



National Health Service (Amendment) Act 1986

1986 CHAPTER 66

An Act to apply certain enactments, orders and regulations relating to food and health and safety to certain health service bodies and premises; to make further provision as to pharmaceutical services under the National Health Service Act 1977 and the National Health Service (Scotland) Act 1978 and the remuneration of persons providing those services, general medical services, general dental services or general ophthalmic services under those Acts; to provide further, as respects Scotland, as to co-operation among certain bodies in securing and advancing the health of disabled persons, the elderly and others; and for connected purposes. [7th November 1986]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Application of food legislation to health authorities and health service premises.

- (1) For the purposes of the food legislation—
 - (a) a health authority shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; and
 - (b) premises used by a health authority shall not be regarded as property of or property held on behalf of the Crown.
- (2) The appropriate authority may by regulations—
 - (a) provide who is to be treated as the occupier or owner of any such premises for any of those purposes; and
 - (b) make such modifications of the food legislation, in its application to health authorities, as appear to the authority to be necessary for its effective operation in relation to them.

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- (3) The powers to make regulations conferred by subsection (2) above shall be exercisable by statutory instrument.
- (4) A statutory instrument containing regulations made in the exercise of the power conferred by paragraph (a) of that subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A statutory instrument containing regulations made in the exercise of the power conferred by paragraph (b) shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.
- (6) Section 125 of the 1977 Act and section 101 of the 1978 Act shall have no effect in relation to any action, liability, claim or demand arising out of the food legislation.
- (7) In this section—
 - (a) as respects England and Wales—
 - (i) “the appropriate authority” means the Ministers, as defined in section 132(1) of the Food Act 1984;
 - (ii) “the food legislation” means the Food Act 1984 and any regulations or order made under it;
 - (iii) “health authority” has the meaning assigned to it by section 128 of the 1977 Act;
 - (b) as respects to Scotland—
 - (i) “the appropriate authority” means the Secretary of State;
 - (ii) “the food legislation” means the Milk and Dairies (Scotland) Acts 1914 to 1949, the Food and Drugs (Scotland) Act 1956 and the Control of Food Premises (Scotland) Act 1977 and any regulations or order made under those Acts;
 - (iii) “health authority” means a Health Board constituted under section 2 of the 1978 Act, the Common Services Agency constituted under section 10 of that Act or a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984.
- (8) This section shall have no effect in relation to anything done or omitted before its commencement.

2 Health and safety legislation.

- (1) For the purposes of health and safety legislation—
 - (a) a health authority shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; and
 - (b) premises used by a health authority shall not be regarded as property of or property held on behalf of the Crown.
- (2) In this section—

“health authority”—

 - (a) as respects England and Wales, has the meaning assigned to it by section 128 of the 1977 Act; and
 - (b) as respects Scotland, means a Health Board constituted under section 2 of the 1978 Act, the Common Services Agency constituted under section 10 of that Act or a State Hospital Management Committee

constituted under section 91 of the Mental Health (Scotland) Act 1984;
and

“the health and safety legislation” means—

- (a) the Health and Safety at Work etc. Act 1974 and the regulations, orders and other instruments in force under it; and
 - (b) the enactments specified in the third column of Schedule 1 to that Act and the regulations, orders and other instruments in force under those enactments.
- (3) Section 125 of the 1977 Act and section 101 of the 1978 Act shall have no effect in relation to any action, liability, claim or demand arising out of the health and safety legislation.
- (4) This section shall have no effect in relation to anything done or omitted before its commencement.

3 Pharmaceutical services.

- (1) The following section shall be substituted for section 42 of the 1977 Act—

“42 Regulations as to pharmaceutical services.

- (1) Regulations shall provide for securing that arrangements made by a Family Practitioner Committee under section 41 above will enable persons in the Committee’s locality 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 a Committee of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the Committee’s locality;
 - (b) that an application to a Committee 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 Committee is 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

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- (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
 - (ii) has ceased to provide from them,
 the services, or any of the services, which he is listed as undertaking to provide from them.
- (3) The regulations may include provision—
 - (a) that an application to a Committee may be granted in respect of some only of the services specified in it;
 - (b) that an application to a Committee relating to services of a prescribed description shall be granted only if it appears to the Committee that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed;
 - (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 a prescribed body and by reference to a prescribed criterion; and
 - (e) that the prescribed body may give its 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.”.
- (2) Regulations purporting to be made under section 42(b) of the 1977 Act and made before the passing of this Act shall be treated as being and always having been valid.
- (3) The following subsections shall be substituted for subsection (2) of section 27 of the 1978 Act—
 - “(2) Regulations shall provide for securing that arrangements made by a Health Board under subsection (1) will enable persons in the Board’s area for whom drugs, medicines or appliances mentioned in that subsection are ordered as there mentioned to receive them from persons with whom such arrangements have been made.
 - (3) The regulations shall include provision—
 - (a) for the preparation and publication by a Health Board of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the Board’s area;

- (b) that an application to a Health Board 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 Health Board is 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
 - (ii) has ceased to provide from them,the services, or any of the services, which he is listed as undertaking to provide from them.

- (4) The regulations may include provision—
 - (a) that an application to a Health Board may be granted in respect of some only of the services specified in it;
 - (b) that an application to a Health Board relating to services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed;
 - (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 a prescribed body and by reference to a prescribed criterion; and
 - (e) that the prescribed body may give its approval subject to conditions.
- (5) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of subsection (3) or (4).
- (6) The regulations shall be so framed as to preclude—
 - (a) a person included in a list published under subsection (3)(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 (3)(c) above should be granted or an appeal against such a decision brought by virtue of subsection (5) above should be allowed.”.

- (4) In section 28 of the 1978 Act, after the word “by” where it first occurs in each of subsections (1) and (2) there shall be inserted the words “or under”.

4 Remuneration of persons providing general medical services etc.

- (1) On a determination of remuneration for any of the descriptions of services mentioned in section 43A(1) of the 1977 Act or section 28A(1) of the 1978 Act or any category of services falling within such a description the determining authority may adjust the amount of the remuneration in either or both of the following ways—

- (a) by deducting an amount to take account of any overpayment;
- (b) by adding an amount to take account of any underpayment,

if it appears to the authority that an earlier determination was unsatisfactory.

- (2) An earlier determination is to be taken to have been unsatisfactory only if, had it fallen to the authority to make it at the time of the later determination, the authority would have made it on the basis of different information.

- (3) If an amount falls to be deducted by virtue of subsection (1)(a) above, the determining authority, in fixing amounts of remuneration for persons to whom the determination relates, may have regard to the period within which they first provided services of the description to which it relates.

- (4) In this section—

“earlier determination” means an earlier determination of remuneration of the same or other persons for services of the same description or any category of services falling within that description and includes such a determination made before the passing of this Act;

“overpayment” means the aggregate of any amounts which were properly paid under the earlier determination but which in the authority’s opinion were paid because that determination was unsatisfactory, exclusive of any portion of that aggregate in respect of which a deduction under subsection (1) above has already been made; and

“underpayment” means the aggregate of any amounts which in the authority’s opinion would have been paid under the earlier determination if that determination had not been unsatisfactory, exclusive of any portion of that aggregate in respect of which an addition under subsection (1) above has already been made.

- (5) If the later determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 43A(1) of the 1977 Act or section 28A(1) of the 1978 Act, it is immaterial whether the earlier determination was of remuneration for the same category of services or for any other category of services falling within the same description.

- (6) In subsection (7) of section 43B of the 1977 Act and of section 28B of the 1978 Act—

- (a) in paragraph (a), for the words “a kind to which the determination will relate” there shall be substituted the words “the description to which the determination will relate or of any category falling within that description”;
- and

- (b) the following paragraph shall be substituted for paragraph (d)—
- “(d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;”.

(7) The following subsection shall be inserted after each of those subsections—

- “(8) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in subsection (1) of the preceding section, the reference in subsection (7)(a) above to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”.

5 Co-operation and advice in relation to disabled persons, the elderly and others.

(1) After section 13 of the 1978 Act there shall be inserted the following sections—

“13A Co-operation in planning of services for disabled persons, the elderly and others.

- (1) The duty under section 13, in relation to persons to whom this section applies, includes—
- (a) joint planning of—
- (i) services for those persons; and
- (ii) the development of those services,
- being services which are of common concern to Health Boards and either or both of the authorities mentioned in that section;
- (b) such consultation with voluntary organisations providing services similar to those mentioned in paragraph (a) as might be expected to contribute substantially to the joint planning of the services mentioned in that paragraph;
- (c) the publication, at such times and in such manner as the bodies who have made joint plans under paragraph (a) consider appropriate, of those joint plans.
- (2) This section applies to—
- (a) disabled persons within the meaning of the Disabled Persons (Services, Consultation and Representation) Act 1986;
- (b) persons aged 65 or more; and
- (c) such other categories of persons as the Secretary of State may by order specify.

13B Joint Liaison Committees.

- (1) The Secretary of State may, after consultation with such Health Boards, local authorities, education authorities, associations of such authorities and other organisations and persons as appear to him to be appropriate, by order provide for the formation and as to the functions of committees, to be known as joint liaison committees, to advise Health Boards and local and education authorities on the performance of such of their duties under section 13 as

consist of co-operation in the planning and operation of services of common concern to Health Boards and such authorities.

(2) An order under subsection (1) may contain provisions relating to the role of voluntary organisations in joint liaison committees.”.

(2) Section 15 of the Disabled Persons (Services, Consultation and Representation) Act 1986 is hereby repealed.

6 Expenses.

There shall be paid out of money provided by Parliament any increase attributable to this Act in sums so provided under any other Act.

7 Orders in Council making corresponding provision for Northern Ireland.

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made for purposes corresponding to those of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House.

8 Short title, etc.

(1) This Act may be cited as the National Health Service (Amendment) Act 1986.

(2) In this Act—

“the 1977 Act” means the National Health Service Act 1977; and

“the 1978 Act” means the National Health Service (Scotland) Act 1978.

(3) Section 21(1) of the Health Services Act 1980 and paragraph 54 of Schedule 1 to that Act shall cease to have effect.

(4) Sections 1 and 2 above shall come into force at the end of the period of three months beginning with the day on which this Act is passed.

(5) Each of the following provisions of this Act—

(a) section 3 above; and

(b) to the extent that it inserts section 13B of the 1978 Act into that Act, section 5 above,

shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint in relation to it.

(6) Section 7 above extends to Northern Ireland only, but apart from that section, subsection (1) above and this subsection, this Act does not extend to Northern Ireland.