



National Health Service and Community Care Act 1990

1990 CHAPTER 19

PART I

THE NATIONAL HEALTH SERVICE: ENGLAND AND WALES

Funding, audit and liabilities

19 Amendments relating to funding of health authorities etc

- (1) Section 97 of the principal Act (means of meeting expenditure of health authorities out of public funds) shall be amended in accordance with this section.
- (2) In subsection (1) (payments to health authorities etc. by the Secretary of State)—
 - (a) at the end of paragraph (a) there shall be added “including, in the case of a Regional Health Authority, its functions with respect to such expenditure of Family Health Services Authorities in relation to which it is the relevant Regional Health Authority as—
 - (i) is attributable to the reimbursement of expenses of persons providing services in pursuance of Part II of this Act and is of a description specified in the allotment, and
 - (ii) is attributable to the performance by the Family Health Services Authority of their functions in that year”;
 - (b) after paragraph (a) there shall be inserted the following paragraph—
 - “(aa) to each Regional Health Authority sums equal to any such expenditure of Family Health Services Authorities in relation to which it is the relevant Regional Health Authority as is attributable to the remuneration of persons providing services in pursuance of Part II of this Act and is not of a description specified as mentioned in paragraph (a) above”;

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- (c) in paragraph (b) for the words “Family Practitioner Committee” there shall be inserted “Family Health Services Authority whose locality is in Wales”.
- (3) In subsection (2) (payments by Regional Health Authorities) for the words following “each financial year” there shall be substituted—
- “(a) to each District Health Authority whose district is included in the region sums not exceeding the amount allotted by the Regional Health Authority to the District Health Authority for that year towards meeting the expenditure attributable to the performance by the District Health Authority of their functions in that year; and
 - (b) to each Family Health Services Authority in relation to which it is the relevant Regional Health Authority—
 - (i) sums equal to the expenditure referred to in subsection (1) (aa) above; and
 - (ii) sums not exceeding the amount allotted by the Regional Health Authority to the Family Health Services Authority for that year towards meeting other expenditure attributable to the reimbursement of expenses of persons providing services in pursuance of Part II of this Act and to the performance by the Family Health Services Authority of their functions in that year.”
- (4) In subsection (3) (directions of Secretary of State)—
- (a) after the word “directions” there shall be inserted “(a)”;
 - (b) after the word “Regional” there shall be inserted “or Special” and for the words “Practitioner Committee” there shall be substituted “Health Services Authority whose locality is in Wales”; and
 - (c) at the end of the subsection there shall be added “and
 - (b) to a District Health Authority in England with respect to the payment of sums by them to the Regional Health Authority in respect of charges or other sums referable to the valuation or disposal of assets; and
 - (c) to a Regional Health Authority with respect to the application of sums received by them by virtue of paragraph (b) above or by virtue of section 15(7)(a) of the National Health Service and Community Care Act 1990.”
- (5) In subsection (4) (directions of Regional Health Authorities) for the words from “an Area Health Authority” onwards there shall be substituted “a District Health Authority whose district is included in the region or a Family Health Services Authority in relation to which it is the relevant Regional Health Authority with respect to the application of any sum paid out of those sums to the District Health Authority or the Family Health Services Authority under subsection (2) above”.

20 Extension of functions etc. of Audit Commission to cover the health service

- (1) Part III of the Local Government Finance Act 1982 (the Audit Commission for Local Authorities in England and Wales—in this section referred to as “the Commission”) shall have effect subject to the amendments in Schedule 4 to this Act, being amendments—
- (a) to extend the functions of the Commission to cover health authorities and other bodies established under this Act or the principal Act;

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- (b) to alter the title and constitution of the Commission to reflect its wider role; and
 - (c) to make provision consequential on or supplemental to the amendments referred to in paragraphs (a) and (b) above.
- (2) In section 98 of the principal Act (accounts and audit),—
- (a) in subsection (1), in the words following paragraph (e) for the words from “appointed” to “Comptroller” there shall be substituted “appointed by the Audit Commission for Local Authorities and the National Health Service in England and Wales and the Comptroller”;
 - (b) after subsection (2A) of that section there shall be inserted the following subsection—
 - “(2B) So far as relates to allotted sums paid to the members of a fund-holding practice—
 - (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 the 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 Family Health Services Authority; and
 - (d) in respect of each financial year, each Family Health Services 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 the Authority under paragraph (c) above.”;
 - (c) subsection (3) (regulations of the Secretary of State with respect to audit) shall be omitted; and
 - (d) after subsection (4) there shall be inserted—
 - “(5) In subsection (2B) above “recognised fund-holding practice” and “allotted sum” have the same meaning as in section 15 of the National Health Service and Community Care Act 1990.”
- (3) If the person who is for the time being the auditor, within the meaning of Part III of the Local Government Finance Act 1982, in relation to the accounts of a health service body, within the meaning of that Part, has reason to believe that the body, or any officer of the body,—
- (a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful, or
 - (b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,
- he shall refer the matter forthwith to the Secretary of State.
- (4) It shall be the duty of the Commission to make, by such date as the Secretary of State may determine, an offer of employment by the Commission to each person employed in the civil service of the State in connection with the audit of the accounts of any of the bodies specified in section 98(1) of the principal Act whose name is notified to the Commission by the Secretary of State for the purposes of this subsection; and the

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terms of the offer must be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

- (5) An offer made in pursuance of subsection (4) above shall not be revocable during the period of three months beginning with the date on which it is made.
- (6) Where a person becomes an officer or servant of the Commission in consequence of subsection (4) above, then, for the purposes of the Employment Protection (Consolidation) Act 1978, his period of employment in the civil service of the State shall count as a period of employment by the Commission and the change of employment shall not break the continuity of the period of employment.
- (7) Where a person ceases to be employed as mentioned in subsection (4) above—
 - (a) on becoming an officer or servant of the Commission in consequence of an offer made in pursuance of that subsection, or
 - (b) having unreasonably refused such an offer,
 he shall not, on ceasing to be so employed, be treated for the purposes of any scheme under section 1 of the Superannuation Act 1972 as having been retired on redundancy.
- (8) Without prejudice to any express amendment made by this Act, on and after the day appointed for the coming into force of this subsection, any reference in any enactment (including an enactment comprised in subordinate legislation) to the Audit Commission for Local Authorities in England and Wales shall be construed as a reference to the Audit Commission for Local Authorities and the National Health Service in England and Wales.

21 Schemes for meeting losses and liabilities etc. of certain health service bodies

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies specified in subsection (2) below may make provision to meet—
 - (a) expenses arising from any loss of or damage to their property; and
 - (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies concerned.
- (2) The bodies referred to in subsection (1) above are—
 - (a) health authorities;
 - (b) NHS trusts; and
 - (c) the Public Health Laboratory Service Board;
 but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.
- (3) Without prejudice to the generality of the power conferred by subsection (1) above, a scheme under this section may—
 - (a) provide for the scheme to be administered by the Secretary of State or by a health authority or NHS trust specified in the scheme;
 - (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
 - (c) provide for the making of payments for the purposes of the scheme by the Secretary of State.

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- (4) Without prejudice to any other power of direction conferred on the Secretary of State,
- (a) if the Secretary of State so directs, a body which is eligible to participate in a scheme shall do so; and
 - (b) where a scheme provides for it to be administered by the Secretary of State, a health authority or NHS trust shall carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct.
- (5) Neither the Secretary of State nor any health authority or NHS trust administering a scheme under this section shall, by virtue of their activities under the scheme, be regarded as carrying on insurance business for the purposes of the Insurance Companies Act 1982.