform with the conditions prescribed for payments of that description under subsection (5) above.]]

#### Textual Amendments

**F127** Ss. 28A, 28B substituted for s. 28A by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 1

**F128** Words in s. 28A(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), [Sch. 1 para. 17\(a\)](#)

**F129** Word in s. 28A(1) substituted (1.11.1999 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 29(2)(a), 67(2); S.I. 1999/2793, art. 2(1)(a), [Sch. 1](#)

**F130** Words in s. 28A(2) substituted (1.11.1999 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(2), [Sch. 4 para. 14\(2\)](#); S.I. 1999/2793, art. 2(1)(a), [Sch. 1](#)



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- F131** Words in s. 28A(2)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(4), **Sch. 10 para. 11(2)** (with Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F132** Words in s. 28A(2)(c) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 44(a)** (with s. 1(4), Sch. 9 paras. 30, 39, Sch. 39)
- F133** Words in s. 28A(2)(c) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 44(b)** (with s. 1(4), Sch. 9 paras. 30, 39, Sch. 39)
- F134** S. 28A(2)(d) substituted by Housing (Consequential Provisions) Act 1985 (c. 71, SIF 61), s. 4, **Sch. 2 para. 38(2)(a)**
- F135** S. 28A(2)(e)(i) substituted (E.W.) (1.10.1996) by S.I. 1996/2325, art. 5(1), **Sch. 2 para. 9(2)**
- F136** S. 28A(2)(e)(vi) and word “and” immediately preceding repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, **art. 4**
- F137** S. 28A(2)(e)(vii) repealed (1.11.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. VI** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, **art. 5**
- F138** S. 28A(2A)(2B) inserted (1.11.1999 for E. and otherwise*prosp.*) by 1999 c. 8, **ss. 29(3)**, 67(2); S.I. 1999/2793, art. 2(1)(a), **Sch. 1**
- F139** S. 28A(4)(8)(a) omitted (1.11.1999 for E. for specified purposes and otherwise*prosp.*) by virtue of 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 14(3)**; S.I. 1999/2793, art. 2(1)(a), **Sch. 1**
- F140** Word in s. 28A(7)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 17(b)**
- F141** Words in s. 28A(9) substituted (1.11.1999 for E. for specified purposes and otherwise*prosp.*) by 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 14(4)(a)**; S.I. 1999/2793, art. 2(1)(a), **Sch. 1**
- F142** Word in s. 28A(9)(a) substituted (1.11.1999 for E. and otherwise*prosp.*) by 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 14(4)(b)**; S.I. 1999/2793, art. 2(1)(a), **Sch. 1**
- F143** Words in s. 28A(9)(b) substituted (1.11.1999 for E. for specified purposes and otherwise*prosp.*) for s. 28A(b)(i)(ii) by 1999 c. 8, ss. 65(1), 67(2), **Sch. 4 para. 14(4)(e)**; S.I. 1999/2793, art. 2(1)(a), **Sch. 1**

#### Marginal Citations

- M14** 1970 c. 42(81:3).
- M15** 1958 c. 33(43:1).
- M16** 1980 c. 7.
- M17** 1983 c. 41(113:3).
- M18** 1985 c. 68(61).
- M19** 1980 c. 65(81:1, 2) (103:1, 2) (123:1, 2, 3, 4).

### [<sup>F144</sup>28B Power of Secretary of State to make payments towards expenditure on community services in Wales.

- (1) The Secretary of State may, if he thinks fit, make payments—
  - (a) to authorities in Wales of any of the descriptions mentioned in paragraphs (a), (b), (c) and (d) of section 28A(2) above, for the purposes respectively mentioned in those paragraphs;
  - (b) to the following bodies, in respect of expenditure incurred or to be incurred by them in connection with the provision of housing accommodation in Wales,

—<sup>F145</sup>  
[ a registered social landlord within the meaning of the Housing Act  
<sup>F146</sup>(i) 1985 (see section 5(4) and (5) of that Act);.]

- (ii) the Commission for the New Towns;
- (iii) a new town development corporation;
- (iv) an urban development corporation established under the <sup>M20</sup>Local Government, Planning and Land Act 1980;

<sup>F147</sup>(v) . . . . .

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<sup>F148</sup>(vi) . . . . .

- (2) The Secretary of State may, if he thinks fit, make payments to a voluntary organisation towards expenditure incurred or to be incurred by the organisation in connection with the provision of services for which he could make payments under subsection (1) above.
- (3) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.
- (4) Conditions may be attached to a payment under this section.
- (5) Without prejudice to the generality of subsection (4) above, the conditions that may be attached include conditions requiring, in such circumstances as may be specified,—
  - (a) repayment of the whole or any part of a payment under this section;
  - (b) payment, in respect of property acquired with money paid under this section, of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.

#### Textual Amendments

**F144** Ss. 28A, 28B substituted for s. 28A by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 1

**F145** S. 28B(1)(b)(i) substituted by [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\)](#), s. 4, [Sch. 2 para. 38\(3\)](#)

**F146** S. 28B(1)(b)(i) substituted (E.W.) (1.10.1996) by [S.I. 1996/2325](#), art. 5(1), [Sch. 2 para. 9\(3\)](#)

**F147** S. 28B(1)(b)(v) repealed (1.11.1998) by virtue of [1998 c. 38](#), s. 152, [Sch. 18 Pt. VI](#) (with ss. 137(1), 139(2), 141(1), 143(2)); [S.I. 1998/2244](#), art. 5

**F148** S. 28B(1)(b)(vi) and the word “and” immediately preceding repealed (1.10.1998) by [1998 c. 38](#), s. 152, [Sch. 18 Pt. IV](#) (with ss. 137(1), 139(2), 141(1), 143(2)); [S.I. 1998/2244](#), art. 4

#### Marginal Citations

**M20** [1980 c. 53\(113:2\)](#).

#### [<sup>F149</sup>28B] Power of local authorities to make payments to NHS bodies.

- (1) A local authority may, if they think fit, make payments to a relevant NHS body towards expenditure incurred or to be incurred by the body in connection with the performance by the body of prescribed functions of the NHS body.
- (2) In this section—
 

“prescribed” means prescribed to any extent by regulations made by the Secretary of State;

“relevant NHS body” means a Health Authority or a Primary Care Trust.
- (3) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.
- (4) The Secretary of State may by directions prescribe conditions relating to payments under this section.
- (5) The power to give such directions may be exercised so as to make, as respects the cases in relation to which it is exercised, the same provision for all cases, or different

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provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes.

- (6) Without prejudice to the generality of subsection (4) above, the power may be exercised—
- (a) so as to make different provision for England and Wales and different provision for different areas in either; and
  - (b) so as to require, in such circumstances as may be specified—
    - (i) repayment of the whole or any part of a payment under this section; or
    - (ii) payment, in respect of property acquired with money paid under this section, of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.
- (7) No payment shall be made under this section in respect of any expenditure unless the conditions relating to it conform with the conditions prescribed for payments of that description under subsection (4) above.]

#### Textual Amendments

**F149** S. 28BB inserted (1.4.2000 for E. and 1.12.2000 for W. for specified purposes and otherwise *prosp.*) by 1999 c. 8, ss. 30, 67(2); S.I. 1999/2793, art. 2(3)(b); S.I. 2000/2991, art. 2(1), Sch. 1

#### [<sup>F150</sup> Provision of personal medical or dental services]

#### Textual Amendments

**F150** Cross-heading inserted (*prosp.*) by 1997 c. 46, ss. 21(1), 41(3)

PROSPECTIVE

#### <sup>F151</sup>28C Personal medical or dental services.

- (1) A [Strategic Health Authority or a] Health Authority may make one or more agreements with respect to their area, in accordance with the provisions of regulations under section 28E, under which—
- (a) personal medical services are provided (otherwise than by the Authority); or
  - (b) personal dental services are provided (otherwise than by the Authority).
- (2) An agreement made under this section—
- (a) may not combine arrangements for the provision of personal medical services with arrangements for the provision of personal dental services [<sup>F152</sup>], and may not combine arrangements for the provision of personal medical services or personal dental services with arrangements for the provision of local pharmaceutical services under LPS schemes (within the meaning of paragraph 1(3) of Schedule 8A to this Act) or under pilot schemes made under section 28 of the Health and Social Care Act 2001]; but
  - (b) may include arrangements for the provision of services—
    - (i) which are not personal medical services or personal dental services; but

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(ii) which may be provided under this Part.

(3) Except to such extent as may be prescribed—

- (a) a patient for whom personal medical services are provided in accordance with an agreement made under this section is not to count as a person for whom arrangements must be made by the [Primary Care Trust or] Health Authority concerned under section 29;
- (b) a patient for whom personal dental services are provided under an agreement made under this section is not to count as a person for whom arrangements must be made by the [Primary Care Trust or] Health Authority concerned under section 35.

(4) This Act (and in particular section 17) has effect, in relation to personal medical services or personal dental services provided under an agreement made under this section, as if those services were provided as a result of the delegation by the Secretary of State (by directions given under section [F153 16D]) of functions of his under this Part.

(5) The functions of a Health Authority in relation to an agreement made under this section are primary functions of the Authority for the purposes of the <sup>M21</sup>National Health Service and Community Care Act 1990.

(6) Regulations may provide—

- (a) for functions which are exercisable by a [Strategic Health Authority or a] Health Authority in relation to an agreement made under this section to be exercisable on behalf of the Authority by a Health Board; and
- (b) for functions which are exercisable by a Health Board in relation to an agreement made under section 17C of the <sup>M22</sup>National Health Service (Scotland) Act 1978 to be exercisable on behalf of the Board by a [Strategic Health Authority or a] Health Authority.

(7) For the purposes of this section—

“personal medical services” means medical services of a kind that may be provided by a general medical practitioner in accordance with arrangements made under Part II; and

“personal dental services” means dental services of a kind that may be provided by a general dental practitioner in accordance with arrangements made under Part II.

#### Textual Amendments

**F151** SS. 28C-28D inserted (*prosp.*) by 1997 c. 46, **ss. 21(1), 41(3)**

**F152** Words in s. 28C(2)(a) inserted (1.7.2002 for W. and otherwise *prosp.*) by 2001 c. 15, **ss. 67(1), 70(2), Sch. 5 para. 11(4)** (with **ss. 64(9), 65(4)**); S.I. 2002/1475, **art. 2, Sch. Pt. 1**

**F153** Word in s. 28C(4) substituted (1.10.1999 for E. and 1.12.1999 for W.) by 1999 c. 8, **ss. 65(1), Sch. 4 para. 15**; S.I. 1999/2540, **art. 2(1)(a), Sch. 1**; S.I. 1999/3184, **art. 2(2), Sch. 2**

#### Marginal Citations

**M21** 1990 c. 19.

**M22** 1978 c. 29.

**Status:** Point in time view as at 08/02/2000. This version of this Act contains provisions that are not valid for this point in time.

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PROSPECTIVE

**[<sup>F154</sup>28D Persons with whom agreements may be made.**

(1) A [Strategic Health Authority or a] Health Authority may make an agreement under section 28C only with one or more of the following—

- (a) an NHS trust;
- (b) in the case of an agreement under which personal medical services are provided—
  - (i) a qualifying medical practitioner;
  - (ii) an individual who is providing personal medical services in accordance with section 28C arrangements or section 17C arrangements;
- (c) in the case of an agreement under which personal dental services are provided—
  - (i) a qualifying dental practitioner;
  - (ii) an individual who is providing personal dental services in accordance with section 28C arrangements or section 17C arrangements;
- (d) an NHS employee, a section 28C employee or a section 17C employee;
- (e) a qualifying body.

[ a Primary Care Trust]  
<sup>F155</sup>(f)

(2) In this section—

“the 1978 Act” means the <sup>M23</sup>National Health Service (Scotland) Act 1978;

“NHS employee” means an individual who, in connection with the provision of services in the health service in England and Wales or Scotland, is employed by—

- (a) an NHS trust;
- (b) in the case of an agreement under which personal medical services are provided—
  - (i) a medical practitioner whose name is included in a medical list kept under this Act or in a corresponding list kept under the 1978 Act; or
  - (ii) a medical practitioner who is providing personal medical services in accordance with section 28C arrangements or section 17C arrangements;
- (c) in the case of an agreement under which personal dental services are provided—
  - (i) a dental practitioner whose name is included in a list prepared in accordance with regulations made under section 36(1)(a) of this Act or section 25(2)(a) of the 1978 Act; or
  - (ii) a dental practitioner who is providing personal dental services in accordance with section 28C arrangements or section 17C arrangements;

“qualifying body” means—

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(a) a company which is limited by shares all of which are legally and beneficially owned by persons falling within [<sup>F156</sup>paragraph (a), (b), (c), (d) or (f)] of subsection (1); and also

(b) in the case of an agreement under which personal dental services are provided, a body corporate which, in accordance with the provisions of Part IV of the <sup>M24</sup>Dentists Act 1984, is entitled to carry on the business of dentistry;

“qualifying dental practitioner” means a dental practitioner who satisfies the conditions imposed by regulations made under section 28E(2)(b) of this Act or section 17E(2)(b) of the 1978 Act;

“qualifying medical practitioner” means a medical practitioner who satisfies the conditions imposed by regulations made under section 28E(2)(b) of this Act or section 17E(2)(b) of the 1978 Act;

“section 17C arrangements” means arrangements for the provision of services made under section 17C of the 1978 Act;

“section 17C employee” means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by an individual providing those services;

“section 28C arrangements” means arrangements for the provision of services made under section 28C; and

“section 28C employee” means an individual who, in connection with the provision of services in accordance with section 28C arrangements, is employed by an individual providing those services.]

#### Textual Amendments

**F154** SS. 28C-28D inserted (*prosp.*) by 1997 c. 46, ss. 21(1), 41(3)

**F155** S. 28D(1)(f) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(2), Sch. 4 para. 16(a); S.I. 1999/2540, art. 2(2)

**F156** S. 28D(2); words in para. (a) of the definition of “qualifying body” substituted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(2), Sch. 4 para. 16(b); S.I. 1999/2540, art. 2(2)

#### Marginal Citations

**M23** 1978 c. 29.

**M24** 1984 c. 24.

VALID FROM 01/07/2002

#### [<sup>F157</sup>28DA] Lists of persons who may perform personal medical services or personal dental services

(1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of—

- (a) medical practitioners who may perform personal medical services in accordance with section 28C arrangements,
- (b) dental practitioners who may perform personal dental services in accordance with section 28C arrangements.

(2) Such a list is referred to in this section as a “services list”.

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- (3) The regulations may, in particular, include provision as to—
- (a) the Health Authority to which an application for inclusion in a services list is to be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Health Authority may, or must, refuse a person's application for inclusion in a services list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - (d) requirements with which a person included in a services list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Health Authority may, or must, suspend or remove a person from a services list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a services list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Health Authority by an applicant for inclusion in a services list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a services list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a services list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person's inclusion in a services list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the services list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) below.
- (6) Regulations may provide—

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- (a) that no person may perform personal medical services in accordance with section 28C arrangements unless he is included in a medical list, a supplementary list under section 43D or a services list,
  - (b) that no person may perform personal dental services in accordance with section 28C arrangements unless he is included in a list referred to in section 36(1)(a), a supplementary list under section 43D or a services list.
- (7) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N below.
- (8) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a services list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (9) or (10).
- (9) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a services list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.
- (10) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the services list for breach of condition,
  - (d) on any review of an earlier such decision of theirs.]

#### Textual Amendments

**F157** S. 28DA inserted (1.7.2002 for W., otherwise prosp.) by 2001 c. 15, ss. 26(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2002/1475, art. 2

PROSPECTIVE

#### [<sup>F158</sup>28E Personal medical or dental services: regulations.

- (1) The Secretary of State may make regulations with respect to the provision of services in accordance with section 28C arrangements.
- (2) The regulations must—
- (a) include provision for participants other than [Strategic Health Authorities and] Health Authorities to withdraw from section 28C arrangements if they wish to do so;
  - (b) impose conditions (including conditions as to qualifications and experience) to be satisfied by medical practitioners performing personal medical services,



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and dental practitioners performing personal dental services, in accordance with section 28C arrangements.

In paragraph (b) “practitioner” does not include a practitioner who is undergoing training of a prescribed description.

(3) The regulations may, in particular—

- (a) provide that section 28C arrangements may be made only in prescribed circumstances;
- (b) provide that section 28C arrangements may be made only in prescribed areas;
- (c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with section 28C arrangements;
- (d) require details of section 28C arrangements to be published;
- (e) make provision with respect to the variation and termination of section 28C arrangements;
- (f) prevent (except in such circumstances and to such extent as may be prescribed) a medical practitioner who performs personal medical services in accordance with section 28C arrangements from providing general medical services;
- (g) make provision with respect to medical lists, including provision for preferential treatment for medical practitioners;
- (h) provide for parties to section 28C arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 4 of the <sup>M25</sup>National Health Service and Community Care Act 1990;
- (i) provide for directions, as to payments, made under section 4(7) of the Act of 1990 (as it has effect as a result of regulations made by virtue of paragraph (h)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court;
- (j) confer powers or impose duties on the Dental Practice Board in relation to agreements made by virtue of section 28C(1) under which personal dental services are provided;
- (k) authorise [Strategic Health Authorities and] Health Authorities to make payments of financial assistance for prescribed categories of preparatory work undertaken—
  - (i) in connection with preparing proposals for section 28C arrangements;  
or
  - (ii) in preparation for the provision of services under proposed section 28C arrangements.

[ The regulations must include provision for a medical practitioner who—

- <sup>F159</sup>(4) (a) has provided or performed personal medical services in accordance with section 28C arrangements, and
- (b) in contemplation of doing so, gave up fund-holding status,  
to be allowed to return immediately to fund-holding status on satisfying the Secretary of State that, if he were granted that status, he would be able to fulfil the conditions for the time being in force for continuing to have it.

For the purposes of this subsection “fund-holding status” has such meaning as may be prescribed.]

(5) The Secretary of State must—

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- (a) consider whether section 28C arrangements are likely to have an adverse effect on the distribution of medical practitioners providing general medical services or performing personal medical services in England or in Wales;
  - (b) if he thinks that the arrangements are likely to have that effect, consider whether it is necessary to include in the regulations provisions designed to secure that, so far as is possible, the arrangements do not have that effect; and
  - (c) if he thinks that it is necessary, include such provisions in the regulations.
- (6) Regulations which impose conditions on persons performing personal medical services or persons performing personal dental services (whether made by virtue of subsection (2)(b) or otherwise) may, in particular, include provision of a kind that may be made by regulations under section 32.
- (7) Regulations made by virtue of subsection (3)(g) may, in particular, include provision—
- (a) requiring (except in prescribed circumstances) [Primary Care Trusts and] Health Authorities to remove from their medical lists persons who are performing personal medical services in accordance with section 28C arrangements or corresponding services under section 17C of the <sup>M26</sup>National Health Service (Scotland) Act 1978;
  - (b) conferring a right to transfer to a medical list on persons who have ceased to perform such services;
  - (c) that any provision in relation to medical lists made by or under any enactment is not to apply;
  - (d) as to conditions to be attached to entries in medical lists;
  - (e) conferring powers of disqualification on the [<sup>F160</sup>Family Health Services Appeal Authority constituted under section 49S].
- (8) The power to make provision under this section of the kind mentioned in subsection (3) (j) includes power—
- (a) to authorise or require the Dental Practice Board to perform on behalf of a [Strategic Health Authority or] Health Authority functions of a prescribed description (including functions relating to remuneration) which have been delegated to the Board by the [Strategic Health Authority or] Health Authority in accordance with a power conferred by the regulations;
  - (b) to provide that functions conferred by the regulations are only to be exercised by the Board in accordance with directions of the Secretary of State;
  - (c) to require information for the purpose of performing any functions conferred or imposed on the Board under this section.]

#### Textual Amendments

**F158** S. 28E inserted (*prosp.*) by 1997 c. 46, ss. 22(1), 41(3)

**F159** S. 28E(4) repealed (1.10.1999 for E. and 1.4.2000 for W.) by 1999 c. 8, ss. 65(2), **Sch. 5**; S.I.

1999/2540, art. 2(1), **Sch. 1**; S.I. 2000/1041, art. 2(d), **Sch.**

**F160** Words in s. 28E(7)(e) substituted ((E.) 1.10.2001 for specified purposes otherwise 1.12.2001 and (W.) 26.8.2002) by 2001 c. 15, ss. 27(5)(a), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3294, art. 4(1), **Sch. Pt. I** (subject to art. 4(2), **Sch. Pt. II**); S.I. 2002/1919, **art. 3(1)**, **Sch. Pt. II** (subject to art. 3(2))

#### Marginal Citations

**M25** 1990 c. 19.

**M26** 1978 c. 29.

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PROSPECTIVE

[<sup>F161</sup>28E] **Delegation of Health Authority functions relating to section 28C arrangements.**

- (1) **No commentary item could be found for this reference c18059541.** .....
- (2) The Secretary of State may by order make provision for any rights and liabilities arising under an agreement to provide personal medical services under section 28C above to be transferred from [Strategic Health Authorities] to Primary Care Trusts and from Primary Care Trusts to [Strategic Health Authorities] .
- (3) Subsection (2) above is without prejudice to any other power of the Secretary of State to transfer rights and liabilities under this Act.]

**Textual Amendments**

**F161** S. 28EE inserted (*prosp.*) by 1999 c. 8, ss. 6(2), 67(2)

[<sup>F162</sup>28F] **Right to choose medical practitioner.**

- (1) Provision shall be made in regulations for conferring a right on any person to choose the medical practitioner from whom he is to receive primary medical services, subject to—
  - (a) the consent of the practitioner concerned; and
  - (b) any limit on the number of patients to be accepted by any practitioner.
- (2) In particular, the regulations—
  - (a) shall prescribe the procedure for choosing a practitioner;
  - (b) may prescribe a limit on the number of patients to be accepted by a medical practitioner who undertakes to provide general medical services under Part II; and
  - (c) shall provide for the distribution among medical practitioners of persons who have indicated a wish to obtain primary medical services but—
    - (i) have been refused by the medical practitioner of their choice; or
    - (ii) have not chosen a medical practitioner.
- (3) The Secretary of State may give directions imposing a limit on the number of patients to be accepted by a medical practitioner who performs personal medical services in accordance with section 28C arrangements.
- (4) Any such directions may make different provision for different cases or descriptions of case.
- (5) Regulations under this section may also provide that the right to choose a medical practitioner conferred by the regulations shall, in the case of such persons as may be specified in the regulations, be exercised on their behalf by other persons so specified.
- (6) In this section “primary medical services” means medical services which are—
  - (a) provided, in accordance with section 28C arrangements, as personal medical services; or

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(b) provided under Part II as general medical services.]

#### Textual Amendments

**F162** S. 28F inserted (1.4.1998) by 1997 c. 46, s. 23(1); S.I. 1997/631, art. 2(1)(a), Sch. 1 (subject to arts. 3-5)

#### [<sup>F163</sup>28G Right to choose dental practitioner.

- (1) Provision shall be made in regulations for conferring a right on any person to choose the dental practitioner from whom he is to receive primary dental services, subject to the consent of the practitioner concerned.
- (2) The regulations shall, in particular, prescribe the procedure for choosing a practitioner.
- (3) The regulations may, in particular, provide that the right to choose a dental practitioner conferred by the regulations shall, in the case of such persons as may be specified in the regulations, be exercised on their behalf by other persons so specified.
- (4) In this section “primary dental services” means dental services which are—
  - (a) provided, in accordance with section 28C arrangements, as personal dental services; or
  - (b) provided under Part II as general dental services.]

#### Textual Amendments

**F163** S. 28G inserted (1.10.1998) by 1997 c. 46, s. 24(1); S.I. 1998/1998, art. 2(2)(a), Sch. 1

#### [<sup>F164</sup>28H Immunisation.

Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against disease, he shall so far as reasonably practicable give every person providing, and every medical practitioner performing, personal medical services in accordance with section 28C arrangements an opportunity to participate in the arrangements for vaccination or immunisation.]

#### Textual Amendments

**F164** S. 28H inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 6; S.I. 1998/631, art. 2(1), Schs. 1, 2 (subject to arts. 3-5)

#### [<sup>F165</sup>28I Use of accommodation.

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of personal medical services or personal dental services in accordance with section 28C arrangements, he may make the accommodation available on such terms as he thinks fit to persons providing those services.]

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### Textual Amendments

**F165** S. 28I inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 7**; S.I. 1998/631, art. 2(1), Schs. 1, 2 (subject to arts. 3-5)

PROSPECTIVE

### [<sup>F166</sup>28J Local pharmaceutical services schemes

- (1) Schedule 8A makes provision with respect to the provision of local pharmaceutical services in accordance with schemes made by [Primary Care Trusts and] Health Authorities.]

### Textual Amendments

**F166** S. 28J inserted (*prosp.*) by 2001 c. 15, ss. 40(1), 70(2) (with ss. 64(9), 65(4))

## PART II

### GENERAL MEDICAL, GENERAL DENTAL, GENERAL OPHTHALMIC, AND PHARMACEUTICAL SERVICES

### Modifications etc. (not altering text)

**C37** Pt. II modified by S.I. 1982/288, **Sch. 2 para. 1** Table

**C38** Pt. II restricted (1.4.1998) by 1997 c. 46, s. 12; S.I. 1998/631, art. 2(a), **Sch. 1**

**C39** Pt. II power to modify conferred (1.4.1998) by 1997 c. 46, s. 15(2)(a); S.I. 1998/631, art. 2(1)(a), **Sch. 1**

Pt. II power to apply conferred (1.4.1998) by 1997 c. 46, s. 15(2)(b); S.I. 1998/631, art. 2(1)(b), **Sch. 1**

### *General medical services*

## 29 Arrangements and regulations for general medical services.

[<sup>F167</sup>(1) It is the duty of every [<sup>F168</sup>Health Authority], in accordance with regulations, to arrange as respects their [<sup>F169</sup>area] with medical practitioners to provide personal medical services for all persons in the [<sup>F169</sup>area] who wish to take advantage of the arrangements.

(1A) The services so provided are referred to in this Act as “general medical services”.]

(2) Regulations may provide for the definition of the personal medical services to be provided and for securing that the arrangements will be such that all persons availing themselves of those services will receive adequate personal care and attendance, and the regulations shall include provision—

- (a) for the preparation and publication of lists of medical practitioners who undertake to provide general medical services;

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- <sup>F170</sup>(b) .....
- <sup>F170</sup>(c) .....
- (d) for the issue to patients or their personal representatives by medical practitioners providing those services of such certificates as may be prescribed being certificates reasonably required by them under or for the purposes of any enactment;
- (e) for the removal from the list of medical practitioners undertaking to provide general medical services for persons in any [<sup>F171</sup>area] of the name of any one in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, such general medical services for persons in that [<sup>F171</sup>area].
- [<sup>F172</sup>(f) for the making of arrangements for the temporary provision of general medical services [<sup>F173</sup>in the area of a Health Authority];
- (g) for the circumstances in which a name added to the list by virtue of subsection (6) below may be removed from it.]
- (3) Regulations under subsection (2) above may provide for the personal medical services there mentioned to include the provision of, and services connected with, any such advice, examination and treatment as are mentioned in paragraph (b) of section 5(1) above.
- [<sup>F174</sup>(4) The remuneration to be paid under the arrangements mentioned in subsection (1) above to a practitioner who provides general medical services shall not, except in special circumstances, consist wholly or mainly of a fixed salary which has no reference to the number of patients for whom he has undertaken to provide such services.]
- [<sup>F175</sup>(5) Regulations shall—
- (a) include provision for the making to a medical practitioner providing general medical services of payments in respect of qualifying services provided by a spouse or other relative of his; and
- (b) provide that the rates and conditions of payment and the qualifying services in respect of which the payments may be made shall be such as may be determined by the Secretary of State after consultation with such bodies as he may recognise as representing such medical practitioners.]
- [<sup>F176</sup>(6) The persons with whom arrangements for the temporary provision of general medical services in [<sup>F177</sup>an area] may be made by virtue of regulations under subsection (2) above include medical practitioners who are not on the list of medical practitioners providing such services in [<sup>F178</sup>the area], and the power to prepare and publish lists of medical practitioners conferred by paragraph (a) of that subsection accordingly includes power to add the names of medical practitioners with whom such arrangements are made to the list.
- (7) Regulations may provide that this Act and any regulations made under it shall apply in relation—
- (a) to the making of arrangements for the temporary provision of general medical services; and
- (b) to the provision of general medical services in pursuance of any such arrangements,
- subject to such modifications as may be specified in the regulations.

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(8) Where the registration of a medical practitioner in the register of medical practitioners is suspended—

- (a) by a direction of the Health Committee of the General Medical Council under [<sup>F179</sup>section 37(1) or (2) of the <sup>M27</sup>Medical Act 1983] (unfitness to practice by reason of physical or mental condition);
- (b) by an order of that Committee under [<sup>F179</sup>section 38(1)] of that Act (order for immediate suspension); or
- (c) by an interim order [<sup>F180</sup>under section 42] of that Act,

the suspension shall not terminate any arrangements made with him for the provision of general medical services, but he shall not provide such services in person during the suspension.]

[<sup>F181</sup>(9) Where the registration of a medical practitioner in the register of medical practitioners is suspended by a direction of the Committee on Professional Performance of the General Medical Council—

- (a) under section 36A of the Medical Act 1983 (professional performance),
- (b) under section 38(1) of that Act (order for immediate suspension), or
- (c) under rules made by virtue of paragraph 5A(3) of Schedule 4 to that Act (procedure of committees),

the suspension shall not, except in so far as is provided by or determined in accordance with regulations under subsection (2) above, terminate any arrangements made with him for the provision of general medical services; but he shall not provide such services in person during the suspension.]

### Textual Amendments

**F167** S. 29(1)(1A) substituted for s. 29(1) by S.I. 1985/39, art. 7(3)(a)

**F168** Words in s. 29(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(a)(i)** (with Sch. 2 para. 6)

**F169** Words in s. 29(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(a)(ii)** (with Sch. 2 para. 6)

**F170** S. 29(2)(b)(c) repealed (1.4.1998) by 1997 c. 46, 41(10)(12), Sch. 2 Pt. I para. 8, Sch. 3 Pt. I; S.I. 1998/631, art. 2(1)(a), **Sch. 1** (with arts. 3-5)

**F171** Words in s. 29(2)(e) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(b)(i)** (with Sch. 2 para. 6)

**F172** S. 29(2)(f)(g) added by Health and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14, **Sch. 6 para. 2(1)**

**F173** Words in s. 29(2)(f) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(b)(ii)** (with Sch. 2 para. 6)

**F174** S. 29(4) ceased to have effect (*prosp.*) by National Health Service Act 1966 (c. 8, SIF 113:2), s. 10(3), (as substituted (29.8.1977) by Sch. 15 para. 37(b) of this Act)

**F175** S. 29(5) added by Health Services Act 1980 (c. 53, SIF 113:2), s. 7

**F176** S. 29(6)–(8) inserted by Health and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14, **Sch. 6 para. 2(2)**

**F177** Words in s. 29(6) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(c)(i)** (with Sch. 2 para. 6)

**F178** Words in s. 29(6) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(c)(ii)** (with Sch. 2 para. 6)

**F179** Words substituted by Medical Act 1983 (c. 54, SIF 83:1), s. 56(1), **Sch. 5 para. 16(a)**

**F180** Words in s. 29(8)(c) substituted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 28(a)**; S.I. 1996/271, art. 2, **Sch.**

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**F181** S. 29(9) added (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 28(b)**; S.I. 1997/1315, **art. 2**

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

**C40** S. 29 extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 17(1)**

**C41** S. 29 restricted (28.11.1997) by 1997 c. 46, **s. 1(5)(a)**; S.I. 1997/2620, **art. 2(2)(a)**

**C42** S. 29(4) modified by S.I. 1974/160, **reg. 19(16)(a)** (as substituted by S.I. 1985/1053, **reg. 3(5)**)

**C43** S. 29(4) continue to have effect (1.10.1999 for S. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 2**; S.S.I. 1999/90, **art. 2(b)**

#### Marginal Citations

**M27** 1983 c. 54(**83:1**).

### [<sup>F182</sup>29A Medical lists.

- (1) A Health Authority may not, under section 29, arrange with a medical practitioner for him to provide general medical services for persons in the Authority's area unless his name is included in the Authority's medical list.
- (2) A medical practitioner is entitled to be included in a Health Authority's medical list only if—
  - (a) he is eligible for inclusion in the list; and
  - (b) he is nominated or approved, in accordance with regulations under section 29B, for appointment to fill a vacancy which relates (whether wholly or in part) to the area of the Authority.
- (3) A medical practitioner is eligible for inclusion in a medical list if—
  - (a) he has not attained the age specified in regulations under section 8 of the <sup>M28</sup>Health and Medicines Act 1988 (retirement age for practitioners); and
  - (b) he is not disqualified, or treated as disqualified, from inclusion in the list by virtue of a direction of the Tribunal constituted under section 46 or any corresponding tribunal in Scotland or Northern Ireland.
- (4) Regulations may make provision in relation to delaying a person's inclusion in a medical list in prescribed circumstances.
- (5) This section is subject to section 29(6) (temporary provision of general medical services) and any provision of, or made under, an enactment relating to the right of a medical practitioner to transfer to a medical list.
- (6) In this Act "medical list", in relation to a Health Authority, means the list of medical practitioners undertaking to provide general medical services for persons in their area, kept by the Authority under regulations made under section 29(2)(a).]

#### Textual Amendments

**F182** S. 29A inserted (10.12.1998) by 1997 c. 46, **s. 32(1)**; S.I. 1998/2840, **art. 2(3)**, **Sch.**

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

**C44** S. 29A(2)(b) excluded (1.4.1998) by 1997 c. 46, s. 13(9), **Sch. 1 para. 2(2)**; S.I. 1998/631, **art. 2(1)(a)**, **Sch. 1** (with arts. 3-5)



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### Marginal Citations

M28 1988 c. 49.

## [<sup>F183</sup>29B Vacancies for medical practitioners.

- (1) Regulations may make provision in relation to the filling of vacancies for medical practitioners to provide general medical services.
- (2) The regulations may, in particular, include provision for—
  - (a) references by a Health Authority to the Medical Practices Committee as to whether there is, or will be, a vacancy for a medical practitioner in a locality;
  - (b) the determination of such references by the Medical Practices Committee;
  - (c) the determination by the Medical Practices Committee of conditions of practice to be imposed on any medical practitioner who fills a particular vacancy;
  - (d) the determination by a Health Authority of whether a vacancy is to be filled by a member of a partnership or by a sole practitioner;
  - (e) the nomination by a Health Authority of a medical practitioner for appointment to fill a vacancy as a sole practitioner;
  - (f) the approval by a Health Authority of a medical practitioner for appointment to fill a vacancy as a member of a partnership.
- (3) The regulations may also make provision in relation to—
  - (a) criteria to be applied in making decisions under the regulations,
  - (b) the variation or revocation of such decisions (including appeals to the Secretary of State on points of law), or
  - (c) vacancies relating to the area of one Health Authority which also relate to the area of another Health Authority or a Health Board,
 and may contain such transitional provisions as the Secretary of State considers appropriate.
- (4) Regulations which make provision about vacancies which relate partly to the area of a Health Board may, in particular, provide that section 29A(2)(b) is to have effect in prescribed circumstances as if the reference to regulations under this section were a reference to regulations under section 19B of the <sup>M29</sup>National Health Service (Scotland) Act 1978.
- (5) In this section—
 

“conditions of practice” means conditions—

  - (a) specifying, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which a person is entitled to be remunerated; and
  - (b) specifying the locality in which a person is entitled to provide general medical services;

“Health Board” has the same meaning as in the National Health Service (Scotland) Act 1978;

“locality”, in relation to a Health Authority, means the Authority’s area or a particular part of their area; and

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“sole practitioner” means a medical practitioner providing general medical services otherwise than in partnership with one or more other medical practitioners.

(6) This section does not affect the power to make regulations under section 29.]

**Textual Amendments**  
F183 S. 29B inserted (10.12.1998) by 1997 c. 46, s. 32(1); S.I. 1998/2840, art. 2(3), Sch.  
**Marginal Citations**  
M29 1978 c. 29.

F184 30 .....

**Textual Amendments**  
F184 S. 30 repealed (10.12.1998) by 1997 c. 46, s. 32(2), 41(12), Sch. 3 Pt. I; S.I. 1998/2840, art. 2(3), Sch. (with art. 3)

**31 Requirement of suitable experience.**

[<sup>F185</sup>(1) Regulations under section 29B must secure that a medical practitioner is not nominated or approved by a Health Authority for appointment to fill a vacancy unless he is suitably experienced.]

- (2) For the purposes of this section a medical practitioner is “suitably experienced” if, but only if, he either—
- (a) has acquired the prescribed medical experience, or
  - (b) is by virtue of regulations made under section 32 below exempt from the need to have acquired that experience, and “medical experience” includes hospital experience in any specialty.

**Textual Amendments**  
F185 S. 31(1) substituted (10.12.1998) by 1997 c. 46, s. 32(3); S.I. 1998/2840, art. 2(3), Sch.  
**Modifications etc. (not altering text)**  
C45 S. 31 applied (28.11.1997) by 1997 c. 46, s. 2(4); S.I. 1997/2620, art. 2(2)

**32 Regulations as to s. 31.**

- (1) Regulations may for the purposes of section 31 above provide—
- (a) for prescribing the medical experience needed to satisfy paragraph (a) of section 31(2);
  - (b) as to the documents which an applicant may or must produce as evidence that he is suitably experienced or has acquired medical experience of any particular kind;

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- (c) for requiring an applicant who claims to have acquired the prescribed experience to submit particulars of his experience to a prescribed body, and for requiring that body, if satisfied that he has acquired the prescribed experience, to issue him a certificate (a “certificate of prescribed experience”) to that effect;
- (d) for enabling an applicant without the prescribed experience who considers that the medical experience which he has acquired is, or ought to be regarded as, equivalent to the prescribed experience to submit particulars of that experience to a prescribed body, and for requiring or enabling that body, if satisfied that the applicant’s medical experience is so equivalent, to issue him a certificate (a “certificate of equivalent experience”) to that effect;
- (e) for treating an applicant who holds a certificate of equivalent experience as satisfying paragraph (a) of section 31(2);
- (f) as to the circumstances or conditions in or subject to which a medical practitioner is exempt from the need to have acquired the prescribed experience;
- (g) for conferring on an applicant who is refused a certificate of prescribed experience or a certificate of equivalent experience a right of appeal to a body constituted by the Secretary of State, and for any matter for which it appears to the Secretary of State to be requisite or expedient to provide in consequence of the conferring of that right;
- (h) for anything authorised or required by section 31 to be prescribed or otherwise provided for by regulations.

In this section—

[<sup>F186</sup>“applicant” means a medical practitioner who is seeking to be nominated or approved by a Health Authority in accordance with regulations under section 29B for appointment to fill a vacancy;]

“the prescribed experience” means the medical experience for the time being prescribed for the purposes of paragraph (a) of section 31(2).

- (2) Regulations under this section shall be framed so as to allow the prescribed experience to be acquired without undertaking whole-time employment.
- (3) Any power under this section to make regulations—
  - (a) may be exercised so as to make different provision for different [<sup>F187</sup>areas] or different periods of time or in relation to different cases or different circumstances;
  - (b) includes power to make such incidental or supplemental provision in the regulations as the Secretary of State considers appropriate.

#### Textual Amendments

**F186** Definition of “applicant” in s. 32(1) substituted (10.12.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 9**; S.I. 1998/2840, art. 2, **Sch.**

**F187** Word in s. 32(3)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 21** (with **Sch. 2 para. 6**)

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

**C46** S. 32 applied (1.4.1998) by 1997 c. 46, s. 11(3); S.I. 1998/631, art. 2(1)(a), **Sch. 1** (with arts. 3-5)

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S. 32 applied (with modifications) (1.4.1998) by 1997 c. 46, s. 11(3)(4); S.I. 1998/631, art. 2(1)(a), Sch. 1 (with arts. 3-5)

**33 Distribution of general medical services.**

<sup>F188</sup>(1) . . . . .

[<sup>F189</sup>(1A) The Secretary of State may by order specify—

- (a) the maximum number of medical practitioners with whom, in any year, all the [<sup>F190</sup>Health Authorities for areas] in England, taken as a whole, may enter into arrangements under section 29 above for the provision of general medical services; and
- (b) the maximum number of medical practitioners with whom, in any year, all the [<sup>F191</sup>Health Authorities for areas] in Wales, taken as a whole, may enter into such arrangements.

(1B) An order under subsection (1A) above may contain such incidental and consequential provisions (including provisions amending this Part of this Act [<sup>F192</sup>or any regulations made under this Part of this Act]) as appear to the Secretary of State to be appropriate including, in particular, provisions as to the basis on which [<sup>F193</sup>references under regulations made under section 29B are to be determined] in order to secure that any maximum number specified in the order is not exceeded.]

[<sup>F194</sup>(1C) An order under subsection (1A) may, in particular, make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions of practice which relate to remuneration and are determined under regulations made under section 29B.]

(2) . . . . .

<sup>F195</sup>(2A) . . . . .

<sup>F195</sup>(3) . . . . .

<sup>F195</sup>(4) . . . . .

<sup>F195</sup>(5) . . . . .

. . . . .

<sup>F195</sup>(6) . . . . .

(7) . . . . . <sup>F196</sup>

<sup>F195</sup>(8) . . . . .

**Textual Amendments**

**F188** S. 33(1) repealed (10.12.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 10(2), **Sch. 3 Pt. I**; S.I. 1998/2840, arts. 2(3), **Sch.** (with art. 3)

**F189** S. 33(1A)(1B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 23(1)

**F190** Words in s. 33(1A)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 22(b)** (with Sch. 2 para. 6)

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- F191** Words in s. 33(1A)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 22(b)** (with Sch. 2 para. 6)
- F192** Words in s. 33(1B) inserted (10.12.1998) by 1997 c. 46, s. 41(10) **Sch. 2 Pt. I para. 10(3)(a)**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)
- F193** Words in s. 33(1B) substituted (10.12.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 10(3)(b)**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)
- F194** S. 33(1C) inserted (10.12.1998) by 1997 c. 46, s. 41(10) **Sch. 2 Pt. I para. 10(4)**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)
- F195** S. 33(2)-(6)(8) repealed (10.12.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 10(5), **Sch. 3 Pt. I**; S.I. 1998/2840, arts. 2(3), **Sch.** (with art. 3)
- F196** S. 33(7) repealed (subject to transitional provisions in S.I. 1990/2511, **art. 4(2)**) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 23(5), 66(2), **Sch. 10**

### 34 Regulations for Medical Practices Committee.

[<sup>F197</sup>(1)] Regulations may make provisions for conferring or imposing on the Medical Practices Committee such additional functions in relation to arrangements for the provision of general medical services as may be prescribed; and regulations shall provide—

[<sup>F198</sup>(a)] for requiring [<sup>F199</sup>Health Authorities] to make to the Medical Practices Committee, at such times and in such manner as may be prescribed, reports as to—

(i) the number of medical practitioners required to meet the reasonable needs of their [<sup>F200</sup>areas] and the different parts of those [<sup>F200</sup>areas];]

<sup>F201</sup>  
.....

#### Textual Amendments

- F197** S. 34: provisions of s. 34 preceding subsection (2) renumbered as s. 34(1) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 23(a)** (with Sch. 2 para. 6)
- F198** Words substituted by S.I. 1985/39, **art. 7(8)(a)**
- F199** Words in s. 34(1)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 23(b)(i)** (with Sch. 2 para. 6)
- F200** Words in s. 34(1)(a)(i) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 23(b)(ii)** (with Sch. 2 para. 6)
- F201** Words in s. 34 repealed (10.12.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 11, **Sch. 3 Pt. I**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)

#### General dental services

### 35 Arrangements for general dental services.

[<sup>F202</sup>(1)] It is the duty of every [<sup>F203</sup>Health Authority], in accordance with regulations, to make as respects their [<sup>F204</sup>area] arrangements with dental practitioners under which any person in the [<sup>F204</sup>area] for whom a dental practitioner undertakes in accordance with the arrangements to provide dental treatment and appliances shall receive such treatment and appliances.

(1A) The services so provided are referred to in this Act as general dental services.]

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- (2) The remuneration to be paid under such arrangements to a dental practitioner who provides general dental services elsewhere than at a health centre shall not consist wholly or mainly of a fixed salary unless either—
- (a) the remuneration is paid in pursuance of arrangements made under section 56 below, or
  - (b) the services are provided in prescribed circumstances and the practitioner consents,
- and it shall be the Secretary of State's duty, before he prescribes any circumstances for the purposes of paragraph (b), to consult such organisations as appear to him to be representative of the dental profession.
- [<sup>F205</sup>(3) Where the registration of a dental practitioner in the dentists register is suspended—
- (a) by an order under [<sup>F206</sup>section 32 of the <sup>M30</sup>Dentists Act 1984] (interim suspension); or
  - (b) by a direction or [<sup>F207</sup>an order of the Health Committee under] that Act (health cases),
- the suspension shall not terminate any arrangements made with him for the provision of general dental services, but he shall not provide such services in person during the suspension.
- (4) Regulations may provide for the making of payments in consequence of suspension to a dental practitioner whose registration is so suspended.]

#### Textual Amendments

- F202** S. 34(1)(1A) substituted for s. 34(1) by S.I. 1985/39, **art. 7(9)**
- F203** Words in s. 35(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 24(a)** (with Sch. 2 para. 6)
- F204** Words in s. 35(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 24(a)** (with Sch. 2 para. 6)
- F205** S. 35(3)(4) added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **s. 15(a)**
- F206** Words substituted by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), **Sch. 5 para. 8(a)**
- F207** Words substituted by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), **Sch. 5 para. 8(b)**

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

- C47** S. 35 restricted (28.11.1997) by 1997 c. 46, **s. 1(5)(b)**; S.I. 1997/2620, **art. 2(2)**
- C48** S. 35(1) modified (*prosp.*) by 1997 c. 46, ss. 41(3)(11), **Sch. 2 Pt. II para. 79**

#### Marginal Citations

- M30** 1984 c. 24(83:1).

### 36 Regulations as to s. 35.

- [<sup>F208</sup>(1)] Regulations may provide as to the arrangements to be made under section 35 above, and shall include provision—
- (a) for the preparation and publication of lists of dental practitioners who undertake to provide general dental services;
  - (b) for conferring a right, subject to [<sup>F209</sup>[<sup>F210</sup>subsections (2) and (3)] below and to] the provisions of this Part of this Act relating to the disqualification of

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practitioners [<sup>F211</sup>and to section 8 of the Health and Medicines Act 1988 and regulations under that section], on any dental practitioner, who wishes to be included in any such list, to be so included;

<sup>F212</sup>(c) . . . . .

(d) for the removal from the list of dental practitioners undertaking to provide general dental services for persons in any [<sup>F213</sup>area] of the name of any one in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, such general dental services for persons in that [<sup>F213</sup>area].

[<sup>F214</sup>(2) No dental practitioner who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in the list kept by any [<sup>F215</sup>Health Authority] unless he satisfies [<sup>F215</sup>the Health Authority] that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provision of general dental services in the [<sup>F215</sup>Health Authority's area].]

[<sup>F216</sup>(3) Regulations may make the exercise of the right conferred by virtue of paragraph (b) of subsection (1) above subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in paragraph (a) of that subsection.]

#### Textual Amendments

**F208** S. 36 renumbered s. 36(1) by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 5(1)**

**F209** Words inserted by S.I. 1981/432, **art. 3(3)(a)**

**F210** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. **24(2)**

**F211** Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 4**

**F212** S. 36(1)(c) repealed (1.10.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 12, **Sch. 3 Pt. I**; S.I. 1998/1998, art. 2(2)(a)(b), **Schs. 1 2**

**F213** Words in s. 36(1)(d) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. I para. 25(a)**

**F214** S. 36(2) added by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 5(2)**

**F215** Words in s. 36(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 25(b)(i)(ii)(iii)** (with Sch. 2 para. 6)

**F216** S. 36(3) added by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. **24(3)**

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

**C49** S. 36 extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. **17(1)**

### 37 Dental Estimates Board.

[<sup>F217</sup>(1)] Regulations providing as to the arrangements to be made under section 35 above shall include provision—

(a) for constituting a Board, to be called the Dental Estimates Board, of whom the chairman and a majority of the members shall be dental practitioners, for the purpose of carrying out such duties as may be prescribed with respect to . . . <sup>F218</sup>dental treatment and appliances, and to the remuneration of dental practitioners providing general dental services;

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- (b) for providing in relation to that Board for any of the matters for which, in relation to <sup>F219</sup>a Health Authority], provision is or may be made by or under Part III of Schedule 5 to this Act.

<sup>F220</sup>(1A) Regulations may empower the Dental Practice Board—

- (a) to direct a dental practitioner to submit to the Board, in relation to treatment which he has carried out or contemplates carrying out or to a description of such treatment specified in the direction, such estimates and information and such radiographs, models or other items as may be prescribed; and
- (b) to direct a dental practitioner not to carry out treatment, or a description of treatment specified in the direction, without first obtaining approval of an estimate from the Board.

(1B) If regulations include any such provision as is mentioned in subsection (1A)(b) above, regulations shall confer on a dental practitioner in whose case a direction such as is mentioned in that paragraph has been given a right of appeal against the direction to a prescribed person or body, but before making regulations conferring such a right the Secretary of State shall consult such organisations as appear to him to be representative of persons providing general dental services.

(1C) Regulations may be made authorising or requiring the Dental Practice Board to carry on any such additional activity relating to the provision of general dental services as may be prescribed and, without prejudice to the generality of this subsection, to conduct or commission surveys or other research relating to the provision of such services.]

#### Textual Amendments

**F217** S. 37 renumbered as s. 37(1) by Health and Medicines Act 1988 (c.49, SIF 113:2), s. 12(2)

**F218** Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), Sch. 3

**F219** Words in s. 37(1)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 26 (with Sch. 2 para. 6)

**F220** S. 37(1A)—(1C) inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 12(3)

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

**C50** S. 37 extended (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, ss. 39(2), 67; S.I. 1999/2793, art. 2(1)(a), Sch. 1; S.I. 2001/270, art. 2(a)

### *General ophthalmic services*

## 38 Arrangements for general ophthalmic services.

<sup>F221</sup>(1) <sup>F222</sup>It is the duty of every <sup>F223</sup>Health Authority], in accordance with regulations, to arrange as respects their <sup>F224</sup>area]] with medical practitioners having the prescribed qualifications, <sup>F225</sup>and ophthalmic opticians for securing the testing]]<sup>F226</sup>by them of the sight—

- (a) of a child;
- (b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements; or
- (c) of a person of such other description as may be prescribed.

(2) In this section—



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- “child” means—
- (a) a person who is under the age of 16 years; or
  - (b) a person who is under the age of 19 years and receiving qualifying full-time education; and
- “qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purpose of this definition—
- (a) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and
  - (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.
- (3) Regulations under this section may direct how a person’s resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—
- (a) by a method set out in the regulations;
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
  - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person’s being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Descriptions of persons may be prescribed for the purposes of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
- (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit; and
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (5) Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.
- (6) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services; and
  - (b) who is shown during the testing or within a prescribed time after it to fall within subsection (1) above,

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shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—

- (i) for the purposes of any arrangements under this section;
  - (ii) for the purposes of remuneration in respect of the testing; and
  - (iii) for any such other purpose as may be prescribed,
- as a testing of sight under this Act.

- (7) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined are in this Act referred to as “general ophthalmic services”.]

#### Textual Amendments

- F221** The first paragraph of s. 38 renumbered as s. 38(1) by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(1\)](#)
- F222** Words substituted by [S.I. 1985/39, art. 7\(11\)](#)
- F223** Words in s. 38(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\), Sch. 1 Pt. I para. 27\(a\)](#) (with [Sch. 2 paras. 6, 16](#))
- F224** Words in s. 38(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\), Sch. 1 Pt. I para. 27\(b\)](#) (with [Sch. 2 paras. 6, 16](#))
- F225** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), [s. 1\(3\)](#)
- F226** [S. 38\(1\)\(a\)–\(7\)](#) and the words “by them of the sight—” substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(1\)](#)

### 39 Regulations as to s. 38.

Regulations may provide as to the arrangements to be made under section 38 above, and shall include provision—

- (a) for the preparation and publication of lists of medical practitioners, [<sup>F227</sup>and ophthalmic] opticians, respectively, who undertake to provide general ophthalmic services;
- (b) for conferring a right, subject to the provisions of this [<sup>F228</sup>Part of this] Act relating to the disqualification of practitioners, on any medical practitioner having the prescribed qualifications, [<sup>F229</sup>or ophthalmic] optician who wishes to be included in the appropriate list, to be so included;
- (c) for conferring on any person a right to choose in accordance with the prescribed procedure the medical practitioner or ophthalmic optician by whom his sight is to be tested, or from whom any prescription for the supply of optical appliances is to be obtained . . . <sup>F230</sup>;
- (d) for the removal from the list of medical practitioners, [<sup>F231</sup>or ophthalmic] opticians undertaking to provide general ophthalmic services for persons in any [<sup>F232</sup>area] of the name of any one in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, such general ophthalmic services for persons in that [<sup>F232</sup>area].

#### Textual Amendments

- F227** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), [s. 1\(6\)](#), [Sch. 1 Pt. I para. 1\(a\)](#)
- F228** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1 para. 52](#)

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**F229** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(6), **Sch. 1 Pt. I para. 1(b)**

**F230** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), ss. 1(4), 24, **Sch. 8 Pt. I**

**F231** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(6), **Sch. 1 Pt. I para. 1(c)**

**F232** Words in s. 39(d) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17](#), ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 28** (with [Sch. 2 paras. 6, 16](#))

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

**C51** [S. 39](#) extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 17(1)**

## 40 Medical practitioners with qualifications prescribed under s. 38.

The power conferred by section 38 above (in relation to general ophthalmic services) to prescribe the qualifications to be possessed by any medical practitioner includes a power—

- (a) to prescribe a requirement that the practitioner shall show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications, including qualifications as to experience, as may be mentioned in the regulations; and
- (b) to confer on a person who is dissatisfied with the determination of such a committee, a right of appeal to a committee appointed by the Secretary of State, and to provide for any matter for which it appears to the Secretary of State to be requisite or expedient to provide in consequence of the conferring of that right.

### *Pharmaceutical services*

## 41 Arrangements for pharmaceutical services.

<sup>F233</sup>It is the duty of every [<sup>F234</sup>Health Authority], in accordance with regulations, to arrange as respects their [<sup>F235</sup>area] for the [<sup>F236</sup>provision to persons who are in that [<sup>F235</sup>area] of]]

- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); . . . <sup>F237</sup>
- <sup>F238</sup>(b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision [<sup>F239</sup>of dental services by a Health Authority, a Special Health Authority or an NHS trust]; . . . <sup>F240</sup>
- (c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by him of general dental services.]]<sup>F241</sup>and]
- <sup>F242</sup>(cc) listed drugs and medicines and listed appliances which are ordered for those persons by a prescribed description of registered nurse, midwife or health visitor in pursuance of functions in the health service, the Scottish health service or the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); and]

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[<sup>F243</sup>(d) such other services as may be prescribed.]

The services so provided are [<sup>F244</sup>, together with additional pharmaceutical services provided in accordance with a direction under section 41A, referred to in this Act] as “pharmaceutical services”.

In this section—

“listed” means included in a list for the time being approved by the Secretary for the purposes of this section; and

“the Scottish health service” and “the Northern Ireland health service” mean respectively the health service established in pursuance of section 1 of the <sup>M31</sup>National Health Service (Scotland) Act 1947 or any service provided in pursuance of Article 4(a) of the <sup>M32</sup>Health and Personal Social Services (Northern Ireland) Order 1972.

#### Textual Amendments

- F233** Words substituted by S.I. 1985/39, art. 7(13)(a)
- F234** Words in s. 41 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 29(a) (with Sch. 2 paras. 6, 16)
- F235** Words in s. 41 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 29(b) (with Sch. 2 paras. 6, 16)
- F236** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(1)(a)
- F237** Word repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7
- F238** S. 41(b)(c) substituted for s. 41(b) by Health Services Act 1980 (c. 53, SIF 113:2), s. 20(1)
- F239** Words in s. 41 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 29(c) (with Sch. 2 paras. 6, 16)
- F240** Word repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1)(2), Sch. 9 para. 18(1)(b), Sch. 10
- F241** Word at the end of s. 41(c) (which was inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(c)) omitted (3.10.1994) by virtue of Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), s. 2; S.I. 1994/2408, art. 2
- F242** S. 41(cc) inserted (3.10.1994) by Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), s. 2; S.I. 1994/2408, art. 2
- F243** S. 41(d) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(c).
- F244** Words in s. 41 substituted (15.8.1997) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 13; S.I. 1997/1780, art. 2, Sch.

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

- C52** S. 41 modified ( prosp. ) by 1997 c. 46, s. 41(3)(11), Sch. 2 Pt. II para. 79

#### Marginal Citations

- M31** 1947 c. 27.  
**M32** 1972 S.I. 1972/1265 (N.I. 14).

[<sup>F245</sup>41A Arrangements for providing additional pharmaceutical services.

(1) The Secretary of State may—

- (a) give directions to a Health Authority requiring them to arrange for the provision to persons in their area of additional pharmaceutical services; or

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- (b) by giving directions to a Health Authority authorise them to arrange for such provision if they wish to do so.
- (2) Directions under this section may make different provision in relation to different services specified in the directions.
- (3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he thinks appropriate.
- (4) In this section—
- “additional pharmaceutical services”, in relation to directions, means such services (of a kind that do not fall within section 41) as may be specified in the directions; and
- “Drug Tariff” means the Drug Tariff published under regulation 18 of the <sup>M33</sup>National Health Service (Pharmaceutical Services) Regulations 1992 or under any corresponding provision replacing, or otherwise derived from, that regulation.]

#### Textual Amendments

**F245** S. 41A inserted (15.8.1997) by 1997 c. 46, s. 27(1); S.I. 1997/1780, art. 2, Sch.

#### Marginal Citations

**M33** S.I. 1992/662.

#### [<sup>F246</sup>41B Terms and conditions etc.

- (1) Directions under section 41A may require the Health Authority to whom they apply, when making arrangements—
- (a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions;
- (b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.
- (2) The arrangements must secure that any service to which they apply is provided only by a person whose name is included in a pharmaceutical list.
- (3) Different arrangements may be made with respect to—
- (a) the provision of the same service by the same person but in different circumstances; or
- (b) the provision of the same service by different persons.
- (4) A Health Authority must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.
- (5) After making any arrangements, a Health Authority must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.
- (6) In this section, “pharmaceutical list” means, subject to any provision of the directions in question, a list—

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- (a) published by the Health Authority concerned, or by any other Health Authority, in accordance with regulations made under section 42(2)(a) of this Act; or
- (b) published by any body in accordance with regulations made under section 27(2)(a) of the <sup>M34</sup>National Health Service (Scotland) Act 1978 or Article 63(2A)(a) of the <sup>M35</sup>Health and Personal Social Services (Northern Ireland) Order 1972.]

#### Textual Amendments

**F246** S. 41B inserted (15.8.1997) by 1997 c. 46, s. 28(1); S.I. 1997/1780, art. 2, Sch.

#### Marginal Citations

**M34** 1978 c. 29.

**M35** S.I. 1972/1265 (N.I.14).

### [<sup>F247</sup>42 Regulations as to pharmaceutical services.

- (1) Regulations shall provide for securing that arrangements made by a [<sup>F248</sup>Health Authority] under section 41 above will enable persons in the [<sup>F248</sup>Health Authority's area] for whom drugs, medicines or appliances mentioned in that section are ordered as there mentioned to receive them from persons with whom such arrangements have been made.
- (2) The regulations shall include provision—
  - (a) for the preparation and publication by [<sup>F249</sup>a Health Authority] of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the [<sup>F249</sup>Health Authority's area];
  - (b) that an application to [<sup>F249</sup>a Health Authority] for inclusion in such a list shall be made in the prescribed manner and shall state—
    - (i) the services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and
    - (ii) the premises from which he will undertake to provide those services;
  - (c) that, except in prescribed cases—
    - (i) an application for inclusion in such a list by a person not already included; and
    - (ii) an application by a person already included in such a list for inclusion also in respect of services or premises other than those already listed in relation to him,

shall be granted only if the [<sup>F249</sup>Health Authority are] satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application; and

- (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
  - (i) has never provided from those premises; or

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- (ii) has ceased to provide from them, the services, or any of the services, which he is listed as undertaken to provide from them.
- (3) The regulations may include provision—
- (a) that an application to a [<sup>F250</sup>Health Authority] may be granted in respect of some only of the services specified in it;
  - (b) that an application to a [<sup>F250</sup>Health Authority] relating to services of a prescribed description shall be granted only if it appears to the [<sup>F250</sup>Health Authority] that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed;
  - <sup>F251</sup>(ba) [ that an application to a [<sup>F250</sup>Health Authority] by a person who qualified to have his name registered under the Pharmacy Act 1954 by virtue of section 4A of that Act (qualification by European diploma) shall not be granted unless the applicant satisfies the [<sup>F250</sup>Health Authority] that he has the knowledge of English which, in the interests of himself and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the [<sup>F250</sup>Health Authority's area;]]
  - (c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
  - (d) that, where the premises from which an application states that the applicant will undertake to provide services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by [<sup>F252</sup>reference to prescribed criteria by the [<sup>F250</sup>Health Authority in whose area] those premises are situated; and]
  - (e) that [<sup>F250</sup>that Health Authority may give their] approval subject to conditions.
- (4) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of this section.
- (5) The regulations shall be so framed as to preclude—
- (a) a person included in a list published under subsection (2)(a) above ;and (b) an employee of such a person; from taking part in the decision whether an application such as is mentioned in subsection (2)(c) above should be granted or an appeal against such a decision brought by virtue of subsection (4) above should be allowed.]

#### Textual Amendments

**F247** S. 42 substituted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 3

**F248** Words in s. 42(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 30(a)** (with Sch. 2 paras. 6, 16)

**F249** Words in s. 42(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 30(b)** (with Sch. 2 paras. 6, 16)

**F250** Words in s. 42(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 30(c)** (with Sch. 2 paras. 6, 16)

**F251** S. 42(3)(ba) inserted by S.I. 1987/2202, art. 4

**F252** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 12(3)(a)

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

**C53** S. 42 extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 17(1)

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### 43 Persons authorised to provide pharmaceutical services.

- (1) No arrangements shall be made by [<sup>F253</sup>a Health Authority] (except as may be provided by [<sup>F254</sup>or under] regulations) with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering general medical services or general dental services.
- (2) No arrangements for the dispensing of medicines shall be made (except as may be provided by [<sup>F254</sup>or under] regulations) with persons other than persons who are registered pharmacists, or are persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968 and who undertake that all medicines supplied by them under the arrangements made under this Part of this Act shall be dispensed either by or under the direct supervision of a registered pharmacist.
- [<sup>F255</sup>(2A) Regulations shall provide for the preparation and publication by a Health Authority of one or more lists of medical practitioners who undertake to provide drugs, medicines or listed appliances in the Authority's area.
- (2B) In subsection (2A) "listed" has the same meaning as in section 41.
- (2C) The regulations shall include provision for the removal of an entry from a list in prescribed circumstances.]
- [<sup>F256</sup>(3) No arrangements for the provision of pharmaceutical services falling within section 41(d) [<sup>F257</sup>, or additional pharmaceutical services provided in accordance with a direction under section 41A,] above shall be made with persons other than those who are registered pharmacists or are of a prescribed description.]

#### Textual Amendments

- F253** Words in s. 43(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 31** (with Sch. 2 paras. 6, 16)
- F254** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), s. 21(2)
- F255** S. 43(2A)-(2C) inserted (1.4.1998) by 1997 c. 46, s. 29(1); S.I. 1998/631, art. 2(a), **Sch.**
- F256** S. 43(3) added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(2)**
- F257** Words in s. 43(3) inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 14**; S.I. 1997/1780, art. 2, **Sch.**

VALID FROM 22/11/2001

### [<sup>F258</sup>43ZA] Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists

- (1) The Secretary of State may by regulations provide—
- (a) that if a person is to be included in a list referred to in subsection (3), he is to be subject, while he remains included in the list, to conditions determined by the Health Authority,
  - (b) for the Health Authority to vary that person's terms of service for the purpose of or in connection with the imposition of any such conditions,
  - (c) for the Health Authority to vary the conditions or impose different ones,
  - (d) for the consequences of failing to comply with a condition (including removal from the list), and



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- (e) for the review by the Health Authority of any decision made by virtue of the regulations.
- (2) The imposition of conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services in question, or
  - (b) preventing any acts or omissions within section 49F(3)(a) below.
- (3) The lists in question are—
  - (a) a list of persons undertaking to provide general medical services,
  - (b) a list of persons undertaking to provide general dental services,
  - (c) a list of persons undertaking to provide general ophthalmic services,
  - (d) a list of persons undertaking to provide pharmaceutical services.
- (4) If regulations provide for a practitioner's removal from the list for breach of condition—
  - (a) the regulations may provide that he may not withdraw from the list while the Health Authority are investigating whether there are grounds for exercising their power to remove him, or after the Health Authority have decided to remove him but before they have given effect to that decision; and
  - (b) the regulations must include provision—
    - (i) requiring the practitioner to be given notice of any allegation against him,
    - (ii) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his removal from the list, and
    - (iii) requiring him to be given notice of the Health Authority's decision and the reasons for it and of his right of appeal under subsection (5).
- (5) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the FHSAA against the Health Authority's decision—
  - (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to vary his terms of service,
  - (d) on any review of an earlier such decision of theirs,
  - (e) to remove him from the list for breach of condition,and the appeal shall be by way of redetermination of the Health Authority's decision.
- (6) The regulations may provide for any such decision not to have effect until the determination by the FHSAA of any appeal against it, and must so provide in relation to a decision referred to in subsection (5)(e).
- (7) Regulations under this section may provide for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about persons whose inclusion in the lists referred to in subsection (3) is subject to conditions imposed under this section, and about the removal of such persons from such lists for breach of condition.]

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### Textual Amendments

**F258** S. 43ZA inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 21, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 01/04/2000

### [<sup>F259</sup> Indemnity cover]

### Textual Amendments

**F259** S. 43C and cross-heading inserted (1.4.2000) by 1999 c. 8, ss. 9(1); S.I. 1999/2793, art. 2(3)(b); S.I. 2000/1041, art. 2(a)

### <sup>F260</sup> 43C Indemnity cover.

- (1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—
  - (a) for securing that a person is not to be added to any list unless he holds approved indemnity cover;
  - (b) for the removal from a list prepared by a Health Authority of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Authority in the prescribed manner satisfy the Health Authority that he holds approved indemnity cover.
- (3) For the purposes of this section—
 

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

  - (a) on prescribed terms; and
  - (b) with an approved body;

“indemnity cover”, in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—

  - (a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Authority under this Part of this Act; and
  - (b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in section 46 below;

“Part II practitioner” means a person whose name is on a list;

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“Part II services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

- (4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—
- (a) in a form identified in accordance with the regulations in relation to persons of that description; and
  - (b) made with a person or persons so identified,
- is to be treated as holding approved indemnity cover for the purposes of the regulations.

#### Textual Amendments

**F260** S. 43C and cross-heading inserted (1.4.2000) by 1999 c. 8, ss. 9(1); S.I. 1999/2793, art. 2(3)(b); S.I. 2000/1041, art. 2(a)

VALID FROM 22/11/2001

#### [<sup>F261</sup> 43D Supplementary lists

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of persons approved by the Health Authority for the purpose of assisting in the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services.
- (2) Such a list is referred to in this section as a “supplementary list”.
- (3) The regulations may, in particular, include provision as to—
  - (a) the Health Authority to which an application for inclusion in a supplementary list is to be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Health Authority may, or must, refuse a person’s application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - (d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Health Authority may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,

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- (f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Health Authority by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a supplementary list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person's inclusion in a supplementary list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the supplementary list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) below.
- (6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N below.
- (7) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a supplementary list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority's decision and the reasons for it and of any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person's application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority's decision.

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(9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority's decision—

- (a) to impose conditions, or any particular condition,
- (b) to vary a condition,
- (c) to remove him from the supplementary list for breach of condition,
- (d) on any review of an earlier such decision of theirs.

(10) Regulations may require a person (“A”) included in—

- (a) a medical list,
- (b) a list referred to in section 36(1)(a),
- (c) a list referred to in section 39(1)(a),
- (d) a list referred to in section 42(2)(a), or
- (e) a list referred to in section 43(2A),

not to employ or engage a person (“B”) to assist him in the provision of the relevant service unless B is included in a list referred to in paragraphs (a) to (e), a supplementary list, a services list referred to in section 28DA above or section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46) or a list corresponding to a services list prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (or, in any of those cases, such a list of a prescribed description).

(11) If regulations do so require, they—

- (a) need not require both A and B to be included in lists prepared by the same Health Authority, but
- (b) may, in particular, require that both A and B be included in lists prepared by Health Authorities in England, or in lists prepared by Health Authorities in Wales.]

#### Textual Amendments

**F261** S. 43D inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 24, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1) Sch. Pt. 1

### Local representative committees

#### 44 Recognition of local representative committees.

[(A1) A Health Authority may recognise a committee formed for their area which they are satisfied is representative of—

- (a) the medical practitioners providing general medical services or general ophthalmic services in that area;
- (b) those medical practitioners and the deputy medical practitioners for that area; or
- (c) the medical practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,

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and the section 28C medical practitioners for that area,

and any committee so recognised shall be called the Local Medical Committee for the area.

(B1) A Health Authority may recognise a committee formed for their area which they are satisfied is representative of—

- (a) the dental practitioners providing general dental services in that area;
- (b) those dental practitioners and the deputy dental practitioners for that area; or
- (c) the dental practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,

and the section 28C dental practitioners for that area,

and any committee so recognised shall be called the Local Dental Committee for the area.]

(1) Where [<sup>F262</sup>a [<sup>F263</sup>Health Authority are satisfied] that a committee formed for [<sup>F263</sup>their area] is representative]—

- [<sup>F264</sup>(a) of the medical practitioners providing general medical services or general ophthalmic services in that [<sup>F265</sup>area], or
- (b) of the dental practitioners providing general dental services in that [<sup>F265</sup>area], or]
- (c) of the ophthalmic opticians . . . <sup>F266</sup> providing general ophthalmic services in that [<sup>F263</sup>area], or
- (d) of the persons providing pharmaceutical services in that [<sup>F263</sup>area],

[<sup>F267</sup>the Family Health Services Authority] may recognise that committee; and any committee so recognised shall be called [<sup>F268</sup> the Local Medical Committee, the Local Dental Committee, ]Local Optical Committee or the Local Pharmaceutical Committee, as the case may be, for the [<sup>F263</sup>area] concerned.

(2) Any such committee may with the [<sup>F269</sup>approval of the [<sup>F270</sup>Health Authority]] delegate any of their functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

[<sup>F271</sup>(3) For the purposes of this section and section 45 below, a person who meets the condition in subsection (4) below—

- (a) is a deputy medical practitioner for the area of a Health Authority if he is a medical practitioner who assists a medical practitioner providing general medical services in that area in the provision of those services but is not himself on a list;
- (b) is a section 28C medical practitioner for the area of a Health Authority if he is a medical practitioner who provides or performs personal medical services in accordance with arrangements made under section 28C above by the Health Authority (whether with himself or another);
- (c) is a deputy dental practitioner for the area of a Health Authority if he is a dental practitioner who assists a dental practitioner providing general dental services in that area in the provision of those services but is not himself on a list;
- (d) is a section 28C dental practitioner for the area of a Health Authority if he is a dental practitioner who provides or performs personal dental services in accordance with arrangements made under section 28C above by the Health Authority (whether with himself or another).

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- (4) The condition referred to in subsection (3) above is that the person concerned has notified the Health Authority that he wishes to be represented under this section by the appropriate committee for their area (and has not notified them that he wishes to cease to be so represented).
- (5) For the purposes of subsection (3) above—
- (a) a person is to be treated as assisting a medical practitioner or dental practitioner in the provision of services if he is employed by that practitioner for that purpose or if he acts as his deputy in providing those services; and
  - (b) “list” has the same meaning as in section 46 below.]

### Textual Amendments

- F262** Words commencing “a Family Health” to “locality is representative” substituted (1.10.1991) for words commencing “the Secretary of State” to “is representative” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 12\(4\)\(a\)](#); S.I. 1990/2511, [art. 3](#)
- F263** Words in [s. 44\(1\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 32\(a\)](#) (with [Sch. 2 paras. 6, 16](#))
- F264** [S. 44\(1\)\(a\)\(b\)](#) omitted (1.9.1999 for E. for specified purposes and otherwise prosp.) by virtue of [1999 c. 8, ss. 11\(3\), 67\(1\)](#); S.I. 1999/2342, [art. 2\(1\)](#), [Sch. 1](#) and repealed (prosp.) by [1999 c. 8, ss. 65\(2\), 67\(1\)](#), [Sch. 5](#)
- F265** Words in [s. 44\(1\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 32\(a\)](#) (with [Sch. 2 paras. 6, 16](#))
- F266** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), [s. 24](#), [Sch. 8 Pt. I](#)
- F267** Words commencing “the Family Health” substituted (1.10.1991) for the word “he” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 12\(4\)\(b\)](#); S.I. 1991/2511, [art. 3](#)
- F268** Words in [s. 44\(1\)](#) omitted (1.9.1999 for E. for specified purpose and otherwise prosp.) by virtue of [1999 c. 8, ss. 11\(3\), 67](#); S.I. 1999/2342, [art. 2\(1\)](#), [Sch. 1](#) and repealed (prosp.) by [1999 c. 8, ss. 65\(2\), 67\(1\)](#), [Sch. 5](#)
- F269** Words commencing “approval of the” substituted (1.10.1991) for “Secretary of State’s approval” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 12\(4\)](#); S.I. 1991/2511, [art. 3](#)
- F270** Words in [s. 44\(2\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 32\(b\)](#) (with [Sch. 2 paras. 6, 16](#))
- F271** [S. 44\(3\)-\(5\)](#) inserted (1.9.1999 for E. for specified purposes and otherwise prosp.) by [1999 c. 8, ss. 11\(4\), 67\(1\)](#); S.I. 1999/2342, [art. 2\(1\)](#), [Sch. 1](#)

### Modifications etc. (not altering text)

- C54** [S. 44\(A1\)\(B1\)](#) inserted (1.9.1999 for E. for specified purposes and otherwise prosp.) by [1999 c. 8, ss. 11\(2\)](#); S.I. 1999/2342, [art. 2\(1\)](#), [Sch. 1](#)
- C55** [S. 44\(1\)](#) amended by S.I. 1990/2511, [art. 5\(1\)](#)

## 45 Functions of local representative committees.

[<sup>F272</sup>(1) Regulations may require Health Authorities—

- (a) in the exercise of their functions under this Part of this Act to consult committees recognised by them under section 44 above,
- (b) in the exercise of any of their functions which relate to arrangements under section 28C above to consult committees recognised by them under section 44(A1)(c) or (B1)(c) above,

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on such occasions and to such extent as may be prescribed.

- (1A) The power conferred by subsection (1) above is without prejudice to any other power to require a Health Authority to consult any committee recognised under section 44 above.
- (1B) Committees recognised under section 44 above shall exercise such other functions as may be prescribed.
- (1C) A committee recognised for an area under subsection (A1)(b) or (c) or (B1)(b) or (c) of section 44 above shall, in respect of each year, determine the amount of its administrative expenses for that year attributable —
- (a) in the case of a committee recognised under subsection (A1)(b) or (c)(ii) of that section, to the deputy medical practitioners for the area;
  - (b) in the case of a committee recognised under subsection (A1)(c) of that section, to the section 28C medical practitioners for the area;
  - (c) in the case of a committee recognised under subsection (B1)(b) or (c)(ii) of that section, to the deputy dental practitioners for the area;
  - (d) in the case of a committee recognised under subsection (B1)(c) of that section, to the section 28C dental practitioners for the area.]
- (2) The [<sup>F273</sup>Health Authority] may, on the request of any committee recognised under section 44 for their [<sup>F273</sup>area], allot to that committee such sums for defraying the committee's administrative expenses [<sup>F274</sup>(including travelling and subsistence allowances payable to its members)] as may be determined by the [<sup>F273</sup>Health Authority] . . . <sup>F275</sup>
- (3) Any sums so allotted shall be out of the moneys available to the [<sup>F273</sup>Health Authority] for the remuneration of persons of whom the committee so recognised is representative and who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services, as the case may be, under this Part of this Act.
- The amount of any such sums shall be deducted from the remuneration of those persons in such manner as may be determined by the [<sup>F273</sup>Health Authority] . . . <sup>F275</sup>
- [<sup>F276</sup>(4) Where a committee has made a determination under subsection (1C) above, it shall apportion the amount so determined among the deputy medical practitioners, section 28C medical practitioners, deputy dental practitioners or section 28C dental practitioners, as the case may be, for the area and each such practitioner shall pay in accordance with the committee's directions the amount so apportioned to him.
- (5) References in this section to administrative expenses of a committee include references to travelling and subsistence allowances payable to its members; but the reference in subsection (2) above to a committee's administrative expenses does not include so much of the committee's administrative expenses as are determined under subsection (1C) above to be attributable to any practitioners mentioned in that subsection.]

#### Textual Amendments

**F272** S. 45(1)-(1C) substituted (1.9.1999 for E. for specified purposes and 1.4.2000 for specified purposes and otherwise *prosp.*) for s. 45(1) by 1999 c. 8, ss. 11(6), 67(1); S.I. 1999/2342, art. 2(1), Sch. 1; 2000/1026, art. 2(1), Sch.



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- F273** Words in s. 45 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 33** (with **Sch. 2 paras. 6, 16**)
- F274** Words in s. 45 omitted (1.9.1999 for E. for specified purposes and 1.4.2000 for specified purposes and otherwise *prosp.*) by virtue of 1999 c. 8, ss. **11(7)**, 67(1); S.I. 1999/2342, art. 2(1), **Sch. 1**; 2000/1026, art. 2(1), **Sch.** and repealed (1.4.2000 for E.W.) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5**; S.I. 2000/1041, art. 2(c)(d), **Sch.**
- F275** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), ss. 5(4), 24, **Sch. 3 para. 7(b)(ii)**, **Sch. 8 Pt. I**
- F276** S. 45(4)(5) inserted (1.9.1999 for E. for specified purposes and 1.4.2000 for specified purposes and otherwise *prosp.*) by 1999 c. 8, ss. **11(8)**, 67(1); S.I. 1999/2342, art. 2(1), **Sch. 1**; 2000/1026, art. 2(1), **Sch.**

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

- C56** S. 45(1): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

### *Provisions as to disqualification of practitioners*

#### 46 Disqualification of practitioners.

- (1) There shall be a tribunal (in this section and sections 47 to [F277 49C] below referred to as “the Tribunal”) which shall be constituted in accordance with Schedule 9 to this Act to inquire into cases where representations are made in the prescribed manner to the Tribunal by [F278 a Health Authority] or any other person that the continued inclusion of a person’s name in a list prepared under this Part of this Act—
- (a) of medical practitioners undertaking to provide general medical services,
  - (b) of medical practitioners undertaking to provide general ophthalmic services,
  - (c) of dental practitioners undertaking to provide general dental services,
  - (d) of ophthalmic opticians undertaking to provide general ophthalmic services,
  - F279 (e) .....
  - (f) of persons undertaking to provide pharmaceutical services,
- would be prejudicial to the efficiency of the services in question.

The supplementary provisions contained in Schedule 9 apply in relation to the Tribunal.

- (2) The Tribunal, on receiving representations from [F278 a Health Authority] shall, and in any other case may, inquire into the case, and, if they are of opinion that the continued inclusion of that person’s name in any list to which the representations relate would be prejudicial to the efficiency of those services—
- (a) shall direct that his name be removed from that list; and
  - (b) may also, if they think fit, direct that his name be removed from, or not be included in, any corresponding list kept by any [F278 other Health Authority] under this Part [F280], and
  - (c) where they make a direction under paragraph (b) above, may also, if they think fit, declare that he is not fit to be engaged in any capacity in the provision of those services.]

F281 (3) .....

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- [<sup>F282</sup>(4) Subject to subsection (5) below, where the Tribunal direct that the name of any person be removed from or not included in any list or lists, the Health Authority or Health Authorities concerned shall remove the name of the person concerned from the list or lists in question.
- (5) Subsection (4) above shall not apply—
- (a) where no appeal is brought against the decision to make the direction, until the end of the period for bringing an appeal, and
  - (b) where an appeal is brought against that decision, until the appeal process has been exhausted.]

#### Textual Amendments

- F277** Words in s. 46(1) substituted (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(2); S.I. 1995/3090, art. 2(1)(2), Sch. (subject to savings in art. 3); S.I. 1996/552, art. 2
- F278** Words in s. 46(1)(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 34(a)(b) (with Sch. 2 paras. 6, 16)
- F279** S. 46(1)(e) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, Sch. 8 Pt. I
- F280** S. 46(2)(c) and word inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 1; S.I. 1995/3090, art. 2(1)(2), Sch. (subject to savings in art. 3); S.I. 1996/552, art. 2
- F281** S. 46(3) repealed (21.12.1995) by 1995 c. 31, ss. 3(1), 14(2), Sch.; S.I. 1995/3090, art. 2(1), Sch. (subject to savings in art. 3)
- F282** S. 46(4)(5) substituted (21.12.1995) for s. 46(4) by 1995 c. 31, s. 3(2); S.I. 1995/3090, art. 2(1), Sch. 1 (subject to savings in art. 3)

#### 47 Removal of disqualification.

- (1) Any person whose name has been removed by a direction under section 46 above from any list or lists shall be disqualified for inclusion in any list to which that direction relates until the Tribunal <sup>F283</sup> . . . direct under this section to the contrary.
- (2) For the purpose of deciding whether or not to issue a direction under this section (or under paragraph 8 of Schedule 14 to this Act), the Tribunal <sup>F284</sup> . . . may hold an inquiry.

#### Textual Amendments

- F283** Words in s. 47(1) repealed (21.12.1995) by 1995 c. 31, ss. 4(1), 14(2), Sch.; S.I. 1995/3090, art. 2(1), Sch. (subject to saving in art. 3)
- F284** Words in s. 47(2) repealed (21.12.1995) by 1995 c. 31, s. 14(2), Sch.; S.I. 1995/3090, art. 2(1), Sch. (subject to saving in art. 3)

#### 48 Disqualification provisions in Scotland or Northern Ireland.

Where—

- (a) under any provisions in force in Scotland or Northern Ireland corresponding to the provisions of this Part of this Act a person is for the time being disqualified for inclusion in all lists prepared under those provisions of persons undertaking to provide services of one or more of the kinds specified in section 46(1) above, then

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- (b) that person shall, so long as that disqualification is in force, be disqualified for inclusion in a list prepared under this Part of persons undertaking to provide services of those kinds, and the name of that person shall be removed from every such list in which his name is included.

#### 49 Regulations as to ss. 46 to 48.

Regulations shall provide—

- (a) for <sup>F285</sup> . . . inquiries <sup>F285</sup> . . . or the Secretary of State under sections 46 to 48 above [<sup>F286</sup>to be held in accordance with such procedure as may be prescribed by or determined under the regulations], and for the making and determining of appeals to the Secretary of State under that procedure, and, in particular for <sup>F285</sup> . . . any person who is the subject of such an inquiry [<sup>F287</sup>to have] an opportunity—
- (i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal and, in the case of an inquiry by, or appeal to, the Secretary of State before a person appointed by the Secretary of State, and
  - (ii) of being heard by the Tribunal or the person so appointed and of calling witnesses and producing other evidence on his behalf,

and [<sup>F287</sup>for the hearing], whether by the Tribunal or the person so appointed [<sup>F287</sup>to be] in public if the person who is the subject of the inquiry so requests;

- (b) for conferring on the Tribunal and on any person so appointed such powers as the Secretary of State considers necessary, and for that purpose to apply, with any necessary modifications, any of the provisions of section 250 of the <sup>M36</sup>Local Government Act 1972; and
- (c) for the publication of the decisions of the Tribunal and the Secretary of State under this section and of the imposition and removal of any disqualifications imposed under section 48 above.

#### Textual Amendments

**F285** Words in s. 49(a) omitted (E.W.) (21.12.1995) by virtue of 1995 c. 31, s. 5(2)(a); S.I. 1995/3090, art. 2(1), Sch. (subject to saving in art. 3)

**F286** Words in s. 49(a) inserted (E.W.) (21.12.1995) by 1995 c. 31, s. 5(2)(b); S.I. 1995/3090, art. 2(1), Sch. (subject to saving in art. 3)

**F287** Words in s. 49(a) substituted (E.W.) (21.12.1995) by 1995 c. 31, s. 5(2)(c); S.I. 1995/3090, art. 2(1), Sch. (subject to saving in art. 3)

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

**C57** S. 49 extended (E.W.) (21.12.1995) by 1995 c. 31, s. 5(1); S.I. 1995/3090, art. 2(1), Sch. (subject to saving in art. 3)

#### Marginal Citations

**M36** 1972 c. 70(81:1).

#### [<sup>F288</sup>49A Applications for interim suspension.

- (1) A Health Authority who have made representations under section 46 above may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a

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direction to be made under subsection (2) below in relation to the person to whom the case relates.

- (2) If, on an application under this section, the Tribunal are satisfied that it is necessary to do so in order to protect patients, they shall direct that subsection (3) below shall apply to the person concerned as respects services of the kind to which the case in question relates.
- (3) A person to whom this subsection applies shall—
  - (a) be deemed to have been removed from any relevant list in which his name is included,
  - (b) be disqualified for inclusion in any relevant list in which his name is not included, and
  - (c) be deemed to be a person in relation to whom there is in force a declaration under section 46(2)(c) above concerning his fitness to be engaged in the provision of services of the relevant kind.
- (4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case in connection with which it is made.
- (5) In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.
- (6) In the application of subsection (3) above to any person—
  - (a) “relevant list” means a list prepared under this Part of this Act of persons undertaking to provide services of the kind to which the direction applying the subsection to him relates, and
  - (b) “services of the relevant kind” means services of the kind to which that direction relates.]

#### Textual Amendments

**F288** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

#### [<sup>F289</sup> 49B Continuation of suspension pending appeal.

- (1) Where—
  - (a) on disposing of a case under section 46 above, the Tribunal make a direction under subsection (2)(b) of that section, and
  - (b) the person to whom the direction relates is a person to whom section 49A(3) above would, apart from this section, cease to apply on the disposal of the case, the Tribunal may, if they consider it necessary to do so in order to protect patients, direct that that provision shall continue to apply to him as respects services of the kind to which the direction under section 46(2)(b) above relates.
- (2) A direction under subsection (1) above shall cease to have effect—
  - (a) where no appeal against the direction under section 46(2)(b) above is brought, at the end of the period for bringing an appeal, and
  - (b) where an appeal against that direction is brought, when the appeal process has been exhausted.

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- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a direction which is not coupled with a declaration under section 46(2)(c) above, section 49(A)(3) above shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).
- (4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 46(2)(b) above relates are, or may be, provided under this Part of this Act.]

#### Textual Amendments

**F289** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

#### [<sup>F290</sup> 49C Sections 49A and 49B: procedure etc.

- (1) Before making a direction under section 49A(2) or 49B(1) above in relation to any person, the Tribunal shall give him an opportunity—
- (a) to appear before them, either in person or by counsel or solicitor or such other representative as may be prescribed, and
  - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—
- (a) make provision for, or for the determination of, procedure in relation to determining applications under section 49A above or the exercise of the power conferred by section 49B(1) above, and
  - (b) provide for the functions of the Tribunal under section 49A or 49B above to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.]

#### Textual Amendments

**F290** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

#### [<sup>F291</sup> 49D Suspension provisions in Scotland or Northern Ireland.

- (1) This section applies where, under any provisions in force in Scotland or Northern Ireland corresponding to section 49A or 49B above, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of this Part of this Act of persons undertaking to provide services of one or more of the kinds specified in section 46(1) above, other than those in which his name is included.
- (2) The practitioner shall, while he is so disqualified—
- (a) be disqualified for inclusion in any list prepared under this Part of this Act of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included, and
  - (b) be deemed to have been removed from any relevant list in which his name is included.]

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#### Textual Amendments

**F291** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

#### [<sup>F292</sup>49E Payments in consequence of suspension.

- (1) Regulations may provide for the making to persons to whom section 49A(3) or 49D(2) above applies of payments in consequence of the application of that provision.
- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.]

#### Textual Amendments

**F292** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

VALID FROM 22/11/2001

#### [<sup>F293</sup>49F Disqualification of practitioners

- (1) If it appears to a Health Authority that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in any of the following prepared by them—
  - (a) a list of medical practitioners undertaking to provide general medical services,
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services,
  - (c) a list of dental practitioners and dental corporations undertaking to provide general dental services,
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or
  - (e) a list of persons undertaking to provide pharmaceutical services,
 (such a person being referred to in this group of sections as a “practitioner”), they may (or, in cases falling within subsection (6), must) decide to remove him from that list.
- (2) The first condition is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this group of sections as an “efficiency case”).
- (3) The second condition is that the person concerned—
  - (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit,

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(and such a case is referred to in this group of sections as a “fraud case”).

- (4) The third condition is that the person concerned is unsuitable to be included in the list (and such a case is referred to in this group of sections as an “unsuitability case”).
- (5) “This group of sections” means this section and sections 49G to 49R below.
- (6) In unsuitability cases, the Health Authority must remove the practitioner from the list in prescribed circumstances.
- (7) The Health Authority must state which condition (or conditions) they are relying on when removing a practitioner from a list.
- (8) In subsection (3), “health scheme” means—
  - (a) any of the health services under section 1(1) above or any corresponding enactment extending to Scotland or Northern Ireland, and
  - (b) any prescribed scheme,
 and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (9) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.]

#### Textual Amendments

**F293** S. 49F inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

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

**C58** S. 49F(8): definition extended (W.) (26.8.2002) by National Health Service (General Ophthalmic Services) Regulations 1986 (S.I. 1986/975), reg. 9A (as inserted (26.8.2002) by National Health Service (General Ophthalmic Services) (Amendment) (Wales) Regulations 2002 (S.I. 2002/1883), reg. 6)

VALID FROM 14/12/2001

#### <sup>F294</sup> 49G Contingent removal

- (1) In an efficiency case or a fraud case, the Health Authority may, instead of deciding to remove a practitioner from their list, decide to remove him contingently.
- (2) If they so decide, they must impose such conditions as they may decide on his inclusion in the list with a view to—
  - (a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or
  - (b) preventing further acts or omissions within section 49F(3)(a) above (in a fraud case).

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- (3) If the Health Authority determine that the practitioner has failed to comply with a condition, they may decide to—
- (a) vary the conditions, or impose different conditions, or
  - (b) remove him from their list.
- (4) The Health Authority may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.]

#### Textual Amendments

**F294** S. 49G inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 14/12/2001

#### **[<sup>F295</sup>49H Fraud and unsuitability cases: supplementary**

- (1) Where the practitioner is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second or third condition referred to in section 49F(3) and (4) above—
- (a) in the case of an ophthalmic optician not referred to in paragraph (b) or a dental corporation, if any director meets that condition (whether or not he first did so when he was a director), and
  - (b) in the case of a body corporate carrying on a retail pharmacy business or an ophthalmic optician which is a limited liability partnership, if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).
- (2) A practitioner is to be treated for the purposes of this group of sections as meeting the condition referred to in section 49F(3) above if—
- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 49F(1) above on the practitioner's behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 49F(3)(a) above occurring in the course of the provision of those services on his behalf.]

#### Textual Amendments

**F295** S. 49H inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1



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## <sup>F296</sup>49I Suspension

- (1) If the Health Authority are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, they may suspend a practitioner from their list—
  - (a) while they decide whether or not to exercise their powers under section 49F or 49G (other than in circumstances falling within paragraph (b)), or
  - (b) while they wait for a decision affecting the practitioner of a court or of a body which regulates—
    - (i) the practitioner's profession,
    - (ii) the profession of a person providing any of the services mentioned in section 49F(1) on the practitioner's behalf, or
    - (iii) if the practitioner is a body corporate, the profession of one of its directors or, as the case may be, one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,or one of that regulatory body's committees.
- (2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.
- (3) In a case falling within subsection (1)(a), the Health Authority must specify how long the period of suspension is to be.
- (4) In a case falling within subsection (1)(b), the Health Authority may specify that the practitioner shall remain suspended after the decision referred to there for an additional period which the Health Authority must specify.
- (5) In either case—
  - (a) before that period expires they may extend, or further extend, the suspension for a further specified period, or
  - (b) if that period has expired, they may impose a further suspension, for a period which they must specify.
- (6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—
  - (a) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),
  - (b) if, on the application of the Health Authority, the FHSAA orders accordingly before the expiry of the period of suspension, or
  - (c) if the Health Authority have applied under paragraph (b) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA has made an order.
- (7) If the FHSAA does so order, it shall specify—
  - (a) the date on which the period of suspension is to end, or
  - (b) an event beyond which it is not to continue.

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- (8) The FHSAA may, on the application of the Health Authority, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (9) The Secretary of State may make regulations providing for payments to practitioners who are suspended.
- (10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.]

#### Textual Amendments

**F296** S. 49I inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), **Sch. 1 Pt. II**; S.I. 2002/1475, art. 2(1), **Sch. Pt. 1**

VALID FROM 14/12/2001

#### [<sup>F297</sup> 49J Suspension pending appeal

- (1) This section applies if the Health Authority decide to remove a practitioner from a list under section 49F.
- (2) In such a case they may also decide to suspend the practitioner from the list pending any appeal by him, if they are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.
- (3) If they do suspend the practitioner under this section, the suspension has effect from the date when the Health Authority gave him notice of the suspension.
- (4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 49M(1) below, or, if the practitioner appeals under section 49M, until the FHSAA has disposed of the appeal.
- (5) The Health Authority may revoke a suspension imposed under this section.
- (6) If the practitioner appeals under section 49M against the Health Authority's decision to remove him from the list, the FHSAA may also revoke a suspension imposed on him under this section.
- (7) Subsections (9) and (10) of section 49I above apply for the purposes of this section as they apply for the purposes of that.]

#### Textual Amendments

**F297** S. 49J inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), **Sch. 1 Pt. III**; S.I. 2002/1475, **art. 2(1)**, **Sch. Pt. 1**

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### [<sup>F298</sup> 49K Effect of suspension

While a practitioner is suspended (whether under section 49I or under section 49J above) he is to be treated as not being included in the list from which he has been suspended even though his name appears in it.]

#### Textual Amendments

**F298** S. 49K inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 22/11/2001

### [<sup>F299</sup> 49L Review of decisions

- (1) The Health Authority may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the FHSAA, or a suspension imposed under section 49J above).
- (2) The practitioner may not request a review before the expiry of the period of—
  - (a) three months beginning with the date of the Health Authority's decision to suspend or contingently remove him, or (as appropriate),
  - (b) six months beginning with the date of their decision on the previous review.
- (3) On such a review, the Health Authority may—
  - (a) confirm the contingent removal or the suspension,
  - (b) in the case of a suspension, terminate it,
  - (c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.]

#### Textual Amendments

**F299** S. 49L inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1)

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### **[<sup>F300</sup>49M Appeals**

- (1) A practitioner may appeal to the FHSAA against a decision of a Health Authority mentioned in subsection (2) by giving notice in writing to the FHSAA within the period of 28 days beginning with the date on which the Health Authority gave him notice of the decision.
- (2) The Health Authority decisions in question are—
  - (a) to remove the practitioner from a list (under section 49F or 49G(3) or under subsection (5)(b) of this section),
  - (b) to remove him contingently (under section 49G),
  - (c) to impose any particular condition under section 49G, or to vary any condition or to impose any different condition under that section,
  - (d) to vary his terms of service (under section 49G(4)),
  - (e) any decision on a review of a contingent removal under section 49L.
- (3) The appeal shall be by way of redetermination of the Health Authority's decision.
- (4) On an appeal, the FHSAA may make any decision which the Health Authority could have made.
- (5) If the FHSAA decides to remove the practitioner contingently—
  - (a) the Health Authority and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked, and
  - (b) the Health Authority may remove him from their list if they determine that he has failed to comply with a condition.
- (6) The Health Authority shall not remove a person from a list, or impose a contingent removal—
  - (a) until the expiry of the period of 28 days referred to in subsection (1), or
  - (b) if the practitioner appeals within that period, until the FHSAA has disposed of the appeal.
- (7) Regulations may provide for payments by Health Authorities to practitioners who are removed from lists pursuant to decisions of the FHSAA under this section, but whose appeals against those decisions are successful.]

#### **Textual Amendments**

**F300** S. 49M inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1)

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VALID FROM 22/11/2001

### **[<sup>F301</sup>49N National disqualification**

- (1) If the FHSAA removes the practitioner from a list, it may also decide to disqualify him from inclusion in—
  - (a) all lists referred to in section 49F(1)(a) to (e) prepared by all Health Authorities,
  - (b) all supplementary lists prepared by all Health Authorities, and
  - (c) all services lists prepared by all Health Authorities under section 28DA above or under section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46), or any list corresponding to a services list prepared by any Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001,or only from inclusion in one or more descriptions of such lists prepared by all Health Authorities, the description being specified by the FHSAA in its decision.
- (2) A decision by the FHSAA to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.
- (3) The FHSAA may also impose a national disqualification on a practitioner if it dismisses an appeal by him against a Health Authority's refusal to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (4) The Health Authority may apply to the FHSAA for a national disqualification to be imposed on a person after they have—
  - (a) removed him from a list of theirs of any of the kinds referred to in subsection (1)(a) to (c), or
  - (b) refused to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of their refusal.
- (6) If the FHSAA imposes a national disqualification on a person—
  - (a) no Health Authority may include him in a list of any of the kinds from which he has been disqualified from inclusion prepared by them, and
  - (b) if he is included in such a list, each Health Authority in whose list he is included must remove him from it.
- (7) The FHSAA may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.
- (8) Subject to subsection (9), the person may not request such a review before the end of the period of—
  - (a) two years beginning with the date on which the national disqualification was imposed, or
  - (b) one year beginning with the date of the FHSAA's decision on the last such review.

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(9) The Secretary of State may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to “two years” or “one year” were a reference to a different period specified in the regulations.]

#### Textual Amendments

**F301** S. 49N inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1) Sch. Pt. 1

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

**C59** S. 49N(8) modified (W.) (26.8.2002) by S.I. 1992/635, reg. 7H (as inserted (26.8.2002) by The National Health Service (General Medical Services) (Amendment) (Wales) (No. 2) Regulations 2002 (S.I. 2002/1896), reg. 5)

VALID FROM 22/11/2001

#### <sup>F302</sup> 49O Notification of decisions

Regulations may require a Health Authority to notify prescribed persons, or persons of prescribed descriptions, of any decision they make under this group of sections, and of any information relevant to the decision which they consider it appropriate to include in the notification.]

#### Textual Amendments

**F302** S. 49O inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

#### <sup>F303</sup> 49P Withdrawal from lists

Regulations may provide for circumstances in which a practitioner—

- (a) whom a Health Authority are investigating in order to see whether there are grounds for exercising their powers under section 49F, 49G or 49I,
  - (b) whom a Health Authority have decided to remove from a list under section 49F or 49G, or contingently remove under section 49G, but who has not yet been removed or contingently removed, or
  - (c) who has been suspended under section 49I,
- may not withdraw from a list in which he is included.]

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### Textual Amendments

**F303** S. 49P inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

### [<sup>F304</sup> 49Q Regulations

- (1) Any decision by a Health Authority referred to in this group of sections shall be reached in accordance with regulations made by the Secretary of State about such decisions.
- (2) The regulations shall include provision—
  - (a) requiring the practitioner to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before a Health Authority make any decision affecting him under this group of sections,
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal which he may have.
- (3) The regulations may, in particular, make provision as to criteria which the Health Authority must apply when making decisions in unsuitability cases.]

### Textual Amendments

**F304** S. 49Q inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

### [<sup>F305</sup> 49R Corresponding provision in Scotland and Northern Ireland

- (1) This section applies where it appears to the Secretary of State that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this group of sections.
- (2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Secretary of State may make regulations providing for the effect to be given in England and Wales to a corresponding decision.
- (4) That effect need not be the same as the effect of the decision in the place where it was made.
- (5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England and Wales.]

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### Textual Amendments

**F305** S. 49R inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 01/10/2001

### <sup>F306</sup> *The Family Health Services Appeal Authority*

#### Textual Amendments

**F306** S. 49S and cross-heading inserted (1.10.2001 for certain purposes for E., 1.12.2001 for all other purposes for E. and 26.8.2002 for W.) by 2001 c. 15, ss. 27(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3294, art. 4, Sch. Pt. I (subject to transitional provisions in Sch. Pt. II); S.I. 2002/1919, art. 3 (subject to art. 3(2))

### <sup>F307</sup> **49S The Family Health Services Appeal Authority**

- (1) There shall be a body to be known as the Family Health Services Appeal Authority (“FHSAA”).
- (2) The FHSAA shall be constituted in accordance with Schedule 9A to this Act, which also makes other provision in relation to the FHSAA.
- (3) The FHSAA shall have such functions as are conferred on it by this Act or by any other enactment.
- (4) The Secretary of State may direct the FHSAA to exercise any of his functions relating to the determination of appeals to him which are specified in the directions.
- (5) Directions under subsection (4) shall be given by regulations or by an instrument in writing.
- (6) The Secretary of State may make available to the FHSAA any facilities (including the use of any premises) provided by him or by a Special Health Authority or NHS trust for any service under this Act, and the services of persons employed by the Secretary of State or by a Special Health Authority or NHS trust.
- (7) Subsections (1) to (3) of section 27 above apply in relation to the services of persons employed by a Special Health Authority and made available under subsection (6) as they apply in relation to the services of officers of Special Health Authorities to be made available under section 26 above.
- (8) For the purposes of subsection (6)—
  - (a) the Secretary of State may give directions to an NHS trust requiring it to make facilities or the services of persons available as mentioned there; but
  - (b) subsections (1) and (2) of section 27 above apply in relation to the services of such persons as they apply in relation to the services of officers to be made available by virtue of section 26 above by a Health Authority, Special Health Authority or Primary Care Trust.]



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### Textual Amendments

**F307** S. 49S inserted (1.10.2001 for certain purposes for E., 1.12.2001 for all other purposes for E. and 26.8.2002 for W.) by 2001 c. 15, ss. 27(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3294, art. 4, Sch. Pt. I (subject to transitional provisions in Sch. Pt. II); S.I. 2002/1919, {art. 3 } (subject to art. 3(2))

### Other provisions supplementary to Part II

## 50 Exercise of choice of practitioner in certain cases.

Regulations may provide that, where a right to choose the person by whom [<sup>F308</sup>general ophthalmic] services are to be provided under this Part of this Act is conferred by or under this Part, that right shall, in the case of such persons as may be specified in the regulations, be exercised on their behalf by other persons so specified.

### Textual Amendments

**F308** Words in s. 50 inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 15; S.I. 1998/1998, art. 2(2)(b), Sch. 2

## 51 University clinical teaching and research.

[<sup>F309</sup>(1)] It is the Secretary of State's duty to [<sup>F310</sup>exercise his functions under this Act and Part I of the <sup>M37</sup>National Health Service and Community Care Act 1990 so as to secure that there are made available] such facilities as he considers are reasonably required by any university which has a medical or dental school, in connection with clinical teaching and with research connected with clinical medicine or, as the case may be, clinical dentistry.

[<sup>F311</sup>(2) Regulations may provide for any functions exercisable by a Health Authority [<sup>F312</sup>Special Health Authority or Primary Care Trust] in relation to the provision of facilities such as are mentioned in subsection (1) above to be exercisable by the Health Authority [<sup>F312</sup>Special Health Authority or Primary Care Trust] jointly with one or more other relevant health service bodies.

(3) For the purposes of subsection (2) above the following are relevant health service bodies—

- (a) Health Authorities;
- (b) Special Health Authorities;
- [ Primary Care Trusts]; and
- <sup>F313</sup>(bb)
- (c) NHS trusts.]

### Textual Amendments

**F309** S. 51 re-numbered as s. 51(1) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 35 (with Sch. 2 paras. 6, 16)

**F310** Words in s. 51(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 35(a) (with Sch. 2 paras. 6, 16)

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- F311** S. 51(2)(3) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. 1 para. 35(b)** (with **Sch. 2** paras. 6, 16)
- F312** Words in s. 51(2) substituted (4.1.2000 for E. amd otherwise prosp.) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 23(a)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**
- F313** S. 51(3)(bb) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 23(b)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**

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

- C60** S. 51(1): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(a), **Sch. 1**  
S. 51(1) restricted (1.4.2000) by S.I. 2000/695, **reg. 6**
- C61** S. 51(1): functions of Health Authorities modified (E.) (1.4.2001) by S.I. 2001/747, **regs. 5(6), 6(5)**  
S. 51(1): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, **regs. 2(1), 3, 4, Sch. 1**

#### Marginal Citations

- M37** 1990 c. 19.

## 52 Use of accommodation.

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of general medical services, general dental services, general ophthalmic services or pharmaceutical services he may make the accommodation available on such terms as he thinks fit to persons providing any of those services.

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

- C62** S. 52: transfer of functions (E.) (1.4.2001) by S.I. 2001/747, **regs. 2(1), 3, 4, Sch. 1**

## 53 Immunisation.

Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against disease, he shall so far as reasonably practicable give every medical practitioner providing general medical services an opportunity to participate in the arrangements.

## [<sup>F314</sup>54 Sale of medical practices.

- (1) It is unlawful to sell the goodwill of the medical practice of a person who has at any time—
- (a) provided general medical services under arrangements made with any Council, Committee or Authority under the <sup>M38</sup>National Health Service Act 1946, the <sup>M39</sup>National Health Service Reorganisation Act 1973 or this Act, or
  - (b) provided or performed personal medical services in accordance with section 28C arrangements,
- unless that person no longer provides or performs such services and has never carried on the practice in a relevant area.
- (2) In this section—

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“goodwill” includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice;

“medical practice” includes any part of a medical practice; and

“relevant area”, in relation to any Council, Committee or Authority by arrangement with whom a person has at any time—

- (a) provided general medical services, or
- (b) provided or performed personal medical services in accordance with section 28C arrangements,

means the area, district or locality of that Council, Committee or Authority (at that time).

(3) Schedule 10 supplements the provisions of this section.]

#### Textual Amendments

**F314** S. 54 substituted (1.4.1998) by 1997 c. 46, 34(1); S.I. 1998/631, art. 2(1)(a), Sch. 1

#### Marginal Citations

**M38** 1946 c. 81.

**M39** 1973 c. 32.

55 ..... **F315**

#### Textual Amendments

**F315** S. 55 repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 12(5), 66(2), Sch. 10

## 56 Inadequate services.

If the Secretary of State is satisfied, after such inquiry as he may think fit, as respects [<sup>F316</sup>the area, or part of the area, of a Health Authority] that the persons whose names are included in any list prepared under this Part of this Act—

- (a) of medical practitioners undertaking to provide general medical services,
- (b) of dental practitioners undertaking to provide general dental services,
- (c) of persons undertaking to provide general ophthalmic services, or
- (d) of persons undertaking to provide pharmaceutical services,

are not such as to secure the adequate provision of the services [<sup>F317</sup>in question in that area or part, or that for any other reason any considerable number of persons in any such area or part are not] receiving satisfactory services under the arrangements in force under this Part, then—

- [<sup>F318</sup>(i) he may authorise [<sup>F319</sup>the Health Authority] to make such other arrangements as he may approve, or may himself make such other arrangements, and]
- (ii) he may dispense with any of the requirements of regulations made under this Part so far as appears to him necessary to meet exceptional circumstances and enable such arrangements to be made.

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#### Textual Amendments

- F316** Words in s. 56 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 37(a)** (with Sch. 2 paras. 6, 16)
- F317** Words in s. 56 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 37(b)** (with Sch. 2 paras. 6, 16)
- F318** S. 56(i) substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 8**
- F319** Words in s. 56 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 37(c)** (with Sch. 2 paras. 6, 16)

### PART III

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

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

#### [<sup>F320</sup>57 **Maximum price of medical supplies may be controlled.**

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

“medical supplies” in this section includes surgical, dental and optical materials and equipment; and

“undertaking” in this section and that Schedule means any public utility undertaking or any undertaking by way of trade or business.]

#### Textual Amendments

- F320** S. 57 ceased to have effect for specified purposes (1.9.1999 for specified purposes otherwise 1.11.1999) by virtue of 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)

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

**58** ..... F321

**Textual Amendments**

**F321** S. 58 repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

**59, 60.** ..... F322

**Textual Amendments**

**F322** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)

**61** ..... F323

**Textual Amendments**

**F323** S. 61 repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

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

The Secretary of State shall exercise the powers conferred on him by the provisions of section 25 above (supplies not readily obtainable) . . . <sup>F324</sup>only if and to the extent that he is satisfied that anything which he proposes to do or allow under those powers—

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

**Textual Amendments**

**F324** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

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

**63** **Hospital accommodation on part payment.**

- (1) The Secretary of State may authorise the accommodation described in this section to be made available, [<sup>F325</sup> for patients to such extent as he may determine, and may recover

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

The accommodation mentioned above is—

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

[<sup>F326</sup>(1C) References in subsection (1) above to a health service hospital do not include references to a hospital vested in an NHS trust.]

(2) ..... <sup>F327</sup>

**Textual Amendments**

- F325** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 7(9)(a)**
- F326** [S. 63\(1C\)](#) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 18(3)**
- F327** [S. 63\(2\)](#) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), ss. 7(9)(b), 25(2), **Sch. 3**

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

- C63** [S. 63](#): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747](#), regs. 2(1), 3, 4, **Sch. 1**

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

The Secretary of State may require any person—

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

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

[<sup>F328</sup>**65 Accommodation and services for private patients.**

(1) [<sup>F329</sup>Subject to the provisions of this section, to such extent as they may determine, a [<sup>F330</sup>Health Authority or Special Health Authority] may make available at a hospital or hospitals for which they have responsibility accommodation and services], for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made [<sup>F331</sup>available, such charges as the Health Authority or Special Health Authority may determine and may make and recover such charges as they may determine in respect of such accommodation and services and calculate those charges on any basis that they consider to be the appropriate commercial basis; but they shall do so only if and to the extent that they are satisfied] that to do so—

- (a) will not to a significant extent interfere with the performance by [<sup>F332</sup>the Health Authority or Special Health Authority of any function conferred on them under] this Act to provide accommodation or services of any kind; and

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- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

<sup>F333</sup> [ Before determining to make any accommodation or services available as mentioned (1A) in subsection (1) above, a [<sup>F334</sup>Health Authority or Special Health Authority] shall consult organisations representative of the interests of persons likely to be affected by the determination.]

- (2) [<sup>F335</sup>A Health Authority or Special Health Authority] may allow accommodation and services [<sup>F336</sup>which are made available under subsection (1) above to be so made available] in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital for the treatment of private patients of that practitioner.

[ The Secretary of State may give directions to a [<sup>F339</sup>Health Authority or Special Health <sup>F337</sup>Authority] in relation to the exercise of its functions under this section; and it shall be <sup>F338</sup>(3) the duty of [<sup>F340</sup>a Health Authority or Special Health Authority] to whom directions are so given to comply with them.]]

<sup>F341</sup>(4) [ References in the preceding provisions of this section to a health service hospital do not include references to a hospital vested in an NHS trust.]]

#### Textual Amendments

- F328** S. 65 substituted for ss. 65 and 66 by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 7(10)**
- F329** Words beginning with “Subject” substituted (1.4.1991) for words beginning with “If” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 25(2)(a)**
- F330** Words in s. 65(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 38(a)(i)** (with Sch. 2 para. 6)
- F331** Words in s. 65(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 38(a)(ii)** (with Sch. 2 para. 6)
- F332** Words in s. 65(1)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 38(a)(iii)** (with Sch. 2 para. 6)
- F333** S. 65(1A) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 25(3)**
- F334** Words in s. 65(1A) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 38(b)** (with Sch. 2 para. 6)
- F335** Words in s. 65(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 38(c)** (with Sch. 2 para. 6)
- F336** Words in s. 65(2) substituted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 25(4)(b)**
- F337** S. 65(3) omitted (1.9.1999 for E. and otherwise *prosp.*) by virtue of 1999 c. 8, ss. 65, 67, **Sch. 4 para. 24**; S.I. 1999/2342, art. 2(1), **Sch. 1** and is repealed (*prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 5**
- F338** S. 65(3) substituted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 25(5)**
- F339** Words in s. 65(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 38(d)(i)** (with Sch. 2 para. 6)
- F340** Words in s. 65(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 38(d)(ii)** (with Sch. 2 para. 6)
- F341** S. 65(4) added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 18(4)**

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

**C64** S. 65(1): by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), **s. 25(2)(b)** it is provided that for any reference to the Secretary of State in the words beginning “for patients who” and ending “to do so” preceding para. (a) there shall be substituted (1.4.1991) a reference to the District Health Authority or Special Health Authority, as the case may require

**66A** ..... **F342**

**Textual Amendments**

**F342** S. 66A repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), **Sch. 3**

**67—** ..... **F343**  
**71.**

**Textual Amendments**

**F343** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), **Sch. 7**

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

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

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



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- (5) The persons to whom this section applies are—
- (a) persons of any of the following descriptions who provide services under Part II of this Act, namely, medical practitioners, dental practitioners, registered pharmacists, and ophthalmic . . . <sup>F344</sup>opticians; and
  - (b) other persons who provide pharmaceutical or ophthalmic services under Part II; and
  - (c) chiropodists who provide services under this Act at premises where services are provided under Part II.
- (6) In this section—
- (a) “relevant health service accommodation or facilities”, in relation to a person to whom this section applies, means any accommodation or facilities available at premises provided by the Secretary of State by virtue of this Act, being accommodation or facilities which that person is for the time being authorised to use for purposes of Part II; or
  - (b) in the case of a person to whom this section applies by virtue of paragraph (c) of subsection (5) above, accommodation or facilities which that person is for the time being authorised to use for purposes of this Act at premises where services are provided under Part II.

**Textual Amendments**

**F344** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. I](#)

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

**C65** [S. 72\(1\)\(3\)\(4\)](#): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747](#), regs. 2(1), 3, 4, [Sch. 1](#)

73— ..... <sup>F345</sup>  
76.

**Textual Amendments**

**F345** [Ss. 6\(1\)\(2\)\(6\)\(7\), 30\(2\), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70](#) repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)

*Regulations as to certain charges*

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

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—
- (a) the supply under this Act (otherwise than under Part II) of drugs, medicines or appliances (including the replacement and repair of those appliances),
  - (b) such of the pharmaceutical services referred to in Part II as may be prescribed,
- and paragraph (a) and (b) of this subsection may include the supply of substances and appliances mentioned in paragraph (b) of section 5(1) above.

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

## 78 Charges for dental or optical appliances.

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of such amounts as are mentioned in sub-paragraph (1) of paragraph 2 of Schedule 12 to this Act, in respect of the supply under the Act of such . . . <sup>F346</sup>optical appliances as are mentioned in that sub-paragraph.
- [<sup>F347</sup>(1A) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of amounts calculated in accordance with section 79A below in respect of the supply under this Act of dentures and other dental appliances of prescribed descriptions.]
- (2) If the Secretary of State, after consultation with the university associated with any hospital providing facilities for clinical dental teaching, is satisfied that it is expedient in the interests of dental training or education that the charges imposed by subsection [<sup>F348</sup>(1A)] above should be remitted in the case of dental services provided at that hospital, either generally or subject to limitations or conditions, he may by order provide for that purpose.
- Any order made under this subsection may be revoked or varied by a subsequent order made by the Secretary of State after such consultation as is mentioned above.
- (3) The additional provisions of paragraphs 2 and 5 of Schedule 12 have effect in relation to this section.

### Textual Amendments

**F346** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(2\), Sch. 3](#)

**F347** [S. 78\(1A\)](#) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 11\(1\)](#)

**F348** Word substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(1\), Sch. 2 para. 5](#)

## 79 Charges for dental treatment.

- (1) A charge of [<sup>F349</sup>an amount calculated in accordance with section 79A below] may be made and recovered, in such manner as may be prescribed, in respect of any services provided as part of the general dental services under Part II of this Act, not being—
- (a) . . . . . <sup>F350</sup>
  - (b) the repair of appliances other than prescribed appliances;
  - (c) the arrest of bleeding; . . . <sup>F350</sup>
  - (d) . . . . . <sup>F350</sup>

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

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

#### Textual Amendments

**F349** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 11(2)**

**F350** [S. 79\(a\)\(d\)](#) and the word “or” immediately preceding (d) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 25(2)**, **Sch. 3**

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

**C66** By [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 11(7)** it is provided that [s. 79\(1\)](#) shall cease to have effect so far as it provides that a charge may not be authorised for the clinical examination of a patient and any report on that examination

### [<sup>F351</sup>79A Calculation of charges for dental appliances and treatment.

#

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

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

#### Textual Amendments

**F351** S. 79A inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 11(3)**

### 80 Charges for designated facilities.

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

### 81 Charges for more expensive supplies.

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

- (a) by the Secretary of State [<sup>F352</sup>or an NHS trust] in respect of the supply by him [<sup>F353</sup>or, as the case may be, by the trust] of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in paragraph 1 of Schedule 2 to this Act;
- (b) by persons providing [<sup>F354</sup>personal dental services in accordance with section 28C arrangements or] general dental services . . . [<sup>F355</sup>in respect of the supply, as part of those services, of any dental . . . [<sup>F355</sup>appliance which is, at the request of the person supplied, of a more expensive type than the prescribed type or in respect of the replacement or repair of any such appliance.

#### Textual Amendments

**F352** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 5(8), **Sch. 2 para. 22(a)**

**F353** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 5(8), **Sch. 2 para. 22(b)**

**F354** Words in s. 81(b) inserted (1.10.1998) 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 16**; S.I. 1998/1998, art. 2(2), **Schs. 1 2**

**F355** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, **Sch. 8 Pt. I**

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

**C67** S. 81: transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

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

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

- (a) by the Secretary of State [<sup>F356</sup>or an NHS trust] in respect of the replacement or repair of any appliance or vehicle supplied by him [<sup>F357</sup>or, as the case may be, by the trust], or

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- (b) by persons providing [<sup>F358</sup>personal dental services in accordance with section 28C arrangements or] general dental services . . . <sup>F359</sup> in respect of the replacement or repair of any dental . . . <sup>F359</sup> appliance supplied as part of those services,

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

#### Textual Amendments

**F356** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 22(a)**

**F357** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 22(b)**

**F358** Words in s. 82(b) inserted (1.10.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 17**, S.I. 1998/1998, art. 2(2), Schs. 1, 2

**F359** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

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

**C68** S. 82: transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

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

Regulations made—

- (a) under sections 77 to 79 and under sections 81 and 82 above providing for the making and recovery of charges in respect of any services, may provide for the reduction of the sums which would otherwise be payable by [<sup>F360</sup>a Health Authority or Special Health Authority] to the persons by whom those services are provided by the amount of the charges authorised by the regulations in respect of those services;
- [<sup>F361</sup>(b) for the purposes of section 78(1A) in relation to appliances provided as part of—
- (i) general dental services, or
  - (ii) personal dental services provided in accordance with section 28C arrangements,
- may provide for the reduction of the sums which would otherwise be payable by a Health Authority to the persons by whom those services are provided by the amount of the charges authorised by section 78(1A) in respect of those appliances.]

#### Textual Amendments

**F360** Words in s. 83(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 39** (with Sch. 2 para. 6)

**F361** S. 83(b) substituted (1.10.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 18**; S.I. 1998/1998, art. 2(2), Schs. 1, 2

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### **[<sup>F362</sup>83A Remission and repayment of charges and payment of travelling expenses.**

- (1) Regulations may provide in relation to prescribed descriptions of persons—
  - (a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 77(1) above, section 78(1) [<sup>F363</sup> or (1A)] above or section 79 above [<sup>F364</sup> or section 20 of the National Health Service (Primary Care) Act 1997]; and
  - (b) for the payment by the Secretary of State [<sup>F365</sup> or an NHS trust] in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act [<sup>F365</sup> and]
    - [<sup>F366</sup>(c) for the reimbursement by a [<sup>F367</sup> Health Authority] to an NHS trust and, in such cases as may be prescribed to another [<sup>F367</sup> Health Authority], of payments made by virtue of exercising the functions conferred under paragraph (b) above].
- (2) Descriptions of persons may be prescribed for the purposes of paragraph (a) or (b) of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
  - (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
  - (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.
- (3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—
  - (a) by a method set out in the regulations;
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
  - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
  - (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.]

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#### Textual Amendments

- F362** S. 83A inserted by Social Security Act 1988 (c. 7, SIF 113:1), s. 14(1)
- F363** Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), Sch. 2 para. 6
- F364** Words in s. 83A(1)(a) inserted (29.9.1998) by S.I. 1998/2385, art. 2
- F365** Words inserted and at the end of the paragraph the word “and” added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(5)(a)
- F366** S. 83A(c) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(5)(b)
- F367** Words in s. 83A(1)(c) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 40 (with Sch. 2 para. 6)

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

- C69** S. 83(1)(b)(c): functions of a local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(1)(a), Sch. 1
- C70** S. 83A(1)(b): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, Sch. 1

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

## 84 Inquiries.

- (1) The Secretary of State may cause an inquiry to be held in any case where he deems it advisable to do so in connection with any matter arising under this Act [<sup>F368</sup>or Part I of the National Health Service and Community Care Act 1990][<sup>F369</sup>or Part I of the Health Act 1999 (with the exception of sections 33 to 38)].
- (2) For the purpose of any such inquiry (but subject to subsection (3) below) the person appointed to hold the inquiry—
  - (a) may by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
  - (b) may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make a solemn affirmation.
- (3) Nothing in this section—
  - (a) requires a person, in obedience to a summons under the section, to attend to give evidence or to produce any documents unless the necessary expenses of his attendance are paid or tendered to him; or
  - (b) empowers the person holding the inquiry to require the production of the title, or of any instrument relating to the title, of any land not being the property of a local authority.
- (4) Any person who refuses or deliberately fails to attend in obedience to a summons under this section, or to give evidence, or who deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce for the purposes of this section, shall be liable on summary conviction to a fine not exceeding [<sup>F370</sup>level 3 on the standard scale] or to imprisonment for a term not exceeding 6 months, or to both.
- (5) Where the Secretary of State causes an inquiry to be held under this section—

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- (a) the costs incurred by him in relation to the inquiry (including such reasonable sum not exceeding £30 a day as he may determine for the services of any officer engaged in the inquiry) shall be paid by such local authority or party to the inquiry as he may direct, and
- (b) he may cause the amount of the costs so incurred to be certified, and any amount so certified and directed to be paid by any authority or person shall be recoverable from that authority or person by the Secretary of State summarily as a civil debt.

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

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

#### Textual Amendments

**F368** Words added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 18\(6\)](#)

**F369** Words in [s. 84\(1\)](#) inserted (1.11.1999) by [S.I. 1999/2795](#), [art. 2\(1\)\(2\)](#)

**F370** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#)

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

**C71** [S. 84\(2\)–\(4\)](#) applied with modifications by [S.I. 1979/1644](#), [reg. 10\(8\)](#)

[S. 84\(2\)–\(4\)](#) applied with modifications (30.1.1998) by [S.I. 1997/2817](#), [reg. 19\(1\)\(2\)](#), [Sch. 4](#)

VALID FROM 01/08/2001

#### <sup>F371</sup> **84A Intervention orders**

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



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- (3) An intervention order may make any provision authorised by section 84B below (including any combination of such provisions).]

#### Textual Amendments

**F371** S. 84A inserted (1.8.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 13(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/2804 art. 2(1)(a)(2)

VALID FROM 01/08/2001

#### **[<sup>F372</sup>84B Intervention orders: effect**

- (1) In this section—
- (a) “member” means a member of a Health Authority, Special Health Authority or Primary Care Trust, or a member of the board of directors of an NHS trust,
  - (b) “employee member” means a member of a Health Authority, Special Health Authority or Primary Care Trust who is an officer of the Authority or Trust, or an executive director of an NHS trust.
- (2) An intervention order may provide for the removal from office of—
- (a) all the members, or
  - (b) those specified in the order,
- and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).
- (3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—
- (a) all the members, or
  - (b) those specified in the order,
- and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).
- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
- (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified,
- and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.
- (6) If the person referred to in subsection (5)(a) is a body referred to in section 84A(2) above, the functions of that body include the performance of the functions specified

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in the directions under subsection (5); and, if that body is a Health Authority, are primary functions of the Authority.

- (7) Subsection (8) applies in relation to any provision—
- (a) in this Act, the National Health Service and Community Care Act 1990 (c. 19), or the Health and Social Care Act 2001; or
  - (b) in any order or regulations made, or directions given, under any of those Acts,
- which relates to the membership of the body to which an intervention order relates (or of its board of directors, in the case of an NHS trust), or relates to its procedure.
- (8) If the Secretary of State considers it appropriate, the intervention order may, in relation to any such provision specified in the order, provide—
- (a) that it is not to apply in relation to the body while the order remains in force; or
  - (b) that it is to apply in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.]

#### Textual Amendments

**F372** S. 84B inserted (1.8.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 13(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/2804 art. 2(1)(a)

## 85 Default powers.

- (1) Where the Secretary of State is of opinion, on complaint or otherwise, that—
- <sup>F373</sup>(a) a Health Authority;
  - (b) a Special Health Authority;
  - [ a Primary Care Trust]
  - <sup>F374</sup>(bb)
  - (c) an NHS trust;
  - (d) the Medical Practices Committee; or
  - (e) the Dental Practice Board;]
- have failed to carry out any functions conferred or imposed on them by or under this Act [<sup>F375</sup>or Part I of the National Health Service and Community Care Act 1990][<sup>F376</sup>or Part I of the Health Act 1999], or have in carrying out those functions failed to comply with any regulations or directions relating to those functions, he may after such inquiry as he may think fit make an order declaring them to be in default.
- (2) [<sup>F377</sup>The members of the body in default shall] forthwith vacate their office, and the order—
- (a) shall provide for the appointment, in accordance with the provisions of this Act, of new members of the body; and
  - (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body in question pending the appointment of new members.

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- (3) ..... F378
- (5) An order made under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including—
- (a) provision for the transfer to the Secretary of State of property and liabilities of the body in default; and
  - (b) where any such order is varied or revoked by a subsequent order, provision in the revoking order or a subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him.

#### Textual Amendments

- F373** S. 85(1)(a)-(e) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) for s. 85(1)(a)-(g) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 41** (with **Sch. 2 para. 6**)
- F374** S. 85(bb) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 25**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**
- F375** Words inserted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(7)(a)**
- F376** Words in s. 85 inserted (1.11.1999) by S.I. 1999/2795, **art. 2(1)(3)**
- F377** Words substituted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(7)(b)**
- F378** S. 85(3)(4) repealed by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1)(2), **Sch. 9 para. 18(7)(c)**, **Sch. 10**

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

- C72** S. 85(1) amended (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 20**; S.I. 1997/1780, art. 2(1), **Sch.**
- C73** S. 85(3)-(5) extended by **Mental Health Act 1983** (c. 20, SIF 85), **Ss. 124(2)**, 131(1) (the said s. 124 repealed (*prosp.*) by **National Health Service and Community Care Act 1990** (c.19, SIF 113:2), ss. 66(2), 67(2), **Sch. 10**)

## 86 Emergency powers.

If the Secretary of State—

- (a) considers that by reason of an emergency it is necessary, in order to ensure that a service falling to be provided in pursuance of this Act [<sup>F379</sup> or Part I of the **National Health Service and Community Care Act 1990**] is provided, to direct that during the period specified by the directions a function conferred on any body or person by virtue of this Act [<sup>F379</sup> or that Part] shall to the exclusion of or concurrently with that body or person be performed by another body or person, then
- (b) he may give directions accordingly <sup>F380</sup> . . .

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

#### Textual Amendments

- F379** Words inserted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(8)**

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**F380** Words in s. 86(b) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, s. 67, **Sch. 4 para. 26**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and repealed (*prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 5**

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

**C74** S. 86 amended (1.4.1998 to the extent it relates to pilot schemes under which personal medical services are provided otherwise 1.10.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 21**; S.I. 1998/631, art. 2(a)(b), **Schs. 1 2** (with arts. 3-5); S.I. 1998/1998, art. 2(2), **Schs. 1 2**

**C75** S. 86 modified (E.) (12.12.2002) **The National Health Service (Local Pharmaceutical Services Etc.) Regulations 2002** (S.I. 2002/2861), **reg. 22**

**PART IV**

PROPERTY AND FINANCE

*Land and other Property*

**87 Acquisition, use and maintenance of property.**

- (1) The Secretary of State may acquire—
  - (a) any land, either by agreement or compulsorily,
  - (b) any other property,
 required by him for the purposes of this Act; and (without prejudice to the generality of paragraph (a) above) land may be so acquired to provide residential accommodation for persons employed for any of those purposes.
- (2) The Secretary of State may use for the purposes of any of the functions conferred on him by this Act any property belonging to him by virtue of this Act, and he has power to maintain all such property.
- (3) A local social services authority may be authorised to purchase land compulsorily for the purposes of this Act by means of an order made by the authority and confirmed by the Secretary of State.
- [<sup>F381</sup>(4) The <sup>M40</sup>Acquisition of Land Act 1981 shall apply to the compulsory purchase of land under this section]
- (5) Section 120(3) of the <sup>M41</sup>Local Government Act 1972 (which relates to the application of Part I of the <sup>M42</sup>Compulsory Purchase Act 1965 where a council are authorised to acquire land by agreement) applies to the acquisition of land by the Secretary of State under this section in like manner as it applies to such acquisition by a council under that section.
- [<sup>F382</sup>(6) Sections 238 and 239 of the Town and Country Planning Act 1990 (use and development of consecrated land and burial grounds) shall apply to consecrated land or, as the case may be, land comprised in a burial ground (within the meaning of section 240 of that Act) which—
  - (a) the Secretary of State holds for the purposes of the health service, and
  - (b) has not been the subject of a relevant acquisition (within the meaning of that section) by the Secretary of State,
 as if that land had been the subject of such an acquisition by him for those purposes.]

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#### Textual Amendments

**F381** S. 87(4) substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 28**

**F382** S. 87(6) substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 40**

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

**C76** S. 87(1)(2): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, regs. 2(1), 3, 4, **Sch. 1**

#### Marginal Citations

**M40** 1981 c. 67(28:1).

**M41** 1972 c. 70(81:1).

**M42** 1965 c. 56(28:1).

### 88 Transferred property free of trusts.

- (1) All property vested in the Secretary of State in consequence of the transfer of that property under section 6 of the <sup>M43</sup>National Health Service Act 1946 (transfer of hospitals) [<sup>F383</sup>is so vested] free of any trust existing immediately before that transfer.
- (2) The Secretary of State may use any such property for the purpose of any of his functions under this Act, but he shall so far as practicable secure that the objects for which any such property was used immediately before that transfer are not prejudiced by [<sup>F383</sup>the exercise of the power hereby conferred].

#### Textual Amendments

**F383** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1**, para. 66

#### Marginal Citations

**M43** 1946 c. 81.

### 89 Power of voluntary organisations to transfer property.

- (1) Notwithstanding anything contained—
  - (a) in the constitution or rules of any voluntary organisation formed for the purpose of providing a service of nurses for attendance on the sick in their own homes, or of midwives, or
  - (b) in any trust deed or other instrument relating to such organisation or service, any property vested in the organisation or held by any persons on trust for the organisation or service or for any specific purposes connected with the organisation or service may be transferred to the Secretary of State, on such terms as may be agreed between him and the organisation or trustees, with a view to the property being used or held by him for purposes similar to the purposes for which it was previously used or held.

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## Trusts

### 90 Gifts on trust.

—A [<sup>F384</sup>Health Authority or Special Health Authority] has power to accept, hold and administer any property on trust for all or any purposes relating to the health service.

#### Textual Amendments

**F384** Words in s. 90 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 42** (with **Sch. 2 para. 6**)

### 91 Private trusts for hospitals.

(1) Where—

- (a) the terms of a trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property for the purposes of any health service hospital, then
- (b) the trust instrument shall be construed as authorising or (as the case may be) requiring the trustees to apply the trust property to the like extent, and at the like times, for the purpose of making payments, whether of capital or income, to the appropriate hospital authority.

(2) Any sum so paid to the appropriate hospital authority shall, so far as practicable, be applied by them for the purpose specified in the trust instrument.

(3) In this section “the appropriate hospital authority” means—

- (a) where special trustees are appointed for the hospital, those trustees;
- [<sup>F385</sup>(b) where the hospital is managed by, and trustees have been appointed for, an NHS trust or Primary Care Trust, the trustees,
- (c) where the hospital is managed by an NHS trust or Primary Care Trust and neither paragraph (a) nor paragraph (b) applies, the NHS trust or (as the case may be) Primary Care Trust,
- (d) in any other case, the Health Authority or Special Health Authority exercising functions of the Secretary of State in respect of the hospital]

(4) Nothing in this section applies to a trust for a special hospital, or to property transferred under section 24 of the <sup>M44</sup>National Health Service Reorganisation Act 1973.

#### Textual Amendments

**F385** S. 91(3)(aa) to (b) substituted (1.10.1999 for E. subject to specified exceptions otherwise 4.1.2000. For W. 1.4.2000 subject to specified exceptions otherwise (*prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 27(a)**; S.I. 1999/2540, art. 2(1), **Sch. 1**; S.I. 1999/2342, art. 2(3), **Sch. 2**; S.I. 2000/1026, art. 2(1), **Sch.**

#### Marginal Citations

**M44** 1973 c. 32(113:2).

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## 92 Further transfers of trust property.

- (1) The Secretary of State may, having regard to any change or proposed change in the arrangements for the administration of a hospital [<sup>F386</sup>or other establishment or facility] or in the area or functions of any [<sup>F387</sup>Health Authority or Special Health Authority], by order provide for the transfer of any trust property [<sup>F388</sup>from any relevant health service body to any other relevant health service body].

[<sup>F389</sup>(1A) In this section “relevant health service body” means—

- (a) a Health Authority;
- (b) a Special Health Authority;
- (c) an NHS trust [<sup>F390</sup>or a Primary Care Trust];
- (d) special trustees; or
- (e) trustees for an NHS trust [<sup>F390</sup>or a Primary Care Trust].]

- (2) If it appears to the Secretary of State at any time that all the functions of any special trustees should be discharged by [<sup>F391</sup>one or more bodies which are relevant health service bodies by virtue of subsection (1A)(a) to (c) above] then, whether or not there has been any such change as is mentioned in subsection (1) above, he may by order provide for the transfer of all trust property from the special trustees to the [<sup>F392</sup>body or, in such proportions as may be specified in the order, to those bodies].

- (3) Before so acting the Secretary of State shall consult the [<sup>F393</sup>special trustees and other bodies]concerned.

- (4) Where by an order under this section, property is transferred to two or more [<sup>F394</sup>bodies], it shall be apportioned by them in such proportions as they may agree or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property is to be apportioned.

- (5) Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property.

[<sup>F395</sup>(6) If it appears to the Secretary of State at any time that—

- (a) the functions of any special trustees should be discharged by the trustees for an NHS trust, or
- (b) the functions of the trustees for an NHS trust should be discharged by special trustees,

then, whether or not there has been any such change as is mentioned in subsection (1) above, he may, after consulting the special trustees and the trustees for the NHS trust, by order provide for the transfer of all trust property from or to the special trustees to or from the trustees for the NHS trust.]

[<sup>F396</sup>(7) Subsection (6) above applies in relation to a Primary Care Trust as it applies in relation to an NHS trust.]

### Textual Amendments

**F386** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. **11(5)**  
(a)

**F387** Words in s. 92(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17](#), ss. 2(1)(3), 8(1), [Sch. 1 para. 44\(a\)\(i\)](#) (with [Sch. 2 para. 6](#))

**F388** Words in s. 92(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17](#), ss. 2(1)(3), 8(1), [Sch. 1 para. 44\(a\)\(ii\)](#) (with [Sch. 2 para. 6](#))

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- F389** S. 92(1A) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 44(b)** (with **Sch. 2 para. 6**)
- F390** Words in s. 92(1A) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 28(a)**; S.I. 1999/2342, art. 2(3), **Sch. 2**
- F391** Words in s. 92(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 44(c)(i)** (with **Sch. 2 para. 6**)
- F392** Words in s. 92(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 44(c)(ii)** (with **Sch. 2 para. 6**)
- F393** Words in s. 92(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 44(d)** (with **Sch. 2 para. 6**)
- F394** Words in s. 92(4) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 44(e)** (with **Sch. 2 para. 6**)
- F395** S. 92(6) added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 11(5)(d)**
- F396** S. 92(7) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 28(b)**; S.I. 1999/2342, art. 2(3), **Sch. 2**

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

- C77** S. 92 restricted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 301, **Sch. 6 para. 7(2)**

**93 Trust property previously held for general hospital purposes.**

(1) This section applies—

- (a) to property transferred under section 23 of the <sup>M45</sup>National Health Service Reorganisation Act 1973 (winding-up of hospital endowments funds), and
- (b) to property transferred under section 24 of that Act (transfer of trust property from abolished authorities) which immediately before the day appointed for the purposes of that section was, in accordance with any provision contained in or made under section 7 of the <sup>M46</sup>National Health Service Act 1946, applicable for purposes relating to hospital services or relating to some form of research,

and this section continues to apply to the property after any further transfer under section 92 above.

(2) The person holding the property after the transfer or last transfer shall secure, so far as is reasonably practicable, that the objects of any original endowment and the observance of any conditions attached to that endowment, including in particular conditions intended to preserve the memory of any person or class of persons, are not prejudiced by this Part of this Act, <sup>F397</sup>. . . .

In this subsection “original endowment” means a hospital endowment which was transferred under section 7 of that Act of 1946 and from which the property in question is derived.

- (3) Subject to subsection (2) above, the property shall be held on trust for such purposes relating to hospital services (including research), or to any other part of the health service associated with any hospital, as the person holding the property thinks fit.
- (4) Where the person holding the property is a body of special trustees, the power conferred by subsection (3) above shall be exercised as respects the hospitals for which they are appointed.



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#### Textual Amendments

**F397** Words in s. 93(2) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with **Sch. 2 para. 6**)

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

**C78** S. 93(1)(2) extended (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 5(3)** (with **Sch. 2 para. 6**)

#### Marginal Citations

**M45** 1973 c. 32(113:2).

**M46** 1946 c. 81.

## 94 Application of trust property: further provisions.

(1) Any discretion given by a trust instrument to the trustees of property transferred under—

- (a) section 24 of the <sup>M47</sup>National Health Service Reorganisation Act 1973 (transfer of trust property from abolished authorities),
- (b) section 25 of that Act (transfer of trust property held for health services by local health authorities),
- (c) section 92 above,

shall be exercisable by the person to whom the property is so transferred and, subject to section 93 above and the following provisions of this section, the transfer shall not affect the trusts on which property is held.

(2) Where—

- (a) property has been transferred under section 24 of that Act of 1973, and
- (b) any discretion is given by a trust instrument to the trustees to apply the property, or income arising from the property, to such hospital services (including research) as the trustees think fit without any restriction on the kinds of hospital services and without any restriction to one or more specified hospitals,

the discretion shall be enlarged so as to allow the application of the property or (as the case may be) of the income arising from the property, to such extent as the trustees think fit, for any other part of the health service associated with any hospital.

(3) Subsection (2) above shall apply on any subsequent transfer of the property under section 92 above.

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

**C79** S. 94(1)(3) extended (E.W.) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 5(3)** (with **Sch. 2 para. 6**)

#### Marginal Citations

**M47** 1973 c. 32(113:2).

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## 95 Special trustees for a university or teaching hospital.

- (1) The bodies of trustees (in this Act referred to as special trustees) appointed by the Secretary of State under section 29 of the National Health Service Reorganisation Act 1973 [<sup>F398</sup>or] this section shall (subject to section 92 above) hold and administer the property transferred to them under that Act of 1973.

The special trustees so appointed are bodies of trustees appointed for the hospital or hospitals which, immediately before the day appointed for the purposes of section 29 of that Act of 1973, were controlled and managed by a University Hospital Management Committee or a Board of Governors, but excluding—

- (a) a body on whose request an order was made under section 24(2) of that Act of 1973;
  - (b) a preserved Board within the meaning of section 15(6) of that Act of 1973.
- (2) Special trustees have power to accept, hold and administer any property on trust for all or any purposes relating to hospital services (including research), or to any other part of the health service associated with hospitals, being a trust which is wholly or mainly for hospitals for which the special trustees are appointed.
- (3) The number of trustees for any hospital or hospitals shall be such as the Secretary of State may from time to time determine after consultation with such persons as he considers appropriate.
- (4) The term of office of any special trustee shall be fixed by the Secretary of State but a special trustee may be removed by the Secretary of State at any time during the special trustee's term of office.

### Textual Amendments

**F398** Word substituted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1](#), para. 68

## 96 Trusts: supplementary provisions.

- (1) Any provision in sections 90 to 95 above [<sup>F399</sup>and 96B below] for the transfer of any property includes provision for the transfer of any rights and liabilities arising from that property.

[<sup>F400</sup>(1A) Where any transfer of property by virtue of those sections is of, or includes,—

- (a) land held on lease from a third party, that is to say, a person other than the Secretary of State or a [<sup>F401</sup>Health Authority or Special Health Authority], or
- (b) any other asset leased or hired from a third party or in which a third party has an interest,

the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.]

- (2) Nothing in those sections shall affect any power of Her Majesty, the court (as defined in [<sup>F402</sup>the <sup>M48</sup>Charities Act 1993]) or any other person to alter the trusts of any charity.
- (3) Nothing in section 12 of the <sup>M49</sup>Finance Act 1895 (which requires certain Acts and certain instruments relating to the vesting of property by virtue of an Act to be stamped as conveyances on sale) applies to sections 90 to 95 above [and 96B below] or to an order made in pursuance of any of those sections; and stamp duty shall not be payable on such an order.

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#### Textual Amendments

**F399** Words in s. 96(1)(3) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 29**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**

**F400** S. 96(1A) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. **11(6)(b)**

**F401** Words in s. 96(1A) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1, Pt. I para. 45** (with **Sch. 2 para. 6**)

**F402** Words in s. 96(2) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 30**

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

**C80** S. 96 amended by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. **11(6)**

#### Marginal Citations

**M48** 1993 c. 10.

**M49** 1895 c. 16(114).

### [<sup>F403</sup>96A Power of health authorities, etc. to raise money, etc., by appeals, collections, etc.

- (1) A [<sup>F404</sup>Health Authority, Special Health Authority][<sup>F405</sup>or NHS trust] shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist the [<sup>F404</sup>Health Authority, Special Health Authority][<sup>F405</sup>or NHS trust] in providing or improving any services or any facilities or accommodation which is or are or is or are to be provided as part of the health service or to assist them in connection with their functions with respect to research.
- (2) A Board of Governors of a teaching hospital shall, so long as it is a preserved Board by virtue of section 15 of the <sup>M50</sup>National Health Service Reorganisation Act 1973, have the like power in relation to services, facilities or accommodation provided or to be provided at or by the hospital or their functions with respect to research.
- (3) Subject to any directions of the Secretary of State excluding specified descriptions of activity, the activities authorised by this section include public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the [<sup>F406</sup>Health Authority, Special Health Authority or NHS trust] exercising the power subject however to any restrictions on the purposes for which trust property may be used.
- (4) Subject to the following provisions of this section, the [<sup>F406</sup>Health Authority, Special Health Authority or NHS trust]at whose instance property is given in pursuance of this section shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given.
- (5) Where property is given in pursuance of this section to or on trust for any purposes of a hospital for which special trustees have been appointed, the property may be held, administered and applied by the special trustees instead of by the [<sup>F407</sup>body responsible for the hospital if that body and the special trustees agree; and in this subsection the body responsible for a hospital is,—
  - (a) in the case of a hospital vested in a NHS trust, that trust; and

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- (b) in any other case, the [<sup>F408</sup>Health Authority] exercising functions <sup>F409</sup> . . . of the Secretary of State in respect of the hospital]

[ Where property is given in pursuance of this section on trust for any purposes of an <sup>F410</sup>(5A) NHS trust for which trustees have been appointed under section 11(1) of the National Health Service and Community Care Act 1990, then, if those trustees and the NHS trust agree, the property may be held, administered and applied by those trustees instead of by the NHS trust.]

[ Where property—  
<sup>F411</sup>(5B) (a) is given in pursuance of this section on trust for any purposes of a Primary Care Trust for which trustees have been appointed under section 96B below, and  
(b) those trustees and the Primary Care Trust agree,  
the property may be held, administered and applied by those trustees instead of by the Primary Care Trust.]

(6) Property given in pursuance of this section on trust may be transferred <sup>F412</sup> . . . by order of the Secretary of State under section 92 above in the same circumstances as other trust property may be transferred under that section, and sections 94 and 96 above shall apply as they apply to other trust property transferred under the said section 92.

(7) Where property held by a [<sup>F413</sup>Health Authority, Special Health Authority or NHS trust] under this section is more than sufficient to enable the purpose for which it was given to be fulfilled the excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the authority or Board as the [<sup>F413</sup>Health Authority, Special Health Authority or NHS trust] think fit.

(8) Where property held by a [<sup>F413</sup>Health Authority, Special Health Authority or NHS trust] under this section is insufficient to enable the purpose for which it was given to be fulfilled then—

(a) the [<sup>F413</sup>Health Authority, Special Health Authority or NHS trust] may apply so much of the capital or income at their disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of trust property, to any restrictions on the purpose for which the trust property may be applied and, in the case of money paid or payable by the Secretary of State <sup>F414</sup> . . . under section 97 below, to any directions he <sup>F414</sup> . . . may give; but

(b) where the capital or income applicable under paragraph (a) above is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the [<sup>F413</sup>Health Authority, Special Health Authority or NHS trust] shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the authority or Board as the [<sup>F413</sup>Health Authority, Special Health Authority or NHS trust] think fit.

(9) Where under subsection (7) or (8) above property becomes applicable for purposes other than that for which it was given the [<sup>F413</sup>Health Authority, Special Health Authority or NHS trust] shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.

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(10) In this section “special trustees” has the same meaning as in section 95 above and references to the purposes for which trust property may be used or applied are to be taken, in the case of trust property which has been transferred under section 92 above, to include references to those purposes as enlarged by section 94 above.]

[<sup>F415</sup>(11) This section (apart from subsection (5A)) has effect in relation to a Primary Care Trust as it has effect in relation to an NHS trust.]

#### Textual Amendments

- F403** S. 96A inserted by Health Services Act 1980 (c. 53, SIF 113:2), s. 5(1)
- F404** Words in s. 96A(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 46(a) (with Sch. 2 para. 6)
- F405** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(1)
- F406** Words in s. 96A(3)(4) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by virtue of 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 46(b) (with Sch. 2 para. 6)
- F407** Words and subsections (a)(b) substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(3)
- F408** Words in s. 96A(5)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 46(c) (with Sch. 2 para. 6)
- F409** Words in s. 96A(5)(b) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, ss. 65, 67, Sch. 4 para. 30(2); S.I. 1999/2342, art. 2(1), Sch. 1; S.I. 1999/3184, art. 2(2), Sch. 2 and are repealed (1.4.2000) by 1999 c. 8, s. 65, Sch. 5; S.I. 2000/1041, art. 2(d), Sch.
- F410** S. 96A(5A) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), Sch. 2 para. 23(4)
- F411** S. 96A(5B) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, Sch. 4 para. 30(3); S.I. 1999/2342, art. 2(3), Sch. 2
- F412** Words in s. 96A(6) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), Sch. 3 (with Sch. 2 para. 6)
- F413** Words in s. 96A(7)-(9) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 46(e), Sch. 3 (with Sch. 2 para. 6)
- F414** Words in s. 96A(8)(a) repealed (1.4.1996) by 1995 c. 17, ss. 5(1)(2), Sch. 3 (with Sch. 2 para. 6)
- F415** S. 96A(11) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, Sch. 4 para. 30(4); S.I. 1999/2342, art. 2(3), Sch. 2

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

- C81** S. 96A(10) extended (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), Sch. 2 para. 5(3) (with Sch. 2 para. 6)

#### Marginal Citations

- M50** 1973 c. 32(113:2).

#### [<sup>F416</sup>96B Trust-funds and trustees for Primary Care Trusts.

- (1) The Secretary of State may by order provide for the appointment of trustees for any Primary Care Trust.
- (2) Trustees for a Primary Care Trust may accept, hold and administer any property on trust—
  - (a) for the general or any specific purposes of the Primary Care Trust (including the purposes of any specific hospital or other establishment or facility which is managed by the trust), or

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- (b) for all or any purposes relating to the health service.
- (3) An order under subsection (1) above may—
- (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
  - (b) provide for any appointment to be subject to any conditions specified in the order (including conditions requiring the consent of the Secretary of State),
  - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with any persons he considers appropriate, and
  - (d) make provision about the term of office of any trustee and his removal from office.
- (4) Where trustees have been appointed for a Primary Care Trust under subsection (1) above, the Secretary of State may by order provide for the transfer of any trust property from the Primary Care Trust to the trustees so appointed.]

#### Textual Amendments

**F416** S. 96B inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 7, 67; S.I. 1999/2342, art. 2(3), Sch. 2

VALID FROM 01/08/2001

#### [<sup>F417</sup> Companies

#### Textual Amendments

**F417** S. 96C and cross-heading inserted (1.8.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 4, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/2804 art. 2(1)(a)

#### [<sup>F418</sup> 96C Public-private partnerships

- (1) The Secretary of State may form, or participate in forming, companies to provide facilities or services for—
- (a) persons or bodies exercising functions, or otherwise providing services, under this Act; or
  - (b) NHS trusts.
- (2) The Secretary of State may, with a view to securing or facilitating the provision by companies of facilities or services for persons or bodies falling within subsection (1) (a) or (b)—
- (a) invest in the companies (whether by acquiring assets, securities or rights or otherwise), or
  - (b) provide loans and guarantees and make other kinds of financial provision to or in respect of them,
- or both.

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- (3) For the purposes of subsections (1) and (2) above it is immaterial that the facilities or services provided or to be provided by the companies in question are not provided or to be provided—
- (a) only to persons or bodies falling within subsection (1)(a) or (b); or
  - (b) to persons or bodies falling within subsection (1)(a) only in their capacities as persons or bodies such as are mentioned in that provision.
- (4) In this section—
- “companies” means companies within the meaning of the Companies Act 1985 (c. 6);
  - “facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus.
- (5) This section is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of this section.]]

#### Textual Amendments

**F418** S. 96C inserted (1.8.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 4, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/2804 art. 2(1)(a)

### Finance and Accounts

#### [<sup>F419</sup>97] **Means of meeting expenditure of Health Authorities and Special Health Authorities out of public funds.**

[ It is the duty of the Secretary of State to pay to each Health Authority sums equal to <sup>F420</sup>(1) their general Part II expenditure.

[ “General Part II expenditure” is expenditure which—

<sup>F421</sup>(2) (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II; but

(b) does not fall within paragraphs (b) to (d) of subsection (3A).]

(3) It is the duty of the Secretary of State to pay to each Health Authority, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Authority towards meeting their main expenditure [<sup>F422</sup>in that year].

[ Schedule 12A to this Act (which defines “general Part II expenditure” and “main <sup>F423</sup>(3BB) expenditure” for the purposes of, and supplements, this section and section 97C below) shall have effect]]

[ Where the Secretary of State has made an initial determination of the amount (“the <sup>F424</sup>(3C) initial amount”) to be allotted for any year to a Health Authority under subsection (3) above, he may, if it appears to him that the authority satisfied in any preceding year any objectives notified as objectives to be met by Health Authorities for the purposes of this subsection in performing their functions, increase the initial amount by a further sum.

(3D) In subsection (3C) above, “notified” means specified or referred to in a notice given to Health Authorities by the Secretary of State.

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- (3E) In making any increase under subsection (3C) above, the Secretary of State may (whether by directions under subsection (6) below or otherwise) impose any conditions he thinks fit on the application or retention by the authority of the sum in question.
- (3F) Where the Secretary of State has, under subsection (3C) above, increased by any sum the amount to be allotted for any year to a Health Authority and notified the authority of the allotment and it subsequently appears to him that the authority have failed (wholly or in part) to satisfy any conditions imposed in making that increase, he may—
- (a) reduce the allotment made to that authority for that year, or
  - (b) when he has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the authority under subsection (3) above, reduce the initial amount,
- by an amount not exceeding that sum.]
- (4) It is the duty of the Secretary of State to pay in respect of each financial year to each Special Health Authority sums not exceeding the amount allotted for that year by the Secretary of State to the Special Health Authority towards meeting the expenditure of the Special Health Authority which is attributable to the performance by the Special Health Authority of their functions in that year.
- (5) An amount is allotted to a Health Authority or Special Health Authority for a year under this section when they are notified by the Secretary of State that it is allotted to them for that year; and the Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.
- (6) The Secretary of State may give directions to a Health Authority or Special Health Authority with respect to—
- (a) the application of sums paid to them under [<sup>F425</sup>this section];
  - (b) the payment of sums by them to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets; or
  - (c) the application by them of sums received by them by virtue of section 15(7) (a) of the <sup>M51</sup>National Health Service and Community Care Act 1990.
- <sup>F426</sup>(7) .....
- (8) Where an order establishing a Special Health Authority provides for any expenditure of the Special Health Authority to be met by a Health Authority or by two or more Health Authorities in portions determined by or in accordance with the order, it is the duty of the Health Authority, or each of the Health Authorities, to pay to the Special Health Authority sums equal to, or to the appropriate portion of, that expenditure.
- (9) Sums falling to be paid under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.]

#### Textual Amendments

**F419** S. 97 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 47 (with Sch. 2 para. 6)

**F420** S. 97(1)-(3B) substituted (14.10.1997) for s. 97(1)-(3) by 1997 c. 46, s. 36; S.I. 1997/2457, arts. 2, 3



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- F421** S. 97(2) omitted (1.9.1999 for E. with effect for the financial year 1999-2000 and subsequent financial years and otherwise *prosp.* ) by 1999 c. 8, **ss. 4(2)(a)(4)**, 67; S.I. 1999/2342, art. 2(1), **Sch. 1** and s. 97(2) repealed (*prosp.*) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5** Note
- F422** Words in s. 97(3) inserted (1.9.1999 for E. with effect for the financial year 1999-2000 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, **ss. 4(2)(b)(4)**, 67; S.I. 1999/2342, art. 2(1), **Sch. 1**
- F423** S. 97(3BB) substituted for s. 97(3A)(3B)(1.9.1999 for E. for specified purposes with effect for the financial year 1999-2000 and subsequent financial years and otherwise *prosp.*) by virtue of 1999 c. 8, **ss. 4(2)(c)(4)**, 67; S.I. 1999/2342, art. 2(1), **Sch. 1**
- F424** S. 97(3C)-(3F) inserted (1.9.1999 for E. and otherwise *prosp.*) by 1999 c. 8, **ss. 8**, 67; S.I. 1999/2342, art. 2(1), **Sch.**
- F425** Words in s. 97(6)(a) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 22**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)
- F426** S. 97(7) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, s. 65, **Sch. 4 para. 31(3)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and is repealed (*prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 5**

**Marginal Citations**

**M51** 1990 c. 19.

**[<sup>F427</sup>97A Financial duties of Health Authorities and Special Health Authorities.**

- (1) It is the duty of every Health Authority, in respect of each financial year, to perform their functions so as to secure that the expenditure of the Health Authority which is attributable to the performance by them of their functions in that year (not including expenditure within subsection (1) of section 97 above) does not exceed the aggregate of—
  - (a) the [<sup>F428</sup>amount allotted to them for that year under subsection (3)]of that section;
  - (b) any sums received by them in that year under any provision of this Act (other than sums received by them under that section); and
  - (c) any sums received by them in that year otherwise than under this Act for the purpose of enabling them to defray any such expenditure.
- (2) It is the duty of every Special Health Authority, in respect of each financial year, to perform their functions so as to secure that the expenditure of the Special Health Authority which is attributable to the performance by them of their functions in that year does not exceed the aggregate of—
  - (a) the amount allotted to them for that year under subsection (4) of section 97 above;
  - (b) any sums received by them in that year under any provision of this Act (other than sums received by them under that subsection); and
  - (c) any sums received by them in that year otherwise than under this Act for the purpose of enabling them to defray any such expenditure.
- (3) The Secretary of State may give such directions to a Health Authority or Special Health Authority as appear to be requisite to secure that the Health Authority or Special Health Authority comply with the duty imposed on them by subsection (1) or (2) above.
- (4) Directions under subsection (3) above may be specific in character.
- <sup>F429</sup>(5) . . . . .
- (6) To the extent to which—

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- (a) any expenditure is defrayed by a Health Authority or Special Health Authority as trustee or on behalf of a Health Authority or Special Health Authority by special trustees; or
  - (b) any sums are received by a Health Authority or Special Health Authority as trustee or under section 96A above,
- that expenditure and, subject to subsection (8) below, those sums shall be disregarded for the purposes of this section.
- (7) For the purposes of this section sums which, in the hands of a Health Authority or Special Health Authority, cease to be trust funds and become applicable by the Health Authority or Special Health Authority otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Health Authority or Special Health Authority otherwise than as trustee.
- (8) Of the sums received by a Health Authority or Special Health Authority under section 96A above so much only as accrues to the Health Authority or Special Health Authority after defraying any expenses incurred in obtaining them shall be disregarded under subsection (6) above.
- (9) Subject to subsection (6) above, the Secretary of State may by directions determine—
- (a) whether sums of a description specified in the directions are, or are not, to be treated for the purposes of this section as received under this Act by a Health Authority or Special Health Authority of a description specified in the directions;
  - (b) whether expenditure of a description specified in the directions is, or is not, to be treated for those purposes as—
    - (i) expenditure within subsection (1) above of a Health Authority of a description so specified; or
    - (ii) expenditure within subsection (2) above of a Special Health Authority of a description so specified; or
  - (c) the extent to which, and the circumstances in which, sums received—
    - (i) by a Health Authority under <sup>F430</sup> . . . section 97 above; or
    - (ii) by a Special Health Authority under subsection (4) of that section,
 but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Health Authority or Special Health Authority and to which financial year's expenditure they are to be attributed.]

#### Textual Amendments

**F427** S. 97A substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1) (3), 8(1), **Sch. 1 Pt. 1 para. 48** (with Sch. 2 para. 6)

**F428** Words in s. 97A substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. 1 para. 23(a)**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

**F429** S. 97A(5) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, s. 65, **Sch. 4 para. 32**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and is repealed (1.4.2000) by 1999 c. 8, s. 65, **Sch. 5**; S.I. 2000/1041, art. 2(d), **Sch.**

**F430** Words in s. 97A(9)(c)(i) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. 1 para. 23(b), **Sch. 3 Pt. 1**; S.I. 1998/631, art. 2(b), Sch. 2, **Sch. 3 Pt. 1** (with arts. 3-5)

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VALID FROM 22/12/2000

**[<sup>F431</sup>97A] Resource limits for Health Authorities and Special Health Authorities.**

- (1) It is the duty of every Health Authority and every Special Health Authority to ensure that the use of their resources in a financial year does not exceed the amount specified for them in relation to that year by the Secretary of State.
- (2) In the application of subsection (1) above to a Health Authority no account shall be taken of any use of resources for the purpose of general Part II expenditure (within the meaning of paragraph 1 of Schedule 12A).
- (3) For the purpose of subsection (1) above the Secretary of State may give directions—
  - (a) specifying uses of resources which are to be, or not to be, taken into account;
  - (b) making provision for determining to which Health Authority or Special Health Authority certain uses of resources are to be attributed;
  - (c) specifying descriptions of resources which are to be, or not to be, taken into account.
- (4) Subsections (6) to (8) of section 97A above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duties under section 97A(1) and (2); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.
- (5) The provisions in section 97A(3) and (4) above about the giving of directions by the Secretary of State shall apply in relation to the duty under subsection (1) above as they apply in relation to the duties under section 97A(1) and (2).
- (6) Where the Secretary of State has specified an amount under this section in respect of a financial year, he may vary the amount by a later specification.
- (7) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.]

**Textual Amendments**

**F431** S. 97AA inserted (22.12.2000 for E. for specified purposes, 1.4.2001 for other specified purposes and otherwise *prosp*) by 2000 c. 20, ss. 12(1), 30; S.I. 2000/3349, arts. 2(c), 3(1)(a), 4 (with transitional provisions in art. 5)

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

**C82** S. 97AA amended (W.) (*prosp.*) by 2000 c. 20, ss. 12(2), 30

**[<sup>F432</sup>97B] .....**

**Textual Amendments**

**F432** S. 97B repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), Sch. 3 (with Sch. 2 para. 6)

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VALID FROM 01/04/2000

### <sup>F433</sup>97C Public funding of Primary Care Trusts.

- (1) It is the duty of every Health Authority, in respect of each financial year, to pay to each Primary Care Trust whose area falls within their area—
  - (a) sums equal to the trust's general Part II expenditure, and
  - (b) sums not exceeding the amount allotted by the authority to the trust for that year towards meeting the trust's main expenditure in that year.
- (2) Any payment under subsection (1)(a) above shall be made out of money paid to the Health Authority under subsection (1) of section 97 above and any payment under subsection (1)(b) above shall be made out of money paid to the authority under subsection (3) of that section.
- (3) An amount is allotted to a Primary Care Trust for a year under this section when the trust is notified by the Health Authority that the amount is allotted to it for that year; and the Health Authority may make an allotment under this section increasing or reducing an allotment previously so made.
- (4) The Secretary of State may give directions to a Primary Care Trust about the payment of sums by the trust to the Health Authority in whose area the area of the trust falls in respect of charges or other sums referable to the valuation or disposal of assets.
- (5) Where any part of a sum paid to a Primary Care Trust by a Health Authority under subsection (1) above derives from a sum which was paid to the authority under subsection (1) or (3) of section 97 above subject to a direction (under subsection (6) (a) of that section) that it be applied for a particular purpose, the authority shall direct the trust that the sum paid to the trust shall be applied for the same purpose.
- (6) Sums falling to be paid to Primary Care Trusts under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.]

#### Textual Amendments

**F433** S. 97C inserted (1.4.2000 for E. for the purposes of the financial year 2000-2001 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, ss. 3, 67; S.I. 1999/2342, art. 2(4), Sch. 3

VALID FROM 01/04/2000

### <sup>F434</sup>97D Financial duties of Primary Care Trusts.

- (1) It is the duty of every Primary Care Trust, in respect of each financial year, to perform its functions so as to secure that the expenditure of the trust which is attributable to the performance by the trust of its functions in that year (not including expenditure within subsection (1)(a) of section 97C above) does not exceed the aggregate of—
  - (a) the amount allotted to it for that year under subsection (1)(b) of that section,
  - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section), and

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- (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.
- (2) The Secretary of State may give such directions to a Primary Care Trust as appear to be requisite to secure that the trust complies with the duty imposed on it by subsection (1) above.
- (3) Directions under subsection (2) above may be specific in character.
- (4) To the extent to which—
- (a) any expenditure is defrayed by a Primary Care Trust as trustee or on behalf of a Primary Care Trust by special trustees, or
  - (b) any sums are received by a Primary Care Trust as trustee or under section 96A above,
- that expenditure and, subject to subsection (6) below, those sums shall be disregarded for the purposes of this section.
- (5) For the purposes of this section sums which, in the hands of a Primary Care Trust, cease to be trust funds and become applicable by the Primary Care Trust otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Primary Care Trust otherwise than as trustee.
- (6) Of the sums received by a Primary Care Trust under section 96A above so much only as accrues to the Primary Care Trust after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.
- (7) Subject to subsection (4) above, the Secretary of State may by directions determine—
- (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Primary Care Trust,
  - (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Primary Care Trust, or
  - (c) the extent to which, and the circumstances in which, sums received by a Primary Care Trust under section 97C above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Primary Care Trust and to which financial year's expenditure they are to be attributed.
- (8) In subsection (7) above, “specified” means of a description specified in the directions.

#### Textual Amendments

**F434** s. 97D inserted (1.4.2000 for E. for the purposes of the financial year 2000-2001 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, ss. 3, 67; S.I. 1999/2342, art. 2(4), Sch. 3

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VALID FROM 22/12/2000

**[<sup>F435</sup>97E Resource limits for Primary Care Trusts.**

- (1) It is the duty of every Primary Care Trust to ensure that the use of their resources in a financial year does not exceed the amount specified for them in relation to that year by the Health Authority for the trust's area.
- (2) For the purpose of subsection (1) above no account shall be taken of any use of resources for the purpose of a trust's general Part II expenditure (within the meaning of paragraph 4 of Schedule 12A).
- (3) For the purpose of subsection (1) above the Secretary of State may give directions—
  - (a) specifying uses of resources which are to be, or not to be, taken into account;
  - (b) making provision for determining to which Primary Care Trust certain uses of resources are to be attributed;
  - (c) specifying descriptions of resources which are to be, or not to be, taken into account.
- (4) Where an amount has been specified under this section in respect of a financial year, it may be varied by a later specification.
- (5) Subsections (4) to (6) of section 97D above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97D(1); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.
- (6) The provisions in section 97D(2) and (3) above about the giving of directions by the Secretary of State shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97D(1).
- (7) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.]

**Textual Amendments**

**F435** S. 97E inserted (22.12.2000 for E. for specified purposes, 1.4.2001 for other specified purposes and otherwise *prosp.*) by 2000 c. 20, ss. 13(1), 30; S.I. 2000/3349, arts. 2(c), 3(1)(a), 4 (with transitional provisions in art. 5)

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

**C83** S. 97E amended (W.) (22.12.2000 for E. for specified purposes, 1.4.2001 for other specified purposes and otherwise *prosp.*) by 2000 c. 20, ss. 13(1), 30; S.I. 2000/3349, arts. 2(c), 3(1)(a), 4 (with transitional provisions in art. 5)

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VALID FROM 10/10/2002

## **[<sup>F436</sup>97F Public funding of Local Health Boards**

- (1) It is the duty of the National Assembly for Wales, in respect of each financial year, to pay to each Local Health Board—
  - (a) sums equal to their general Part 2 expenditure; and
  - (b) sums not exceeding the amount allotted by the National Assembly for Wales to the Local Health Board for that year towards meeting the Board’s main expenditure in that year.
- (2) In determining the amount to be allotted for any year to a Local Health Board under subsection (1)(b) above (or in varying the amount under subsection (7) below), the National Assembly for Wales may take into account, in whatever way the Assembly thinks appropriate—
  - (a) the Board’s general Part 2 expenditure; and
  - (b) expenditure which would have been the Board’s general Part 2 expenditure but for an order under section 103(1) below,during any period the Assembly thinks appropriate (or such elements of that expenditure as it thinks appropriate).
- (3) Where the National Assembly for Wales has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Local Health Board under subsection (1)(b) above, the Assembly may increase the initial amount by a further sum if it appears to it that over a period notified to the Board—
  - (a) the Board satisfied any objectives notified to it as objectives to be met in performing its functions; or
  - (b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).
- (4) In subsection (3) above, “notified” means specified or referred to in a notice given to the Local Health Board by the National Assembly for Wales.
- (5) In making any increase under subsection (3) above, the National Assembly for Wales may (whether by directions under subsection (8) below or otherwise) impose any conditions it thinks fit on the application or retention by the Local Health Board of the sum in question.
- (6) Where the National Assembly for Wales has, under subsection (3) above, increased by any sum the amount to be allotted for any year to a Local Health Board and notified the Board of the allotment and it subsequently appears to the Assembly that the Board has failed (wholly or in part) to satisfy any conditions imposed in making that increase, the Assembly may—
  - (a) reduce the allotment made to the Board for that year; or
  - (b) when the Assembly has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the Board under subsection (1)(b) above, reduce the initial amount,by any amount not exceeding that sum.
- (7) An amount is allotted to a Local Health Board for a year under this section when the Board is notified by the National Assembly for Wales that the amount is

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allotted to the Board for that year; and the National Assembly for Wales may make an allotment under this section increasing or reducing (subject to subsection (6) above) an allotment previously so made, and the reference to a determination in subsection (3) above includes a determination made with a view to increasing or reducing an allotment previously so made.

- (8) The National Assembly for Wales may give directions to a Local Health Board with respect to—
- (a) the application of sums paid to the Board under this section, or
  - (b) the payment of sums by the Board to the National Assembly for Wales in respect of charges or other sums referable to the valuation or disposal of assets.
- (9) Sums falling to be paid to Local Health Boards under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the National Assembly for Wales may determine.

#### Textual Amendments

**F436** Ss. 97F-97H inserted (10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 9, 42(3); S.I. 2002/2532, art. 2, Sch.

VALID FROM 10/10/2002

#### 97G Financial duties of Local Health Boards

- (1) It is the duty of every Local Health Board, in respect of each financial year, to perform its functions so as to secure that the expenditure of the Board which is attributable to the performance by the Board of its functions in that year (not including expenditure within subsection (1)(a) of section 97F above) does not exceed the aggregate of—
- (a) the amount allotted to it for that year under subsection (1)(b) of that section;
  - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section); and
  - (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.
- (2) The National Assembly for Wales may give such directions to a Local Health Board as appear to be requisite to secure that the Board complies with the duty imposed on it by subsection (1) above.
- (3) Directions under subsection (2) may be specific in character.
- (4) To the extent to which—
- (a) any expenditure is defrayed by a Local Health Board as trustee or on behalf of a Local Health Board by special trustees; or
  - (b) any sums are received by a Local Health Board as trustee or under section 96A above,
- that expenditure and, subject to subsection (6) below, those sums shall be disregarded for the purposes of this section.



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- (5) For the purposes of this section sums which, in the hands of a Local Health Board, cease to be trust funds and become applicable by the Local Health Board otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Local Health Board otherwise than as trustee.
- (6) Of the sums received by a Local Health Board under section 96A above so much only as accrues to the Local Health Board after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.
- (7) Subject to subsection (4) above, the National Assembly for Wales may by directions determine—
  - (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Local Health Board;
  - (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Local Health Board; or
  - (c) the extent to which, and the circumstances in which, sums received by a Local Health Board under section 97F above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Local Health Board and to which financial year's expenditure they are to be attributed.
- (8) In subsection (7) above, “specified” means of a description specified in the directions.

#### Textual Amendments

**F436** Ss. 97F-97H inserted (10.10.2002 for W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), [ss. 9](#), 42(3); S.I. 2002/2532, [art. 2](#), Sch.

VALID FROM 10/10/2002

#### 97H Resource limits for Local Health Boards

- (1) It is the duty of every Local Health Board to ensure that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the National Assembly for Wales.
- (2) For the purpose of subsection (1) above no account shall be taken of any use of resources for the purposes of a Board's general Part 2 expenditure (within the meaning of paragraph 6A of Schedule 12A).
- (3) But in specifying an amount for a Local Health Board under subsection (1) above (or in varying the amount under subsection (5) below), the National Assembly for Wales may take into account (in whatever way it thinks appropriate)—
  - (a) any such use of resources; and
  - (b) the use of any resources which would have been for the purpose of the Board's general Part 2 expenditure but for an order under section 103(1) below,

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during any period the Assembly thinks appropriate (or such elements of such uses of resources as it thinks appropriate).

- (4) For the purpose of subsection (1) above the National Assembly for Wales may give directions—
- (a) specifying uses of resources which are to be, or not to be, taken into account;
  - (b) making provision for determining to which Local Health Board certain uses of resources are to be attributed;
  - (c) specifying descriptions of resources which are to be, or not to be, taken into account.
- (5) Where an amount has been specified under this section in respect of a financial year, it may be varied by a later specification.
- (6) Subsections (4) to (6) of section 97G above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.
- (7) The provisions in section 97G(2) and (3) above about the giving of directions by the National Assembly for Wales shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1).
- (8) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.]

#### Textual Amendments

**F436** Ss. 97F-97H inserted (10.10.2002 for W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), [ss. 9](#), 42(3); S.I. 2002/2532, [art. 2](#), Sch.

## 98 Accounts and audit.

(1) Accounts, in such form as the Secretary of State may with the approval of the Treasury direct, shall be kept by—

- <sup>[F437]</sup>(a) every Health Authority;
- (b) every Special Health Authority;
- (c) every NHS trust;]
- (d) all special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 and section 95(1) above;
- <sup>[F438]</sup>(dd) any trustees for an NHS trust appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990; and]
- (e) the Dental Estimates Board

Those accounts shall be audited by auditors <sup>[F439]</sup>appointed by the Audit Commission for Local Authorities and the National Health Service in England and Wales and the Comptroller] and Auditor General may examine all such accounts and any records relating to them, and any report of the auditor on them.

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(2) Every such body shall prepare and transmit to the Secretary of State in respect of each financial year annual accounts in such form as the Secretary of State may with the approval of the Treasury direct.

F440

[<sup>F441</sup>(2A) The accounts prepared and transmitted by a [<sup>F442</sup>Health Authority] in pursuance of subsection (2) above shall include annual accounts of a Community Health Council if—

- (a) the Council is established for the [<sup>F443</sup>Health Authority’s area]; or
- (b) the [<sup>F444</sup>Health Authority is prescribed for the purposes of this subsection] in relation to the Council.]

[<sup>F445X2</sup>(2B) in preparing its annual accounts in pursuance of subsection (2) above, and NHS trust shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

- (a) the methods and principles according to which the accounts are to be prepared; and
- (b) the information to be given in the accounts.]

[<sup>F446</sup> So far as relates to allotted sums paid [<sup>F448</sup>under section 15 of the <sup>M52</sup>National Health Service and Community Care Act 1990] to the members of a fund-holding practice—

[<sup>F447X2</sup>(2B) (a) accounts shall be kept in such form as the Secretary of State may with the approval of the Treasury direct;

- (b) the Comptroller and Auditor General may examine the accounts and records relating to them and any report of the auditor on them;
- (c) in respect of each financial year, annual accounts in such form as the Secretary of State may with the approval of the Treasury direct shall be prepared and submitted to the relevant [<sup>F449</sup>Health Authority]; and
- (d) in respect of each financial year, each [<sup>F449</sup>Health Authority] shall prepare in such form as the Secretary of State may with the approval of the Treasury direct, and include in its own accounts, a summarised version of the accounts submitted to [<sup>F450</sup>the Health Authority] under paragraph (c) above.]]

(3) ..... F451

(4) The Secretary of State shall prepare in respect of each financial year—

- (a) in such form as the Treasury may direct, summarised accounts of [<sup>F452</sup>the bodies mentioned in subsection (1) above, other than the Dental Estimates Board]
- (b) in such form and containing such information as the Treasury may direct, a statement of the accounts of the Dental Estimates Board;

and shall transmit them on or before 30th November in each year to the Comptroller and Auditor General, who shall examine and certify them, and lay copies of them together with his report on them before both Houses of Parliament.

<sup>F453</sup>(5) .....

**Editorial Information**

X2 S.98(2B): this is one of two provisions of this number inserted by different authorities in the same Act

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### Textual Amendments

- F437** S. 98(1)(a)-(c) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(a)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F438** S. 98(1)(dd) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 11(7)**
- F439** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 20(2)(a)(8)**
- F440** Para. repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt.I**
- F441** S. 98(2A) inserted by Health and Social Security Act 1984 (c. 48, SIF 113:1), **s. 6(2)**
- F442** Words in s. 98(2A) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(b)(i)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F443** Words in s. 98(2A)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(b)(ii)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F444** Words in s. 98(2A)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(b)(iii)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F445** S. 98(2B) inserted (5.7.1990) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 24(2)**
- F446** S. 98(2B) repealed (1.10.1999 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1** (with
- F447** S. 98(2B) inserted (1.10.1990) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 20(2)(b)(8)**
- F448** Words in s. 98(2B) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(c)(i)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F449** Words in s. 98(2B)(c)(d) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(c)(ii)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F450** Words in s. 98(2B)(d) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(c)(iii)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F451** S. 98(3) repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 20(2)(c), 66(2), **Sch. 10**
- F452** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 12, **Sch. 5 para. 3(b)**
- F453** S. 98(5) repealed (1.4.1996) by 1995 c. 17, ss. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)

### Modifications etc. (not altering text)

- C84** S. 98 extended (1.4.1999) by S.I. 1999/804, **art. 7**  
S. 98 extended (1.4.1999) by S.I. 1999/807, **art. 5(1)**
- C85** S. 98(1) applied (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 13(4)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- C86** S. 98(2B)(c) modified (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 13(5)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)  
S. 98(2B)(c) modified (W.) (1.4.2000) by S.I. 2000/999, **art. 9(1)(2)**
- C87** S. 98(4) modified (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 13(6)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)

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### Marginal Citations

M52 1990 c. 19.

## 99 Regulation of financial arrangements.

(1) The Secretary of State may by regulations provide, in the case of all or any of the following bodies—

- [<sup>F454</sup>(a) Health Authorities,
- (b) Special Health Authorities,]
- [<sup>F455</sup>(ba) Primary Care Trusts]
- (e) Community Health Councils, and
- (f) the Dental Estimates Board,

for restricting the making of payments by or on behalf of the body otherwise than on such authorisation and subject to such conditions as may be specified in the regulations.

(2) Such provision may be made subject to such exceptions as may be so specified, and those regulations may contain such other provisions as to the making and carrying out by all or any of those bodies of such arrangements with respect to financial matters as the Secretary of State thinks necessary for the purpose of securing that the affairs of such bodies are conducted, so far as reasonably practicable, in such manner as to prevent financial loss and to ensure and maintain efficiency.

(3) The Secretary of State may give directions to any of those bodies as to any matter with respect to which those regulations may be made; and those directions may be specific in character and shall be—

- (a) such as appear to him requisite to secure that the affairs of the body are conducted in such a manner as is mentioned in subsection (2) above,
- (b) without prejudice to the operation of any such regulation,

<sup>F456</sup>  
. . .

### Textual Amendments

**F454** S. 99(1)(a)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by s. 99(1)(a)-(d) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 51** (with **Sch. 2 para. 6**)

**F455** S. 99(ba) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 34**; S.I. 1999/2342, art. 2(3), **Sch. 2**

**F456** Words in s. 99(3) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, s. 65, **Sch. 4 para. 34(b)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and is repealed (1.4.2000) by 1999 c. 8, s. 65, **Sch. 5**; S.I. 2000/1041, art. 2(d), **Sch.**

## 100 Other Payments.

(1) There shall be paid out of moneys provided by Parliament such expenses incurred by—

- (a) . . . . .<sup>F457</sup>
- (b) any standing advisory committee constituted under section 6 above,
- (c) the Medical Practices Committee,
- (d) the Tribunal constituted under section 46 above, and
- (e) the Dental Estimates Board,

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as may be determined by the Secretary of State with the approval of the Treasury.

- (2) Payments made under this section shall be . . . <sup>F458</sup> made at such times and in such manner as the Treasury may direct, and subject to such conditions as to records, certificates, or otherwise as the Secretary of State may with the approval of the Treasury determine.

#### Textual Amendments

**F457** S. 100(1)(a) repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

**F458** Words repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 29, 30(1), Sch. 9 Pt. I para. 21, **Sch. 10 Pt. I**

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

**C88** S. 100(2) partially repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3) s. 29. Sch. 9 para 21

### 101 Secretary of State's receipts.

Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund, . . . <sup>F459</sup>

#### Textual Amendments

**F459** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

*Miscellaneous provisions as to remuneration, allowances and superannuation*

### 102 Allowances and remuneration for members of certain bodies.

- (1) The Secretary of State may pay such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of [<sup>F460</sup>the Treasury], determine—
- (a) to members of any of the following bodies constituted under this Act—
- (i) <sup>F461</sup>, any standing advisory committee constituted under section 6 above to advise the Secretary of State . . . <sup>F461</sup> and any sub-committee appointed by any such standing advisory committee . . . <sup>F461</sup>;
  - (ii) the Medical Practices Committee;
  - (iii) any body on which functions are conferred by regulations under section 32 above [<sup>F462</sup>or by regulations which make provision in relation to section 28C arrangements of a kind that may be made by regulations under section 32 above];
  - (iv) the Dental Estimates Board;
  - (v) the Tribunal constituted under section 46 above;
- (b) to members of any other body being a body specified in an order made by the Secretary of State as being a body recognised by him to have been formed for the purpose of performing a function connected with the provision of services under this Act.

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- (2) The Secretary of State may pay to members of any of the following bodies such remuneration as he may, with the approval of [<sup>F463</sup>the Treasury], determine—
- (a) the Medical Practices Committee;
  - (b) any body on which functions are conferred by regulations under section 32 above;
  - (c) the Dental Estimates Board;
  - (d) the Tribunal constituted under section 46 above;
  - (e) any other body constituted under Part II of this Act, being a body specified in an order made for the purposes of this subsection, with the approval of [<sup>F464</sup>the Treasury], by the Secretary of State.
- (3) Allowances shall not be paid under subsection (1) above except in connection with the exercise or performance of such powers or duties, in such circumstances, as may, with the approval of [<sup>F460</sup>the Treasury], be determined by the Secretary of State.
- (4) Any payments under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may, with the approval of [<sup>F464</sup>the Treasury], determine.

#### Textual Amendments

**F460** Words substituted by virtue of S.I. 1981/1670, arts. 2(1)(c)(d)(2), 3(5)

**F461** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7

**F462** Words in s. 102(1)(a)(iii) inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 24; S.I. 1998/631, art. 2(b), Sch. 2 (with arts. 3-5)

**F463** Words substituted by virtue of S.I. 1981/1670, arts. 2(2), 3(5)

**F464** Words substituted by virtue of S.I. 1981/1670, arts 2(1)(2), 3(5)

### 103 Special arrangement as to payment of remuneration.

- (1) If the Secretary of State—
- (a) considers it appropriate for remuneration in respect of services provided by any person in pursuance of Part II of this Act [<sup>F465</sup>or in accordance with section 28C arrangements] to be paid by a particular body, and
  - (b) apart from this section the functions of the body do not include the function of paying the remuneration,
- the Secretary of State may by order confer that function on the body.
- (2) Any sums required to enable any body having that function to pay remuneration in respect of such services shall, if apart from this section there is no provision authorising the payment of the sums by the Secretary of State or out of money provided by Parliament, be paid by him.
- [<sup>F466</sup>(3) If the Secretary of State by order so provides with respect to remuneration in respect of such pharmaceutical services as may be specified in the order,—
- (a) an NHS trust determined in accordance with the order shall have the function of paying sums so determined to [<sup>F467</sup>a Health Authority so determined in respect of the whole or any part of that remuneration]
  - (b) nothing in subsection (2) above shall apply with respect to [<sup>F468</sup>the whole or (as the case may be) that part of the] remuneration.]

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#### Textual Amendments

- F465** Words in s. 103(1)(a) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 25**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)
- F466** S. 103(3) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(9)**
- F467** Words in s. 103(3)(a) substituted (1.9.1999 for E. and otherwise prosp.) by 1999 c. 8, **ss. 4(3)(a)(4)**, 67; S.I. 1999/2342, art. 2(1), **Sch. 1**
- F468** Words in s. 103(3)(b) substituted (1.9.1999 for E. and otherwise prosp.) by 1999 c. 8, **ss. 4(3)(b)(4)**, 67; S.I. 1999/2342, art. 2(1), **Sch. 1**

### 104 Superannuation of officers of certain hospitals.

- (1) The Secretary of State may enter into an agreement with the governing body of any hospital to which this section applies—
- (a) for admitting officers of the hospital of such classes as may be provided in the agreement to participate, on such terms and conditions as may be so provided, in the superannuation benefits provided under regulations made under section 10 of the <sup>M53</sup>Superannuation Act 1972 in like manner as officers of [<sup>F469</sup>Health Authorities]; and
  - (b) those regulations shall apply accordingly in relation to the officers so admitted subject to such modifications as may be provided in the agreement.
- (2) The governing body of any hospital to which this section applies shall have all such powers as may be necessary for the purpose of giving effect to any terms and conditions on which their officers are admitted to participate in those superannuation benefits.
- (3) This section applies to any hospital (not vested in the Secretary of State) which used, in pursuance of arrangements made by the governing body of the hospital with the Secretary of State, for the provision of services under this Act.

#### Textual Amendments

- F469** Words in s. 104(1)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, **ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 53** (with **Sch. 2 para. 6**)

#### Marginal Citations

- M53** 1972 c. 11.

### 105 Payments for certain medical examinations.

- (1) Where a medical practitioner carries out a medical examination of any person with a view to an application for his admission to hospital for [<sup>F470</sup>assessment] or treatment being made under [<sup>F471</sup>Part II of the <sup>M54</sup>Mental Health Act 1983][<sup>F472</sup>the Secretary of State] shall, subject to the following provisions of this section, pay to that medical practitioner—
- (a) reasonable remuneration in respect of that examination and in respect of any recommendation or report made by him with regard to the person examined; and



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- (b) the amount of any expenses reasonably incurred by him in connection with the examination or the making of any such recommendation or report.
- (2) No payment shall be made under this section to a medical practitioner—
- (a) in respect of an examination carried out as part of his duty to provide general medical services for the person examined [<sup>F473</sup>or as part of his duty to perform personal medical services for that person in accordance with section 28C arrangements] ; or
- (b) in respect of an examination carried out or any recommendation or report made as part of his duty as an officer of a [<sup>F474</sup>Health Authority or Special Health Authority].
- (3) This section shall only apply in a case where it is intended, when the medical examination of the person in question is carried out, that if he is admitted to hospital in pursuance of any such application as mentioned in subsection (1) above, the whole cost of his maintenance and treatment will be defrayed out of moneys provided by Parliament under this Act . . . <sup>F475</sup>

#### Textual Amendments

- F470** Words substituted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), ss. 65(1), 69(6), Sch. 3 para. 56, **Sch. 5 para. 1**
- F471** Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 47(b)**
- F472** Words substituted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), **s. 64(4)**
- F473** Words in s. 105(2)(a) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 26**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)
- F474** Words in s. 105(2)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 54** (with Sch. 2 para. 6)
- F475** Words repealed by Mental Health Act 1983 (c. 20, SIF 85), s. 148, Sch. 4 para. 47(c), **Sch. 6**

#### Marginal Citations

- M54** 1983 c. 20(85).

## <sup>F476</sup>PART V

#### Textual Amendments

- F476** Ss. 106-120 (Pt. V) repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 3**

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## PART VI

### MISCELLANEOUS AND SUPPLEMENTARY

#### *General provisions as to charges*

#### **121 Charges in respect of non-residents.**

Regulations may provide for the making and recovery, in such manner as may be prescribed, of such charges [<sup>F503</sup>as the Secretary of State may determine]—

- (a) in respect of such services provided under this Act as may be prescribed, being
- (b) services provided in respect of such persons not ordinarily resident in Great Britain as may be prescribed.

Such regulations may provide that the charges are only to be made in such cases as may be determined in accordance with the regulations.

[<sup>F504</sup>The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.]

#### **Textual Amendments**

**F503** Words inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 7\(12\)](#)

**F504** Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 7\(14\)](#)

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

**C90** [S. 121](#): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of [S.I. 2000/695, reg. 3\(2\)\(a\)](#), [Sch. 1](#)

**C91** [S. 121](#): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747, regs. 2\(1\), 3, 4](#), [Sch. 1](#)

#### **122 Recovery of charges.**

- (1) All charges recoverable under this Act by the Secretary of State, a local social services authority, or any body constituted under this Act [<sup>F505</sup>or Part I of the National Health Service and Community Care Act 1990], may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.
- (2) If any person, for the purpose of evading the payment of any charge under this Act, or of reducing the amount of any such charge—

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- (a) knowingly makes any false statement or false representation, or
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

the charge, or as the case may be the balance of the charge, may be recovered from him [<sup>F506</sup>as a simple contract debt] by the person by whom the cost of the service in question was defrayed.

#### Textual Amendments

**F505** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(12)

**F506** Words in s. 122(2) omitted (1.11.1999 for E. and otherwise *prosp.*) by virtue of 1999 c. 8, s. 65, 67(1), Sch. 4 para. 36; S.I. 1999/2793, art. 2(1)(a), Sch. 1; and repealed (9.2.2001) by 1999 c. 8, ss. 65, 67, Sch. 5; S.I. 2001/270, art. 2(c), Sch.

#### [<sup>F507</sup>122A] Recovery of other charges and payments.

- (1) Where goods or services to which this section applies are provided and either—
  - (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment, or
  - (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in subsection (2) below is recoverable summarily as a civil debt from the person in question by the responsible authority.

- (2) That amount—
  - (a) in a case within subsection (1)(a) above, is the amount of the charge or (where it has been reduced) reduction,
  - (b) in a case within subsection (1)(b) above, is the amount of the payment.
- (3) Where two or more persons are liable under section 122(1) above or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.
- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
  - (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description,
  - (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it,
  - (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 122B below, “responsible authority” means—

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- (a) in relation to the recovery of any charge under section 122(1) above in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable,
  - (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable,
  - (c) in a case within subsection (1)(b) above, the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies,
  - (b) the functions of any responsible authority under this section and section 122B below,
- to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act,
  - (b) drugs and medicines provided in pursuance of this Act,
  - (c) the testing of sight,
  - (d) optical appliances,
  - (e) any other appliances provided in pursuance of this Act.]

#### Textual Amendments

**F507** Ss. 122A-122C inserted (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, ss. 39(3), 67(1); S.I. 1999/2793, art. 2(1)(a), Sch. 1; S.I. 2001/270, art. 2

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

**C92** Ss. 122A-122C extended (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, ss. 39(3), 67(1); S.I. 1999/2793, art. 2(1)(a), Sch. 1; S.I. 2001/270, art. 2

**C93** S. 122A: Power to apply (with modifications) conferred (11.5.2001 for certain purposes, otherwise 8.3.2002 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 35(2)(c), 70(2) (with ss. 64(9), 65(4)); S.I. 2002/1095, art. 2(4); S.I. 2002/1475, art. 2(1), Sch. Pt. 1

#### <sup>F508</sup> 122B Penalties.

- (1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 122(1) above in respect of the provision of goods or services to which section 122A above applies, or
  - (b) any amount recoverable from him under section 122A above,
- a notice (referred to in this section as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.
- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
- (a) £100,
  - (b) the amount referred to in subsection (1)(a) or (b) above multiplied by 5.

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- (3) The Secretary of State may by order provide for subsection (2) above to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b) above) may be recovered by the responsible authority summarily as a civil debt.
- (7) But a person is not liable by virtue of a penalty notice—
  - (a) to pay at any time so much of any amount referred to in subsection (1)(a) or (b) above for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other, or
  - (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.
- (8) In spite of section 126(1) below, no order is to be made under subsection (3) above unless a draft has been laid before, and approved by resolution of, each House of Parliament.

#### Textual Amendments

**F508** Ss. 122A-122C inserted (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, ss. 39(3), 67(1); S.I. 1999/2793, art. 2(1)(a), Sch. 1; S.I. 2001/270, art. 2

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

**C94** Ss. 122A-122C extended (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, ss. 39(3), 67(1); S.I. 1999/2793, art. 2(1)(a), Sch. 1; S.I. 2001/270, art. 2

**C95** S. 122B: Power to apply (with modifications) conferred (11.5.2001 for certain purposes, otherwise 8.3.2002 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 35(2)(d), 70(2) (with ss. 64(9), 65(4)); S.I. 2002/1095, art. 2(4); S.I. 2002/1475, art. 2(1), Sch. Pt. 1

#### <sup>F509</sup> 122C Offences.

- (1) A person is guilty of an offence if he does any act mentioned in subsection (2) below with a view to securing for himself or another—
  - (a) the evasion of the whole or part of any charge under this Act in respect of the provision of goods or services to which section 122A above applies,
  - (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment,
  - (c) a payment under this Act (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.

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- (2) The acts referred to in subsection (1) above are—
- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation, or
  - (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this section before a magistrates' court if he is authorised to do so by the Secretary of State.
- (5) Proceedings for an offence under this section may be begun within either of the following periods—
- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Secretary of State to justify a prosecution for the offence, comes to his knowledge,
  - (b) the period of 12 months beginning with the commission of the offence.
- (6) For the purposes of subsection (5) above, a certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to his knowledge is conclusive evidence of that date.
- (7) Where, in respect of any charge or payment under this Act—
- (a) a person is convicted of an offence under this section, or
  - (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under section 122B above,
- he shall not, in a case within paragraph (a) above, be liable to pay any such penalty charge or further sum by way of penalty or, in a case within paragraph (b) above, be convicted of such an offence.
- (8) Subsection (4) of section 122A above applies for the purposes of this section as it applies for the purposes of that.

#### Textual Amendments

**F509** Ss. 122A-122C inserted (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, ss. 39(3), 67(1); S.I. 1999/2793, art. 2(1)(a), Sch. 1; S.I. 2001/270, art. 2

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

**C96** Ss. 122A-122C extended (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, ss. 39(3), 67(1); S.I. 1999/2793, art. 2(1)(a), Sch. 1; S.I. 2001/270, art. 2

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## Miscellaneous

### 123 Persons displaced by health service development.

(1) Where the carrying out of a scheme for the provision by the Secretary of State in pursuance of this Act of hospital accommodation or other facilities will involve the displacement from any premises of persons residing in them, the Secretary of State may make arrangements with one or more of the following bodies—

- [<sup>F510</sup>(a) a local housing authority within the meaning of the <sup>M59</sup>Housing Act 1985,
- (b) a housing association or housing trust within the meaning of the <sup>M60</sup>Housing Associations Act 1985,]
- (d) a development corporation established under the [<sup>F511M61</sup>New Towns Act 1981] and
- (e) the Commission for the New Towns,

for securing, in so far as it appears to him that there is no other residential accommodation suitable for the reasonable requirements of those persons available on reasonable terms, the provision of residential accommodation in advance of the displacement from time to time becoming necessary as the carrying out of the scheme proceeds.

(2) Arrangements under subsection (1) above may include provision for making by the Secretary of State to the body with whom the arrangements are made of payments of such amounts and for such purposes as may be approved by the Treasury.

#### Textual Amendments

**F510** S. 123(1)(a)(b) substituted for s. 123(1)(a)–(c) by [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\), s. 4, Sch. 2 para. 38\(4\)](#)

**F511** Words substituted by [New Towns Act 1981 \(c. 64, SIF 123:3\), s. 81, Sch. 12 para. 26](#)

#### Marginal Citations

**M59** 1985 c. 68(61).

**M60** 1985 c. 69(61).

**M61** 1981 c. 64(123:3).

### 124 Special notices of births and deaths.

(1) The requirements of this section with respect to the notification of births and deaths are in addition to, and not in substitution for, the requirements of any Act relating to the registration of births and deaths.

(2) It is the duty of each registrar of births and deaths to furnish, to the [<sup>F512</sup>Health Authority the area of which includes] the whole or part of the registrar's sub-district, such particulars of each birth and death which occurred in the [<sup>F512</sup>Health Authority's area as are entered] in a register of births or deaths kept for that sub-district.

(3) Regulations may provide as to the manner in which and the times at which particulars are to be furnished in pursuance of subsection (2) above.

(4) In the case of every child born, it is the duty—

- (a) of the child's father, if at the time of the birth he is actually residing on the premises where the birth takes place, and

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(b) of any person in attendance upon the mother at the time of, or within six hours after, the birth,  
to give notice of the birth (as provided in subsection (5) below) to the [<sup>F513</sup>Health Authority for the area] in which the birth takes place.

This subsection applies to any child which has issued forth from its mother after the expiry of the twenty-eighth week of pregnancy whether alive or dead.

- (5) Notice under subsection (4) above shall be given either—
- (a) by posting within 36 hours after the birth a prepaid letter or postcard addressed to the [<sup>F514</sup>Health Authority at their offices] and containing the required information, or
  - (b) by delivering within that period at [<sup>F514</sup>the Health Authority's offices] a written notice containing the required information,

and [<sup>F514</sup>a Health Authority] shall, upon application to them, supply without charge to any medical practitioner or midwife residing or practising within their area [<sup>F515</sup> or district] prepaid addressed envelopes together with the forms of notice.

- (6) Any person who fails to give notice of a birth in accordance with subsection (4) above is liable on summary conviction to a fine not exceeding [<sup>F516</sup>level 1 on the standard scale], unless he satisfies the court that he believed, and had reasonable grounds for believing, that notice had been duly given by some other person.

Proceedings in respect of this offence shall not, without the Attorney-General's written consent, be taken by any person other than a party aggrieved or the [<sup>F517</sup>Health Authority] concerned.

- (7) A registrar of births and deaths shall, for the purpose of obtaining information concerning births which have occurred in his sub-district, have access at all reasonable times to notices of births received by a [<sup>F518</sup>Health Authority] under this section, or to any book in which those notices may be recorded.

#### Textual Amendments

**F512** Words in s. 124(2) substituted (28.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 55(a)** (with **Sch. 2 para. 6**)

**F513** Words in s. 124(4) substituted (28.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 55(b)** (with **Sch. 2 para. 6**)

**F514** Words in s. 124(5) substituted (28.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 55(c)** (with **Sch. 2 para. 6**)

**F515** Words in s. 124(5) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with **Sch. 2 para. 6**)

**F516** Words substituted by virtue of **Criminal Law Act 1977 (c. 45, SIF 39:1)**, **s. 31** and **Criminal Justice Act 1982 (c. 48, SIF 39:1)**, **s. 46**

**F517** Words in s. 124(6) substituted (28.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 55(d)** (with **Sch. 2 para. 6**)

**F518** Words in s. 124(7) substituted (28.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 55(e)** (with **Sch. 2 para. 6**)

#### [<sup>F519</sup>124A] Provision of information by Registrar General.

- (1) The Registrar General may provide to the Secretary of State any information to which this section applies.



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- (2) Any information provided under subsection (1) above shall be provided in such form as appears to the Registrar General appropriate for the purpose of assisting the Secretary of State in the performance of his functions in relation to the health service.
- (3) This section applies to any information—
- (a) entered in any register kept under the <sup>M62</sup>Births and Deaths Registration Act 1953; or
  - (b) which is kept by the Registrar General under any other enactment and relates to any birth or death.
- (4) In subsection (3) above, “enactment” includes an enactment contained in subordinate legislation.]

#### Textual Amendments

**F519** S. 124A inserted (1.10.1999) by 1999 c. 8, s. 42; S.I. 1999/2540, art. 2(1)(b), **Sch. 1**

#### Marginal Citations

**M62** 1953 c.20.

## 125 Protection of members and officers of authorities.

Section 265 of the <sup>M63</sup>Public Health Act 1875 (which relates to the protection of members and officers of certain authorities) has effect as if there were included in the authorities referred to in that section—

- [<sup>F520</sup>(a) a Health Authority,  
(b) a Special Health Authority, and  
(c) an NHS trust,]

and as if any reference in that section to the Public Health Act 1875 included a reference to this Act [<sup>F521</sup>and the National Health Service and Community Care Act 1990].

#### Textual Amendments

**F520** S. 125(a)-(c) substituted (28.6.1995 for certain purposes and otherwise 1.4.1996) for s. 125(a)-(d) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 56** (with Sch. 2 para. 6)

**F521** Words added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 25(b)**

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

**C97** s. 125 excluded by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), ss. **1(6)(8)**, 2(3)(4)

**C98** S. 125 extended (*temp.* from 28.6.1995 until 1.4.1996) by 1995 c. 17, s. 3(9)(10) (with **Sch. 2 para. 6**)

#### Marginal Citations

**M63** 1875 c. 55(100:1).

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## Supplementary

### 126 Orders and regulations, and directions.

- (1) Any power to make orders or regulations conferred by this Act shall be exercisable by statutory instrument, and a statutory instrument made by virtue of this Act shall [<sup>F522</sup>, unless it is a PCT order,] be subject to annulment in pursuance of a resolution of either House of Parliament.

This subsection—

- <sup>F523</sup>(a) .....
- (b) does not apply to [<sup>F524</sup>an order made under section 28EE(2) above, paragraph 20, 21 or 23 of Schedule 5A to this Act or to] paragraph 10 of Schedule 11 to this Act.

- (2) Any power to make regulations conferred on the Secretary of State by this Act [<sup>F525</sup>or Part I of the National Health Service and Community Care Act 1990] is, if the Treasury so directs, exercisable by the Treasury and the Secretary of state acting jointly, except in the case of—

- (a) regulations made under section 32 above;
- (b) regulations made under section 77(1) above in respect of charges for the drugs, medicines or appliances referred to in paragraph (a) of that subsection, or under paragraphs 1(1) of Schedule 12 to this Act [<sup>F525</sup>or Part I of the National Health Service and Community Care Act 1990] in respect of the remission or repayment of any charge payable under that section in the cases provided for in paragraph 1(1) of that Schedule;
- (c) regulations made under paragraph 2(2) of that Schedule;
- (d) regulations made under paragraph 2(6) of that Schedule.

- (3) Where under [<sup>F526</sup>or by virtue of] any provision of this Act [<sup>F525</sup>or Part I of the National Health Service and Community Care Act 1990]—

- (a) power to make an order may be exercisable, or
- (b) directions may be given,

that provision includes power to vary or revoke the order or direction, as the case may be, by subsequent order or by subsequent directions.

- [<sup>F527</sup>(3A) Directions given by the Secretary of State [<sup>F528</sup>or by a Health Authority] in pursuance of any provision of this Act or Part I of the <sup>M64</sup>National Health Service and Community Care Act 1990 shall be given by an instrument in writing.

- (3B) In relation to directions given in pursuance of sections [<sup>F529</sup>16D to 17B] above section 18 above applies in place of subsections (3) and (3A) above.]

- [<sup>F530</sup>(3C) Any person or body to whom directions are given in pursuance of any provision of this Act or Part I of the <sup>M65</sup>National Health Service and Community Care Act 1990 shall comply with the directions.]

- (4) Any power conferred by this Act [<sup>F525</sup>or Part I of the National Health Service and Community Care Act 1990] to make orders, regulations or schemes, and any power conferred by section 18 above to give directions by an instrument in writing, may unless the contrary intention appears, be exercised—

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- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case, and
- (b) so as to make, as respects the cases in relation to which it is exercised—
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act [<sup>F525</sup>or Part I of the National Health Service and Community Care Act 1990] or that section,
  - (iii) any such provision either unconditionally, or subject to any specified condition,

and includes power to make such [<sup>F531</sup>supplementary, incidental, consequential, transitory, transitional or saving] provision in the orders, regulations, schemes or directions as the persons making or giving them consider appropriate.

This subsection does not only apply to regulations made under section 32 above (but without prejudice to subsection (3) of that section) or to an order made under section 57 above (but without prejudice to paragraph 1(1) of Schedule 11 to this Act [<sup>F525</sup>or Part I of the National Health Service and Community Care Act 1990] ).

- [<sup>F532</sup>(5) Without prejudice to the generality of subsection (4) above, any power which may be exercised as mentioned in paragraphs (a) and (b) of that subsection may make different provision for different areas.]

#### Textual Amendments

- F522** Words in s. 126(1) inserted (4.1.2000 for E. and otherwise<sup>prosp.</sup>) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 37(2)(a)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**
- F523** S. 126(1)(a) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 5** (with Sch. 2 para. 6)
- F524** Words in s. 126(1)(b) inserted (4.1.2000 for E. and otherwise<sup>prosp.</sup>) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 37(2)(b)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**
- F525** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 65(2)
- F526** Words in s. 126(3) inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 para. 27**; S.I. 1997/1780, art. 2(1), **Sch.**
- F527** S. 126(3A)(3B) substituted (28.6.1995 for certain purposes and otherwise 1.4.1996) for the second sentence of (3) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 57** (with Sch. 2 para. 6)
- F528** Words in s. 126(3A) inserted (4.1.2000 for E. and otherwise<sup>prosp.</sup>) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 37(3)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**
- F529** Words in s. 126(3B) substituted (4.1.2000 for E. and otherwise<sup>prosp.</sup>) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 37(4)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**
- F530** S. 126(3C) inserted (1.9.1999 for E. and 1.11.1999 for W.) by 1999 c. 8, s. 65, **Sch. 4 para. 37(5)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(1), **Sch. 1**
- F531** Words in s. 126(4) substituted (1.9.1999 for E. and 1.11.1999 for W.) by 1999 c. 8, s. 65, **Sch. 4 para. 37(6)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(1), **Sch. 1**
- F532** S. 126(5) added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 65(2)

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

- C99** S. 126 applied (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1968 c. 46, s. 63(5A) (as inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. III para. 95(2)(c) (with **Sch. 2 para. 6**))

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**C100** S. 126(4)(5) extended (28.6.1995) by 1995 c. 17, s. 6(6) (with Sch. 2 para. 6)

**C101** S. 126(4) extended by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 28(3)

#### Marginal Citations

**M64** 1990 c. 19.

**M65** S.I. 1990 c.19.

## 127 Supplementary regulatory powers.

Regulations may provide for all or any of the following matters—

- (a) for prescribing the forms and manner of service of notices and other documents;
- (b) for prescribing the manner in which documents may be executed or proved;
- (c) for prescribing the manner in which resolutions of any bodies (except the Public Health Laboratory Service Board) continued in being by this Act are to be proved;
- (d) for exempting judges and justices of the peace from disqualification by their liability to rates.

## 128 Interpretation and construction.

- (1) In this Act [<sup>F533</sup>and Part I of the National Health Service and Community Care Act 1990], unless the contrary intention appears—

<sup>F534</sup>

...

<sup>F535</sup>

.....

<sup>F536</sup>

“dental practitioner” means a person registered in the dentists register under the <sup>M66</sup>Dentists Act [<sup>F537</sup>1984];

[<sup>F538</sup>“disabled persons” means persons who are blind, deaf or dumb or who suffer from mental disorder of any description and other persons who are substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed;]

“dispensing optician” means a person who is registered in the register kept under section 2 of the <sup>M67</sup>Opticians Act 1958 of dispensing opticians or a body corporate enrolled in the list kept under section 4 of that Act of such bodies carrying on business as dispensing opticians;

“equipment” includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle;

“functions” included powers and duties;

[<sup>F539</sup>[<sup>F540</sup>“fund-holding practice” shall be construed in accordance with section 14 of the National Health Service and Community Care Act 1990;]]

<sup>F534</sup>

...

“the health service” means the health service established in pursuance of [<sup>F541</sup>section 1 of the <sup>M68</sup>National Health Service Act 1946 and continued under] section 1(1) above;

[<sup>F542</sup>“health service body” has the same meaning as in section 4 of the <sup>M69</sup>National Health Service and Community Care Act 1990;]

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“health service hospital” means a hospital vested in the Secretary of State [<sup>F543</sup>for the purposes of his functions] under this Act [<sup>F544</sup>or vested in [<sup>F545</sup>a Primary Care Trust or] an NHS trust];

F535

“hospital” means—

- (a) any institution for the reception and treatment of persons suffering from illness,
- (b) any maternity home, and
- (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation,

and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution, and hospital accommodation shall be construed accordingly;

“illness” includes mental disorder within the meaning of [<sup>F546</sup>the <sup>M70</sup>Mental Health Act 1983] and any injury or disability requiring medical or dental treatment or nursing;

“local authority” means a county council, . . . <sup>F547</sup>a district council, [<sup>F548</sup>a county borough council,] a London borough council, and the Common Council of the City of London; <sup>F549</sup> . . .

“local education authority” has the same meaning as in the [<sup>F550</sup>the Education Act 1996];

“local social services authority” means the council of a non-metropolitan county, [<sup>F551</sup>of a county borough] or of a metropolitan district or London borough, or the Common Council of the City of London;

“medical” includes surgical;

[<sup>F542</sup>“medical list” has the meaning given by section 29A(6);]

[<sup>F552</sup>“medical practitioner” means a registered medical practitioner within the meaning of Schedule 1 to the <sup>M71</sup>Interpretation Act 1978]

“medicine” includes such chemical re-agents as are included in a list for the time being approved by the Secretary of State for the purposes of section 41 above;

“modifications” includes additions, omissions and amendments;

[<sup>F553</sup>“NHS contract” has the meaning assigned by section 4(1) of the National Health Service and Community Care Act 1990;

“National Health Service trust” has the meaning assigned by section 5 of the National Health Service and Community Care Act 1990 and “NHS trust” shall be construed accordingly]

“officer” includes servant;

[<sup>F554</sup>“operational date”, in relation to an NHS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 2 to the National Health Service and Community Care Act 1990]

“ophthalmic optician” means a person registered in either of the registers kept under [<sup>F555</sup>section 7 of the Opticians Act 1989] of ophthalmic opticians or a body corporate enrolled in the list kept under [<sup>F556</sup>section 9] of that Act of such bodies carrying on business as ophthalmic opticians;

“patient” includes an expectant or nursing mother and a lying-in woman;

[<sup>F542</sup>“personal dental services” has the meaning given in section 28C(7);]

[<sup>F542</sup>“personal medical services” (except in section 29) has the meaning given in section 28C(7);]

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[<sup>F557</sup>“pharmaceutical services” has the meaning assigned by section 41 of this Act]

“prescribed” means prescribed by regulations made by the Secretary of State under this Act [<sup>F558</sup>or Part I of the National Health Service and Community Care Act 1990];

[<sup>F559</sup>“PCT order” has the meaning given by section 16A above]

[<sup>F560</sup>“primary functions” shall be construed in accordance with section 3 of the National Health Service and Community Care Act 1990]

“property” includes rights; . . . <sup>F536</sup>

“registered pharmacist” means a pharmacist registered in the register of pharmaceutical chemists;

“regulations” means regulations made by the Secretary of State under this Act [<sup>F561</sup>or Part I of the National Health Service and Community Care Act 1990];

“special hospital” has the meaning given by section 4 above;

“superannuation benefits” means annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits;

“university” includes a university college;

[<sup>F562</sup>“voluntary organisation” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority;]

. . . . . <sup>F535</sup>

[<sup>F563</sup>(1A) So far as is necessary or expedient in consequence of a direction under section 16D or 17A above providing for the exercise by a Health Authority, Special Health Authority or Primary Care Trust of a function exercisable by another person, any reference in any enactment, instrument or other document to that other person is to be read as a reference to the Health Authority, Special Health Authority or Primary Care Trust.]

(2) References in this Act to the purposes of a hospital shall be construed as referring both to the general purposes of the hospital and to any specific purpose of the hospital.

(3) Any reference in this Act to any enactment is a reference to it as amended or applied by or under any other enactment including this Act.

#### Textual Amendments

**F533** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 26(2)**

**F534** Definitions of “District Health Authority” and “health authority” in s. 128(1) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

**F535** Definition repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), **Sch. 2, para. 10, Sch. 7**

**F536** Definition repealed by [Nurses, Midwives and Health Visitors Act 1979 \(c. 36, SIF 83:1\)](#), **Sch. 7, para. 28, Sch. 8**

**F537** Words substituted by [Dentists Act 1984 \(c. 24, SIF 83:1\)](#), s. 54(1), **Sch. 5 para. 9**

**F538** Definition inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 29(1), **Sch. 9 Pt. I para. 22**

**F539** Definition of “fund-holding practice” in s. 128(1) repealed (1.10.1999 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 5**; S.I. 1999/2540, art. 2(1), **Sch. 1**

**F540** Definition of “fund-holding practice” in s. 128(1) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 58(b)** (with Sch. 2 para. 6)

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- F541** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1](#), para. 77(c)
- F542** Definitions in s. 128(1) inserted (1.4.1998 for specified purposes, 10.12.1998 for further purposes and otherwise *prosp.*) by 1997 c. 46, s. 41(10), [Sch. 2 para. 28](#); S.I. 1998/631, art. 2(b), [Sch. 2](#) (with arts. 3-5); S.I. 1998/2840, art. 2(3), [Sch.](#) (with art. 3)
- F543** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1](#), para. 77(d)
- F544** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 26\(2\)\(c\)](#)
- F545** Words in the definition of “health service hospital” in s. 128(1) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, [Sch. 4 para. 38\(2\)\(a\)](#); S.I. 1999/2342, art. 2(3)(a), [Sch. 2](#)
- F546** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 4 para. 47\(d\)](#)
- F547** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), s. 102(2), [Sch. 17](#)
- F548** Words in the definition of “local authority” in s. 128(1) inserted (1.4.1996) by 1994 c. 19, s. 22(4), [Sch. 10 para. 11\(3\)\(a\)](#) (with ss. 54(5)(7), 55(5), [Sch. 17](#) paras. 22(1), 23(2)); S.I. 1996/396, art. 3, [Sch. 1](#)
- F549** Words in the definition of “local authority” in s. 128(1) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), [Sch. 3](#) (with [Sch. 2](#) para. 6)
- F550** Words in the definition of “local education authority” in s. 128(1) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(1), [Sch. 37 para. 45](#) (with s. 1(4), [Sch. 39](#))
- F551** Words in the definition of “local social services authority” in s. 128(1) inserted (1.4.1996) by 1994 c. 19, s. 22(4), [Sch. 10 para. 11\(3\)\(b\)](#) (with ss. 54(4)(7), 55(5), [Sch. 17](#) paras. 22(1), 23(2)); S.I. 1996/396, art. 3, [Sch. 1](#)
- F552** Definition substituted by [Medical Act 1983 \(c. 45, SIF 83:1\)](#), s. 56(1), [Sch. 5 para. 16\(b\)](#)
- F553** Definitions inserted (the insertion not being in force until 1.4.1991 so far as it relates to the definition of “NHS contract”) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 26\(2\)\(d\)](#)
- F554** Definition inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 26\(2\)\(e\)](#)
- F555** Words substituted by [Opticians Act 1989 \(c. 44, SIF 83:1\)](#), [s. 37\(1\)\(a\)](#)
- F556** Words substituted by [Opticians Act 1989 \(c. 44, SIF 83:1\)](#), [s. 37\(1\)\(b\)](#)
- F557** Definition inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 26\(2\)\(f\)](#)
- F558** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 26\(2\)\(g\)](#)
- F559** Definition of “PCT order” in s. 128(1) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, [Sch. 4 para. 38\(2\)\(c\)](#); S.I. 1999/2342, art. 2(3)(a), [Sch. 2](#)
- F560** Definition inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 26\(2\)\(h\)](#)
- F561** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 26\(2\)\(i\)](#)
- F562** Definition substituted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1](#), para. 77(e)
- F563** [S. 128\(1A\)](#) inserted (1.9.1999 for E. for specified purposes, 1.12.1999 for W. for specified purposes, 4.1.2000 for E. for other specified purposes and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, [Sch. 4 para. 38\(3\)](#); S.I. 1999/2342, art. 2(1)(3)(a), [Schs. 1, 2](#); S.I. 1999/3184, art. 2(2), [Sch. 2](#)

#### Marginal Citations

- M66** 1984 c. 24(83:1).  
**M67** 1958 c. 32(83:1).  
**M68** 1946 c. 81.  
**M69** 1990 c. 19.  
**M70** 1983 c. 20(85).  
**M71** 1978 c. 30(115:1).

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## 129 Transitional provisions and savings, consequential amendments, and repeals.

Schedule 14 to this Act is hereby given effect, and subject to the transitional provisions and savings contained in that Schedule—

(a) the enactments and the Order specified in Schedule 15 to this Act have effect subject to the amendments (being amendments consequent on this Act) specified in that Schedule, and

(b) ..... <sup>F564</sup>

but nothing in this Act shall be taken as prejudicing the operation of [<sup>F565</sup>sections 16(1) and 17(2)(a) of the <sup>M72</sup>Interpretation Act 1978] (which relates to the operation of repeals).

### Textual Amendments

**F564** S. 129(b) repeals enactments specified in Sch. 16

**F565** Words substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), s. 25(2)

### Marginal Citations

**M72** 1978 c. 30(115:1).

## 130 Short title, extent and commencement.

- (1) This Act may be cited as the National Health Service Act 1977.
- (2) This Act does not extend to Scotland, except as is mentioned in paragraph 3 of Schedule 11 to this Act.
- (3) The following provisions only of this Act apply to Northern Ireland—
  - (a) this subsection and subsections (1) above and (5) below;
  - (b) section 57 above and Schedule 11 to this Act;
  - <sup>F566</sup>(c) .....
  - (d) paragraph 13 of Schedule 14 to this Act so far as it relates to any enactment which extends to Northern Ireland;
  - (e) paragraph (a) of section 129 above and Schedule 15 to this Act so far as they amend any enactment and order which extends to Northern Ireland;
  - (f) paragraph (b) of section 129 and Schedule 16 to this Act so far as they repeal any enactment which extends to Northern Ireland.
- (4) The Secretary of State may by order provide that this Act shall extend to the Isles of Scilly with such modifications, if any, as are specified in the order, and except as provided in pursuance of this subsection this Act does not extend to the Isles of Scilly.  
The Secretary of State may by any such order amend or repeal any provisions contained in the Isles of Scilly Orders 1927 to 1943.
- (5) This Act shall come into force on the expiry of the period of one month beginning on the date of its passing.

### Textual Amendments

**F566** S. 130(3)(c) repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), Sch. 3



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

**C102** S. 130(4) extended by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), **s. 149(4)**

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## SCHEDULES

### SCHEDULE 1

#### ADDITIONAL PROVISIONS AS TO THE MEDICAL AND DENTAL INSPECTION AND TREATMENT OF PUPILS <sup>F567</sup> AND THEIR EDUCATION IN DENTAL HEALTH

##### Textual Amendments

**F567** Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(1), [Sch. 2 para. 7\(1\)](#)

- 1 Without prejudice to the Secretary of State’s powers apart from this paragraph, he may—
- (a) by arrangement with any local education authority, provide for any medical or dental inspection or treatment <sup>F568</sup> or for education in dental health] of—
    - (i) senior pupils in attendance at any educational establishment, other than a school, which is maintained by the authority and at which full-time further education is provided, or
    - (ii) any child or young person who, in pursuance of <sup>F569</sup> section 19 or 319 of the Education Act 1996] is receiving primary or secondary education otherwise than at a school;
  - (b) by arrangement with the proprietor of any educational establishment which is not maintained by a local education authority, make any such provision in respect of junior or senior pupils in attendance at the establishment.

##### Textual Amendments

**F568** Words inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(1), [Sch. 2 para. 7\(2\)](#)

**F569** Words in [Sch. 1 para. 1\(a\)\(ii\)](#) substituted (1.11.1996) by [1996 c. 56, ss. 582\(1\), 583\(2\)](#), [Sch. 37 Pt. I para. 46\(a\)](#) (with s. 1(4), [Sch. 39](#))

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

**C103** [Sch. 1 para. 1](#): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of [S.I. 2000/695, reg. 3\(1\)\(a\)](#), [Sch. 1](#)

**C104** [Sch. 1 para. 1](#): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747, regs. 2\(1\), 3, 4](#), [Sch. 1](#)

- 2 A local education authority shall not arrange in pursuance of paragraph 1 above in respect of such an establishment as is mentioned in sub-paragraph (a)(i) of that paragraph except by agreement with the governors of the establishment; and an arrangement in pursuance of sub-paragraph (b) of paragraph 1 may provide for payments by the proprietor in question.
- 3 It is the duty of the local education authorities <sup>F570</sup> in respect of the schools (other than foundation, voluntary or foundation special schools) which they maintain or the governing bodies of foundation, voluntary or foundation special schools in respect of those schools]to make available to the Secretary of State such

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accommodation as is appropriate for the purpose of assisting him so to provide as is mentioned in [F571section 5] above for pupils in attendance at the schools.

#### Textual Amendments

**F570** Words in Sch. 1 para. 3 substituted (1.9.1999) by 1998 c. 31, s. 140(1), Sch. 30 para. 8(a); S.I. 1999/2323, art. 2(1), Sch. (with ss. 3-23)

**F571** Words substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), Sch. 2 para. 7(3)

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

**C105** Sch. 1 para. 3 applied (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt. I

Sch. 1 para. 3 applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt. I

- 4 In [F572section 5] above, and in this Schedule expressions to which meanings are given [F573for the purposes of the Education Act 1996][F574or (as the case may be) the School Standards and Framework Act 1998]have those meanings.

#### Textual Amendments

**F572** Words substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), Sch. 2 para. 7(4)

**F573** Words in Sch. 1 para. 4 substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para. 46(b) (with s. 1(4), Sch. 39)

**F574** Words in Sch. 1 para. 4 inserted (1.9.1999) by 1998 c. 31, s. 140(1), Sch. 30 para. 8(b); S.I. 1999/2323, art. 2(1), Sch. 1 (with arts. 3-23)

## SCHEDULE 2

### ADDITIONAL PROVISIONS AS TO VEHICLES FOR THOSE SUFFERING DISABILITY

- 1 The Secretary of State has power, in the case of an invalid carriage or other vehicle provided by him for or belonging to any such person as is mentioned in paragraph (a) of section 5(2) above, on such terms and subject to such conditions as he may determine—
- (a) to adapt the vehicle for the purposes of making it suitable for the circumstances of that person;
  - (b) to maintain and repair the vehicle;
  - (c) to take out insurance policies relating to the vehicle and pay the duty, if any, with which the vehicle is chargeable under [F575the Vehicle Excise and Registration Act 1994];
  - (d) to provide a structure in which the vehicle may be kept, and to provide all material and execute all works necessary for the structure's erection.

#### Textual Amendments

**F575** Words in Sch. 2 para. 1(c) substituted (1.9.1994) by 1994 c. 22, ss. 63, 66(1), Sch. 3 para. 10 (with s. 57(4))

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- 2 The Secretary of State may, on such terms and subject to such conditions as he may determine, make payments by way of grant towards costs incurred by any such person as is mentioned in paragraph (a) of section 5(2) above in respect of all or any of the following matters in relation to an invalid carriage or other vehicle provided by the Secretary of State for or belonging to that person—
- (a) the taking of any such action as is referred to in paragraph 1 above;
  - (b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of fuel; and
  - (c) the taking of instruction in the driving of the vehicle.
- 3 Regulations may provide for any incidental or supplementary matter for which it appears to the Secretary of State necessary or expedient to provide in connection with the taking of action under paragraph 1 above or the making of any payment under paragraph 2 above.
- 4 In paragraph (a) of section 5(2) above, and in this Schedule. “invalid carriage” means a mechanically propelled vehicle specially designed and constructed (and not merely adapted) for the use of a person suffering some physical defect or disability and used solely by such a person.

### SCHEDULE 3

#### PUBLIC HEALTH LABORATORY SERVICE BOARD

#### PART I

##### CONSTITUTION OF THE PUBLIC HEALTH LABORATORY SERVICE BOARD

- 1 The Public Health Laboratory Service Board shall be a body corporate.
- 2 The Board may accept, hold and administer properly on trust for any purposes relating to [<sup>F576</sup>its functions].

##### Textual Amendments

**F576** Words substituted by [Public Health Laboratory Service Act 1979 \(c. 23, SIF 113:1\)](#), s. 1(4)

- 3 The Board shall consist of a chairman appointed by the Secretary of State and such other members so appointed as the Secretary of State thinks fit, and the members shall include—
- (a) not less than two persons appointed after consultation with the Medical Research Council; and
  - (b) not less than two persons with experience as microbiologists, appointed after consultation with such organisations as the Secretary of State thinks appropriate; and
  - (c) not less than two proper officers appointed by a local authority; and
  - (d) not less than one person with experience of service in hospitals; and
  - (e) not less than one medical practitioner engaged in general medical practice, appointed after consultation with such organisations as the Secretary of State may recognise as representative of practitioners so engaged.

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- 4 Subject to paragraph 5 below members shall be appointed for a term of three years.
- 5 Any member appointed to fill a casual vacancy shall be appointed for the remainder of the term for which his predecessor was appointed.
- 6 A member may at any time resign his office.
- 7 A person who is or has been a member of the Board shall be eligible for re-appointment as a member.
- 8 The Board may elect a deputy chairman and may appoint one or more committees consisting wholly or partly of members of the Board and may delegate to any such committee any of the Board's functions.
- 9 The proceedings of the Board or any committee appointed by the Board shall not be invalidated by any vacancy in the membership of the Board or committee, or by any defect in the appointment or qualification of any such member.
- 10 The Board and, subject to any directions of the Board, any committee appointed by them, may regulate their own procedure and fix a quorum for any of their proceedings.

## PART II

### ADDITIONAL PROVISIONS AS TO THE PUBLIC HEALTH LABORATORY SERVICE BOARD

- 11 The Board may appoint such officers and servants, on such terms as to remuneration and conditions of service, as the Board may, with the Secretary of State's approval, determine.
- 12 The Board may pay to its members and to the members of any committee appointed by the Board such [<sup>F577</sup>remuneration and allowances, and may make such provision for the payment of pensions, gratuities or allowances to or in respect of persons who have ceased to be members of the Board, as the Secretary of State may with the approval of [<sup>F578</sup>the Treasury] determine].

#### Textual Amendments

**F577** Words substituted by [Public Health Laboratory Service Act 1979 \(c. 23, SIF 113:1\)](#), s. 2

**F578** Words substituted by virtue of [S.I. 1981/1670](#), arts. 2, 3(5)

- 13 The Board shall exercise their functions in accordance with any direction which the Secretary of State may give to them but shall in the exercise of those functions be deemed for all purposes to act as principal.
- 14 The Secretary of State shall pay to the Board, out of moneys provided by Parliament, such sums as may be necessary to defray the expenditure of the Board incurred with his approval.
- 15 Any sums received by the Board (otherwise than in exercise of their power under paragraph 2 above, or under paragraph 14 above) shall be paid into the Consolidated Fund.
- 16 The Board shall keep proper accounts and other records in such form as the Secretary of State may, with the approval of the Treasury, determine.

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- 17 The Board shall prepare and transmit to the Secretary of State in respect of each financial year statements of account in such form as the Secretary of State may, with the approval of the Treasury, determine.
- 18 The Secretary of State shall transmit these statements of accounts on or before 30th November following the financial year to the Comptroller and Auditor General, who shall examine and certify them and lay copies of them together with his report on them before each House of Parliament.

SCHEDULE 4

CENTRAL HEALTH SERVICES COUNCIL AND ADVISORY COMMITTEES

1 ..... <sup>F579</sup>

**Textual Amendments**  
**F579** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

*Supplementary provisions*

- 2 Regulations may make provision with respect to the appointment, tenure of office and vacation of office of the members of . . . <sup>F580</sup> and of any standing advisory committee constituted under section 6 above.

**Textual Amendments**  
**F580** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

- 3 The Secretary of State shall appoint a secretary to . . . <sup>F581</sup> each standing advisory committee.

**Textual Amendments**  
**F581** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

- 4 <sup>F582</sup> . . . any standing advisory committee may appoint such sub-committees, as they think fit, and as are approved by the Secretary of State, to consider and report upon questions referred to them by the <sup>F582</sup> . . . standing advisory committee as the case may be.  
  
Any such committee or sub-committee may include persons who are not members of the . . . <sup>F582</sup> standing advisory committee . . . <sup>F582</sup>.

**Textual Amendments**  
**F582** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

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- 5 . . . <sup>F583</sup> and any standing advisory committee shall elect one of the members of the . . . <sup>F583</sup> committee. . . <sup>F583</sup> to be chairman of the . . . <sup>F583</sup> committee, and shall have power to regulate their own procedure.

#### Textual Amendments

**F583** Words repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)

- 6 The proceedings of . . . <sup>F584</sup> any standing advisory committee shall not be invalidated by any vacancy in the membership of the . . . <sup>F584</sup> committee, or by any defect in a member's appointment or qualification.

#### Textual Amendments

**F584** Words repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)

## SCHEDULE 5

### [<sup>F585</sup>HEALTH AUTHORITIES AND SPECIAL HEALTH AUTHORITIES]

#### Textual Amendments

**F585** [Sch. 5](#) heading substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 59](#) (with [Sch. 2 para. 6](#))

### [<sup>F586</sup>PART I

#### MEMBERSHIP OF HEALTH AUTHORITIES]

#### Textual Amendments

**F586** By [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 59](#) (with [Sch. 2 para. 6](#)) it is provided (28.6.1995 for specified purposes and otherwise 1.4.1996) that [Sch. 5 Pt. I](#) shall be inserted

- <sup>F587</sup><sub>1</sub> A Health Authority shall consist of—
- (a) a chairman appointed by the Secretary of State;
  - (b) not more than a prescribed number of persons (not being officers of the Health Authority) appointed by the Secretary of State; and
  - (c) a prescribed number of officers of the Health Authority.

#### Textual Amendments

**F587** By [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 59](#) (with [Sch. 2 para. 6](#)) it is provided (28.6.1995 for specified purposes and otherwise 1.4.1996) that [Sch. 5 Pt. I](#) shall be inserted

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- F588**<sup>2</sup> Regulations may provide that all or any of the persons appointed as members of a Health Authority under paragraph 1(b) above—
- (a) must hold posts of a prescribed description; or
  - (b) must fulfil any other prescribed conditions.

**Textual Amendments**

**F588** By 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 59** (with **Sch. 2 para. 6**) it is provided (28.6.1995 for specified purposes and otherwise 1.4.1996) that Sch. 5 Pt. I shall be inserted

- F589**<sup>3</sup> Regulations shall provide that each of the persons who is a member of a Health Authority under paragraph 1(c) above must either—
- (a) hold an office of the Health Authority of a prescribed description; or
  - (b) be appointed by the chairman of the Health Authority and the persons appointed as members of the Health Authority under paragraph 1(b) above.

**Textual Amendments**

**F589** By 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 59** (with **Sch. 2 para. 6**) it is provided (28.6.1995 for specified purposes and otherwise 1.4.1996) that Sch. 5 Pt. I shall be inserted

- F590**<sup>4</sup> Regulations may provide for a person of a prescribed description who is not an officer of a Health Authority to be treated for the purposes of this Part of this Schedule, and any other prescribed provision relating to members of (or of committees or sub-committees of) Health Authorities, as if he were such an officer.

**Textual Amendments**

**F590** By 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 59** (with **Sch. 2 para. 6**) it is provided (28.6.1995 for specified purposes and otherwise 1.4.1996) that Sch. 5 Pt. I shall be inserted

VALID FROM 01/10/2002

- [**<sup>F586</sup>  
<sup>F591</sup>**4A** Paragraphs 1 to 4 above apply in relation to Health Authorities as they apply in relation to Strategic Health Authorities.**]**

**Textual Amendments**

**F591** **Sch 5 Pt. 1 para. 4A** inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 34(2)(c)**; S.I. 2002/2478, **art. 3(1)(c)**



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## [<sup>F592</sup>PART I

### MEMBERSHIP OF REGIONAL [<sup>F593</sup>AREA AND DISTRICT] HEALTH AUTHORITIES

#### Textual Amendments

**F592** Sch. 5 Pt. I repealed (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66(2), 67(2), **Sch. 10**

**F593** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1**, para. 78(1)(2)

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

**C106** Sch. 5 Pt. I: by s. 1(2) of the National Health Service and Community Care Act 1990 (c. 19, SIF 113:2) it is provided that Part I of Schedule 1 to that Act shall have effect in place of Part I of Schedule 5

#### *Regional Health Authorities*

- 1 (1) A Regional Health Authority shall consist of a chairman appointed by the Secretary of State, and of such number of other members appointed by him as he thinks fit.
- (2) Except in prescribed cases, it is the Secretary of State's duty, before he appoints a member of a Regional Health Authority other than the chairman, to consult with respect to the appointment—
- (a) such of the following bodies of which the areas or parts of them are within the region of the Authority, namely, county councils, metropolitan district councils, . . . <sup>F594</sup> London borough councils, and the Common Council of the City of London;
  - (b) the university or universities with which the provision of health services in that region is, or is to be, associated;
  - (c) such bodies as the Secretary of State may recognise as being, either in that region or generally, representative respectively of medical practitioners [<sup>F595</sup>including medical practitioners qualified in homoeopathy], dental practitioners, nurses, midwives, registered pharmacists and ophthalmic . . . <sup>F596</sup>opticians, or representative of such other professions as appear to him to be concerned;
  - (d) any federation of workers' organisations which appears to the Secretary of State to be concerned, and any voluntary organisation within the meaning of section 23 above and any other body which appear to him to be concerned; and
  - (e) in the case of an appointment of a member falling to be made after the establishment of the Regional Health Authority in question, that Authority.

#### Textual Amendments

**F594** Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102(2), **Sch. 17**

**F595** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), **s. 22**

**F596** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

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*Area Health Authorities*

- 2 (1) . . . <sup>F597</sup> an Area [<sup>F598</sup> or District] Health Authority for an area [<sup>F598</sup> or district] in England shall consist of the following members—
  - (a) a chairman appointed by the Secretary of State;
  - (b) the specified number of members appointed by the relevant Regional Authority after consultation (except in prescribed cases) with the bodies mentioned in sub-paragraph (2) below;
  - (c) the specified number of members appointed by the relevant Regional Authority on the nomination of the university or universities specified as being associated with the provision of health services in that Authority’s region; and
  - (d) the specified number (not less than four) of members appointed by the specified local authority or local authorities.
- (2) The bodies referred to in sub-paragraph (1)(b) above are—
  - (a) such bodies as the relevant Regional Authority may recognise as being, either in its region or in the area [<sup>F598</sup> or district] of the Area [<sup>F598</sup> or District] Health Authority or generally, representative respectively of medical practitioners, dental practitioners, nurses, midwives, registered pharmacists and ophthalmic . . . <sup>F599</sup> opticians, or representative of such other professions as appear to the relevant Regional Authority to be concerned;
  - (b) such other bodies (including any federation of workers’ organisations) as appear to the relevant Regional Authority to be concerned, excluding any university which has nominated, or is entitled to nominate, a member, and any local authority which has appointed, or is entitled to appoint, a member; and
  - (c) in the case of an appointment of a member falling to be made after the establishment of the Area [<sup>F598</sup> or District] Health Authority in question, that Authority.

**Textual Amendments**

**F597** Words repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 30, Sch. 10 Pt. I](#)

**F598** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\), Sch. 1, para. 78\(3\)](#)

**F599** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\), s. 24, Sch. 8 Pt. I](#)

- 3 Paragraph 2 above applies to an Area [<sup>F600</sup> or District] Health Authority for an area [<sup>F600</sup> or district] in Wales as if, for any reference to the relevant Regional Authority, there were substituted a reference to the Secretary of State, and for any reference to England or the region of that Authority there were substituted a reference to Wales.

**Textual Amendments**

**F600** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\), Sch. 1, para. 78\(4\)](#)

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### Textual Amendments

**F601** S. 9, Sch. 5 Pt. I para. 4, Sch. 8 paras. 1(2), 2(5), 3(2), repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 13, 30, **Sch. 10 Pt. I**

### Supplemental

- 5 (1) For the purposes of paragraphs 2 to 4 above—
- (a) “local authority” means the council of a non-metropolitan county, a metropolitan district, [<sup>F602</sup>a non-metropolitan district] and a London borough, . . . <sup>F603</sup>and the Common Council of the City of London;
  - (b) “the relevant Regional Authority” means the Regional Health Authority of which the region includes [<sup>F604</sup>the area or district of the Area or District] Health Authority in question; and
  - (c) “specified” means specified in the order establishing the Area [<sup>F602</sup>or District] Health Authority in question, . . . <sup>F605</sup>.
- (2) Where—
- (a) an order establishing an Area [<sup>F602</sup>or District] Health Authority, . . . <sup>F605</sup>, specifies more than one university in pursuance of paragraph 2(1)(c) above, the order may contain provision as to which of the universities shall (either severally or jointly) nominated all or any of the members falling to be nominated in pursuance of that provision;
  - (b) such an order specifies more than one local authority in pursuance of paragraph 2(1)(d) above, the order may provide for each of the local authorities to appoint in pursuance of paragraph 2(1)(d) the number of members specified in the order in relation to that local authority.]

### Textual Amendments

**F602** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1**, para. 78(6)

**F603** Words repealed by Education Reform Act 1988 (c. 40, SIF 41:1, 2), ss. 231(7), 235(6), 237(2), **Sch. 13 Pt. I**

**F604** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 78(6)**

**F605** Words repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 30, **Sch. 10 Pt. I**

## [<sup>F606</sup>[<sup>F607</sup>PART II

### FAMILY PRACTITIONER COMMITTEES

### Textual Amendments

**F606** Pt. II substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 12**.

**F607** Sch. 5 Pt. II repealed (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), 67(2), **Sch. 10**

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

**C107** Sch. 5 Pt. II: by s. 2(4)(6) of the [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), it is provided that Part II of Schedule 1 of that Act shall have effect in place of Part II of Schedule 5

**C108** Pt. II modified by [S.I. 1984/1735, art. 2\(1\)](#)

- 6 (1) Subject to paragraph 7 below, a Family Practitioner Committee shall consist of a chairman and 30 other members.
- (2) The chairman shall be appointed by the Secretary of State.
- (3) The other members shall be appointed by the Secretary of State, as follows—
- (a) 8 shall be appointed from persons nominated by the Local Medical Committee for the locality of the Family Practitioner Committee, and one of them must be, but not more than one of them shall be, a medical practitioner having the qualifications prescribed in pursuance of section 38 above;
  - (b) 3 shall be appointed from persons nominated by the Local Dental Committee for that locality;
  - (c) 2 shall be appointed from persons nominated by the Local Pharmaceutical Committee for that locality;
  - (d) 1 shall be an ophthalmic optician appointed from persons nominated by such members of the Local Optical Committee for that locality as are ophthalmic opticians;
  - [ 1 shall be appointed from persons nominated—
  - <sup>F608</sup>(e) (i) by the Local Medical Committee for the locality of the Family Practitioner Committee;
  - (ii) by the Local Dental Committee for that locality;
  - (iii) by the Local Pharmaceutical Committee for that locality; or
  - (iv) by the Local Optical Committee for that locality;]
  - (f) 4 shall be appointed from persons nominated by local authorities any part of whose area is in the locality of the Family Practitioner Committee;
  - (g) 4 shall be appointed from persons nominated by District Health Authorities any part of whose district is in the locality of the Family Practitioner Committee; and
  - (h) 7 shall be appointed after such consultations with such bodies as the Secretary of State considers appropriate.
- (4) One member must be a person who—
- (a) is registered in the register of qualified nurses, midwives and health visitors—
    - (i) as a nurse recorded in the register as having an additional qualification in district nursing;
    - (ii) as a midwife; or
    - (iii) as a health visitor; and
  - (b) has recent experience of providing services to patients (other than patients resident in hospital) in any such capacity.
- (5) If a nomination required for the purposes of sub-paragraph (3) above is not made before such date as the Secretary of State may determine, he may appoint a member without waiting any longer for the nomination.
- (6) No person—

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- (a) shall be nominated for appointment to a Family Practitioner Committee under sub-paragraph (3)(f) or (g) above or sub-paragraph (5) above; or
- (b) shall be appointed to such a Committee under sub-paragraph (3)(f), (g) or (h) above,

if he is—

- (i) a medical practitioner;
- (ii) a dental practitioner;
- (iii) an ophthalmic optician;
- (iv) ..... F609
- (v) a registered pharmacist; or
- (vi) a person conducting a business providing any service for the purposes of Part II of this Act.

- (7) If a Local Medical Committee so require, the Secretary of State shall appoint from among medical practitioners having the qualifications prescribed in pursuance of section 38 above and nominated by the Local Medical Committee under sub-paragraph (3)(a) above a medical practitioner to be the deputy of such a practitioner appointed from among persons nominated by them under sub-paragraph (3)(a) above.

[ If a Local Optical Committee so require, the Secretary of State shall appoint from F610 (8) among ophthalmic opticians nominated by the Committee under sub-paragraph (3) (d) above an ophthalmic optician to be the deputy of such an optician appointed from among persons nominated by them under sub-paragraph (3)(d) above.]

- (9) If a Local Optical Committee so require, the Secretary of State shall appoint from among dispensing opticians nominated by the Committee under sub-paragraph (3) (e) above a dispensing optician to be the deputy of such an optician appointed from among persons nominated by them under sub-paragraph (3)(e) above.

- (10) A deputy may, while the member for whom he is deputy is absent from any meeting of the relevant Family Practitioner Committee, act as a member of that Committee in the place of the absent member.

- (11) The Committee shall appoint one of their members to be vice-chairman.

#### Textual Amendments

**F608** Para. 6(3)(e) repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. 1](#) and substituted (1.7.1986) by virtue of para. 7A(2) below

**F609** Para. 6(5)(iv) repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. 1](#)

**F610** Para. 6(8) repealed (prosp.) by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), ss. 24, 27(1), [Sch. 8 Pt. 1](#)

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

**C109** Para. 6 modified by [S.I. 1985/66](#), [art. 2](#) and [S.I. 1985/303](#), [art. 2](#)

- 7 (1) If it appears to the Secretary of State that, by reason of special circumstances affecting a locality, it is appropriate that the Family Practitioner Committee for that locality should not be in accordance with paragraph 6 above, he may by order provide that that paragraph shall apply in relation to the Committee for that locality with such modifications as are specified in the order.

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- (2) Subject to sub-paragraph (3) below, it is the Secretary of State's duty, before he makes an order under sub-paragraph (1) above, to consult the Family Practitioner Committee for the locality and any District Health Authority any part of whose district is in the locality of the Family Practitioner Committee with respect to the order.
- (3) It shall also be his duty, in making any such order, to have regard to the desirability of maintaining, so far as practicable, the same numerical proportion as between members falling to be appointed in pursuance of paragraph 6 above as there would be if no modification were made.
- 7A (1) Any member of a Family Practitioner Committee appointed by virtue of paragraph 6(3)(e) above shall cease to be a member of the Committee on the day on which the repeal of that paragraph by section 24 of the Health and Social Security Act 1984 comes into force.
- (2) The following paragraph shall be substituted on that day for paragraph 6(3)(e) above—
- “(e) 1 shall be appointed from persons nominated—
- (i) by the Local Medical Committee for the locality of the Family Practitioner Committee;
- (ii) by the Local Dental Committee for that locality;
- (iii) by the Local Pharmaceutical Committee for that locality; or
- (iv) by the Local Optical Committee for that locality;”]

### PART III

#### SUPPLEMENTARY PROVISIONS

##### *Corporate status*

- 8 Each [<sup>F611</sup>Health Authority and each Special Health Authority] (hereinafter in this Schedule referred to severally as “an authority”) shall be a body corporate.

#### **Textual Amendments**

**F611** Words in *Sch. 1 Pt. III para. 8* substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), *Sch. 1 Pt. I para. 60(a)* (with *Sch. 2 para. 6*)

##### *Pay and allowances*

- 9 (1) The Secretary of State may pay to the chairman of an authority [<sup>F612</sup>and to any member of a relevant authority who is appointed by the Secretary of State <sup>F613</sup> . . . ] . . . <sup>F614</sup> such remuneration as he may determine with the approval of [<sup>F615</sup>the Treasury].

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- (2) The Secretary of State may provide as he may determine with the approval of [<sup>F616</sup>the Treasury] for the payment of a pension, allowance or gratuity to or in respect of the chairman of an authority . . . <sup>F614</sup>.
- (3) Where a person ceases to be chairman of an authority . . . <sup>F614</sup>, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make to him a payment of such amount as the Secretary of State may determine with the approval of [<sup>F617</sup>the Treasury].
- (4) The Secretary of State may pay to a member of an authority, or of a committee or sub-committee of [<sup>F618</sup>, or joint committee or joint sub-committee including.] an authority, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as he may determine with the approval of [<sup>F619</sup>the Treasury].
- (5) Allowances shall not be paid in pursuance of sub-paragraph (4) above except in connection with the exercise, in such circumstances as the Secretary of State may determine with the approval of [<sup>F619</sup>the Treasury], of such functions as he may so determine.
- (6) Payments under this paragraph shall be made at such times, and in such manner and subject to such conditions, as the Secretary of State may determine with the approval of [<sup>F620</sup>the Treasury].
- <sup>F621</sup>(7) In sub-paragraph (1) above “relevant authority” [<sup>F622</sup>means—
- (a) a Health Authority; or
  - (b) any Special Health Authority which is specified] in Schedule 1 to the Authorities for London Post-Graduate Teaching Hospitals (Establishment and Constitution) Order <sup>M73</sup>1982, in the Board of Governors of the Eastman Dental Hospital (Establishment and Constitution) Order <sup>M74</sup>1984 or in any other provision of an order under this Act which specifies an authority for the purposes of this sub-paragraph.]

### Textual Amendments

- F612** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 1(3), 2, **Sch. 1 para. 7**
- F613** Words in **Sch. 5 Pt. III para. 9(1)** omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8(1), **Sch. 1 Pt. I para. 60(b)(i)**, **Sch. 3** (with **Sch. 2 para. 6**)
- F614** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), ss. 5, 24, **Sch. 3 para. 13**, **Sch. 8 Pt. I**
- F615** Words substituted by virtue of S.I. 1981/1670, **arts. 2(2)**, 3(5)
- F616** Words substituted by virtue of S.I. 1981/1670, **arts. 2(1)(c)**, 3(5)
- F617** Words substituted by virtue of S.I. 1981/1670, **arts. 2(1)(d)**, 3(5)
- F618** Words in **Sch. 5 Pt. III para. 9(4)** inserted (1.9.1999 for E. and 1.12.1999 for W.) by 1999 c. 8, s. 65, **Sch. 4 para. 39(2)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2**
- F619** Words substituted by virtue of S.I. 1981/1670, **arts. 2(1)(d)(2)**, 3(5)
- F620** Words substituted by virtue of S.I. 1981/1670, **arts 2(1)(2)**, 3(5)
- F621** **Sch. 5 para. 9(7)** added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 1(3), 2, **Sch. 1 para. 7(2)**

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**F622** Words in **Sch. 5 Pt. III para. 9(7)** and sub-paras. (a)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 60(b)(ii)** (with **Sch. 2 para. 6**)

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

**C110** **Para. 9** modified by **Mental Health Act 1983 (c. 20, SIF 85), s. 121(11)**

**C111** **Sch. 5 para. 9(1)(4):** functions not to be exercised by a primary care trust (1.4.2000) by **S.I. 2000/695, reg. 4(1), Sch. 4**

**C112** **Sch. 5 para. 9(1)(4):** transfer of functions (E.) (1.4.2001) by **S.I. 2001/747, regs. 2(1), 3, 4, Sch. 1**

**Marginal Citations**

**M73** **S.I. 1982/314.**

**M74** **S.I. 1984/188.**

*Staff*

10<sup>[F623]</sup>(1) Subject to and in accordance with regulations and such directions as may be given by the Secretary of State, an authority . . . <sup>F624</sup> may employ such officers as it may determine at such remuneration and on such conditions of service as it may determine; and regulations and directions under] this sub-paragraph may contain provision—

- (a) with respect to the qualifications of persons who may be employed as officers of an authority;
- (b) requiring an authority to employ [<sup>F625</sup>a chief officer and officers of such other descriptions as may be prescribed and to employ], for the purpose of performing prescribed functions of the authority or any other body, officers having prescribed qualifications or experience; and
- (c) as to the manner in which any officers of an authority are to be appointed.

<sup>F626</sup>(1A) Regulations or directions under sub-paragraph (1) above may provide for approvals or determinations to have effect from a date specified in them [<sup>F627</sup>and a direction under that sub-paragraph may relate to a particular officer or class of officer specified in the direction].

(1B) The date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate.]

(2) Regulations may provide for the transfer of officers from one authority to another . . . <sup>F628</sup>, and for arrangements under which the services of an officer of an authority are placed at the disposal of another authority or a local authority.

<sup>F629</sup>(2A) Where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an order under [<sup>F630</sup>section 32 of the <sup>M75</sup>Dentists Act 1984] (interim suspension); or
- (b) by a direction or [<sup>F630</sup>an order of the Health Committee under] that Act (health cases),

the suspension shall not terminate any contract of employment made between him and an authority but a person whose registration is suspended under that Part of that Act shall not perform any duties under a contract made between him and an authority



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which involves the practice of dentistry within the meaning of <sup>F630</sup>the <sup>M76</sup>Dentists Act 1984.]]

- (3) Directions may be given—
- (a) by the Secretary of State to an authority to place services of any of its officers at the disposal of another authority,
  - <sup>F631</sup>(b) .....
  - (c) by the Secretary of State to any authority . . . <sup>F632</sup> to employ as an officer of the authority any person who is or was employed by another authority and is specified in the direction,
  - <sup>F631</sup>(d) .....
  - <sup>F633</sup> . . .
- (4) Regulations made in pursuance of this paragraph shall not require that all consultants employed by an authority are to be so employed whole-time.

#### Textual Amendments

- F623** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 14, Sch. 6 para. 3\(1\)](#)
- F624** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\), ss. 5, 24, Sch. 3 para. 14, Sch. 8 Pt. I](#)
- F625** Words in [Sch. 5 Pt. III para. 10\(1\)\(b\)](#) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), [Sch. 1 Pt. I para. 60\(c\)\(i\)](#) (with [Sch. 2 para. 6](#))
- F626** [Para. 10\(1A\)\(1B\)](#) inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 14, Sch. 6 para. 3\(2\)](#)
- F627** Words added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), ss. 1\(3\), 2, Sch. 1 para. 8](#)
- F628** Words repealed by [S.I. 1985/39, art. 7\(22\)\(a\)\(i\)](#)
- F629** [Para. 10\(2A\)](#) inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 15\(b\)](#)
- F630** Words substituted by [Dentists Act 1984 \(c. 24, SIF 83:1\), s. 54\(1\), Sch. 5 paras. 8, 10](#)
- F631** [Sch. 5 Pt. III para. 10\(3\)\(b\)\(d\)](#) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8(1), [Sch. 1 Pt. I para. 60\(c\)\(ii\)](#), [Sch. 3](#) (with [Sch. 2 para. 6](#))
- F632** Words repealed by [S.I. 1985/39, art. 7\(22\)\(a\)\(ii\)](#)
- F633** Words in [Sch. 5 Pt. III para. 10\(3\)](#) omitted (1.9.1999 for E., 1.12.1999 for W. and otherwise *prosp.*) and repealed (1.4.2000 for E.W. and otherwise *prosp.*) by 1999 c. 8, s. 65, [Sch. 4 para. 39\(3\)](#), [Sch. 5](#); [S.I. 1999/2342, art. 2\(1\)](#), [Sch. 1](#); [S.I. 1999/3184, art. 2\(2\)](#), [Sch. 2](#); [S.I. 2000/1041, art. 2\(d\)](#), [Sch.](#)

#### Marginal Citations

- M75** [1984 c. 24\(83:1\)](#).
- M76** [1984 c. 24\(83:1\)](#).

- 11 (1) It shall be the duty of the Secretary of State, before he makes regulations in pursuance of paragraph 10 above, to consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.
- (2) Subject to sub-paragraph (3) below, it is the Secretary of State's duty, <sup>F634</sup>. . . before he <sup>F634</sup>. . . gives directions to an authority in pursuance of sub-paragraph (3) of paragraph 10 above in respect of any officer of an authority—

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- (a) to consult the officer about the directions; or
  - (b) to satisfy himself . . . that the authority of which he is an officer has consulted the officer about the placing or employment in question; or
  - (c) to consult, except in the case of a direction in pursuance of paragraph (c) <sup>F634</sup> . . . of paragraph 10(3), with respect to the directions such body as he <sup>F634</sup> . . . may recognise as representing the officer.
- (3) If the Secretary of State <sup>F635</sup> . . . —
- (a) considers it necessary to give directions in pursuance of paragraph (a) <sup>F635</sup> . . . of paragraph 10(3) for the purpose of dealing temporarily with an emergency, and
  - (b) has previously consulted bodies recognised by him <sup>F635</sup> . . . as representing the relevant officers about the giving of directions for that purpose,
- the Secretary of State <sup>F635</sup> . . . shall be entitled to disregard sub-paragraph (2) above in relation to the directions.

#### Textual Amendments

**F634** Words in [Sch. 5 Pt. III para. 11\(2\)](#) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8(1), [Sch. 1 Pt. I para. 60\(d\)\(i\)](#), [Sch. 3](#) (with [Sch. 2 para. 6](#))

**F635** Words in [Sch. 5 Pt. III para. 11\(3\)](#) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8(1), [Sch. 1 Pt. I para. 60\(d\)\(ii\)](#), [Sch. 3](#) (with [Sch. 2 para. 6](#))

#### Miscellaneous

- 12 Provision may be made by regulations as to—
- (a) the appointment and tenure of office of the chairman [<sup>F636</sup>vice-chairman] and members of an authority [<sup>F637</sup>and any members of a committee or sub-committee of [<sup>F638</sup>, or joint committee or joint sub-committee including,] an authority who are not members of the authority];
  - <sup>F639</sup>(aa) the circumstances in which a member of an authority who is (or is to be regarded as) an officer of the authority may be suspended from performing his functions as a member]
  - (b) the appointment [<sup>F640</sup>and constitution] of <sup>F641</sup> . . . committees and sub-committees [<sup>F642</sup>(and joint committees and joint sub-committees) of (or including) an authority (including any such committees] consisting wholly or partly of persons who are not members of the authority in question); and
  - (c) the procedure of an authority, and of such committees and sub-committees as are mentioned in sub-paragraph (b) above.

#### Textual Amendments

**F636** Word inserted by [S.I. 1985/39](#), [art. 7\(22\)\(b\)](#)

**F637** Words added by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), ss. 1(3), 2, [Sch. 1 para. 9\(a\)](#)

**F638** Words in [Sch. 5 Pt. III para. 12\(a\)](#) inserted (1.9.1999 for E. and 1.12.1999 for W.) by 1999 c. 8, s. 65, [Sch. 4 para. 39\(4\)\(a\)](#); [S.I. 1999/2342](#), [art. 2\(1\)](#), [Sch. 1](#); [S.I. 1999/3184](#), [art. 2\(2\)](#), [Sch. 2](#)

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- F639** Sch. 5 para. 12(aa) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 1(3), 2, **Sch. 1 para. 9(b)**
- F640** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 1(3), 2, **Sch. 1 para. 9(c)**
- F641** Words in Sch. 5 Pt. III para. 12(b) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, 8(1), Sch. 1 Pt. I para. 60(e), **Sch. 3** (with Sch. 2 para. 6)
- F642** Words in Sch. 5 Pt. III para. 12(b) substituted (1.9.1999 for E., and 1.12.1999 for W.) by 1999 c. 8, s. 65, **Sch. 4 para. 39(4)(b)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2**

[<sup>F643</sup>12A Regulations made by virtue of this Schedule [<sup>F644</sup>may make provision (including provision modifying this Schedule)] to deal with cases where the post of chief officer or any other officer of an authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.]

#### Textual Amendments

- F643** Sch. 5 para. 12A inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 1(3), 2, **Sch. 1 para. 10**
- F644** Words in Sch. 5 Pt. III para. 12A substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 60(f)** (with Sch. 2 para. 6)

- 13 An authority may pay subscriptions, of such amounts as the Secretary of State may approve, to the funds of such bodies as he may approve.
- 14 The proceedings of an authority shall not be invalidated by any vacancy in its membership, or by any defect in a member's appointment.
- 15<sup>F645</sup>(1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by an authority of any function exercisable by them by virtue of section 16 or 16D above are enforceable by or (as the case may be) against that authority (and no other health service body).
- (1A) This paragraph does not apply in relation to the joint exercise of any functions by an authority with another body under section 16(2)(c) or (3)(b) above.]
- [<sup>F646</sup>(2) An authority shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the discovery or production of documents.
- This sub-paragraph shall not prejudice any right of the Crown to withhold or procure the withholding from production of any document on the ground that its disclosure would be contrary to the public interest.]
- <sup>F647</sup>(3) .....

#### Textual Amendments

- F645** Sch. 5 Pt. III para. 15(1)(1A) substituted (1.9.1999 for E. and 1.12.1999 for W.) for Sch. 5 Pt. III para. 15(1) by 1999 c. 8, s. 65, **Sch. 4 para. 39(5)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2**
- F646** Sch. 5 para. 15(2) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**
- F647** Sch. 5 Pt. III para. 15(3) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, 8(1), Sch. 1 Pt. I para. 60(g), **Sch. 3** (with Sch. 2 para. 6)

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- 16 Provision may be made by regulations with respect to the recording of information by an authority, and the furnishing of information by an authority to the Secretary of State or another authority.

## [<sup>F648</sup>SCHEDULE 5A

### PRIMARY CARE TRUSTS

#### Textual Amendments

**F648** Sch. 5A inserted (8.9.1999, 4.1.2000 and 1.4.2000 for specified purposes for E., and otherwise *prosp.*) by 1999 c. 8, s. 2(2), **Sch. 1**; S.I. 1999/2342, art. 2(2)(b)(3)(a)(4)(a), Schs. 1, 2, 3

### PART I

#### PCT ORDERS

- 1 (1) A PCT order shall specify—
- (a) the name of the trust, and
  - (b) the operational date of the trust.
- (2) The operational date of a Primary Care Trust is the date on which the functions exercisable by it may be undertaken fully by the trust.
- 2 (1) A PCT order may provide for the establishment of a Primary Care Trust with effect from a date earlier than the operational date.
- (2) During the period beginning with that earlier date and ending with the day immediately preceding the operational date (referred to in this Schedule as the preparatory period), the exercise of any functions by the trust shall be limited to such exercise as may be specified in the PCT order for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date.
- (3) A PCT order may require the Health Authority in whose area a Primary Care Trust is established to meet the costs of the trust performing its functions during the preparatory period by doing either or both of the following—
- (a) discharging such liabilities of the trust as may be incurred during the preparatory period and are of a description specified in the order,
  - (b) paying the trust sums to enable it to meet expenditure of a description specified in the order.
- (4) A PCT order may require the Health Authority in whose area a Primary Care Trust is established or an NHS trust to make available to the Primary Care Trust during the preparatory period—
- (a) premises and other facilities of the authority or NHS trust,
  - (b) officers of the authority,
  - (c) staff of the NHS trust.

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## PART II

### CONSTITUTION AND MEMBERSHIP

#### *Corporate status*

3 Every Primary Care Trust shall be a body corporate.

#### *Membership*

4 The members of a Primary Care Trust shall be—

- (a) a chairman appointed by the Secretary of State,
- (b) officers of the trust, and
- (c) a number of persons who are not officers of the trust.

5 (1) Regulations may make provision about—

- (a) the appointment of the chairman and other members of a Primary Care Trust (including any conditions to be fulfilled for appointment),
- (b) the tenure of office of the chairman and other members of a trust (including the circumstances in which they cease to hold office or may be removed or suspended from office),
- (c) how many persons may be appointed as members of a trust and how many of those members may be officers (a minimum and maximum number may be specified for both purposes),
- (d) the appointment and constitution of any committees of a trust (which may include or consist of persons who are not members of the trust),
- (e) the appointment and tenure of office of the members of any committees of a trust,
- (f) the procedure to be followed by a trust, and by any committee of the trust, in the exercise of its functions,
- (g) the circumstances in which a person who is not an officer of the trust is to be treated as if he were such an officer.

(2) The power to make provision under paragraphs (c) and (f) of sub-paragraph (1) above includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period.

(3) Any regulations under this paragraph may, in particular, make provision to deal with cases where the post of any officer of a Primary Care Trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

6 Any reference in this Part of this Schedule to a committee of a Primary Care Trust includes a reference to sub-committees of, and joint committees and joint sub-committees including, the trust.

7 The validity of any proceedings of a Primary Care Trust, or of any of its committees, shall not be affected by any vacancy among the members or by any defect in the appointment of any member.

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### Staff

- 8 A Primary Care Trust may employ officers, and on such terms and conditions, as it thinks fit.
- 9 (1) Without prejudice to the generality of section 17 above the Secretary of State may direct a Primary Care Trust—
- (a) to make the services of any of its officers available to another Primary Care Trust, or
  - (b) to employ any person who is or was employed by another Primary Care Trust and is specified in the direction.
- (2) Before he gives a direction under sub-paragraph (1) above the Secretary of State shall—
- (a) consult the person whose services are to be made available or who is to be employed,
  - (b) satisfy himself that the trust has consulted that person, or
  - (c) consult such body as he may recognise as representing that person.
- (3) Sub-paragraph (2) above does not apply in relation to a direction under sub-paragraph (1)(a) above if the Secretary of State—
- (a) considers it necessary to give the direction for the purpose of dealing temporarily with an emergency, and
  - (b) has previously consulted bodies recognised by him as representing the person whose services are to be made available about the giving of directions for that purpose.
- 10 In addition to making provision in relation to Health Authorities and Special Health Authorities, regulations under paragraph 10(2) of Schedule 5 to this Act may also provide—
- (a) for the transfer of officers from one Primary Care Trust to another, and
  - (b) for arrangements under which the services of officers of a Primary Care Trust are placed at the disposal of another Primary Care Trust or a local authority.

VALID FROM 01/10/2002

- [  
F649] 10A Where the registration of a dentist in the dentist's register is suspended—
- (a) by an order under section 32 of the Dentists Act 1984 (interim suspension); or
  - (b) by a direction or order of the Health Committee under that Act (health cases),
- the suspension shall not terminate any contract of employment made between him and a Primary Care Trust, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Primary Care Trust which involves the practice of dentistry within the meaning of that Act.]

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### Textual Amendments

**F649** Sch. 5A para. 10A inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 2(5), 42(3), Sch. 2 Pt. 1 para. 37; S.I. 2002/2478, art. 3(1)(d)

### *Remuneration, pensions etc*

- 11 (1) A Primary Care Trust may pay the chairman and any other members of the trust such remuneration and such travelling and other allowances as may be determined by the Secretary of State.
- (2) A trust may pay its officers such remuneration and allowances as it may determine.
- (3) A trust may pay the chairman or any person who has been chairman of the trust such pension, allowance or gratuity as may be determined by the Secretary of State.
- (4) A trust may pay the members of any committee of a trust such travelling and other allowances as may be determined by the Secretary of State.
- (5) If, when a person ceases to be chairman of a trust, the Secretary of State determines that there are special circumstances which make it right that that person should receive compensation, the trust shall pay to him a sum by way of compensation of such amount as the Secretary of State may determine.

## PART III

### POWERS AND DUTIES

#### *General powers*

- 12 (1) A Primary Care Trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its functions.
- (2) That includes, in particular—
- (a) acquiring and disposing of land and other property,
  - (b) entering into contracts,
  - (c) accepting gifts of money, land and other property, including money, land or other property held on trust, either for the general or any specific purposes of the Primary Care Trust or for all or any purposes relating to the health service.
- 13 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Primary Care Trust of any function exercisable by it by virtue of section 16B or 17A above are enforceable by or (as the case may be) against that trust (and no other health service body).
- (2) This paragraph does not apply in relation to the joint exercise of any functions by a Primary Care Trust with another body under section 16B(2)(c) above.

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### *Specific powers*

- 14 (1) A Primary Care Trust may conduct, commission or assist the conduct of research.
- (2) A trust may, in particular, make officers available or provide facilities under subparagraph (1) above.
- 15 A Primary Care Trust may—
- (a) make officers available in connection with any instruction provided under section 63 of the <sup>M77</sup>Health Services and Public Health Act 1968,
  - (b) make officers and facilities available in connection with training by a university or any other body providing training in connection with the health service.

#### **Marginal Citations**

**M77** 1968 c.46.

### *Specific duties*

- 16 (1) As soon as is practicable after the end of each financial year every Primary Care Trust shall prepare a report on the trust's activities during that year and shall send a copy of the report to the Health Authority within whose area the trust's area falls and to the Secretary of State.
- (2) The report shall give details of the measures the trust has taken to promote economy, efficiency and effectiveness in using its resources for the exercise of its functions.
- (3) A Primary Care Trust shall prepare and send such other reports, and supply such information, to the Health Authority within whose area the trust's area falls or to the Secretary of State as they or, as the case may be, he require.
- 17 Provision must be made by regulations requiring Primary Care Trusts to publicise—
- (a) the trust's audited accounts,
  - (b) the trust's annual reports prepared under paragraph 16 above,
  - (c) any report on the trust's accounts made pursuant to section 8 of the <sup>M78</sup>Audit Commission Act 1998 (report of auditor on matter of public interest), and
  - (d) any other document as may be prescribed,
- by taking such steps as may be specified in the regulations.

#### **Marginal Citations**

**M78** 1998 c.18.

### *Status*

- 18 A Primary Care Trust is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and a Primary Care Trust's property is not to be regarded as property of, or property held on behalf of, the Crown.



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### *Compulsory acquisition*

- 19 (1) A Primary Care Trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the trust and confirmed by the Secretary of State.
- (2) The <sup>M79</sup>Acquisition of Land Act 1981 applies to the compulsory purchase of land under this paragraph.
- (3) No order is to be made by a Primary Care Trust under Part II of the Acquisition of Land Act 1981 in respect of any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the Secretary of State in the form, and with the information, required by him, and
  - (b) has been approved by him.

#### **Marginal Citations**

**M79** 1981 c.67.

### *Dissolution*

- 20 (1) The Secretary of State may, if a Primary Care Trust is dissolved, by order transfer (or provide for the transfer) to himself or to a Health Authority, a Special Health Authority, an NHS trust or another Primary Care Trust any property, rights or liabilities of the dissolved trust.
- (2) If any consultation requirements apply, they must be complied with before the order is made.
- (3) In this paragraph, “consultation requirements” means requirements about consultation contained in regulations.

## **PART IV**

### **TRANSFER OF PROPERTY**

- 21 (1) The Secretary of State may by order (referred to in this paragraph and paragraph 22 below as a transfer order)—
- (a) transfer (or provide for the transfer of) any of the property, rights and liabilities of a health service authority to a Primary Care Trust,
  - (b) create or impose (or provide for the creation or imposition of) new rights or liabilities in respect of property transferred or retained.
- (2) Any property, rights and liabilities which—
- (a) belong to a health service authority other than the Secretary of State or are used or managed by a Health Authority, and
  - (b) are to be transferred to a Primary Care Trust by or under a transfer order,

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must be identified by agreement between the health service authority (or Health Authority) and the Primary Care Trust or, in default of agreement, by direction of the Secretary of State.

- (3) Where a transfer order transfers (or provides for the transfer of)—
- (a) land held on lease from a third party, or
  - (b) any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer is binding on the third party despite the fact that, apart from this sub-paragraph, the transfer would have required the third party's consent or concurrence.
- (4) In sub-paragraph (3) above, “third party” means a person other than a health service authority.
- (5) In this paragraph and paragraph 22 below, “health service authority” means the Secretary of State, a Health Authority, a Primary Care Trust or an NHS trust.
- 22 (1) Stamp duty is not chargeable in respect of any transfer to a Primary Care Trust effected by or under a transfer order.
- (2) Where it becomes necessary, for the purpose of a transfer by or under a transfer order, to apportion any property, rights or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose.
- (3) Where a transfer order transfers (or provides for the transfer of) any property or rights to which paragraph 21(3) above applies, the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties (within the meaning of that sub-paragraph), including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (4) A certificate issued by the Secretary of State that—
- (a) any specified property,
  - (b) any specified interest in or right over any property, or
  - (c) any specified right or liability,
- has been vested in a Primary Care Trust by or under a transfer order is conclusive evidence of that fact for all purposes.
- In this sub-paragraph, “specified” means specified in the certificate.
- (5) A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (6) Paragraph 21 above and this paragraph do not prejudice—
- (a) any existing power of a health service authority to transfer property, rights or liabilities to a Primary Care Trust,
  - (b) the extent of the power conferred by section 126(4) above.

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## PART V

### TRANSFER OF STAFF

- 23 (1) The Secretary of State may by order transfer to a Primary Care Trust any specified description of employees to which this paragraph applies.
- (2) This paragraph applies to employees of—
- (a) a Health Authority,
  - (b) an NHS trust,
  - (c) a Primary Care Trust.
- (3) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.
- 24 (1) The contract of employment of an employee transferred under paragraph 23 above—
- (a) is not terminated by the transfer, and
  - (b) has effect from the date of the transfer as if originally made between the employee and the Primary Care Trust to which he is transferred.
- (2) Without prejudice to sub-paragraph (1) above—
- (a) all the rights, powers, duties and liabilities of the body from which an employee is transferred under paragraph 23 above under or in connection with his contract of employment shall by virtue of this sub-paragraph be transferred to the Primary Care Trust to which the employee is transferred under that paragraph, and
  - (b) anything done before the date of the transfer by or in relation to the body from which he is so transferred in respect of the employee or the contract of employment shall be deemed from that date to have been done by or in relation to the Primary Care Trust to which he is transferred.
- (3) Sub-paragraphs (1) and (2) above do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the body from which they would be transferred, or the Primary Care Trust to which they would be transferred, that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3) above his contract of employment with the body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur; but he shall not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph is without prejudice to any right of an employee to which paragraph 23 above applies to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- 25 (1) Where an employee is to be transferred by an order under paragraph 23 above but is to continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee shall, on the date on which the employee is transferred, be divided so as to constitute two separate contracts

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of employment between the employee and the transferor and the employee and the Primary Care Trust in question.

- (2) Where an employee's contract of employment is divided as provided under subparagraph (1) above, the order shall provide for paragraph 24 above to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 26 Where a Primary Care Trust is dissolved, an order under paragraph 20 above includes power to transfer employees of the trust and the order may make any provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under paragraph 23 above.]

VALID FROM 10/10/2002

## [<sup>F650</sup>SCHEDULE 5B

### LOCAL HEALTH BOARDS

#### Textual Amendments

**F650** Sch. 5B inserted (10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss 6(2), 42(3), **Sch. 4**; S.I. 2002/2532, **art. 2** Sch.

#### PART 1

##### LHB ORDERS

- 1 (1) An LHB order shall specify—
- (a) the name of the Board; and
  - (b) the operational date of the Board.
- (2) The operational date of a Local Health Board is the date on which functions exercisable by it may first be undertaken fully by the Board.
- 2 (1) An LHB order may provide for the establishment of a Local Health Board with effect from a date earlier than the operational date.
- (2) During the period beginning with that earlier date and ending with the day immediately preceding the operational date (referred to in this Schedule as the preparatory period), the exercise of any functions by the Board shall be limited to such exercise as may be specified in the LHB order for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date.
- (3) Sub-paragraphs (4) and (5) below apply for so long as there is a Health Authority for any part of the area of Wales specified in a particular LHB order.
- (4) That LHB order may require such a Health Authority to meet the costs of the Board performing its functions during the preparatory period by doing either or both of the following—

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- (a) discharging such liabilities of the Board as may be incurred during the preparatory period and are of a description specified in the order;
  - (b) paying the Board sums to enable it to meet expenditure of a description specified in the order.
- (5) An LHB order may require such a Health Authority or an NHS trust in Wales to make available to the Local Health Board during the preparatory period—
- (a) premises and other facilities of the authority or NHS trust;
  - (b) officers of the authority;
  - (c) staff of the NHS trust.

## PART 2

### STATUS, CONSTITUTION AND MEMBERSHIP

#### *Status*

- 3 A Local Health Board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and a Local Health Board's property is not to be regarded as property of, or property held on behalf of, the Crown.
- 4 Every Local Health Board shall be a body corporate.

#### *Membership*

- 5 The members of a Local Health Board shall be—
- (a) a chairman appointed by the National Assembly for Wales;
  - (b) if the Assembly thinks fit, a vice-chairman appointed by the Assembly;
  - (c) officers of the Board; and
  - (d) a number of persons who are not officers of the Board.
- 6 (1) The National Assembly for Wales may by regulations make provision about—
- (a) the appointment of the chairman, vice-chairman and other members of a Local Health Board (including any conditions to be fulfilled for appointment);
  - (b) the tenure of office of the chairman, vice-chairman and other members of a Local Health Board (including the circumstances in which they cease to hold office or may be removed or suspended from office);
  - (c) how many persons may be appointed as members of a Local Health Board and how many of those members may be officers (a minimum and maximum number may be specified for both purposes);
  - (d) the appointment and constitution of any committees of a Local Health Board (which may include or consist of persons who are not members of the Board);
  - (e) the appointment and tenure of office of the members of any committees of a Local Health Board;
  - (f) the procedure to be followed by a Local Health Board, and by any committee of the Board, in the exercise of its functions;

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- (g) the circumstances in which a person who is not an officer of the Local Health Board is to be treated as if he were such an officer.
- (2) The power to make provision under paragraphs (c) and (f) of sub-paragraph (1) above includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period.
- (3) Any regulations under this paragraph may, in particular, make provision to deal with cases where the post of any officer of a Local Health Board is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- 7 Any reference in this Part of this Schedule to a committee of a Local Health Board includes a reference to sub-committees of, and joint committees and joint sub-committees including, the Board.
- 8 The validity of proceedings of a Local Health Board, or of any of its committees, shall not be affected by any vacancy among the members or by any defect in the appointment of any member.
- Staff*
- 9 (1) A Local Health Board may employ such officers as it thinks fit.
- (2) Subject to sub-paragraph (3) below, a Board may—
- (a) pay its officers such remuneration and allowances; and
  - (b) employ them on such other terms and conditions, as it thinks fit.
- (3) A Board shall—
- (a) in exercising its powers under sub-paragraph (2) above; and
  - (b) otherwise in connection with the employment of its officers,
- act in accordance with regulations made by the National Assembly for Wales and any directions given by the Assembly.
- (4) Before making any regulations under sub-paragraph (3) above, the Assembly shall consult such bodies as it may recognise as representing persons who, in its opinion, are likely to be affected by the regulations.
- 10 (1) Without prejudice to the generality of section 16BB above the National Assembly for Wales may direct a Local Health Board—
- (a) to make the services of any of its officers available to another Local Health Board; or
  - (b) to employ any person who is or was employed by another Local Health Board and is specified in the direction.
- (2) Before it gives a direction under sub-paragraph (1) above the Assembly shall—
- (a) consult the person whose services are to be made available or who is to be employed;
  - (b) satisfy itself that the Board has consulted that person; or
  - (c) consult any such body as the Assembly may recognise as representing that person.

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- (3) Sub-paragraph (2) above does not apply in relation to a direction under sub-paragraph (1)(a) above if the Assembly—
- (a) considers it necessary to give the direction for the purpose of dealing temporarily with an emergency; and
  - (b) has previously consulted bodies recognised by the Assembly as representing the person whose services are to be made available about the giving of directions for that purpose.
- 11 In addition to making provision in relation to Strategic Health Authorities, Health Authorities and Special Health Authorities, regulations under paragraph 10(2) of Schedule 5 to this Act may also provide—
- (a) for the transfer of officers of one Local Health Board to another; and
  - (b) for arrangements under which the officers of a Local Health Board are placed at the disposal of another Local Health Board or a local authority.

#### *Remuneration, pensions etc of members*

- 12 (1) A Local Health Board may pay the chairman, the vice-chairman (if any) and any other members of the Board such remuneration and such travelling and other allowances as may be determined by the National Assembly for Wales.
- (2) A Board may pay the chairman or any person who has been chairman of the Board such pension, allowance or gratuity as may be determined by the National Assembly for Wales.
- (3) A Board may pay the members of any committee of a Board such travelling and other allowances as may be determined by the National Assembly for Wales.
- (4) If, when a person ceases to be chairman of a Board, the National Assembly for Wales determines that there are special circumstances which make it right that that person should receive compensation, the Board shall pay to him a sum by way of compensation of such amount as the Assembly may determine.

### **PART 3**

#### **OTHER MATTERS**

#### *General powers*

- 13 (1) Subject to sub-paragraph (3), a Local Health Board may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its functions.
- (2) That includes, in particular—
- (a) acquiring and disposing of land and other property;
  - (b) entering into contracts;
  - (c) accepting gifts of money, land and other property, including money, land or other property held on trust, either for the general or any specific purposes of the Local Health Board or for all or any purposes relating to the health service.

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- (3) A Local Health Board may not do anything mentioned in sub-paragraph (2) without the consent of the Assembly (which may, if the Assembly thinks fit, be given in general terms covering one or more descriptions of case).
- 14 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Local Health Board of any function exercisable by it by virtue of section 16BB or 16BC above are enforceable by or (as the case may be) against that Board (and not against any other health service body or the National Assembly for Wales).
- (2) This paragraph does not apply in relation to the joint exercise of any functions by a Local Health Board with another body under section 16BC(2)(c) above.

#### *Specific powers and duties*

- 15 (1) A Local Health Board may conduct, commission or assist the conduct of research.
- (2) A Board may, in particular, make officers available or provide facilities under sub-paragraph (1) above.
- 16 A Local Health Board may—
- (a) make officers available in connection with any instruction provided under section 63 of the Health Services and Public Health Act 1968;
  - (b) make officers and facilities available in connection with training by a university or any other body providing training in connection with the health service.
- 17 The National Assembly for Wales may by regulations make provision in relation to—
- (a) reports to be prepared by Local Health Boards;
  - (b) information to be supplied by them;
  - (c) their accounts, and the audit and publication of their accounts;
  - (d) the publication of any other document.

#### *Compulsory acquisition*

- 18 (1) A Local Health Board may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the Board and confirmed by the National Assembly for Wales.
- (2) The Acquisition of Land Act 1981 applies to the compulsory purchase of land under this paragraph.
- (3) No order is to be made by a Local Health Board under Part 2 of the Acquisition of Land Act 1981 in respect of any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the National Assembly for Wales in the form, and with the information, required by the Assembly; and
  - (b) has been approved by the Assembly.



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### *Dissolution*

- 19 (1) The National Assembly for Wales may, if a Local Health Board is dissolved, by order transfer (or provide for the transfer) to itself or to another Local Health Board any property, rights or liabilities of the dissolved Board.
- (2) If any consultation requirements apply, they must be complied with before the order is made.
- (3) In this paragraph, “consultation requirements” means requirements about consultation contained in regulations made by the Assembly.

### *Transfer of property*

- 20 (1) The National Assembly for Wales may by order (referred to in this paragraph and paragraph 21 below as a transfer order)—
- (a) transfer (or provide for the transfer of) any of the property, rights and liabilities of a health service authority to a Local Health Board;
  - (b) create or impose (or provide for the creation or imposition of) new rights or liabilities in respect of property transferred or retained.
- (2) Any property, rights and liabilities which—
- (a) belong to a health service authority other than the National Assembly for Wales or are used or managed by a Health Authority; and
  - (b) are to be transferred to a Local Health Board by or under a transfer order, must be identified by agreement between the health service authority (or Health Authority) and the Local Health Board or, in default of agreement, by direction of the Assembly.
- (3) Where a transfer order transfers (or provides for the transfer of)—
- (a) land held on lease from a third party; or
  - (b) any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer is binding on the third party despite the fact that, apart from this sub-paragraph, the transfer would have required the third party’s consent or concurrence.
- (4) In sub-paragraph (3) above, “third party” means a person other than a health service authority.
- (5) In this paragraph and paragraph 21 below, “health service authority” means the National Assembly for Wales, a Health Authority, a Local Health Board or an NHS trust in Wales.
- 21 (1) Stamp duty is not chargeable in respect of any transfer to a Local Health Board effected by or under a transfer order.
- (2) Where it becomes necessary, for the purpose of a transfer by or under a transfer order, to apportion any property, rights or liabilities, the order may contain such provisions as appear to the National Assembly for Wales to be appropriate for the purpose.
- (3) Where a transfer order transfers (or provides for the transfer of) any property or rights to which paragraph 20(3) above applies, the order must contain such provisions as appear to the National Assembly for Wales to be appropriate to

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safeguard the interests of third parties (within the meaning of that sub-paragraph), including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

- (4) A certificate issued by the National Assembly for Wales that—
- (a) any specified property;
  - (b) any specified interest in or right over any property; or
  - (c) any specified right or liability,
- has been vested in a Local Health Board by or under a transfer order is conclusive evidence of that fact for all purposes.
- In this sub-paragraph, “specified” means specified in the certificate.
- (5) A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (6) Paragraph 20 above and this paragraph do not prejudice—
- (a) any existing power of a health service authority to transfer property, rights or liabilities to a Local Health Board;
  - (b) the extent of the power conferred by section 126(4) above.

#### *Transfer of staff*

- 22 (1) The National Assembly for Wales may by order transfer to a Local Health Board any specified description of employees to which this paragraph applies.
- (2) This paragraph applies to employees of—
- (a) a Health Authority;
  - (b) an NHS trust in Wales;
  - (c) a Local Health Board.
- (3) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.
- 23 (1) The contract of employment of an employee transferred under paragraph 22 above—
- (a) is not terminated by the transfer; and
  - (b) has effect from the date of the transfer as if originally made between the employee and the Local Health Board to which he is transferred.
- (2) Without prejudice to sub-paragraph (1) above—
- (a) all the rights, powers, duties and liabilities of the body from which an employee is transferred under paragraph 22 above under or in connection with his contract of employment shall by virtue of this sub-paragraph be transferred to the Local Health Board to which the employee is transferred under that paragraph; and
  - (b) anything done before the date of the transfer by or in relation to the body from which he is so transferred in respect of the employee or the contract of employment shall be deemed from that date to have been done by or in relation to the Local Health Board to which he is transferred.
- (3) Sub-paragraphs (1) and (2) above do not transfer an employee’s contract of employment, or the rights, powers, duties and liabilities under or in connection with

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- it, if he informs the body from which they would be transferred, or the Local Health Board to which they would be transferred, that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3) above his contract of employment with the body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur; but he shall not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph is without prejudice to any right of an employee to which paragraph 22 above applies to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise merely because, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- 24 (1) Where an employee is to be transferred by an order under paragraph 22 above but is to continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee shall, on the date on which the employee is transferred, be divided so as to constitute two separate contracts of employment between the employee and the transferor and the employee and the Local Health Board in question.
- (2) Where an employee's contract of employment is divided as provided under sub-paragraph (1) above, the order shall provide for paragraph 23 above to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 25 Where a Local Health Board is dissolved, an order under paragraph 19 above includes power to transfer employees of the Board and the order may make any provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under paragraph 22 above.
- Interpretation*
- 26 In this Schedule, "NHS trust in Wales" means an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales.]

## SCHEDULE 6

### ADDITIONAL PROVISIONS AS TO [F651 ADVISORY COMMITTEES FOR WALES]

#### Textual Amendments

**F651** Sch. 6: words in heading substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. 1 para. 61(e) (with Sch. 2 para. 6)

- 1 (1) Where the Secretary of State is satisfied that a committee formed for Wales <sup>F652</sup> . . . is representative of—
- (a) any category of persons (other than a category mentioned in section 19(1) above) who provide services forming part of the health service, or

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(b) two or more of any of the categories mentioned in that subsection and paragraph (a) above,

and that it is in the interests of the health service to recognise the committee, it shall be his duty to recognise it in pursuance of this sub-paragraph, and to determine that it shall be known by a name specified in the determination.

(2) Where a committee recognised in pursuance of sub-paragraph (1) above appears to the Secretary of State to represent categories of persons which include a category mentioned in section 19(1), he shall not be required by virtue of that subsection to recognise a committee representing persons of that category.

**Textual Amendments**

**F652** Words in [Sch. 6 para. 1\(1\)](#) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 5, 8\(1\), Sch. 1 Pt. 1 para. 61\(a\), Sch. 3](#) (with [Sch. 2 para. 6](#))

2 The Secretary of State may, by notice in writing served on any member of a duly recognised committee, withdraw his recognition of the committee if he considers it expedient to do so—

(a) where the committee is recognised in pursuance of section 19(1) <sup>F653</sup> . . . above or paragraph 1(1)(a) above, with a view to recognising in pursuance of paragraph 1(1)(b) another committee representing categories of persons, which include the category represented by the recognised committee; or

(b) where the committee is recognised in pursuance of paragraph 1(1)(b), with a view to recognising in pursuance of any of the provisions of section 19 and paragraph 1 other committees which together are representative of the categories in question.

**Textual Amendments**

**F653** Words in [Sch. 6 para. 2](#) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 5, 8\(1\), Sch. 1 Pt. 1 para. 61\(b\), Sch. 3](#) (with [Sch. 2 para. 6](#))

3 It is the duty of any duly recognised committee for Wales—

(a) to advise the Secretary of State on the provision by him of services of a kind provided by the categories of persons of whom the committee is representative, and

(b) to perform such other functions as may be prescribed.

<sup>F654</sup> . . . . .

**Textual Amendments**

**F654** [Sch. 6 para. 4](#) omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 5, 8\(1\), Sch. 1 Pt. 1 para. 61\(c\), Sch. 3](#) (with [Sch. 2 para. 6](#))

5 [<sup>F655</sup>The Secretary of State] may defray such expenses incurred by a committee in performing the duty imposed on the committee by [<sup>F656</sup>paragraph 3] above as [<sup>F657</sup>the Secretary of State] considers reasonable, and those expenses may include travelling

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and other allowances and compensation for loss of remunerative time at such rates as the Secretary of State may determine with the approval of [<sup>F658</sup>the Treasury].

F659 . . .

#### Textual Amendments

- F655** Words in Sch. 6 para. 5 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 61(d)(i) (with Sch. 2 para. 6)
- F656** Words in Sch. 6 para. 5 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 61(d)(ii) (with Sch. 2 para. 6)
- F657** Words in Sch. 6 para. 5 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 61(d)(iii) (with Sch. 2 para. 6)
- F658** Words substituted by virtue of S.I. 1981/1670, arts. 2, 3(5)
- F659** Sch. 6 para. 5: the second sentence is omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, 8(1), Sch. 1 Pt. I para. 61(d)(iv), Sch. 3 (with Sch. 2 para. 6)

## SCHEDULE 7

### ADDITIONAL PROVISIONS AS TO COMMUNITY HEALTH COUNCILS

- 1 It is the duty of a Community Health Council (in this Schedule referred to as a “Council”)—
- (a) to represent the interests in the health service of the public in its district; and
  - (b) to perform such other functions as may be conferred on it by virtue of paragraph 2 below.
- 2 Regulations may provide as to—
- (a) the membership of Councils (including the election by members of a Council of a chairman of the Council);
  - (b) the proceedings of Councils;
  - (c) the staff, premises and expenses of Councils;
  - [<sup>F660</sup>(d) the consultation of Councils by [<sup>F661</sup>Health Authorities [<sup>F662</sup>Primary Care Trusts] and NHS trusts] with respect to such matters, and on such occasions, as may be prescribed;
  - (e) the furnishing of information to Councils by [<sup>F663</sup>[<sup>F664</sup>Health Authorities [<sup>F662</sup>Primary Care Trusts] and NHS trusts], and the right of members of Councils to enter and inspect premises controlled by [<sup>F665</sup>Health Authorities] or NHS trusts];
  - (f) the consideration by Councils of matters relating to the operation of the health service within their districts, and the giving of advice by Councils to [<sup>F666</sup>Health Authorities][<sup>F667</sup>and Primary Care Trusts] on such matters;
  - (g) the preparation and publication of reports by Councils on such matters, and the furnishing and publication by [<sup>F666</sup>Health Authorities][<sup>F667</sup>and Primary Care Trusts] of comments on the reports; and]

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- (h) the functions to be exercised by Councils in addition to the functions exercisable by them by virtue of paragraph 1(a) above and the preceding provisions of this paragraph.

#### Textual Amendments

- F660** Paras. (d)-(g) substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 5(4), [Sch. 3 para. 15](#)
- F661** Words in [Sch. 7 para. 2\(d\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 62\(a\)\(i\)](#) (with [Sch. 2 para. 6](#))
- F662** Words in [Sch. 7 para. 2\(d\)\(e\)](#) inserted (4.1.2000 for E. and otherwise *prosp.*) by [1999 c. 8, s. 65](#), [Sch. 4 para. 40\(a\)](#); S.I. 1999/2342, art. 2(3), [Sch. 2](#)
- F663** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 18\(13\)\(b\)](#)
- F664** Words in [Sch. 7 para. 2\(e\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 62\(a\)\(ii\)](#) (with [Sch. 2 para. 6](#))
- F665** Words in [Sch. 7 para. 2\(e\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 62\(a\)\(ii\)](#) (with [Sch. 2 para. 6](#))
- F666** Words in [Sch. 7 para. 2\(f\)\(g\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 62\(a\)\(iii\)\(iv\)](#) (with [Sch. 2 para. 6](#))
- F667** Words in [Sch. 7 para. 2\(f\)\(g\)](#) inserted (4.1.2000 for E. and otherwise *prosp.*) by [1999 c. 8, s. 65](#), [Sch. 4 para. 40\(b\)](#); S.I. 1999/2342, art. 2(3), [Sch. 2](#)

- 3 It is the Secretary of State's duty to exercise his power to make regulations in pursuance of paragraph 2(a) above so as to secure as respects each Council that—
- (a) at least one member of the Council is appointed by each local authority of which the area or part of it is included in the Council's district, and at least half of the members of the Council consist of persons appointed by those local authorities;
  - (b) at least one third of the members are appointed in a prescribed manner by bodies (other than public or local authorities) of which the activities are carried on otherwise than for profit;
  - (c) the other members of the Council are appointed by such bodies, and in such manner and after such consultations as may be prescribed; and
  - (d) no member of the Council is also a member of a [<sup>F668</sup>Health Authority].

#### Textual Amendments

- F668** Words in [Sch. 7 para. 3\(d\)](#) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 62\(b\)](#) (with [Sch. 2 para. 6](#))

- 4 Nothing in paragraph 3 above affects the validity of anything done by or in relation to a Council during any period during which, by reason of a vacancy in the membership of the Council or a defect in the appointment of a member of it, a requirement included in regulations in pursuance of that paragraph is not satisfied.
- 5 The Secretary of State may by regulations—
- (a) provide for the establishment of a body—
    - (i) to advise Councils with respect to the performance of their functions, and to assist Councils in the performance of their functions; and

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- (ii) to perform such other functions as may be prescribed; and
- (b) provide for the membership, proceedings, staff, premises and expenses of that body.
- 6 The Secretary of State may pay to members of Councils and any body established under paragraph 5 above such travelling and other allowances (including compensation for loss of remunerative time) as he may determine with the consent of [<sup>F669</sup>the Treasury].

#### Textual Amendments

**F669** Words substituted by virtue of S.I. 1981/1670, arts. 2, 3(5)

- 7 In this Schedule—
- “local authority” means the council of a London borough, or of a county or district as defined in relation to England in section 270(1) of the <sup>M80</sup>Local Government Act 1972, or [<sup>F670</sup>the council of a Welsh county or county borough] or the Common Council of the City of London, and
- “district”, in relation to a Council, means [<sup>F671</sup>the district for which it is established, whether the district consists of the whole or part of the area of a Health Authority or of the whole or part of the area of one Health Authority together with the whole or part of the area of one or more others,][<sup>F672</sup> or for such an area or district or part thereof together with the areas or parts of the areas of other Area Health Authorities or the districts or parts of districts of other District Health Authorities],
- and the district of a Council must be such that no part of it is separated from the rest of it by territory not included in the district.

#### Textual Amendments

**F670** Sch. 7 para. 7: words in the definition of “local authority”

substituted (1.4.1996) by 1994 c. 19, s. 22(4), Sch. 10 para. 11(4) (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, Sch. 1

**F671** Sch. 7 para. 7: words in the definition of “district” substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 62(c) (with Sch. 2 para. 6)

**F672** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 1, para. 82(4)

#### Marginal Citations

**M80** 1972 c. 70(81:1).

<sup>F673</sup>8

#### Textual Amendments

**F673** Sch. 7 para. 8 omitted (28.6.1995 for specified purposes and otherwise 1.4.1996) and repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8(1), Sch. 1 Pt. I para. 62(d), Sch. 3 (with Sch. 2 para. 6)

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SCHEDULE 8

LOCAL SOCIAL SERVICES AUTHORITIES

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

**C113** Sch. 8 restricted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 54, 162(2), Sch. 3; S.I. 2002/2811, art. 2, Sch.

*Care of mothers and young children*

- 1 (1) A local social services authority may, with the Secretary of State’s approval, and to such extent as he may direct shall, make arrangements for the care of expectant and nursing mothers [<sup>F674</sup>(other than for the provision of residential accommodation for them)]. . .
- (2) . . . . . <sup>F675</sup>

**Textual Amendments**

**F674** Words inserted (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(14)(a); S.I. 1992/2975, art. 2(2), Sch.

**F675** S. 9, Sch. 5 Pt. I para. 4, Sch. 8 paras. 1(2), 2(5), 3(2), repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 13, 30, Sch. 10 Pt. I

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

**C114** Sch. 8 para. 1(1) applied (1.4.1994) by S.I. 1994/653, reg. 42(1), Sch. Pt. I  
 Sch. 8 para. 1(1) applied (9.5.1994) by S.I. 1994/1084, reg. 8(1), Sch. 2 Pt. I

*Prevention, care and after-care*

- 2 (1) A local social services authority may, with the Secretary of State’s approval, and to such extent as he may direct shall, make arrangements for the purpose of the prevention of illness and for the care of persons suffering from illness and for the after-care of persons who have been so suffering and in particular for—
- <sup>F676</sup>(a) . . . . .
- (b) the provision, for persons whose care is undertaken with a view to preventing them from becoming ill, persons suffering from illness, and persons who have been so suffering, of centres or other facilities for training them or keeping them suitably occupied and the equipment and maintenance of such centres;
- (c) the provision, for the benefit of such persons as are mentioned in paragraph (b) above, of ancillary or supplemental services; and
- [<sup>F677</sup>(d) for the exercise of the functions of the authority in respect of persons suffering from mental disorder who are received into guardianship under Part II or III of the <sup>M81</sup>Mental Health Act 1983 (whether the guardianship of the local social services authority or of other persons).]



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Such an authority shall neither have the power nor be subject to a duty to make under this paragraph arrangements to provide facilities for any of the purposes mentioned in section 15(1) of the <sup>M82</sup>Disabled Persons (Employment) Act 1944.

(2) No arrangements under this paragraph shall provide for the payment of money to persons for whose benefit they are made except—

(a) in so far as they may provide for the remuneration of such persons engaged in suitable work in accordance with the arrangements; <sup>F678</sup> . . .

<sup>F678</sup>(b) . . .  
    <sup>F678</sup>(i) . . . . .  
    <sup>F678</sup>(ii) . . . . .  
    <sup>F678</sup>(iii) . . . . .

of such amounts as the local social services authority think fit in respect of their occasional personal expenses where it appears to that authority that no such payment would otherwise be made.

[<sup>F679</sup>(2A) No arrangements under this paragraph may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

(a) because he is destitute; or  
(b) because of the physical effects, or anticipated physical effects, of his being destitute.

(2B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (2A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local social services authority.]

(3) The Secretary of State may make regulations as to the conduct of premises in which, in pursuance of arrangements made under this paragraph, are provided for persons whose care is undertaken with a view to preventing them from becoming sufferers from mental disorder within the meaning of [<sup>F680</sup>that Act of 1983] or who are, or have been, so suffering, [<sup>F681</sup> . . .] facilities for training them or keeping them suitably occupied.

[<sup>F682</sup>(4) . . . . .]

[<sup>F683F684</sup>(4A) This paragraph does not apply in relation to persons under the age of 18.]

[<sup>F683</sup>(4AA) No authority is authorised or may be required under this paragraph to provide residential accommodation for any person.]

(5) . . . . . <sup>F685</sup>

#### Textual Amendments

**F676** Sch. 8 para. 2(1)(a) repealed (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1)(2), Sch. 9 para. 18(14)(b)(i), Sch. 10; S.I. 1992/2975, art. 2(2), Sch.

**F677** Para. 2(1)(d) substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, Sch. 4 para. 47(e)(i)

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- F678** Word in Sch. 8 para. 2(2) and para. 2(2)(b) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with s. 108(6), Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**
- F679** Sch. 8 para. (2A)(2B) inserted (6.12.1999) by 1999 c. 33, ss. 117(2), 169(2), **Sch. 15 para. 9**; S.I. 1999/3190, art. 2, **Sch.**
- F680** Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 47(e)(iii)**
- F681** Words in Sch. 8 para. 2(3) repealed (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**; S.I. 1992/2975, art. 2(2), **Sch.**
- F682** Sch. 8 para. 2(4) repealed (1.4.1993) by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1)(2), Sch. 9 para. 18(14)(b)(i), **Sch. 10**; S.I. 1992/2975, art. 2(2), **Sch.**
- F683** Sch. 8 para. 2(4AA) inserted (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(14)(b)(ii)**; S.I. 1992/2975, art. 2(2), **Sch.**
- F684** Sch. 8 para. 2(4A) added (14. 10. 1991) by Children Act 1989 (c. 41, SIF 20), s. 108(4), **Sch. 12 para. 34** (with s. 108(6), Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F685** S. 9, Sch. 5 Pt. I para. 4, Sch. 8 paras. 1(2), 2(5), 3(2), repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 13, 30, **Sch. 10 Pt. I**

**Marginal Citations**

- M81** 1983 c. 20(85).
- M82** 1944 c. 10(43:1).

*Home help and laundry facilities*

- 3 (1) It is the duty of every local social services authority to provide on such a scale as is adequate for the needs of their area, or to arrange for the provision on such a scale as is so adequate, of home help for households where such help is required owing to the presence of—
- <sup>F686</sup>(0) a person who is suffering from illness, lying-in, an expectant mother, aged, handicapped as a result of having suffered from illness or by congenital deformity,
- <sup>F686</sup> .....
- and every such authority has power to provide or arrange for the provision of laundry facilities for households for which home help is being, or can be, provided under this sub-paragraph.
- (2) ..... <sup>F687</sup>

**Textual Amendments**

- F686** Sch. 8 para. 3: Words in Sch. 8 para. 3(1) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with s. 108(6), Sch. 14 paras.1(1), 27(4);S.I.1991/828, **art.3(2)**
- F687** S. 9, Sch. 5 Pt. I para. 4, Sch. 8 paras. 1(2), 2(5), 3(2), repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 13, 30, **Sch. 10 Pt. I**

*<sup>F688</sup>Research*

**Textual Amendments**

- F688** Para. 4 added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 29(1), **Sch. 9 Pt. I para. 23**

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- 4 Without prejudice to any powers conferred on them by any other Act, a local social services authority may conduct or assist other persons in conducting research into matters relating to the functions of local social services authorities under this Schedule.]

VALID FROM 01/07/2002

## [<sup>F689</sup>SCHEDULE 8A

### LOCAL PHARMACEUTICAL SERVICES SCHEMES

#### Textual Amendments

**F689** Sch. 8A inserted (1.7.2002 for W., otherwise prosp.) by 2001 c. 15, ss. 40, 70(2), Sch. 3 (with ss. 64(9), 65(4)); S.I. 2002/1475, art. 2, Sch. Pt. 1

#### *Provision of local pharmaceutical services*

- 1 (1) Health Authorities may establish LPS schemes.
- (2) In this Schedule “LPS scheme” means one or more agreements—
- (a) made by a Health Authority (“A”) in accordance with the provisions of, or made under, this Schedule;
  - (b) under which local pharmaceutical services are to be provided (otherwise than by A); and
  - (c) the parties to which do not include any other Health Authority.
- (3) For the purposes of this Schedule—
- “local pharmaceutical services” means such services of a kind which may be provided under section 41 of this Act, or by virtue of section 41A of this Act (other than practitioner dispensing services) as may be prescribed; and
- “practitioner dispensing services” means the provision of drugs, medicines or listed appliances (within the meaning of section 41) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 43(1).
- (4) An LPS scheme may include arrangements—
- (a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Part of this Act (whether or not of the kind usually provided by pharmacies);
  - (b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).
- (5) An LPS scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of personal medical services or personal dental services under any provision of, or made under, this Act or the National Health Service (Primary Care) Act 1997 (c. 46).

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- (6) In this Schedule “LP services” means services provided under an LPS scheme (including any services to which the scheme applies as a result of subparagraph (4)).
- (7) In determining the arrangements they need to make in order to comply with section 41 of this Act, a Health Authority may take into account arrangements under an LPS scheme made by them.
- (8) The functions of an NHS trust or a Primary Care Trust include power to provide any services to which an LPS scheme applies.
- (9) The functions of a Health Authority in relation to LP services are primary functions of the Authority for the purposes of the National Health Service and Community Care Act 1990 (c. 19).

*Designation of priority neighbourhoods or premises*

- 2 (1) The Secretary of State may make regulations allowing a Health Authority to—
- (a) designate neighbourhoods,
  - (b) designate premises, or
  - (c) designate descriptions of premises,
- for the purposes of this paragraph.
- (2) The regulations may, in particular, make provision—
- (a) as to the circumstances in which, and the neighbourhoods or premises in relation to which, designations may be made or maintained;
  - (b) allowing a Health Authority to defer consideration of Part 2 applications relating to neighbourhoods, premises or descriptions of premises that have been designated;
  - (c) allowing a designation to be cancelled in prescribed circumstances;
  - (d) requiring a designation to be cancelled—
    - (i) if the Secretary of State gives a direction to that effect; or
    - (ii) in prescribed circumstances.
- (3) “Part 2 applications” means applications for inclusion in a list maintained under section 42 of this Act.

*Regulations*

- 3 (1) The Secretary of State may make regulations with respect to LP services.
- (2) The regulations must include provision for participants other than Health Authorities to withdraw from an LPS scheme if they wish to do so.
- (3) The regulations may, in particular—
- (a) provide that an LPS scheme may be made only—
    - (i) in prescribed circumstances;
    - (ii) in relation to an area, a community or a category of persons determined in accordance with the regulations; or
    - (iii) in relation to premises determined in accordance with the regulations;

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- (b) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with an LPS scheme;
  - (c) make provision as to the services, or categories of service, for which an LPS scheme must provide;
  - (d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons providing LP services;
  - (e) require details of each LPS scheme to be published;
  - (f) make provision with respect to the variation and termination of an LPS scheme;
  - (g) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both LP services and pharmaceutical services from the same premises;
  - (h) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a list under section 42;
  - (i) provide for parties to an LPS scheme to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 4 of the National Health Service and Community Care Act 1990;
  - (j) provide for directions, as to payments, made under section 4(7) of the Act of 1990 (as it has effect as a result of regulations made by virtue of paragraph (i)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court;
  - (k) authorise Health Authorities to make payments of financial assistance for prescribed categories of preparatory work undertaken—
    - (i) in connection with preparing proposals for an LPS scheme; or
    - (ii) in preparation for the provision of services under a proposed LPS scheme.
- 4 (1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for local pharmaceutical services.
- (2) The regulations may, in particular, provide for—
- (a) exemptions from charges;
  - (b) the liability to pay charges to be disregarded in prescribed circumstances or for prescribed purposes;
  - (c) section 122A of this Act (recovery of certain charges and payments) to apply also in relation to local pharmaceutical services (with or without modification);
  - (d) section 122B of this Act (penalties) to apply also in relation to local pharmaceutical services (with or without modification).
- (3) The regulations must secure that the amount charged for any service is the same as the amount that would be charged for that service if it were provided under Part 2 of this Act.]

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## SCHEDULE 9

### TRIBUNAL FOR PURPOSES OF SECTION 46

#### *Constitution of Tribunal*

- [<sup>F690</sup>1 The Tribunal shall consist of—
- (a) a chairman appointed by the Lord Chancellor,
  - (b) such number of deputy chairmen as the Lord Chancellor may appoint,
  - (c) such number of persons as the Secretary of State may appoint for the purposes of this sub-paragraph,
  - (d) such number of medical practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,
  - (e) such number of medical practitioners having the qualifications prescribed under section 38 above as the Secretary of State may appoint for the purposes of this sub-paragraph,
  - (f) such number of dental practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,
  - (g) such number of ophthalmic opticians as the Secretary of State may appoint for the purposes of this sub-paragraph, and
  - (h) such number of registered pharmacists as the Secretary of State may appoint for the purposes of this sub-paragraph.]

#### Textual Amendments

**F690** Sch. 9 paras. 1-4 substituted (21.12.1995) for Sch. 9 paras. 1-5 by 1995 c. 31, ss. 6(2), 14(5); S.I. 1995/3090, arts. 2, Sch. (with art. 3)

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

**C115** Sch. 9 para. 1 amended (*prosp.*) by 1954 c. 61, s. 131(1)(e) (as inserted (*prosp.*) by 1997 c. 19, ss. 1, 2(1), Sch. para. 2 (with s. 1))

- [<sup>F691</sup>2 A person appointed as the chairman or a deputy chairman shall be a person who has a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990).]

#### Textual Amendments

**F691** Sch. 9 paras. 1-4 substituted (21.12.1995) for Sch. 9 para. 1-5 by 1995 c. 31, ss. 6(2), 14(5); S.I. 1995/3090, arts. 2, Sch. (with art. 3)

- [<sup>F692</sup>3 Any appointment for the purposes of paragraph 1(c) above shall be made after consultation with such associations of Health Authorities as the Secretary of State may recognise as representative of Health Authorities.]

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#### Textual Amendments

**F692** Sch. 9 paras. 1-4 substituted (21.12.1995) for Sch. 9 paras. 1-5 by 1995 c. 31, ss. 6(2), 14(5); S.I. 1995/3090, art. 2, Sch. (with art. 3)

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

**C116** Sch. 9 para. 3 extended (temporarily) (1.10.2002 for E.) The National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469), reg. 16(b)

[<sup>F693</sup>4 Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 1 above shall be made after consultation with such organisations as the Secretary of State may recognise as representative of the profession or calling concerned.]

#### Textual Amendments

**F693** Sch. 9 paras. 1-4 substituted (21.12.1995) for Sch. 9 paras. 1-5 by 1995 c. 31, ss. 6(2), 14(5); S.I. 1995/3090, arts. 2, Sch. (with art. 3)

5 If any member of the Tribunal is unable to act in any case, a deputy may be appointed by the Lord Chancellor or the Secretary of State as in the case of the appointment of the member in question.

If the member is the chairman, the deputy shall possess the professional qualifications required for the office of chairman, and, if the member is the practitioner member, the deputy shall be appointed from the same panel.

#### [<sup>F695</sup> *Sittings of Tribunal*]

#### Textual Amendments

**F695** Sch. 9 para. 5A and the cross-heading inserted (21.12.1995) by 1995 c. 31, s. 6(3); S.I. 1995/3090, art. 2, Sch. (with art. 3)

[<sup>F696</sup>5A(1) The functions of the Tribunal shall be exercised by three members consisting of—

- (a) the chairman or a deputy chairman,
- (b) a person appointed under paragraph 1(c) above, and
- (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 1 above as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph (1)(c) above [<sup>F697</sup>as it has effect in relation to the functions mentioned below]], the reference to the person concerned is—

- (a) in the case of functions under section 46 above, to the person to whom the representations in question relate,

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- (b) in the case of functions under section 47 above (or paragraph 8 of Schedule 14 to this Act), to the person whose disqualification is under consideration,
- (c) in the case of functions under section 49A above, to the person to whom the application in question relates, and
- (d) in the case of functions under section 49B above, to the person in relation to whom the application of section 49A(3) above may be continued.

[<sup>F698</sup>(2A) In sub-paragraph (1)(c) above as it has effect in relation to functions of the Tribunal conferred by or under any enactment relating to the preferential treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.]

- (3) In the case of functions under section 49A or 49B above, sub-paragraph (1) above is subject to section 49C(2)(b) above.

#### Textual Amendments

- F696** Section heading and s. 5A inserted (21.12.1995) by 1995 c. 31, s. 6(3); S.I. 1995/3090, art. 2, Sch. (with art. 3)
- F697** Words in Sch. 9 para. 5A(2) inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 29(2); S.I. 1998/631, art. 2(b), Sch. 2 (with arts. 3-5)
- F698** Sch. 9 para. 5A(2A) inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 29(3); S.I. 1998/631, art. 2(b), Sch. 2 (with arts. 3-5)

#### Supplementary

- 6 Regulations may provide for the appointment, tenure of office and vacation of office of members of the Tribunal, and with respect to the appointment of officers of the Tribunal.

VALID FROM 01/10/2001

## [<sup>F699</sup>SCHEDULE 9A

### THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

#### Textual Amendments

- F699** Sch. 9A inserted (1.10.2001 for certain purposes for E., 1.12.2001 for all other purposes for E. and 26.8.2002 for W.) by 2001 c. 15, ss. 27(4), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3294, art. 4(1), Sch. Pt. I (subject to transitional provisions in Sch. Pt. II); S.I. 2002/1919, art. 3(1), Sch. Pt. II

#### Constitution

- 1 The Family Health Services Appeal Authority (“the FHSAA”) shall consist of—



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(a) a President;  
(b) one or more Deputy Presidents; and  
(c) a number of other members,  
all appointed by the Lord Chancellor on terms to be determined by him.

2 The number of the other members shall be determined by the Lord Chancellor after consulting the Secretary of State.

3 A person appointed as the President shall have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), and a person appointed as a Deputy President shall have a 7 year general qualification.

4 The qualifications which the other members must have in order to be eligible for appointment shall be determined by the Lord Chancellor.

5 Each person appointed under paragraph 1—  
(a) shall hold and vacate office in accordance with the terms of his appointment; and  
(b) may be removed from office by the Lord Chancellor on grounds of incapacity or misbehaviour.

6 The other members must include at least one—  
(a) medical practitioner providing general medical services, or performing personal medical services under section 28C arrangements;  
(b) dental practitioner providing general dental services, or performing personal dental services under section 28C arrangements;  
(c) ophthalmic optician or medical practitioner providing general ophthalmic services; and  
(d) registered pharmacist providing pharmaceutical services or local pharmaceutical services (whether under this Act or under a pilot scheme made under section 28 of the Health and Social Care Act 2001),  
and must also include such number of persons with a 7 year general qualification (construed as in paragraph 3) as the Lord Chancellor considers appropriate bearing in mind the requirements of paragraph 9, and a number of lay persons who do not fall within paragraphs (a) to (d) and who possess such qualifications and experience as the Lord Chancellor considers appropriate.

#### *Procedure*

7 The procedure of the FHSAA shall be as it determines, subject to the following.

8 The functions of the FHSAA shall be exercised by panels consisting—  
(a) in the case of functions referred to in section 49S(4) above, of such one or more members as the President may choose; and  
(b) in the case of other functions, of three members chosen by the President, and, in either case, the President may include himself (or, in the case of a one-member panel, may constitute the panel).

9 Subject to paragraph 10, at least one member of each panel (or, in the case of a one-member panel, that member) must have a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)).

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- 10 In the case of a panel constituted for the purposes of section 49M or 49N above, one member of the panel must have the qualification mentioned in paragraph 9, and (unless the President decides otherwise)—
- (a) if the practitioner provides general medical services, one member of the panel must fall within paragraph 6(a), and so on as respects a practitioner who provides one of the other services referred to in section 49F(1); and
  - (b) the third member must neither fall within any of sub-paragraphs (a) to (d) of paragraph 6 nor have a legal qualification.
- 11 Where a panel has more than one member—
- (a) the President shall nominate one of the members as chairman,
  - (b) decisions shall be taken by a majority of votes, and
  - (c) if there is a tie the chairman shall have a second vote as a casting vote.
- 12 The FHSAA shall—
- (a) give notice of a panel’s decision and of the reasons for it to each party to the proceedings; and
  - (b) publish each decision of a panel falling within paragraph 13 in such way as the FHSAA considers appropriate;
- and it may send a copy of any such decision to such prescribed persons or persons of prescribed descriptions as it considers appropriate, together with any information relevant to the decision which the FHSAA considers it appropriate to include.
- 13 The following decisions fall within this paragraph—
- (a) a decision on national disqualification (see section 49N above);
  - (b) a decision to allow an appeal brought by virtue of section 49M(2)(a), (b) or (c) above; and
  - (c) such other decisions as may be prescribed.
- 14 The FHSAA may publish a decision not falling within paragraph 13 if it considers it appropriate to do so.
- 15 The Lord Chancellor may make rules as to—
- (a) the composition of panels,
  - (b) the allocation to panels of cases, or of particular proceedings in any case, and
  - (c) the procedure to be followed by a panel in considering any matter before it.
- 16 The Lord Chancellor shall make rules—
- (a) giving each party to proceedings before a panel the opportunity of putting his case at a hearing,
  - (b) entitling each party to be legally represented at any hearing (whether it is held at the instance of the panel or of a party), and
  - (c) securing that any hearing is held in public unless the practitioner asks for it to be in private (a request which the panel must consider but need not grant).
- 17 Rules under this Schedule may, in particular, make provision—
- (a) as to the carrying out by a Deputy President of functions of the President,

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	<ul style="list-style-type: none"> <li>(b) as to how, and as to the time within which, an application to the FHSAA is to be made, or an appeal to the FHSAA is to be brought (so far as the matter is not provided for in or by virtue of this or any other Act),</li> <li>(c) for a period which must elapse before an application, or a further application, may be made under section 49M(5)(a) above,</li> <li>(d) as to the matters referred to in paragraph 12,</li> <li>(e) for the giving by the panel of directions to the parties as to the conduct of the case, and for the consequences of failure to comply with such directions (which may include allowing or dismissing the appeal or application if the failure to comply was without reasonable excuse);</li> <li>(f) empowering a panel to require persons to attend and give evidence or produce documents,</li> <li>(g) about the admissibility of evidence, and</li> <li>(h) enabling the panel to administer oaths.</li> </ul>
18	No person shall be required by virtue of any such rules to give any evidence or produce any document or other material which he could not be compelled to give or produce in civil proceedings in a court in England and Wales.
	<i>Miscellaneous</i>
19	<ul style="list-style-type: none"> <li>(1) The President must, in respect of each period of 12 months beginning on 1st April, prepare a written report about the FHSAA's activities during that period.</li> <li>(2) He must send a copy of the report to the Lord Chancellor, the Secretary of State and the National Assembly for Wales.</li> <li>(3) After consulting the Lord Chancellor and the National Assembly for Wales, the Secretary of State may give directions to the President as to subjects with which the report must deal.</li> </ul>
20	The President must arrange such training for himself and the other members of the FHSAA as he considers appropriate.
	<i>Interpretation</i>
21	<p>In this Schedule—</p> <p>“practitioner” means the person whose case is before the FHSAA;</p> <p>“prescribed” means prescribed by the Lord Chancellor in rules.]</p>

## SCHEDULE 10

### ADDITIONAL PROVISIONS AS TO PROHIBITION OF SALE OF MEDICAL PRACTICES

#### *Prohibition, and certificate of Medical Practices Committee*

- 1 (1) Any person who buys or sells the goodwill, <sup>F700</sup> . . . , of a medical practice which it is unlawful to sell by virtue of section 54(1) above is guilty of an offence and liable on conviction on indictment to a fine not exceeding—

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- (a) such amount as will in the court's opinion secure that he derives no benefit from the offence, and
- (b) the further amount of £500,
- or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.
- [<sup>F701</sup>(2) Any person proposing to be a party to a transaction or series of transactions which he thinks might amount to a sale of the goodwill of a medical practice in contravention of section 54(1) may ask the Medical Practices Committee for a certificate under this paragraph.]
- (3) The Committee shall consider any such application, and, if they are satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill,<sup>F700</sup> . . . , of such a medical practice, they shall issue to the applicant a certificate to that effect, which shall be in the prescribed form and shall set out all material circumstances disclosed to the Committee.
- (4) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it shall be a defence to the charge to prove that the transaction or series of transactions was certified by the Medical Practices Committee under sub-paragraph (3) above.
- (5) Any document purporting to be such a certificate shall be admissible in evidence and shall be deemed to be such a certificate unless the contrary is proved.
- (6) If it appears to the court that the applicant for any such certificate failed to disclose to the Committee all the material circumstances, or made any misrepresentation with respect thereto, the court may disregard the certificate, and sub-paragraph (4) shall not apply thereto.
- (7) A prosecution for an offence under this paragraph shall only be instituted by or with the consent of the Director of Public Prosecutions, and the Medical Practices Committee shall, at the request of the Director, furnish him with a copy of any certificate issued by them under sub-paragraph (3), and with copies of any documents produced to them in connection with the application for that certificate.
- <sup>F702</sup>(8) . . . . .

#### Textual Amendments

- F700** Words in Sch. 10 para. 1(1)(3) repealed (1.4.1998) by 1997 c. 46, s. 41(12), Sch. 3 Pt. I; S.I. 1998/631, art. 2(1), Schs. 1, 2 (with arts. 3-5)
- F701** Sch. 10 para. 1(2) substituted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 30(3); S.I. 1998/631, art. 2(b), Sch. 2 (with arts. 3-5)
- F702** Sch. 10 para. 1(8) repealed (1.4.1998) by 1997 c. 46, s. 41(12), Sch. 3 Pt. I; S.I. 1998/631, art. 2(1), Schs. 1, 2 (with arts. 3-5)

#### *Certain transactions deemed sale of goodwill*

- 2 [<sup>F703</sup>(1) For the purposes of section 54(1) and paragraph 1, a disposal of premises previously used for the purposes of a medical practice shall be deemed to be a sale of the goodwill of a medical practice if—

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- (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A’s medical practice, and
  - (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- (1A) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.
- (1B) For the purposes of sub-paragraphs (1) and (1A)—
  - (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and “disposes” and “disposing” are to be read accordingly; and
  - (b) a person who procures the disposal of any premises is to be treated as having disposed of them.]
- (2) Where in pursuance of any partnership agreement <sup>F704</sup> . . .—
  - (a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership,
  - (b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner’s share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or
  - (c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,there shall be deemed for the purposes of section 54(1) and paragraph 1 to have been a sale of the goodwill <sup>F704</sup> . . . of the practice of any partner to whom, or to whose personal representative, the consideration or any part thereof is given or, as the case may be, for whose benefit the services are performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of section 54(1) and paragraph 1 to have been effected—
  - (i) in a case to which paragraph (a) or paragraph (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part thereof was given, or
  - (ii) in a case to which paragraph (c) applies, at the time when the agreement was made.
- <sup>F705</sup>(3) Sub-paragraph (3A) applies if a person (“the assistant”)—
  - (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice);
  - (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed; and

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- (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.
- (3A) For the purposes of section 54 and paragraph 1, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.]
- [<sup>F706</sup>(4) For the purposes of section 54(1) and paragraph 1, the goodwill of a medical practice shall be deemed to have been sold if—
- (a) a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—
    - (i) to do or refrain from doing any act, for the purpose of facilitating the succession of another person to the practice; or
    - (ii) to allow any act to be done, for that purpose; or
  - (b) a person—
    - (i) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice); and
    - (ii) succeeds, or has previously succeeded, to the practice.
- (5) Sub-paragraph (4) does not apply—
- (a) if it is proved that no part of the consideration was given in respect of the goodwill; or
  - (b) to anything done—
    - (i) in relation to the acquisition of premises for the purposes of a medical practice;
    - (ii) in pursuance of a partnership agreement; or
    - (iii) in the performance of medical services by one person as an assistant to another.]
- (6) In determining for the purposes of section 54(1) and this Schedule the consideration given in respect of any transaction, the court shall have regard to any other transaction appearing to the court to be associated with the first transaction, and shall estimate the total consideration given in respect of both or all the transactions, and apportion it between those transactions in such manner as it thinks just.
- [<sup>F707</sup>(7) For the purposes of section 54 and this Schedule—
- (a) consideration is deemed to be given to a person (“B”) if—
    - (i) it is given to another person but with B's knowledge and consent; and
    - (ii) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration; and
  - (b) unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.]

#### Textual Amendments

**F703** Sch. 10 para. 2(1)(1A)(1B) substituted (1.4.1998) for para. 2(1) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 30(5)**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

**F704** Words in Sch. 10 para. 2(2) repealed (1.4.1998) by 1997 c. 46, s. 41(12), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1), Schs. 1, 2 (with arts. 3-5)

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**F705** Sch. 10 para. 2(3)(3A) substituted (1.4.1998) for Sch. 10 para. 2(3) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 30(7)**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

**F706** Sch. 10 para. 2(4)(5) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 3(8)**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

**F707** Sch. 10 para. 2(7) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 30(9)**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

### *<sup>F708</sup> Carried-over goodwill*

#### Textual Amendments

**F708** Sch. 10. para. 3 and the cross-heading inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 30(10)**; S.I.1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

<sup>F709</sup>3 The fact that a person's medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 54(1) for the goodwill of his practice to be sold.]

#### Textual Amendments

**F709** Sch. 10 para. 3 and the cross-heading inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 para. 30(10)**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

## <sup>F710</sup>SCHEDULE 11

### ADDITIONAL PROVISIONS AS TO THE CONTROL OF MAXIMUM PRICES FOR MEDICAL SUPPLIES

#### Textual Amendments

**F710** Sch. 11 ceased to have effect in relation to health service medicines (1.9.1999 for certain purposes otherwise 1.11.1999) by virtue of 1999 c. 8, s. 38(5); S.I. 1999/2177, **arts. 2(3)(b)(4)(a)**

### *Orders and directions*

- [<sup>F711</sup>1 (1) Any power of making orders under section 57 above includes power to provide for any incidental and supplementary provisions which the Secretary of State thinks it expedient for the purposes of the order to provide.
- (2) An order under section 57 may make such provisions (including provision for requiring any person to furnish any information) as the Secretary of State thinks necessary or expedient for facilitating the introduction or operation of a scheme of control for which provision has been made, or for which, in his opinion, it will or may be found necessary or expedient that provision should be made, under that section.
- (3) An order under section 57 may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as

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may be specified in the order, and may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and so as to have effect either generally or in any particular area.

- (4) [<sup>F712</sup>The <sup>M83</sup>Interpretation Act 1978] shall apply to the interpretation of any order made under section 57 as it applies to the interpretation of an Act of Parliament and for the purposes of [<sup>F712</sup>sections 16(1) and 17(2)(a)] of that Act any such order shall be deemed to be an Act of Parliament.]

#### Textual Amendments

- F711** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)
- F712** Words substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), s. 25(2)

#### Marginal Citations

- M83** 1978 c. 30(115:1).

#### *Notices, authorisations and proof of documents*

- [<sup>F713</sup>2 (1) A notice to be served on any person for the purposes of section 57 above, or of any order or direction made or given under that section, shall be deemed to have been duly served on the person to whom it is directed if—
- (a) it is delivered to him personally; or
  - (b) it is sent by registered post or the recorded delivery service addressed to him at his last or usual place of abode or place of business.
- (2) Where under section 57 and this Schedule a person has power to authorise other persons to act thereunder, the power may be exercised so as to confer the authority either on particular persons or on a specified class of persons.
- (3) Any permit, licence, permission or authorisation granted for the purposes of section 57 may be revoked at any time by the authority or person empowered to grant it.
- (4) Every document purporting to be an instrument made or issued by the Secretary of State or other authority or person in pursuance of section 57 and this Schedule or any provisions so having effect and to be signed by or on behalf of the Secretary of State, or that authority or person, shall be received in evidence and shall until the contrary is proved, be deemed to be an instrument made or issued by the Secretary of State, or that authority or person.
- (5) Prima facie evidence of any such instrument as is described in sub-paragraph (4) above may in any legal proceedings (including arbitrations) be given by the production of a document purporting to be certified to be a true copy of the instrument by or on behalf of the Secretary of State or other authority or person having power to make or issue the instrument.]

#### Textual Amendments

- F713** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)



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### *Territorial extent*

[<sup>F714</sup>3 So far as any provisions contained in or having effect under section 57 above and this Schedule impose prohibitions, restrictions or obligations on persons, those provisions apply to all persons in the United Kingdom and all persons on board any British ship or aircraft, not being an excepted ship or aircraft, and to all other persons, wherever they may be, who are ordinarily resident in the United Kingdom and who are citizens of the United Kingdom and Colonies or British protected persons.

In this paragraph—

“British aircraft” means an aircraft registered in—

- (a) any part of Her Majesty’s dominions;
- (b) any country outside Her Majesty’s dominions in which for the time being Her Majesty has jurisdiction;
- (c) any country consisting partly of one or more colonies and partly of one or more such countries as are mentioned in paragraph(b) above;

“British protected person” means the same as in [<sup>F715</sup>the <sup>M84</sup>British Nationality Act 1981];

“excepted ship or aircraft” means a ship or aircraft registered in any country for the time being listed in [<sup>F715</sup>Schedule 3 to the <sup>M85</sup>British Nationality Act 1981] or in any territory administered by the government of any such country, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, Her Majesty’s Government in the United Kingdom.]

#### **Textual Amendments**

**F714** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

**F715** Words substituted by British Nationality Act 1981 (c. 61, SIF 87), s. 52(6), Sch. 7

#### **Marginal Citations**

**M84** 1981 c. 61(87).

**M85** 1981 c. 61(87).

### *False documents and false statements*

[<sup>F716</sup>4 (1) A person shall not, with intent to deceive—

- (a) use any document issued for the purposes of section 57 above and this Schedule or of any order made under that section;
- (b) have in his possession any document so closely resembling such a document as is described in paragraph (a) above as to be calculated to deceive;
- (c) produce, furnish, send or otherwise make use of for purposes connected with that section and this Schedule or any order or direction made or given under that section, any book, account, estimate, return, declaration or other document which is false in a material particular.

(2) A person shall not, in furnishing any information for the purposes of section 57 and this Schedule or of any order made under that section, make a statement which he

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knows to be false in a material particular or recklessly make a statement which is false in a material particular.]

#### Textual Amendments

**F716** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

#### *Restrictions on disclosing information*

[<sup>F717</sup>5 No person who obtains any information by virtue of section 57 above and this Schedule shall, otherwise than in connection with the execution of that section and this Schedule or of an order made under that section, disclose that information except for the purposes of any criminal proceedings, or of a report of any criminal proceedings, or with permission granted by or on behalf of a Minister of the Crown.]

#### Textual Amendments

**F717** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

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

**C117** Sch. 11 para. 5: disclosure powers extended (14.12.2001) by 2001 c. 24, s. 17, Sch. 4 para. 16

#### *Offences by corporations*

[<sup>F718</sup>6 Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this paragraph, the expression “director”, in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.]

#### Textual Amendments

**F718** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

#### *Penalties*

[<sup>F719</sup>7 (1) If any person contravenes or fails to comply with any order made under section 57 above, or any direction given or requirement imposed under that section, or contravenes or fails to comply with this Schedule (except for paragraph 8(3) or paragraph 9(4) below) he is, save as otherwise expressly provided, guilty of an offence.

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- (2) Subject to any special provisions contained in this Schedule, a person guilty of such an offence shall—
- (a) on summary conviction, be liable to imprisonment for a term not exceeding three months or to a fine not exceeding £100, or to both; or
  - (b) on conviction on indictment, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding £500, or to both.
- (3) Where a person convicted on indictment of such an offence is a body corporate, no provision limiting the amount of the fine which may be imposed shall apply, and the body corporate shall be liable to a fine of such amount as the court thinks fit.]

#### Textual Amendments

**F719** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

#### *Production of documents*

- [<sup>F720</sup>8 (1) For the purposes—
- (a) of securing compliance with any order made or direction given under section 57 above by or on behalf of the Secretary of State, or
  - (b) of verifying any estimates, returns or information furnished to the Secretary of State in connection with section 57 or any order made or direction given under that section,
- an officer of the Secretary of State duly authorised in that behalf has power, on producing (if required to do so) evidence of his authority, to require any person carrying on an undertaking or employed in connection with an undertaking to produce to that officer forthwith any documents relating to the undertaking which that officer may reasonably require for the purpose set out above.
- (2) The power conferred by this paragraph to require any person to produce documents includes power—
- (a) if the documents are produced, to take copies of them or extracts from them and to require that person, or where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them,
  - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (3) If any requirement to produce documents or provide an explanation or make a statement which is imposed by virtue of this paragraph is not complied with, the person on whom the requirement was so imposed is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding [<sup>F721</sup>level 3 on the standard scale] , or to both.

Where a person is charged with such an offence in respect of a requirement to produce any document, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirements.]

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### Textual Amendments

**F720** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

**F721** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (N.I.) S.I. 1984/703 (N.I. 3), arts. 5, 6

[<sup>F722</sup>9] (1) If a justice of the peace is satisfied, on information on oath laid on the Secretary of State's behalf, that there are any reasonable grounds for suspecting that there are on any premises any documents of which production has been required by virtue of paragraph 8 above and which have not been produced in compliance with that requirement, he may issue a warrant under this paragraph.

A warrant so issued may authorise any constable, together with any other persons named in the warrant and any other constables—

- (a) to enter the premises specified in the information (using such force as is reasonably necessary for the purpose); and
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned above, or to take in relation to any documents so appearing any other steps which may appear necessary for preserving them and preventing interference with them.

(2) Every warrant issued under this paragraph shall continue in force until the end of the period of one month after the date on which it is issued.

(3) Any documents of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for an offence under section 57 above and this Schedule to which they are relevant, until the conclusion of those proceedings.

(4) Any person who obstructs the exercise of any right of entry or search conferred by virtue of a warrant under this paragraph, or who obstructs the exercise of any rights so conferred to take possession of any documents, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding [<sup>F723</sup>level 3 on the standard scale], or to both.]

### Textual Amendments

**F722** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

**F723** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (N.I.) S.I. 1984/703 (N.I. 3), arts. 5, 6

### *Northern Ireland*

[<sup>F724</sup>10] (1) So far as the Secretary of State's power under section 57 above and this Schedule is exercisable in relation to Northern Ireland—

- (a) he may, to such extent and subject to such restrictions as he thinks proper, by order delegate that power either to a Northern Ireland department or departments specified in that order or to the appropriate Northern Ireland department or departments; and

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- (b) where any power is so delegated to the appropriate Northern Ireland department or departments, that power shall be exercised by such Northern Ireland department or departments as the Secretary of State may by order specify.
- (2) The power of the Secretary of State to make an order under sub-paragraph (1)(b) above shall be exercisable by statutory instrument; and where a power to make orders has been delegated in pursuance of sub-paragraph (1)—
- (a) any order made in pursuance of that power shall be made by statutory instrument; and
- (b) the <sup>M86</sup>Statutory Instruments Act 1946 shall apply in like manner as if the order had been made by the Secretary of State.
- (3) The references in section 57(1) and (2) above to this Act include any corresponding enactments of the Parliament of Northern Ireland or the Northern Ireland Assembly.]

#### Textual Amendments

**F724** Sch. 11 shall cease to have effect in relation to health service medicines (1.9.1999 for certain purposes and otherwise 1.11.1999) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(b)(4)(a)

#### Marginal Citations

**M86** 1946 c. 36(115:2).

## SCHEDULE 12

### ADDITIONAL PROVISIONS AS TO REGULATIONS FOR THE MAKING AND RECOVERY OF CHARGES

#### *Regulations under section 77—charges for drugs, medicines or appliances, or pharmaceutical services*

- 1 (1) No charge shall be made under section 77(1) above in relation to the supply of drugs, medicines and appliances referred to in paragraph (a) of that subsection in respect of—
- (a) the supply of any drug, medicine or appliance for a patient who is for the time being resident in hospital, or
- (b) the supply of any drug or medicine [<sup>F725</sup>(otherwise than in accordance with section 28C arrangements)] for the treatment of venereal disease, or
- (c) the supply of any appliance (otherwise than in pursuance of paragraph (b) of section 5(1) above) for a person who is under 16 years of age [<sup>F726</sup>or is under 19 years of age and receiving qualifying full-time education, or]
- (d) the replacement or repair of any appliance in consequence of a defect in the appliance as supplied,
- ..... <sup>F727</sup>
- (2) ..... <sup>F728</sup>

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**Textual Amendments**

**F725** Words in **Sch. 12 para. 1(1)(b)** inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 31**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

**F726** Words substituted by **Health Services Act 1980** (c. 53, SIF 113:2), s. 25(2), **Sch. 5 Pt. I para. 1**

**F727** Words repealed by **Social Security Act 1988** (c. 7, SIF 113:1), s. 16(2), **Sch. 5**

**F728** **Sch. 12 para. 1(2)** repealed by **Social Security Act 1988** (c. 7, SIF 113:1), s. 16(2), **Sch. 5**

*Regulations under section 78—charges for dental or optical appliances*

2 <sup>F729</sup>(1) The optical appliances referred to in section 78(1) above are glasses and contact lenses, and the charge for glasses and contact lenses which that subsection authorises is a charge of such sum as may be determined by or in accordance with directions given by the Secretary of State.]

..... F730

(2) Regulations may—

(a) vary the amount or maximum amount of any charge authorised by section 78(1) for any . . . <sup>F731</sup>optical appliance, and this power includes power to direct that the charge shall not be payable; or

(b) vary the descriptions of appliances for which any such charge is authorised; and regulations made for the purposes of section 78(1) may be made so as to take effect—

(i) in the case of appliances supplied under this Act otherwise than under Part II, where the examination or testing of sight (otherwise than under that Part) leading to the supply of those appliances, or the first such examination or testing, takes place on or after the date on which the regulations come into force;

(ii) ..... F732

..... F733

(3) No charge shall be made under section 78(1) [<sup>F734</sup>or (1A)] in respect of any appliance supplied otherwise than under Part II to a patient for the time being resident in a hospital.

(4) No charge shall be made under section 78 [<sup>F735</sup>(1A)] in respect of the supply of a dental appliance if at the relevant time the person for whom that appliance was supplied—

<sup>F736</sup>(a) was under [<sup>F737</sup>18] years of age or was under 19 years of age and receiving qualifying full-time education; or]

(b) was an expectant mother or had borne a child within the previous twelve months.

(5) ..... F738

(6) Regulations made with respect to any exemption under sub-paragraph (4) . . . <sup>F730</sup> above may provide that it shall be a condition of the exemption that such declaration is made in such form and manner, or such certificate or other evidence is supplied in such form and manner, as may be prescribed.

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- (7) In sub-paragraphs (4) . . . <sup>F730</sup>“the relevant time” means—
- (a) in relation to a dental appliance supplied otherwise than under Part II, . . . <sup>F730</sup>the time of the examination . . . <sup>F730</sup> leading to the supply of the appliance, or the first such examination . . . <sup>F730</sup>;
  - (b) in relation to a dental appliance supplied under Part II, the time of the making of the contract or arrangement in pursuance of which the appliance is supplied.
- (8) References in section 78 and in this paragraph to the supply of appliances shall be construed as including references to their replacement [<sup>F739</sup>and, in the case of dentures, to their being relined or adjusted or having additions made to them,] but no charge shall be made under those provisions in respect of the replacement of dentures . . . <sup>F730</sup> if the replacement is required in consequence of loss or damage.

#### Textual Amendments

**F729** Sch. 12 para. 2(1) substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 8(1)**

**F730** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

**F731** Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

**F732** Sch. 12 para. 2(2)(ii) repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

**F733** Para 2(2)(iii) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. 1**

**F734** Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 8(2)**

**F735** Word substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 8(3)**

**F736** Para. 2(4)(a) substituted by Health Services Act 1980 (c. 53, SIF 113:2), s. 25(2), **Sch. 5 Pt. I para. 2(3)**

**F737** Word substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 11(8)

**F738** S. 15(2), Sch. 12 para. 2(5) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

**F739** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), s. 25(2), **Sch. 5 Pt. I para. 2(5)**

[<sup>F740</sup>2A(1) It shall be the duty of the Secretary of State to provide by regulations for payments to be made by him or by any authority established under this Act to meet, or to contribute towards, the cost incurred (whether by way of charge under this Act or otherwise) for the supply of optical appliances for which a prescription has been given in consequence of a testing of sight under this Act—

- (a) for a child;
- (b) for a person whose resources fall to be treated under the regulations as being less than his requirements;

or

- (c) for a person of such other description as may be prescribed

[<sup>F741</sup>or for which a prescription has been given for a person such as is mentioned in paragraph (a), (b) or (c) above in consequence of a testing of sight (not being a testing of sight under this Act) which took place in prescribed circumstances].

- (2) In sub-paragraph (1) above “child” means—
- (a) a person who is under the age of 16 years; or
  - (b) a person who is under the age of 19 years and receiving qualifying full-time education.

[ The Secretary of State may by regulations—

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- <sup>F742</sup>(3) (a) provide for himself or such authority established under this Act as may be prescribed to contribute to the cost of a testing of sight which he or the prescribed authority accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations;
- (b) provide for payments to be made by him or by such authority established under this Act as may be prescribed to meet, or to contribute towards, any cost accepted by him or by the prescribed authority as having been incurred (whether by way of charge under this Act or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of the sight of a person of a prescribed description; and
- (c) direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this sub-paragraph, give any such direction as to how they are to be calculated as may be given by regulations under section 83A(3) above.
- (3A) Descriptions of persons may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub-paragraph, by reference to any of the criteria specified in section 83A(2) above.
- (3B) Subsection (4) of section 83A above shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that section.]
- (4) If regulations under this paragraph provide for payments to be made by an authority established under this Act, it shall be the duty of the Secretary of State to pay to the authority, in respect of each financial year, the sum attributable to the authority's disbursements under the regulations.
- (5) Sums falling to be paid in pursuance of regulations made under this paragraph shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.]

#### Textual Amendments

**F740** Para. 2A inserted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(6), [Sch. 1 para. 3](#)

**F741** Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(2\)](#)

**F742** [Sch. 12 para. 2A\(3\)\(3A\)\(3B\)](#) substituted for para. 2A(3) by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(3\)](#)

#### *Regulations under section 79—charges for dental treatment*

- 3 (1) ..... <sup>F743</sup>
- (2) Regulations may vary the amount or the maximum amount of any charge (including power to direct that the charge shall not be payable) authorised by section 79(1); and no charge shall be made under that section for any services provided in pursuance of a contract or arrangement under which the first examination took place before 29th May 1952.
- (3) Where any services in respect of which a charge is payable under section 78 above are provided in pursuance of a contract or arrangement, the charges payable under



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that section and section 79(1) in respect of all services provided in pursuance of the contract or arrangement shall not exceed a prescribed sum in the aggregate.

(4) No charge shall be made under section 79(1) in respect of services provided for any person who, on the date of the contract or arrangement for the services—

- [<sup>F744</sup>(a) was under 18 years of age or was under 19 years of age and receiving qualifying full-time education, or]
- (b) was an expectant mother or had borne a child within the previous 12 months.

F745

(5) Regulations [<sup>F746</sup>made with respect to any exemption under sub-paragraph (4) above], may provide that it shall be a condition of the exemption that such declaration is made in such form and manner, or such certificate or other evidence is supplied in such form and manner, as may be prescribed.

**Textual Amendments**

- F743** Sch. 12 para. 3(1) repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), Sch. 3
- F744** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), s. 25(2), Sch. 5 Pt. I para. 3(2)
- F745** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), s. 25(2), Sch. 5 Pt. I para. 3(2)
- F746** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), s. 25(2), Sch. 5 Pt. I para. 3(3)

*Miscellaneous Provisions*

4 For the purposes of paragraph (a) of section 5(1) above and paragraph 1(a) of Schedule 1 to this Act (which provide for the Secretary of State to arrange for the free medical treatment of certain pupils) any charge made in pursuance of regulations under this Act in respect of the supply of drugs, medicines or appliances shall be disregarded.

F747

**Textual Amendments**

- F747** Sch. 12 para. 5 repealed by Social Security Act 1988 (c. 7, SIF 113:1), s. 16(2), Sch. 5

6 For the purposes of sections 77 and 78 above and of this Schedule, a bridge, whether fixed or removable, which takes the place of any teeth shall be deemed to be a denture having that number of teeth; . . . <sup>F748</sup>

**Textual Amendments**

- F748** Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), Sch. 3

[<sup>F749</sup>7 References in this Schedule to qualifying full-time education mean full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purposes of such references—  
(a) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and

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- (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.]

#### Textual Amendments

**F749** Para. 7 substituted by Health Services Act 1980 (c. 53, SIF 113:2), s. 25(2), Sch. 5 Pt. I para. 4

## [<sup>F750</sup>SCHEDULE 12A

### EXPENDITURE OF HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS]

#### Textual Amendments

**F750** Sch. 12A inserted (1.9.1999 for E. for specified purposes and 1.4.2000 for E. for further specified purposes and otherwise *prosp.*) by 1999 c. 8, ss. 4(1)(4), 67(1); S.I. 1999/2342, art. 2(1)(4), Schs. 1, 3

### [<sup>F751</sup> Health Authorities: general Part II expenditure

#### Textual Amendments

**F751** Sch. 12A inserted (1.9.1999 for E. for specified purposes and 1.4.2000 for E. for further specified purposes and otherwise *prosp.*) by 1999 c. 8, ss. 4(1)(4), 67(1); S.I. 1999/2342, art. 2(1)(4), Schs. 1, 3

- <sup>F752</sup>1 (1) In section 97 above and this Schedule, general Part II expenditure, in relation to a Health Authority, means expenditure of the authority which—
- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II of this Act, and
  - (b) is not excluded by sub-paragraph (2) below.
- (2) Expenditure is excluded if it is attributable to—
- (a) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration referable to the cost of drugs,
  - (c) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
  - (d) remuneration of a designated description which is determined by the Health Authority and paid to persons providing general medical services in pursuance of Part II.

#### Textual Amendments

**F752** Sch. 12A para. 1 inserted (1.9.1999 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 4(1)(4), 67; S.I. 1999/2342, art. 2(1), Sch. 1

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### *Health Authorities: main expenditure*

- <sup>F753</sup>2 (1) In section 97 above, main expenditure, in relation to a Health Authority and the year in question, means—
- (a) expenditure of the authority mentioned in sub-paragraph (2) below,
  - (b) any other expenditure of the authority attributable to the performance of their functions in that year (other than general Part II expenditure and remuneration referable to the cost of drugs), and
  - (c) expenditure attributable to remuneration referable to the cost of drugs for which the authority are accountable in that year (whether paid by them or another authority).
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
- (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
  - (c) remuneration of a designated description which is determined by the Health Authority and paid in that year to persons providing general medical services in pursuance of Part II.

#### **Textual Amendments**

**F753** Sch. 12A para. 2 inserted (1.9.1999 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 4(1)(4), 67; S.I. 1999/2342, art. 2(1), Sch. 1

- 3 (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Health Authorities the total of the remuneration referable to the cost of drugs which is paid by each Health Authority in that year.
- (2) A Health Authority are accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to them under sub-paragraph (1) above.
- (3) Where in any financial year any remuneration referable to the cost of drugs for which a Health Authority are accountable is paid by another Health Authority, the remuneration is to be treated (for the purposes of sections 97 and 97A above) as having been paid by the first authority in the performance of their functions.
- (4) The Secretary of State may, in particular, exercise his discretion under sub-paragraph (1) above—
- (a) so that any apportionment reflects, in the case of each Health Authority, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the authority in question,
  - (b) by reference to averaged or estimated amounts.
- (5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Health Authority other than the Health Authority

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which are accountable for the payment to be reimbursed in such manner as he may determine.

VALID FROM 01/04/2000

*PCTs: general Part II expenditure*

- 4 (1) In section 97C above and this Schedule, general Part II expenditure, in relation to a Primary Care Trust, means expenditure of the trust which—
- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II of this Act, and
  - (b) is not excluded by sub-paragraph (2) below.
- (2) Expenditure is excluded if it is attributable to—
- (a) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services), or
  - (b) remuneration of a designated description which is determined by the Health Authority within whose area the area of the trust falls and paid to persons providing general medical services in pursuance of Part II.

VALID FROM 01/04/2000

*PCTs: main expenditure*

- 5 (1) In section 97C above, main expenditure, in relation to a Primary Care Trust and the year in question, means—
- (a) expenditure of the trust mentioned in sub-paragraph (2) below, and
  - (b) any other expenditure of the trust attributable to the performance of its functions in that year (other than general Part II expenditure), and is to be treated as including any expenditure apportioned to the trust for that year under paragraph 6 below.
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
- (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services), or
  - (b) remuneration of a designated description which is determined by the Health Authority within whose area the area of the trust falls and paid in that year to persons providing general medical services in pursuance of Part II.

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- 6 (1) For each financial year, a Health Authority may apportion, to such extent and in such manner as they think appropriate, among the Primary Care Trusts whose areas fall within their area, the remuneration referable to the cost of drugs for which the authority are accountable in that year.
- (2) Where in any financial year—
- (a) any remuneration referable to the cost of drugs for which the Health Authority are accountable is paid (whether by them or another Health Authority), and
  - (b) that remuneration is apportioned to a Primary Care Trust under subparagraph (1) above, that remuneration is to be treated for the purposes of sections 97C and 97D above as having been paid by the trust in the performance of its functions.

VALID FROM 10/10/2002

*Local Health Boards: general Part 2 expenditure*

- <sup>F754</sup>6A (1) In section 97F above and this Schedule, general Part 2 expenditure, in relation to a Local Health Board, means expenditure of the Board which—
- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part 2 of this Act, and
  - (b) is not excluded by sub-paragraph (2) below.
- (2) Expenditure is excluded if it is attributable to—
- (a) the reimbursement of expenses of persons providing services in pursuance of Part 2 which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration referable to the cost of drugs,
  - (c) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
  - (d) remuneration of a designated description which is determined by the Board and paid to persons providing general medical services in pursuance of Part 2.

**Textual Amendments**

**F754** Sch. 12A para. 6A-6C inserted (10.10.2002 for W., otherwise prosp.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 10(9), 42(3); S.I. 2002/2532, art. 2, Sch.

VALID FROM 10/10/2002

*Local Health Boards: main expenditure*

- 6B (1) In section 97F above, main expenditure, in relation to a Local Health Board and the year in question, means—

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- (a) expenditure of the Board mentioned in sub-paragraph (2) below,
  - (b) any other expenditure of the Board attributable to the performance of its functions in that year (other than general Part 2 expenditure and remuneration referable to the cost of drugs), and
  - (c) expenditure attributable to remuneration referable to the cost of drugs for which the Board is accountable in that year (whether paid by it or by another Board).
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
- (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part 2 which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
  - (c) remuneration of a designated description which is determined by the Board and paid in that year to persons providing general medical services in pursuance of Part 2.

#### Textual Amendments

**F754** Sch. 12A para. 6A-6C inserted (10.10.2002 for W., otherwise prosp.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. **10(9)**, 42(3); S.I. 2002/2532, **art. 2**, Sch.

VALID FROM 10/10/2002

- 6C
- (1) For each financial year, the National Assembly for Wales shall apportion, in such manner as it thinks appropriate, among all Local Health Boards the total of the remuneration referable to the cost of drugs which is paid by each Local Health Board in that year.
  - (2) A Local Health Board is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (1) above.
  - (3) Where in any financial year any remuneration referable to the cost of drugs for which a Local Health Board is accountable is paid by another Local Health Board, the remuneration is to be treated (for the purposes of sections 97F and 97G above) as having been paid by the first Board in the performance of its functions.
  - (4) The National Assembly for Wales may, in particular, exercise its discretion under sub-paragraph (1) above—
    - (a) so that any apportionment reflects, in the case of each Local Health Board, the financial consequences of orders for the provision of drugs, being orders which in the Assembly's opinion are attributable to the Board in question,
    - (b) by reference to averaged or estimated amounts.

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- (5) The National Assembly for Wales may make provision for any remuneration referable to the cost of drugs which is paid by a Local Health Board other than the Board which is accountable for the payment to be reimbursed in such manner as the Assembly may determine.]

#### Textual Amendments

**F754** Sch. 12A para. 6A-6C inserted (10.10.2002 for W., otherwise prosp.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 10(9), 42(3); S.I. 2002/2532, art. 2, Sch.

### *Interpretation]*

- 7 (1) In this Schedule—
- “designated” means designated in writing by the Secretary of State (and different designations may be made for different purposes),
- “drugs” includes medicines and listed appliances (within the meaning of section 41 above),
- “pharmaceutical services” does not include additional pharmaceutical services.
- (2) The Secretary of State shall determine what remuneration paid by Health Authorities to persons providing pharmaceutical services is to be treated for the purposes of this Schedule as remuneration referable to the cost of drugs.
- (3) The Secretary of State may treat all remuneration paid by Health Authorities to such persons, so far as it is met by an NHS trust or Primary Care Trust under section 103(3) below, as remuneration referable to the cost of drugs for those purposes.

### <sup>F755</sup>SCHEDULE 13

#### Textual Amendments

**F755** Sch. 13 repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), Sch. 3

### SCHEDULE 14

#### TRANSITIONAL PROVISIONS AND SAVINGS

#### *General*

- 1 (1) In so far as—

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- (a) any agreement, appointment, apportionment, authorisation, determination, instrument, order or regulation made by virtue of an enactment repealed by this Act, or
- (b) any approval, consent, direction, or notice given by virtue of such an enactment, or
- (c) any complaint made or investigation begun by virtue of such an enactment, or
- (d) any other proceedings begun by virtue of such an enactment, or
- (e) anything done or having effect as if done,

could, if a corresponding enactment in this Act were in force at the relevant time, have been made, given, begun or done by virtue of the corresponding enactment, it shall, if effective immediately before the corresponding enactment comes into force, continue to have effect thereafter as if made, given, begun or done by virtue of that corresponding enactment.

(2) Where—

- (a) there is any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or to a thing omitted, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act, then
- (b) that reference shall be construed (subject to its context) as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any of the corresponding provisions of the repealed enactments.

2 Where any instrument or document refers either expressly or by implication to an enactment repealed by this Act the reference shall (subject to its context) be construed as or as including a reference to the corresponding provision of this Act.

3 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act has effect as if its corresponding provision had been in force when that period began to run.

#### *Medical schools in London*

4 Notwithstanding the repeal by this Act of section 15 of the <sup>M89</sup>National Health Service Act 1946—

- (a) where a scheme was prepared and submitted under subsection (1) and approved under subsection (2) of that section, that scheme may be amended by a new scheme in accordance with subsection (3) of that section; and
- (b) any scheme prepared, submitted and approved under that section, or as amended under paragraph (a) above, shall continue to have effect, or have effect, as if that section had not been repealed.

#### **Marginal Citations**

**M89** 1946 c. 81.



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### Section 36 of the National Health Service Act 1946

- 5 Notwithstanding the repeal by this Act of section 36 of the <sup>M90</sup>National Health Service Act 1946 (compensation for loss of right to sell a medical practice) that section shall continue to have such effect as may be necessary for the purposes of sections 1 to 7 of the <sup>M91</sup>National Health Service (Amendment) Act 1949.

The saving made by this paragraph applies to section 51 of the <sup>M92</sup>National Health Service Reorganisation Act 1973 (which amended section 36 of the <sup>M93</sup>National Health Service Act 1946), and to any regulations made under that section 36 which were in force immediately before the coming into force of this Act.

#### Marginal Citations

- M90** 1946 c. 81.  
**M91** 1949 c. 93(113:2).  
**M92** 1973 c. 32(113:2).  
**M93** 1946 c. 81.

### Local Acts and charters

- 6 (1) Where at the passing of the <sup>M94</sup>National Health Service Act 1946—
- (a) there was in force a local or private Act or charter containing provisions which appear to the Secretary of State either to be inconsistent with any of the provisions of that Act of 1946 as reproduced in this Act, or to have been made redundant in consequence of the passing of that Act of 1946, then
  - (b) the Secretary of State may by order make such alterations, whether by amendment or by repeal, in the local or private Act or charter as appear to him to be necessary for the purpose of bringing its provisions into conformity with the provisions of that Act of 1946 as so reproduced, or for the purpose of removing redundant provisions, as the case may be.
- (2) Any provision of a charter defining or restricting—
- (a) the objects of any hospital to which section 6 of that Act of 1946 applied, or
  - (b) the purposes for which any property transferred to the Secretary of State or the Board of Governors of a teaching hospital by virtue of that Act of 1946 may be used,
- shall cease to have effect.

#### Marginal Citations

- M94** 1946 c. 81.

### Persons authorised to provide pharmaceutical services

- 7 (1) A person who for three years immediately before 16th December 1911 acted as a dispenser to a medical practitioner or a public institution is in the same position in relation to the undertaking referred to in section 43(2) above regarding the dispensing of medicines as a registered pharmacist.
- (2) .....

F760

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#### Textual Amendments

**F760** Sch. 14 para. 7(2) repealed by Statute Law Repeals Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. V

#### *Disqualification of practitioners*

- 8 Where by virtue of section 42(8) of the <sup>M95</sup>National Health Service Act 1946 a person's name was, immediately before the coming into force of this Act, disqualified for inclusion in any list referred to in section 42(1) of that Act, that person's name is disqualified for inclusion in any list referred to in section 46(1) above, until such time as [<sup>F761</sup>the Tribunal direct] to the contrary.
- Regulations made under section 49 above shall have effect for the purposes of this paragraph.

#### Textual Amendments

**F761** Words in Sch. 14 para. 8 substituted (21.12.1995) by 1995 c. 31, s. 4(2); S.I. 1995/3090, art. 2, Sch. (with art. 3)

#### Marginal Citations

**M95** 1946 c. 81.

#### *Definition of "local authority"*

- 9 The definition of "local authority" in section 128(1) above includes any joint board constituted under the <sup>M96</sup>Public Health Act 1936 or under the <sup>M97</sup>Public Health (London) Act 1936 or any enactment repealed by those Acts, or any port health authority constituted under those Acts or under any Act passed before those Acts.

#### Marginal Citations

**M96** 1936 c. 49(100:1).

**M97** 1936 c. 50.

#### *Sections 3 and 4 of the Health Services and Public Health Act 1968*

- 10 (1) Notwithstanding the repeal by this Act of section 3 of the Health Services and Public Health Act 1968 (transitional provisions relating to accommodation and treatment of private patients), subsection (2) of that section continues to have the same effect in relation to an undertaking given before 31st March 1969 under section 5 of the <sup>M98</sup>National Health Service Act 1946 (accommodation for private patients) as it had immediately before the coming into force of this Act.
- (2) An undertaking given before the coming into force of section 4(1) of the <sup>M99</sup>Health Services and Public Health Act 1968 in respect of payment under section 4 of the <sup>M100</sup>National Health Act 1946 (accommodation available on part payment) continues to have the same effect as it had immediately before the coming into force of this Act.

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#### Marginal Citations

**M98** 1946 c. 81.

**M99** 1968 c. 46.

**M100** 1946 c. 81.

#### *Vehicles under section 33 of the Health Services and Public Health Act 1968*

- 11 The provision of vehicles as mentioned in section 33 of the <sup>M101</sup>Health Services and Public Health Act 1968, and the taking of any such action as is mentioned in subsection (2) of that section, shall for the purposes of the National Health Service Act 1946 be treated as having been included among hospital and specialist services provided under Part II of that Act of 1946 as from its commencement.

#### Marginal Citations

**M101** 1968 c. 46.

#### *Prevention, care and after-care*

- 12 Any arrangements made under section 28(1) of the <sup>M102</sup>National Health Service Act 1946 by a local health authority which were in force immediately before 9th September 1968 shall—
- (a) so far as they could be made under paragraph 2(1) of Schedule 8 to this Act, continue to have effect as if so made;
  - (b) so far as they relate to any matters falling within section 3(1) of the <sup>M103</sup>Disabled Persons (Employment) Act 1958, continue to have effect as if made under that section.

#### Marginal Citations

**M102** 1946 c. 81.

**M103** 1958 c. 33(43:1).

#### *Saving of amendments*

- 13 (1) Notwithstanding the repeal by this Act of section 76 and Part I of Schedule 10 to the National Health Service Act 1946, and section 57(1) and Schedule 4 to the <sup>M104</sup>National Health Service Reorganisation Act 1973—
- (a) the amendments made by Part I of Schedule 10 to that Act of 1946 to the <sup>M105</sup>Voluntary Hospitals (Paying Patients) Act 1936 and to the <sup>M106</sup>Public Health Act 1936, and
  - (b) the amendments made by paragraphs [<sup>F762</sup>paragraphs 2, <sup>F763</sup> . . . 40, 68, 82, 109, 111, 123, 124(2) and (3), 125(2), 128, 130, 131(2), 132, 133, 151 and 152]of Schedule 4 to that Act of 1973,
- shall continue to have the same effect as they had immediately before the coming into force of this Act, subject to any amendments made by this Act.

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- (2) Nothing in this Act [<sup>F764</sup>or the Health Authorities Act 1995] affects the Secretary of State's power under section 58 of the National Health Service Reorganisation Act 1973 to bring into force paragraph [<sup>F764</sup>131(2)] of Schedule 4 to that Act.

#### Textual Amendments

- F762** Words in Sch. 14 para. 13(1)(b) substituted (25.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 64(a)** (with Sch. 2 para. 6)
- F763** Words in Sch. 14 para. 13(1)(b) repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), **Sch. 38 Pt. I Sch. 39** (with s. 1(4))
- F764** Words in Sch. 14 para. 13(2) inserted (28.5.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 64(b)** (with Sch. 2 para. 6)

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

- C118** By Opticians Act 1989 (c. 44, SIF 83), s. 37(2) it is provided that for “to” there is substituted “, 82 and”
- C119** Para. 13(1)(b): by Medical Act 1983 (c. 54, SIF 83:1), s. 56, **Sch. 7** it is provided that the reference to paragraph 69 of the National Health Service Reorganisation Act 1973 is repealed

#### Marginal Citations

- M104** 1973 c. 32(113:2).
- M105** 1936 c. 17(113:3).
- M106** 1936 c. 49(100:1).

#### *Transfers of property by voluntary organisations*

- 14 Notwithstanding the repeal by this Act of section 23(2) of the <sup>M107</sup>National Health Service (Amendment) Act 1949, section 23(1) of that Act shall be deemed to have had effect as from 5th July 1948.

#### Marginal Citations

- M107** 1949 c. 93(113:2).

#### *Mental Health Act 1959*

- 15 (1) Any regulations under section 7 of the <sup>M108</sup>Mental Health Act 1959 in force immediately before 9th September 1968, shall, so far as they could be made under paragraph 2 of Schedule 8 to this Act, have effect as if so made.
- (2) Any institution provided under section 97 of the Mental Health Act 1959, or deemed to be so provided when that section came into force, shall be deemed to be provided in pursuance of section 4 above.

#### Marginal Citations

- M108** 1959 c. 72(85).

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*The National Health Service Reorganisation Act 1973*

F765 16 .....

**Textual Amendments**

F765 Sch. 14 para. 16 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), Sch. 3 (with Sch. 2 para. 6)

*Complaints in respect of preserved Boards or bodies abolished  
under section 14 of the National Health Service Reorganisation Act 1973*

F766 17 .....

**Textual Amendments**

F766 Sch. 14 para. 17 repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), Sch. 3

*Permission deemed to have been granted under section 9(5) of the Health Services Act 1976*

18 Where under any arrangements terminated by virtue of section 9(5) of the  
M109 Health Services Act 1976—

- (a) a person was deemed to have been granted under that section permission to use accommodation and facilities to the same extent and for the same purposes as were covered by those arrangements, then
- (b) that person shall be deemed to have been granted under section 72 above the like permission (and the provisions of that section shall apply accordingly).

**Marginal Citations**

M109 1976 c. 83(113:2).

X3 SCHEDULE 15

Section 129.

CONSEQUENTIAL AMENDMENTS

**Editorial Information**

X3 The text of Sch. 15 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

ACTS

1 .....

F767

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#### Textual Amendments

**F767** Sch. 15 para. 1 repealed by Statute Law (Repeals) Act 1986 (c. 12), s. 1(1), **Sch. 1 Pt. VIII**

#### *The Education Act 1944 c.31*

**F768**<sub>2</sub> .....

#### Textual Amendments

**F768** Sch. 15 para. 2 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), Sch. 38 Pt. I, **Sch. 39** (with s. 1(4))

#### *The Education Act 1946 c.50*

**F769**<sub>3</sub> .....

#### Textual Amendments

**F769** Sch. 15 para. 3 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), Sch. 38 Pt. I, **Sch. 39** (with s. 1(4))

#### *The Polish Resettlement Act 1947 c.19*

- 4 In section 4(1) of the Polish Resettlement Act 1947, for the words “ National Health Service Act, 1946, or the National Health Service Reorganisation Act 1973” substitute “ National Health Service Act 1977 ”, and for the words “ those Acts” substitute “ that Act ”

#### *The National Assistance Act 1948 c.29*

- [<sup>F770</sup>5 In paragraph (c) of section 21(7) of the National Assistance Act 1948, for the words “ National Health Service Acts 1946 to 1973” substitute “ National Health Service Act 1977 ”.]

#### Textual Amendments

**F770** Sch. 15 para. 5 repealed (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66(2), 67(2), **Sch. 10**

- 6 In paragraph (b) of section 29(6) of the National Assistance Act 1948, for the words “ National Health Service Act, 1946, the National Health Service Reorganisation Act 1973” substitute “ National Health Service Act 1977 ”.
- 7 In section 47(8) of the National Assistance Act 1948, for the words “ National Health Service Act 1946, or the National Health Service Reorganisation Act 1973” substitute “ National Health Service Act 1977 ”.

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*The Law Reform (Personal Injuries) Act 1948 c.41*

- 8 In section 2(4) of the Law Reform (Personal Injuries) Act 1948, for the words “National Health Service Act 1946” substitute “National Health Service Act 1977”.

*The Children Act 1948 c. 43*

- 9 In section 59(1) of the Children Act 1948, in the definition of “hospital”, for the words “section seventy-nine of the National Health Service Act 1946,” substitute “section 128(1) of the National Health Service Act 1977”.

*The Nurseries and Child-Minders Regulation Act 1948 c.53*

- 10 ..... F771

**Textual Amendments**

**F771** Sch. 15 para. 10 repealed (14.10.1991) by Children Act (c. 41, SIF 20), s. 108(7), Sch. 15 (with s. 108(6), Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, art. 3(2)

- 11 ..... F772

**Textual Amendments**

**F772** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7

*The Reserve and Auxilliary Forces (Protection of Civil Interests) Act 1951 c.65*

- 12 In Part I of Schedule 2 to the Reserve and Auxilliary Forces (Protection of Civil Interests) Act 1951—

<sup>F773</sup>(a) .....

(b) in paragraph 16, in the first column, for the words “National Health Service Act, 1946” substitute “National Health Service Act 1977”<sup>F774</sup> . . .

**Textual Amendments**

**F773** Sch. 15 para. 12(a) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), Sch. 3 (with Sch. 2 para. 6)

**F774** Words in Sch. 15 para. 12(b) repealed (1.4.1996) by 1995 c. 17, ss. 5(1)(2), Sch. 3 (with Sch. 2 para. 6)

*The Landlord and Tenant Act 1954 c.56*

- 13 In section 57(6) of the Landlord and Tenant Act 1954, for the words “National Health Service Act 1946 and the National Health Service Reorganisation Act 1973” substitute “National Health Service Act 1977”.

- 14 ..... F775

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#### Textual Amendments

**F775** Sch. 15 para. 14 repealed by Medical Act 1983 (c. 54, SIF 83:1), s. 56, **Sch. 7 Pt. I**

15—17. . . . . **F776**

#### Textual Amendments

**F776** Sch. 15 paras. 15–17 repealed by Nurses, Midwives and Health Visitors Act 1979 (c. 36, SIF 83:1), s. 23(5), **Sch. 8**

18 . . . . . **F777**

#### Textual Amendments

**F777** Sch. 15 para. 18 repealed by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(2), **Sch. 6 Pt. I**

19, 20. . . . . **F778**

#### Textual Amendments

**F778** Sch. 15 paras. 19, 20 repealed by Opticians Act 1989 (c. 44, SIF 83), s. 37(4), **Sch. 2**

#### *The Disabled Persons (Employment) Act 1958 c.33*

21 In section 3(2) of the Disabled Persons (Employment) Act 1958, for the words “ section twenty-eight of the National Health Service Act, 1946” substitute “ paragraph 2 of Schedule 8 to the National Health Service Act 1977 ”.

#### *The Public Records Act 1958 c.51*

22 In Part I of the Table in Schedule 1 to the Public Records Act 1958, in the entry relating to the Department of Health and Social Security (formerly the entry relating to the Ministry of Health) after the words “ National Health Service Reorganisation Act 1973” add “ or section 92 of the National Health Service Act 1977 ”, and after the words “ said Act of 1973” add “ or section 90 or 91 of the National Health Service Act 1977 ”.

#### *The Mental Health Act 1959 c.72*

23 . . . . . **F779**

#### Textual Amendments

**F779** Sch. 15 paras. 23, 26—28, 30, 31, 33, repealed by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 6**

24<sup>[F780]</sup>(1) In subsection (1) of section 8 of the Mental Health Act 1959, for the words “ section twenty-eight of the National Health Service Act 1946” substitute “ paragraph 2 of Schedule 8 to the National Health Service Act 1977 ”.]



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(2) In subsection (2) of that section, for the words “ Part III of the National Health Service Act 1946” substitute “ Schedule 8 to the National Health Service Act 1977 ”.

(3) In subsection (4) of that section, omit the words “ Part III of the National Health Service Act 1946, and under” and after the words “ National Assistance Act, 1948” add “ and under Schedule 8 to the National Health Service Act 1977 ”.

**Textual Amendments**

**F780** Sch. 15 para. 24(1) repealed (*prosp.*) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 66(2), 67(2), **Sch. 10**

F781<sup>25</sup> .....

**Textual Amendments**

**F781** Sch. 15 para. 25 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), Sch. 15 (with s. 108(6), Sch. 14 paras. 1(1), **27(4)**); S.I. 1991/828,art.3(2)

26—28 ..... **F782**

**Textual Amendments**

**F782** Sch. 15 paras. 23, 26—28, 30, 31, 33, repealed by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 6**

29 In paragraph (b) of section 128(1) of the Mental Health Act 1959, omit the words “ or the National Health Service Reorganisation Act 1973” and after the words “ National Assistance Act 1948” insert “ or the National Health Service Act 1977 ”.

30—31 ..... **F783**

**Textual Amendments**

**F783** Sch. 15 paras. 23, 26—28, 30, 31, 33, repealed by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 6**

32 In section 142(2) of the Mental Health Act 1959, for the words “ section fifty-seven of the National Health Service Act 1946” substitute “ section 85 of the National Health Service Act 1977 ”.

33 ..... **F784**

**Textual Amendments**

**F784** Sch. 15 paras. 23, 26—28, 30, 31, 33, repealed by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 6**

34 In section 154(2) of the Mental Health Act 1959, for the words “ subsection (3) of section eighty of the National Health Service Act 1946” substitute “ section 130(4) of the National Health Service Act 1977 ”.

35 ..... **F785**

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#### Textual Amendments

**F785** Sch. 15 para. 35 repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 30, **Sch. 10**

36 ..... **F786**

#### Textual Amendments

**F786** Sch. 15 para. 36 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

37 In section 10 of the National Health Service Act 1966—

(a) in subsection (1), for the words “ Part IV of the National Health Service Act 1946” substitute “ Part II of the National Health Service Act 1977”, and in paragraph (a) of that subsection for the words “ section 43 of the said Act of 1946” substitute “ section 56 of the said Act of 1977”;

(b) for subsection (3) substitute—

“(3) Section 29(4) of the National Health Service Act 1977 shall cease to have effect on the coming into operation of this section.”

38 ..... **F787**

#### Textual Amendments

**F787** Sch. 15 para. 38 repealed by Housing and Building Control Act 1984 (c. 29, SIF 61), s. 61(2), **Sch. 12 Pt. I**

39 ..... **F788**

#### Textual Amendments

**F788** Sch. 15 para. 39 repealed by Rating (Disabled Persons) Act 1978 (c. 40, SIF 103:1, 2), **Sch. 2**

#### *The Superannuation (Miscellaneous Provisions) Act 1967 c. 28*

40 In section 7(1) of the Superannuation (Miscellaneous Provisions) Act 1967, in paragraph (a) for the words “ National Health Service Acts 1946 to 1973” substitute “ National Health Service Act 1977 ”, and in paragraph (b) for “ Acts of 1946 to 1973” substitute “ Act of 1977 ”.

41 ..... **F789**

#### Textual Amendments

**F789** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

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*The Leasehold Reform Act 1967 c.88*

- 42 In paragraph (c) of section 28(6) of the Leasehold Reform Act 1967, for the words “National Health Service Acts 1946 to 1973” substitute “National Health Service Act 1977”.

*The Health Services and Public Health Act 1968 c.46*

- 43 In paragraph (b) of section 45(4) of the Health Services and Public Health Act 1968, for the words “National Health Service Act 1946 or Part I of this Act or the National Health Service Reorganisation Act 1973” substitute “National Health Service Act 1977”.
- 44 In section 59(2) of the Health Services and Public Health Act 1968, for the words “Part IV of the National Health Service Act 1946” substitute “Part II of the National Health Service Act 1977”.
- 45 (1) In paragraph (b) of section 63(2) of the Health Services and Public Health Act 1968, for the words “Part IV of the 1946 Act” substitute “Part II of the 1977 Act”;
- (2) In subsection (8) of that section—
- (a) for the words “1946 Act means the National Health Service Act 1946” substitute “1977 Act means the National Health Service Act 1977”;
- (b) in paragraph (a) of the definition of “the relevant enactments” for the words “and Part I of this Act and section 45 thereof” substitute “section 45 of this Act and the National Health Service Act 1977”;
- (c) in paragraph (b) of the definition of “the relevant enactments” for the words “and Part I of this Act and section 45 thereof and the National Health Service Reorganisation Act 1973” substitute “section 45 of this Act and the National Health Service Act 1977”.
- 46 In section 64(3) of the Health Services and Public Health Act 1968—
- (a) omit paragraph (a)(ii);
- (b) omit paragraph (a)(xvi);
- (c) after paragraph (a)(xvii) add “(xviii) the National Health Service Act 1977.”

- 47 In section 65(3) of the Health Services and Public Health Act 1968—
- (a) omit paragraph (b)(ii);
- (b) omit paragraph (b)(xvii);
- (c) after paragraph (b)(xviii) add “(xix) the National Health Service Act 1977.”

*The Social Work (Scotland) Act 1968 c.49*

- 48 In section 86(3) of the Social Work (Scotland) Act 1968, for “Part II of the National Health Service Act 1946” substitute “sections 2 and 3 of the National Health Service Act 1977”.

*The Medicines Act 1968 c.67*

- 49 In section 131(5) of the Medicines Act 1968, for the words “National Health Service Acts 1946 to 1973” substitute “National Health Service Act 1977”.

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- 50 In section 132(1) of the Medicines Act 1968, in the definition of “health centre”, for the words “section 2 of the National Health Service Reorganisation Act” substitute “section 2 or 3 of the National Health Service Act 1977”.

*The Local Authority Social Services Act 1970 c.42*

- 51 In Schedule 1 of the Local Authority Social Services Act 1970, for the entry relating to the National Health Service Act 1946 substitute in the appropriate chronological order—
- (a) in the column headed “Enactment”, the words “National Health Service Act 1977 Schedule 8”;
  - (b) in the column headed “Nature of functions”, the words “Care of mothers and young children; prevention, care and after-care; home help and laundry facilities”.

52 ..... F790

**Textual Amendments**

**F790** Sch. 15 para. 52 repealed by Finance Act 1980 (c. 48, SIF 63:1), Sch. 20 Pt. III

*The Tribunals and Inquiries Act 1971 c. 62*

F791 53 .....

**Textual Amendments**

**F791** Sch. 15 para. 53 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), Sch. 4 Pt. I

*The Finance Act 1971 c.68*

F792 54 .....

**Textual Amendments**

**F792** Sch. 15 para. 54 repealed (13.10.1993) by Finance (No. 2) Act 1992 (c. 48), s. 12, Sch. 18 Pt. IV; S.I. 1993/2272, art. 2 (subject to the transitional provisions and savings in art. 3, Sch. of that S.I.).

- 55 In paragraph 1(1) of Schedule 13 to the Finance Act 1971, for “National Health Service Act 1946” substitute “National Health Service Act 1977”.

56 ..... F793

**Textual Amendments**

**F793** Sch. 15 para. 56 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 3(1), Sch. 1 Pt. I (with s. 5, Sch. 4 paras. 1, 2)

57 ..... F794

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**Textual Amendments**

**F794** Sch. 15 para. 57 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844(4)(6), [Sch. 31](#)

*The National Health Service Reorganisation Act 1973 c.32*

58 In section 14(2) of the National Health Service Reorganisation Act 1973, for the words “ subsection (2) or (3) of section 55 of the principal Act” substitute “ subsection (1) or (2) of section 98 of the National Health Service Act 1977 ”.

59 In section 15 of the National Health Service Reorganisation Act 1973, after subsection (5) insert the following subsection—

“(5A) So far as may be necessary for the purposes of subsections (3) to (5) above, any reference in those subsections to this Act, or to any instrument in force by virtue of this Act, shall (as the case may be) include a reference to—

- (a) any provision of this Act which has been repealed and re-enacted by the National Health Service Act 1977 ;
- (b) any instrument in force by virtue of a provision of this Act which has been repealed and re-enacted by that Act of 1977.”

*The Local Government Act 1974 c.7*

**F795** 60 .....

**Textual Amendments**

**F795** Sch. 15 para. 60 repealed (5.2.1994) by [1993 c. 46, ss. 20, 22\(4\)](#), [Sch. 3](#)

**F796** 61 .....

**Textual Amendments**

**F796** Sch. 15 para. 61 repealed (5.2.1994) by [1993 c. 46, ss. 20, 22\(4\)](#), [Sch. 3](#)

*The Trade Union and Labour Relations Act 1974 c.52*

62 **F797** .....

**Textual Amendments**

**F797** Sch. 15 para. 62 repealed (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(1), 302, [Sch.1](#).

*The Social Security Act 1975 c. 14*

**F798** 63 .....

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**Textual Amendments**

**F798** Sch. 15 para. 63 repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3(1), 7(2), **Sch.1**.

**F799** 64 .....

**Textual Amendments**

**F799** Sch. 15 para. 64 repealed (6.4.1992) by Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21, SIF 113:1), s. 10, **Sch.4**; S.I. 1991/2617, **art.2(f)**.  
 Sch. 15 para. 64 expressed to be repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3(1), 7(2), **Sch.1**.

*The House of Commons Disqualification Act 1975 c.24*

65 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975, in the entry relating to the Medical Practices Committee, for the words “ section 34 of the National Health Service Act 1946” substitute “ section 7 of the National Health Service Act 1977 ”.

66 ..... **F800**

**Textual Amendments**

**F800** Sch. 15 para. 66 repealed by Registered Homes Act 1984 (c. 23, SIF 113:3), s. 57, **Sch. 3**

*The Child Benefit Act 1975 c.61*

**F801** 67 .....

**Textual Amendments**

**F801** Sch. 15 para. 67 repealed (1.7.1992) by Social Security (Consequential Provisions) Act (c. 6), ss. 3, 7(2), Sch.1.

68—70 ..... **F802**

**Textual Amendments**

**F802** Ss. 6(1)(2)(6)(7), 30(2), 59, 60, 67–71, 73–76, Sch. 4 para. 1, Sch. 15 paras. 11, 41, 68—70 repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

71 ..... **F803**

**Textual Amendments**

**F803** Sch. 15 para. 71 repealed by Social Security Act 1990 (c. 27, SIF 113:1), s. 21(1)(2), Sch. 6 para. 14, **Sch. 7**

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*The Health and Personal Social Services (Northern  
Ireland) Order 1972 S.I. 1972/1265 (N.I. 14)*

- 72 In paragraph 7 of Schedule 11 to the Health and Personal Social Services (Northern Ireland) Order 1972 for the words “ Part IV of the National Health Service Act 1946” substitute “ Part II of the National Health Service Act 1977”.

<sup>X4</sup>SCHEDULE 16

Section 129.

REPEALS

**Editorial Information**

- X4** The text of Sch. 16 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
26 Geo 5 & 1 Edw. 8. c. 49.	The Public Health Act 1936.	Section 203.
9 & 10 Geo. 6. c. 81.	The National Health Service Act 1946.	The whole Act.
12, 13, & 14 Geo. 6. c. 93.	The National Health Service (Amendment) Act 1949.	Section 8.  Sections 10 and 11. Sections 14 to 18. Sections 20(1) and 21. Section 23. Section 25. Sections 28 and 29(1). In section 32(1), the words from “ and this Act” where they first occur to “ 1946 and 1949”. In the Schedule, Part I.
14&15 Geo. 6. c. 31.	The National Health Service Act 1951.	The whole Act.
15&16 Geo.6. & 1 Eliz. 2. c. 25.	The National Health Service Act 1952.	The whole Act.
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959.	In section 8(4), the words “ Part III of the National Health Service Act, 1946, and under”

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		In section 128(1), in paragraph (b), the words “ the National Health Service Act, 1946, or”, and the words, “ or the National Health Service Reorganisation Act 1973”.
		In Schedule 7, the entries relating to the National Health Service Act 1946, and the National Health Service (Amendment) Act 1949.
8 & 9 Eliz. 2. c. 49.	The Public Health Laboratory Service Act 1960.	The whole Act.
9 & 10 Eliz. 2. c. 19.	The National Health Service Act 1961.	The whole Act.
1964 c. 60.	The Emergency Laws (Re-enactments and Repeals) Act 1964.	Section 5.
		In section 15, the words “ the National Health Service Acts 1946 to 1973”, and the words “ and the corresponding enactments of the Parliament of Northern Ireland”.
1965 c. 42.	The Public Health (Notification of Births) Act 1965.	The whole Act.
1966 c. 8.	The National Health Service Act 1966.	In section 12(2), from the words “ so far as” where they first occur to the words “ and this Act”.
1968 c. 46.	The Health Services and Public Health Act 1968.	Part I.
		In section 63(8), in paragraph (a) of the definition of “ the relevant enactments” the words “ the 1946 Act”.
		In section 64(3), paragraph (a)(ii) and paragraph (a)(xvi).
		In section 65(3), paragraph (b)(ii) and paragraph (b)(xvii).
		In section 79(1), from the words “ and the” where they



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		first occur to the words “ 1946 to 1968”.
		In Schedule 2, Part I.
1968 c. 67.	The Medicines Act 1968.	In Schedule 5, paragraph 11.
1970 c. 42.	The Local Authority Social Services Act 1970.	In Schedule 1, in the entry relating to the Health Services and Public Health Act 1968, the references to sections 12 and 13 in the column headed “ Enactment” and in the column headed “ Nature of Functions”.
1972 c. 70.	The Local Government Act 1972.	In Schedule 23, paragraphs 1, 5, 15(1) and (2).
1973 c. 32.	The National Health Service Reorganisation Act 1973.	Sections 2 to 13.
		In section 15(3), the words “ and in particular nothing in any provision of this Act amending section 55 of the principal Act (which relates to accounts)”.
		Sections 21 and 22.
		Section 28.
		Part III.
		Section 40.
		Sections 42 and 43.
		Sections 45 to 48.
		Sections 50 to 53.
		Section 54(1) and (5).
		In section 55(1), the definitions “ special hospital” and “ Special Trustees”.
		In section 56—
		(a) in subsection (1), in paragraph (a), the words “ or by virtue of section 34(1) (h) or (6) of this Act or subsection (6) of the following section”;
		(b) in subsection (3), the reference “ 23(2)”;

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		(c)in subsection (4), the words “ and any power conferred by section 7 of this Act to give directions by an instrument in writing”;
		(d)in subsection (5), the words “ other than section 7”.
		In section 57, subsections (1) and (6).
		In section 58—
		(a)in subsection (1), the word “ and” where it first occurs, and paragraph (a);
		(b)subsection (6).
		Schedules 1, 3 and 4.
1974 c. 7.	The Local Government Act 1974.	In Schedule 6, paragraph 21.
1976 c. 48.	The Parliamentary and other Pensions and Salaries Act 1976.	Section 7.
1976 c. 59.	The National Health Service (Vocational Training) Act 1976.	The whole Act.
1976 c. 83.	The Health Services Act 1976.	Section 2.
		Sections 4 and 5.
		Sections 7 to 11.
		In section 23—
		(a)in subsection (1), the definitions of “ the 1946 Act” and “ the National Health Service Acts”;
		(b)subsections (3) to (5).
		In Schedule 1, Part V.
		Schedule 3.
		In Schedule 4, Part I.

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