



# Health Act 1999

## 1999 CHAPTER 8

### PART I **U.K.**

#### THE NATIONAL HEALTH SERVICE

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

- C1** Pt. I (ss. 1-45 except 20(1), 22, 33-38): transfer of functions (1.7.1999) by [S.I. 1999/672](#), art. 2, [Sch. 1](#) (as inserted (30.6.1999) by [1999 c. 8](#), [ss. 66\(4\)\(5\)\(c\)](#), 67(4))  
Pt. I applied to Isles of Scilly (with modifications) (14.3.2001) by [S.I. 2001/448](#), [art. 2](#)

#### *Fund-holding practices*

### 1 Repeal of law about fund-holding practices. **E+W**

In the <sup>M1</sup>National Health Service and Community Care Act 1990, sections 14 to 17 (which make provision in relation to fund-holding practices) are to cease to have effect.

##### Commencement Information

- II** [S. 1](#) wholly in force at 1.4.2000; [S. 1](#) not in force at Royal Assent see [s. 67\(1\)](#); [s. 1](#) in force for E. at 1.10.1999 by [S.I. 1999/2540](#), art. 2(1)(a), [Sch. 1](#); [s. 1](#) in force for W. at 1.4.2000 by [S.I. 2000/1026](#), art. 2(1), [Sch.](#)

##### Marginal Citations

- M1** [1990 c.19](#)

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*Local administration*

**2 Primary Care Trusts. E+W**

F1 .....

**Textual Amendments**  
F1 Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**3 Primary Care Trusts: finance. E+W**

F2 .....

**Textual Amendments**  
F2 Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**4 Expenditure of Health Authorities and Primary Care Trusts. E+W**

F3 .....

**Textual Amendments**  
F3 Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**5 Primary Care Trusts: provision of services etc. E+W**

F4 .....

**Textual Amendments**  
F4 Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**6 Delegation of Health Authority functions relating to pilot schemes and section 28C arrangements. E+W**

F5 .....

**Textual Amendments**  
F5 Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

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**7 Primary Care Trusts: trust-funds and trustees. E+W**

F6 .....

**Textual Amendments**

**F6** Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

**8 Payments relating to past performance. E+W**

F7 .....

**Textual Amendments**

**F7** Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

**9 Indemnity cover for Part II services. E+W**

F8 .....

**Textual Amendments**

**F8** Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

**10 Remuneration for Part II services. E+W**

F9 .....

**Textual Amendments**

**F9** Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

**11 Local representative committees. E+W**

F10 .....

**Textual Amendments**

**F10** Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

**12 Directions. E+W**

F11 .....

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**Textual Amendments**  
**F11** Ss. 2-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

*NHS trusts*

**13 Establishment orders. E+W**

- (1) <sup>F12</sup> .....
- (2) <sup>F12</sup> .....
- (3) <sup>F12</sup> .....
- (4) <sup>F12</sup> .....
- (5) An order under section 63 may—
  - (a) provide for any provision made by it for the purposes of, in consequence of or for giving full effect to this section to be treated as having had effect from a time before the commencement of this section,
  - (b) make such provision about an NHS trust dissolved before that commencement.
- (6) <sup>F13</sup> .....
- (7) <sup>F13</sup> .....
- (8) <sup>F13</sup> .....
- (9) <sup>F13</sup> .....
- (10) <sup>F13</sup> .....
- (11) <sup>F13</sup> .....

**Textual Amendments**  
**F12** S. 13(1)-(4) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 para. 19)  
**F13** S. 13(6)-(11) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 para. 19)

**Commencement Information**  
**I2** S. 13 wholly in force at 1.11.1999; s. 13 not in force at Royal Assent see s. 67(1); s. 13 in force for E. at 1.10.1999 by S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; s. 13 in force for W. at 1.11.1999 by S.I. 1999/3184, art. 2(1), **Sch. 1**

**14 Exercise of powers. E+W**

- <sup>F14</sup> .....

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### Textual Amendments

**F14** S. 14 repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#))

## 15 Public dividend capital. **E+W**

**F15** .....

### Textual Amendments

**F15** S. 15 repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#))

## 16 Existing NHS trusts: conversion of initial loan. **E+W**

- (1) This section applies to any NHS trust in existence immediately before commencement.
- (2) On commencement so much of the originating capital debt of the NHS trust as remains outstanding immediately before commencement is to be treated as the originating capital of the NHS trust and accordingly is public dividend capital.
- (3) Any reference in any enactment, instrument or other document to the originating capital debt of the NHS trust is to be construed (except where the context otherwise requires) as a reference to its originating capital.
- (4) The Secretary of State may with the consent of the Treasury determine the amount and time for payment of interest on the NHS trust's initial loan in respect of the period ending with commencement.
- (5) In this section—
  - “commencement” means the coming into force of this section,
  - “initial loan” has the meaning given by section 9(5) of [<sup>F16</sup>the National Health Service and Community Care Act 1990, prior to the repeal of that section by the National Health Service (Consequential Provisions) Act 2006]

### Textual Amendments

**F16** Words in s. 16(5) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8(2), [Sch. 1 para. 195](#) (with [Sch. 3 Pt. 1](#))

### Commencement Information

**I3** S. 16 wholly in force at 1.11.1999; s. 16 not in force at Royal Assent see [s. 67\(1\)](#); s. 16 in force for E. at 1.9.1999 by [S.I. 1999/2342, art. 2\(1\)](#), [Sch. 1](#); s. 16 in force for W. at 1.11.1999 by [S.I. 1999/3184, art. 2\(1\)](#), [Sch. 1](#)

## 17 Borrowing. **E+W**

**F17** .....

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**Textual Amendments**  
F17 S. 17 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

*Quality etc*

**18 Duty of quality. E+W**

F18 .....

**Textual Amendments**  
F18 Ss. 18-24 repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199, Sch. 14 Pt. 2; S.I. 2004/759, art. 13(2)(g)

**19 The Commission for Health Improvement. E+W**

F19 .....

**Textual Amendments**  
F19 Ss. 18-24 repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199, Sch. 14 Pt. 2; S.I. 2004/759, art. 13(2)(g)

**20 Functions of the Commission. E+W**

F20 .....

**Textual Amendments**  
F20 Ss. 18-24 repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199, Sch. 14 Pt. 2; S.I. 2004/759, art. 13(2)(g)

**21 ..... E+W**

F21 .....

**Textual Amendments**  
F21 Ss. 18-24 repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199, Sch. 14 Pt. 2; S.I. 2004/759, art. 13(2)(g)

**22 Arrangements with Ministers. U.K.**

F22 .....

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**Textual Amendments**

**F22** Ss. 18-24 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 43), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13\(2\)\(g\)](#)

**23 Obtaining information etc.** **E+W**

**F23** .....

**Textual Amendments**

**F23** Ss. 18-24 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 43), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13\(2\)\(g\)](#)

**24 Restrictions on disclosure of information.** **E+W**

**F24** .....

**Textual Amendments**

**F24** Ss. 18-24 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 43), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13\(2\)\(g\)](#)

**25 Abolition of Clinical Standards Advisory Group.** **U.K.**

**F25** .....

**Textual Amendments**

**F25** [S. 25](#) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004](#) (c. 14), [s. 1\(1\)](#), {[Sch. 1 Pt. 5 Group 9](#)}

*Partnership*

**26 Co-operation between NHS bodies.** **E+W**

**F26** .....

**Textual Amendments**

**F26** Ss. 26-32 repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006](#) (c. 43), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#))

**27 Co-operation between NHS bodies and local authorities.** **E+W**

**F27** .....

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**Textual Amendments**  
F27 Ss. 26-32 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**28 Plans for improving health etc. E+W**

F28 .....

**Textual Amendments**  
F28 Ss. 26-32 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**29 Payments by NHS bodies to local authorities. E+W**

F29 .....

**Textual Amendments**  
F29 Ss. 26-32 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**30 Payments by local authorities to NHS bodies. E+W**

F30 .....

**Textual Amendments**  
F30 Ss. 26-32 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**31 Arrangements between NHS bodies and local authorities. E+W**

F31 .....

**Textual Amendments**  
F31 Ss. 26-32 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

**32 Joint consultative committees. E+W**

F32 .....



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### Textual Amendments

**F32** Ss. 26-32 repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#))

## *Control of prices of medicines and profits*

### [<sup>F33</sup>33 Powers relating to voluntary schemes. **U.K.**

- (1) The powers conferred by this section may be exercised where there is in existence a scheme (referred to in this section and sections 34 and 35 as a voluntary scheme) made by the Secretary of State and the industry body for the purpose of—
  - (a) limiting the prices which may be charged by any manufacturer or supplier to whom the scheme relates for the supply of any health service medicines, or
  - (b) limiting the profits which may accrue to any manufacturer or supplier to whom the scheme relates in connection with the manufacture or supply of any health service medicines.
- (2) For the purposes of this section and sections 34 and 35, a voluntary scheme is to be treated as applying to a manufacturer or supplier to whom it relates if—
  - (a) he has consented to the scheme being so treated (and has not withdrawn that consent), and
  - (b) no notice is in force in his case under subsection (4).
- (3) For the purposes of this section a voluntary scheme has effect, in relation to a manufacturer or supplier to whom it applies, with any additions or modifications made by him and the Secretary of State.
- (4) If any acts or omissions of any manufacturer or supplier to whom a voluntary scheme applies (a “scheme member”) have shown that, in the scheme member’s case, the scheme is ineffective for either of the purposes mentioned in subsection (1), the Secretary of State may by a written notice given to the scheme member determine that the scheme is not to apply to him.
- (5) A notice under subsection (4) must give the Secretary of State’s reasons for giving the notice; and the Secretary of State may not give a notice under that subsection until he has given the scheme member an opportunity to make representations about the acts or omissions in question.
- (6) Consent under subsection (2)(a) must be given, or withdrawn, in the manner required by the Secretary of State.
- (7) The Secretary of State may after consultation with the industry body require any manufacturer or supplier to whom a voluntary scheme applies to—
  - (a) record and keep any information, and
  - (b) provide any information to the Secretary of State,which the Secretary of State may require for the purpose of enabling the scheme to operate or facilitating its operation or for the purpose of giving full effect to any provision made under subsection (8).
- (8) The Secretary of State may—

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- (a) prohibit any manufacturer or supplier to whom a voluntary scheme applies from increasing any price charged by him for the supply of any health service medicine covered by the scheme without the approval of the Secretary of State, and
- (b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.]

#### Textual Amendments

**F33** S. 33 repealed by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 6, Sch. 4](#) (with [Sch. 2 Pt. 1](#)), the repeal coming into force at 1.3.2007 to the extent that s. 33 is already in force at that date, and otherwise in accordance with s. 8(2)(4)(a)(5) of the repealing Act

#### Commencement Information

**I4** S. 33 partly in force; s. 33 not in force at Royal Assent see [s. 67\(1\)](#); [s. 33\(1\)-\(6\)](#) in force for certain purposes at 1.9.1999 by [S.I. 1999/2177, art. 2\(3\)\(a\)](#); [s. 33\(7\)](#) in force for certain purposes at 3.4.2007 by [S.I. 2007/1179, art. 2\(a\)](#)

### 34 Power to control prices. **U.K.**

F34 .....

#### Textual Amendments

**F34** S. 34 repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 6, 8\(2\), Sch. 4](#) (with [Sch. 2 Pt. 1](#))

VALID FROM 07/08/2017

### [<sup>F35</sup>35 Statutory schemes. **U.K.**

- (1) The Secretary of State may, after consultation with the industry body, make a scheme (referred to in this section and section 36 as a statutory scheme) for the purpose of—
  - (a) limiting the prices which may be charged by any manufacturer or supplier for the supply of any health service medicines, or
  - (b) limiting the profits which may accrue to any manufacturer or supplier in connection with the manufacture or supply of any health service medicines.
- (2) A statutory scheme may, in particular, make any provision mentioned in subsections (3) to (6).
- (3) The scheme may require any manufacturer or supplier to whom it applies to—
  - (a) record and keep information, and
  - (b) provide information to the Secretary of State.
- (4) The scheme may provide for any amount representing sums charged by any manufacturer or supplier to whom the scheme applies, in excess of the limits

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determined under the scheme, for health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.

- (5) The scheme may provide for any amount representing the profits, in excess of the limits determined under the scheme, accruing to any manufacturer or supplier to whom the scheme applies in connection with the manufacture or supply of health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.
- (6) The scheme may—
  - (a) prohibit any manufacturer or supplier to whom the scheme applies from increasing, without the approval of the Secretary of State, any price charged by him for the supply of any health service medicine covered by the scheme, and
  - (b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.
- (7) A statutory scheme may not apply to a manufacturer or supplier to whom a voluntary scheme applies.]

#### Textual Amendments

**F35** S. 35 repealed by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 6, Sch. 4](#) (with [Sch. 2 Pt. 1](#)), the repeal coming into force in accordance with s. 8(2)(4)(a)(5) of the repealing Act. [Note: the repeal is therefore wholly prospective as at the in-force date of the repealing Act, s. 35 not having been brought into force to any extent by that date]

### 36 Statutory schemes: supplementary. **U.K.**

**F36** .....

#### Textual Amendments

**F36** S. 36 repealed by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 6, Sch. 4](#) (with [Sch. 2 Pt. 1](#)), the repeal coming into force at 1.3.2007 to the extent that s. 36 is already in force at that date, and otherwise at 3.4.2007 in accordance with s. 8(2)(4)(a)(5) of the repealing Act

#### Commencement Information

**I5** S. 36 wholly in force at repeal; s. 36 not in force at Royal Assent; s. 36 in force for certain purposes at 3.8.1999 by [S.I. 1999/2177, art. 2\(2\)\(b\)](#); s. 36 otherwise in force at 3.4.2007 by [S.I. 2007/1179, art. 2\(b\)](#)

### [<sup>F37</sup> 37 Enforcement. **U.K.**

- (1) Regulations may provide for a person who contravenes any provision of regulations or directions under sections 33 to 36 to be liable to pay a penalty to the Secretary of State.
- (2) The penalty may be—
  - (a) a single penalty not exceeding £100,000, or

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- (b) a daily penalty not exceeding £10,000 for every day on which the contravention occurs or continues.
- (3) Regulations may provide for any amount required to be paid to the Secretary of State by virtue of section 33(8)(b), 34(1)(b) or 35(4) or (6)(b) to be increased by an amount not exceeding 50 per cent.
- (4) Regulations may provide for any amount payable to the Secretary of State by virtue of provision made under section 33(8)(b), 34(1)(b) or 35(4), (5) or (6)(b) (including such an amount as increased under subsection (3)) to carry interest at a rate specified or referred to in the regulations.
- (5) Provision may be made by regulations for conferring on manufacturers and suppliers a right of appeal against enforcement decisions taken in respect of them in pursuance of sections 33 to 36 and this section.
- (6) The provision which may be made by virtue of subsection (5) includes any provision which may be made by model provisions with respect to appeals under section 6 of the <sup>M2</sup>Deregulation and Contracting Out Act 1994, reading—
- (a) the references in subsections (4) and (5) of that section to enforcement action as references to action taken to implement an enforcement decision,
  - (b) in subsection (5) of that section, the references to interested persons as references to any persons and the reference to any decision to take enforcement action as a reference to any enforcement decision.
- (7) In subsections (5) and (6), “enforcement decision” means a decision of the Secretary of State or any other person to—
- (a) require a specific manufacturer or supplier to provide information to him,
  - (b) limit, in respect of any specific manufacturer or supplier, any price or profit,
  - (c) refuse to give his approval to a price increase made by a specific manufacturer or supplier,
  - (d) require a specific manufacturer or supplier to pay any amount (including an amount by way of penalty) to him,
- and in this subsection “specific” means specified in the decision.
- (8) A requirement or prohibition, or a limit, under sections 33 to 36 may only be enforced under this section and may not be relied on in any proceedings other than proceedings under this section.
- (9) In this section “regulations” means regulations made by the Secretary of State, and the Secretary of State must consult the industry body before making any regulations under this section.
- (10) The Secretary of State may by order increase (or further increase) either of the sums mentioned in subsection (2).]

#### Textual Amendments

- F37** S. 37 repealed by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 6, [Sch. 4](#) (with [Sch. 2 Pt. 1](#)), the repeal coming into force at 1.3.2007 to the extent that s. 37 is already in force at that date, and otherwise in accordance with s. 8(2)(4)(a)(5) of the repealing Act

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#### Commencement Information

**I6** S. 37 partly in force; s. 37 not in force at Royal Assent see s. 67(1); s. 37 in force for certain purposes at 3.8.1999 by S.I. 1999/2177, art. 2(2)(c); s. 37(1)-(9) in force at 1.11.1999 insofar as not already in force by S.I. 1999/2177, art. 2(4)(a)

#### Marginal Citations

**M2** 1994 c.40.

### [<sup>F38</sup> 38 Controls: supplementary. U.K.]

- (1) Any power conferred on the Secretary of State by sections 33(6) to (8) and 34 to 36 may be exercised by—
  - (a) making regulations, or
  - (b) giving directions to a specific manufacturer or supplier,and the regulations may themselves confer power for the Secretary of State to give directions to a specific manufacturer or supplier; and in this subsection “specific” means specified in the direction concerned.
- (2) Any power to make regulations under any of those provisions or section 37 may be exercised generally in relation to manufacturers or suppliers of health service medicines or be exercised in relation to any class of manufacturers or suppliers.
- (3) The powers to refuse approval under section 33(8)(a) or 35(6)(a) or to impose a limit under section 34(1)(a) or 35(1) are exercisable only with a view to limiting by reference to the prices or profits which would be reasonable in all the circumstances—
  - (a) the prices which may be charged for, or
  - (b) the profits which may accrue to any manufacturer or supplier in connection with,the manufacture or supply for the purposes of the health service of health service medicines.
- (4) In so exercising those powers (in the case of sections 34(1)(a) and 35(1) and (6)(a)) the Secretary of State and any other person must bear in mind, in particular, the need for medicinal products to be available for the health service on reasonable terms and the costs of research and development.
- (5) Section 57 of, and Schedule 11 to, the 1977 Act and section 49 of, and Schedule 10 to, the 1978 Act (maximum prices of medical supplies) are to cease to have effect in relation to health service medicines; but the powers conferred by sections 33 to 36 do not affect any other powers of the Secretary of State to control prices or profits.
- (6) This subsection and subsections (7) and (8) apply for the interpretation of sections 33 to 37 and this section—

“health service” means any of the health services within the meaning of the 1977 Act, the 1978 Act or the<sup>M3</sup>Health and Personal Social Services (Northern Ireland) Order 1972,

“health service medicine” means a medicinal product used to any extent for the purposes of the health service,

“the industry body” means any body which appears to the Secretary of State appropriate to represent manufacturers and suppliers,

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“manufacture” includes assemble and “manufacturer” means any person who manufactures health service medicines,

“medicinal product” has the meaning given by section 130 of the M<sup>4</sup>Medicines Act 1968,

“supplier” means any person who supplies health service medicines.

(7) References to contravention of a provision include failure to comply with it.

(8) References to supplying medicines include selling them.]

#### Textual Amendments

**F38** S. 38 repealed by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 6, Sch. 4 (with Sch. 2 Pt. 1), the repeal coming into force at 1.3.2007 to the extent that s. 38 is already in force at that date, and otherwise in accordance with s. 8(2)(4)(a)(5) of the repealing Act

#### Commencement Information

**I7** S. 38 partly in force; s. 38 not in force at Royal Assent see s. 67(1); s. 38(6) in force for certain purposes at 3.8.1999 by S.I. 1999/2177, art. 2(2)(d); s. 38 in force for certain purposes at 1.9.1999 by S.I. 1999/2177, art. 3(b); s. 38(5) in force at 1.11.1999 by S.I. 1999/2177, art. 2(4)(a); s. 38 in force for certain purposes at 1.11.1999 by S.I. 1999/2177, art. 2(4)(b); s. 38 in force for certain purposes at 3.4.2007 by S.I. 2007/1179, art. 2(c)

#### Marginal Citations

**M3** S.I. 1972/1265 (N.I.14).  
**M4** 1968 c.67.

*Evasion of charges, fraud etc.*

### 39 Evasion of charges etc. **E+W**

**F39** .....

#### Textual Amendments

**F39** S. 39 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

### <sup>F40</sup>40 Disqualification etc. of Part II practitioners. **E+W**

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#### Textual Amendments

**F40** S. 40 repealed by 2001 c. 15, ss. 67, 70(2), Sch. 6 Pt. 1 (with ss. 64(a), 65(4)), the repeal coming into force immediately before the coming into force of the National Health Service Act 2006 (c. 41) (as to which see s. 227 of that 2006 Act) by virtue of The National Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407), arts. 1(1), 2, Sch. 1 Pt. 2 para. 8(c)

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### Miscellaneous

#### 41 High security psychiatric services. **E+W**

F41 .....

##### Textual Amendments

**F41** S. 41 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

#### 42 Provision of information by Registrar General. **E+W**

F42 .....

##### Textual Amendments

**F42** S. 42 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)

#### 43 Health Service Commissioners. **U.K.**

- (1) Section 15 of the <sup>M5</sup>Health Service Commissioners Act 1993 (confidentiality of information) is amended as follows.
- (2) In subsection (1), at the beginning of paragraph (e) there is inserted “ where the information is to the effect that any person is likely to constitute a threat to the health or safety of patients ”.
- (3) Subsection (1A) is omitted.
- (4) In subsection (1B)—
  - (a) for “such a case” there is substituted “ a case within subsection (1)(e) ”,
  - (b) the words following “patients” are omitted.
- (5) In subsection (1C), for paragraphs (a) and (b) there is substituted—
  - “(a) where he knows the identity of the person mentioned in subsection (1) (e), inform that person that he has disclosed the information and of the identity of any person to whom he has disclosed it, and
  - (b) inform the person from whom the information was obtained that he has disclosed it”.

##### Commencement Information

**I8** S. 43 wholly in force at 1.3.2000; s. 43 not in force at Royal Assent see s. 67(1); s. 43 in force for E.W. at 1.10.1999 by S.I. 1999/2540, **art. 2(1)(b)**; s. 43 in force for S. at 1.3.2000 by S.S.I. 2000/38, **art. 2**

##### Marginal Citations

**M5** 1993 c.46.

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### *Rectification of transitional arrangements*

#### **44 Power to rectify transitional provisions etc. E+W**

- (1) The Secretary of State may by order make such provision as he considers appropriate in consequence of the matters mentioned in subsection (2) (the “relevant defects”).
- (2) Those matters are—
  - (a) the omission from Part III of Schedule 2 to the <sup>M6</sup>Health Authorities Act 1995 (Transitional Provisions) Order 1996 (which determined the relevant Health Authority in relation to any Family Health Services Authority in England whose locality comprised or formed part of the area of more than one Health Authority) of an entry for Bromley Family Health Services Authority,
  - (b) the inclusion in Part III or IV of Schedule 1 to that order (which determined the relevant Health Authority in relation to any Family Health Services Authority whose locality comprised or formed part of the area of only one Health Authority) of an entry for any Family Health Services Authority in England or Wales whose locality comprised or formed part of the area of more than one Health Authority (and an entry for which should accordingly have been included in Part III or IV of Schedule 2 to that order),
  - (c) the omission from column 2 of the entry for any Family Health Services Authority in Part III or IV of Schedule 2 to that order (which together with column 3 of that entry specified the relevant Health Authorities in relation to that Family Health Services Authority) of any Health Authority whose area or any part of whose area forms part of the locality of the Family Health Services Authority and which was not included in column 3 of that entry,
  - (d) where—
    - (i) the locality of a Family Health Services Authority and the area of a Health Authority overlap but do not coincide, and
    - (ii) the Family Health Services Authority had compiled a list of persons residing in its locality,
 the treatment, incorrectly, by a Health Authority of a person included in that list as residing, or as not residing, in their area.
- (3) Provision that may be made under subsection (1) includes, in particular—
  - (a) provision amending the Health Authorities Act 1995 (Transitional Provisions) Order 1996,
  - (b) provision transferring, or adding, the name of any Part II practitioner to any Part II list in which he is (or, at the material time, was) not included because of any of the relevant defects,
  - (c) provision for treating anything done by or in relation to an acting authority or a person of any description identified by reference to an acting authority as having been done by or in relation to the proper authority or a person of that description identified by reference to the proper authority,
  - (d) provision for treating anything done by or in relation to an acting authority or a person of any description identified by reference to an acting authority as having been so done in the exercise by them or him of functions on behalf of the proper authority or a person of that description identified by reference to the proper authority.
- (4) Any provision made by an order under this section may be made with effect from any date after 31st March 1996 specified in the order.



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(5) Provision contained in an order under this section by virtue of section 62(4) may include provision conferring functions on the Secretary of State.

(6) In subsection (3)(b)—

“Part II practitioner” means a person who provides (or, at any time since 31st March 1996, has provided) general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made or treated as made (or which, but for any of the relevant defects, would have been made or treated as made) under Part II of the 1977 Act,

“Part II list” means a list kept by a Health Authority under section 29(2)(a), 36(1)(a), 39(a) or 42(2)(a) of that Act (lists of persons providing general medical, general dental, general ophthalmic or pharmaceutical services).

(7) In subsection (3)(c) and (d), in relation to anything done by or in relation to a Health Authority or a person identified by reference to a Health Authority—

“acting authority” means the Health Authority by or in relation to whom the thing was done or person was identified because of any of the relevant defects,

“proper authority” means the Health Authority by or in relation to whom the thing should have been done or by reference to whom the person should have been identified.

**Marginal Citations**

M6 S.I. 1996/709.

**PART II S**

THE NATIONAL HEALTH SERVICE: SCOTLAND

*Fund-holding practices*

**45 Repeal of law about fund-holding practices. S**

In the <sup>M7</sup>National Health Service (Scotland) Act 1978, sections 87A to 87C (which make provision in relation to fund-holding practices in Scotland) are to cease to have effect.

**Marginal Citations**

M7 1978 c.29.

*NHS trusts*

**46 Establishment orders. S**

(1) In section 12A of the 1978 Act (NHS trusts)—

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- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “ to provide goods and services for the purposes of the health service ”,
  - (b) for subsection (4) there is substituted—
    - “(4) The functions which may be specified in an order under subsection (1) include a duty to provide goods or services so specified at, from, or through a hospital or other establishment or facility so specified.”
- (2) In section 108(1) (interpretation) after the definition of “property” there is inserted—
- ““provide” includes manage”.
- (3) Any order under section 12A(1) of that Act—
- (a) is to be treated as always having had effect with the omission of any obligation for the NHS trust to which the order relates to own land specified in the order, and
  - (b) so far as any functions specified in it could have been specified under that provision as amended by this Act, is to be treated as having been made under that provision as so amended.
- (4) Any restriction preventing the acquisition by any NHS trust (including any NHS trust dissolved before the commencement of this section) of land merely because the land did not comprise a hospital or other establishment or facility previously managed or provided by a Health Board or the Agency is to be treated as never having had effect.
- (5) An order under section 63 of this Act may—
- (a) provide for any provision made by it for the purposes of, in consequence of, or for giving full effect to, this section to be treated as having had effect from a time before the commencement of this section,
  - (b) make such provision about an NHS trust dissolved before that commencement.
- (6) In paragraph 3(2) of Schedule 7A to the 1978 Act (establishment orders), for “assume responsibility for the ownership and management of” there is substituted “ provide services at ”.
- (7) In paragraph 3 of Schedule 7B to that Act (borrowing limits), in sub-paragraph (1), for the words from “established” to “manage” there is substituted “ which are required to provide services at or from ”.
- (8) The 1978 Act is to be treated as always having had effect subject to the amendments made by this section.

#### **47 Directions as to delegation of functions. S**

After section 12A of the 1978 Act there is inserted—

##### **“12AA Additional functions of NHS trusts.**

The Secretary of State may direct a Health Board to delegate to an NHS trust or NHS trusts some or all of their functions—

- (a) under section 2(1) of making arrangements on his behalf for the provision of services mentioned in Part II; or

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- (b) relating to pilot schemes under Part I of the National Health Service (Primary Care) Act 1997; or
- (c) relating to arrangements under section 17C for the provision of personal medical services and personal dental services.”

#### 48 Constitution of NHS trust boards. **S**

In section 12A of the 1978 Act (NHS trusts), in subsection (3), for paragraph (a) there is substituted—

- “(a) shall be a body corporate having a board of directors consisting of a chairman who is not an employee of the trust, appointed by the Secretary of State; and, subject to paragraph 5(2) of Schedule 7A, executive directors (directors who, subject to subsection (5), are employees of the trust) and non-executive directors (directors who, subject to subsection (5), are not employees of the trust and who shall be known as “trustees”).”

#### 49 Duties of NHS trusts. **S**

(1) Paragraph 6 of Schedule 7A to the 1978 Act is amended as follows.

(2) For sub-paragraph (1) there is substituted—

- “(1) In carrying out the functions for the time being conferred on it an NHS trust shall comply with any directions given to it by the Secretary of State, whether of a general or of a particular nature.”

(3) Sub-paragraph (2) is omitted.

#### *Staff transfer*

#### 50 Transfer of staff among health service bodies. **S**

After section 12C of the 1978 Act there is inserted—

##### “12CA Transfer of staff among health service bodies.

- (1) This section applies to any person who is—
  - (a) employed by a health service body (the transferor authority) and is transferred to another health service body (the transferee authority) because a function of the transferor authority is transferred to the transferee authority; and
  - (b) designated for the purposes of this section by a scheme made by the transferor authority.
- (2) A scheme under this section shall not have effect unless approved by the Secretary of State.
- (3) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the transferee authority.
- (4) Without prejudice to subsection (3)—

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- (a) all the transferor authority’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the transferee authority on the transfer date; and
  - (b) anything done before the transfer date by or in relation to the transferor authority in respect of that contract shall be deemed from that date to have been done by or in relation to the transferee authority.
- (5) Subsections (3) and (4) are without prejudice to any right of an employee 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 of the change in employer effected by this section.
- (6) A scheme under this section may designate a person either individually or as a member of a class or description of employees.
- (7) In this section—  
 a “health service body” is a body mentioned in section 17A(2); and  
 the “transfer date” is the date on which the function is transferred from the transferor authority to the transferee authority.”

### *Quality*

## 51 **Duty of quality.** **S**

After section 12G of the 1978 Act there is inserted—

### *“ Quality*

#### **12H Duty of quality.**

- (1) It shall be the duty of each Health Board, Special Health Board and NHS trust and of the Agency to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care which it provides to individuals.
- (2) The reference in subsection (1) to health care which a body there mentioned provides to individuals includes health care which the body provides jointly with another person to individuals.
- (3) In this section “health care” means services for or in connection with the prevention, diagnosis or treatment of illness.”

### *Finance*

## 52 **Expenditure of Health Boards and other bodies.** **S**

For section 85 of the 1978 Act there is substituted—

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**“85AA Means of meeting expenditure of Health Boards out of public funds.**

- (1) The Secretary of State shall pay to each Health Board sums equal to their general Part II expenditure.
- (2) “General Part II expenditure” is expenditure which—
  - (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 (e) of subsection (4).
- (3) The Secretary of State shall pay to each Health Board, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Board towards meeting their main expenditure.
- (4) In subsection (3) “main expenditure” means expenditure which is attributable to—
  - (a) the performance by the Board of their functions in that year, but—
    - (i) is not general Part II expenditure; and
    - (ii) does not fall within paragraphs (b) to (d);
  - (b) 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);
  - (c) remuneration which is paid to persons providing additional pharmaceutical services (in accordance with directions under section 27A) in respect of such of those services as are designated;
  - (d) remuneration which is—
    - (i) paid to persons providing general medical services under Part II;
    - (ii) determined by the Health Board concerned; and
    - (iii) of a designated description; or
  - (e) remuneration which is referable to the cost of drugs for which the Health Board is accountable in that year (whether paid by it or by another Health Board).
- (5) In paragraphs (b) to (e) of subsection (4), “designated” means designated in writing by the Secretary of State for the purposes of that paragraph and in relation to the allotment in question.
- (6) An amount is allotted to a Health Board 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.
- (7) Where the Secretary of State proposes to pay any sum to a Health Board, he may, with the consent of the Treasury, instead pay that sum to an NHS trust in discharge of the whole or any part of any liability of the Health Board to the NHS trust.

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- (8) The Secretary of State may give directions to a Health Board with respect to the application of sums paid to them and a Board to whom directions have been given under this subsection shall comply with the directions.
- (9) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.
- (10) 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 determine.
- (11) In this section and section 85AB, “drugs” includes medicines and listed appliances (within the meaning of section 27).

#### **85AB Further provision as to expenditure on drugs.**

- (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Health Boards the total of the remuneration referable to the cost of drugs which is paid by each Health Board in that year.
- (2) A 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 subsection (1).
- (3) Where in any financial year any remuneration referable to the cost of drugs for which a Health Board is accountable is paid by another Health Board, the remuneration is to be treated (for the purposes of this section) as having been paid by the first Health Board in the performance of its functions.
- (4) The Secretary of State may, in particular, exercise his discretion under subsection (1)—
  - (a) so that any apportionment reflects, in the case of each Health Board, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the Board 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 Board other than the Health Board which is accountable for the payment to be reimbursed in such manner as he may determine.
- (6) The Secretary of State shall determine what remuneration paid by Health Boards to persons providing pharmaceutical services is to be treated for the purposes of section 85AA and this section as remuneration referable to the cost of drugs.

#### **85 Expenses of certain bodies.**

- (1) There shall, in respect of each financial year, be paid by the Secretary of State sums not exceeding the amount allotted by him for that year to each

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of the following bodies towards meeting the expenditure attributable to the performance by that body of their functions in that year—

- (a) the Agency;
- (b) every Special Health Board;
- (c) the Medical Practices Committee;
- (d) the Dental Estimates Board;
- (e) the tribunal;
- (f) every local health council.

- (2) The date on which an allotment under subsection (1) (including an allotment increasing or reducing an allotment previously made) takes effect is the date on which the body receiving the allotment are notified of its amount by the Secretary of State.
- (3) The Secretary of State may give directions to a body referred to in subsection (1) with respect to the application of the sums paid to them under that subsection and it shall be the duty of any body to whom directions have been given under this subsection to comply with the directions.
- (4) Payments under subsection (1) 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 determine.”

### 53 Public dividend capital. **S**

- (1) Section 12E of the 1978 Act (originating capital debt of, and other financial provisions relating to, NHS trusts) is amended as provided in subsections (2) to (5).
- (2) In subsections (1), (2) and (3), for “originating capital debt” there is substituted “originating capital”.
- (3) For subsection (4) there is substituted—

“(4) An NHS trust’s originating capital shall be public dividend capital.”
- (4) Subsections (5) and (6) are omitted.
- (5) In subsection (7), for the words from “the terms” to the end there is substituted—
  - “(a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Act;
  - (b) the amount of any such public dividend capital which is to be repaid at any time;
  - (c) any other terms on which any public dividend capital is so issued, or treated as issued”.
- (6) In Schedule 7B to that Act—
  - (a) in paragraph 3 (limits on indebtedness), sub-paragraph (2) is omitted,
  - (b) in paragraph 5 (additional public dividend capital), sub-paragraph (2) is omitted.

### 54 Existing NHS trusts: conversion of initial loan. **S**

- (1) This section applies to any NHS trust in existence immediately before commencement.

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- (2) On commencement so much of the originating capital debt of the NHS trust as remains outstanding immediately before commencement is to be treated as the originating capital of the NHS trust and accordingly is public dividend capital.
- (3) Any reference in any enactment, instrument or other document to the originating capital debt of the NHS trust is to be construed (except where the context otherwise requires) as a reference to its originating capital.
- (4) The Secretary of State may with the consent of the Treasury determine the amount and time for payment of interest on the NHS trust's initial loan in respect of the period ending with commencement.
- (5) In this section—
  - “commencement” means the coming into force of this section,
  - “initial loan” has the meaning given by section 12E(5) of the 1978 Act.

## 55 **Borrowing.** S

- (1) Schedule 7B to the 1978 Act is amended as follows.
- (2) In paragraph 1 (borrowing powers of NHS trusts), in sub-paragraph (1), after “Subject to” there is inserted “ any direction given by the Secretary of State, to ”.
- (3) Sub-paragraphs (3) to (5) of that paragraph are omitted.
- (4) For sub-paragraph (6) there is substituted—
  - “(6) It shall be for the Secretary of State, with the consent of the Treasury, to determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).”

### *Indemnity cover*

## 56 **Indemnity cover for Part II services.** S

- (1) After section 28B of the 1978 Act there is inserted—
 

**“28C 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 be added to any list unless he holds approved indemnity cover;
    - (b) for the removal from a list prepared by a Health Board of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Board in the prescribed manner satisfy the Health Board that he holds approved indemnity cover.
  - (3) For the purposes of this section—



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“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 Board 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 29;

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

“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.”

(2) <sup>F43</sup> .....

(3) <sup>F44</sup> .....

(4) <sup>F44</sup> .....

#### Textual Amendments

**F43** S. 56(2) omitted (1.4.2004) by virtue of [The Primary Medical Services \(Scotland\) Act 2004 \(Modification of Enactments\) Order 2004 \(S.S.I. 2004/167\)](#), art. 2, **Sch. para. 5(a)**

**F44** S. 56(3)(4) repealed (1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 42(2), 43, **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

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## *Remuneration*

### 57 **Remuneration for Part II services.** S

- (1) For sections 28A and 28B of the 1978 Act (regulations as to remuneration) there is substituted—

#### **“28A Remuneration for Part II services.**

- (1) The remuneration to be paid to persons who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).
- (2) For the purposes of this section and section 28B, determining authorities are—
  - (a) the Secretary of State; and
  - (b) so far as authorised by him to exercise the functions of determining authorities, any Health Board or other person appointed by him in an instrument (referred to in this section and section 28B as an instrument of appointment).
- (3) An instrument of appointment—
  - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations; and
  - (b) may be contained in regulations.
- (4) Subject to this section and section 28B, regulations may make provision about determining remuneration under subsection (1) and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (5) Regulations may provide—
  - (a) that determinations may be made by reference to any of the following—
    - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1);
    - (ii) scales, indices or other data of any description specified in the regulations;
  - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—

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- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates;
  - (b) provide that any such determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
    - (i) if it is required to be published, on the date of publication;
    - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this section or section 28B to a determination is a reference to a determination of remuneration under subsection (1) of this section.

### **28B Part II remuneration: supplementary.**

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 28A(1), he—
  - (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.
- (3) Determinations may—
  - (a) be made in more than one stage;
  - (b) be made by more than one determining authority;
  - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—
  - (a) to correct an error; or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
  - (a) is payable only if the determining authority is satisfied as to certain conditions; or
  - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Subject to sections 19(3) and 25(3), remuneration under section 28A may consist of payments by way of—
  - (a) salary;
  - (b) fees;
  - (c) allowances;
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,

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and may be determined from time to time.

- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later date.
- (8) The matters which may be reserved include in particular—
- (a) the amount of remuneration to be paid in particular cases;
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
- (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 28A(1) to which the determination will relate or of any category falling within that description;
  - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services;
  - (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons;
  - (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;
  - (e) the desirability of promoting services which are—
    - (i) economic and efficient; and
    - (ii) of an appropriate standard.
- (10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 28A(1), the reference in subsection (9)(a) 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.”
- (2) Sections 28A and 28B of the 1978 Act as substituted by this section have effect in relation to—
- (a) the making of determinations on or after the commencement of this section; and
  - (b) the variation or revocation on or after the commencement of this section of determinations whenever made,
- and in this subsection “determinations” means determinations under Part II of the 1978 Act of the remuneration to be paid to persons who provide services mentioned in section 28A(1).
- (3) Section 7(4) of the <sup>M8</sup>Health and Social Security Act 1984 and section 15(3) of the <sup>M9</sup>Health and Medicines Act 1988 (determinations of remuneration for services under Part II of the 1978 Act deemed to be valid) have effect in relation to Scotland as if—
- (a) after “inserted by this section” in section 7(4)(b) of the 1984 Act; and
  - (b) after “section 7 of the Health and Social Security Act 1984” in section 15(3) of the 1988 Act,

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there were inserted “ and before the coming into force of section 57 of the <sup>M10</sup>Health Act 1999 ”.

#### Marginal Citations

**M8** 1984 c.48.

**M9** 1988 c.49.

**M10** 1999 c.8.

### Fraud

## 58 Disqualification etc. of Part II practitioners. **S**

- (1) For section 29 of the 1978 Act (disqualification of persons providing services) there is substituted—

### “29 The NHS tribunal.

- (1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of “the NHS Tribunal” and that Schedule shall continue to have effect in relation to the Tribunal.
- (2) If the Tribunal receive from a Health Board representations that—
  - (a) a person who is included in any list meets either of the conditions for disqualification, or
  - (b) a person who has applied to be included in any list meets the second condition for disqualification,the Tribunal shall inquire into the case.
- (3) If the Tribunal receive such representations from any other person, they may inquire into the case.
- (4) Representations under this section shall be made—
  - (a) in the prescribed manner; and
  - (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.
- (5) Subsections (6) to (11) apply for the purposes of this group of sections.
- (6) The first condition for disqualification 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.
- (7) The second condition for disqualification 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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- (8) A “list” means—
- (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 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, prepared (in each case) under this Part.
- (9) “Health scheme” means—
- (a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales 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.
- (10) 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.
- (11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases.
- (12) In this section and sections 29A to 29C—
- (a) “this group of sections” means this and those sections and Schedule 8; and
  - (b) the NHS Tribunal is referred to as the Tribunal.

### **29A The NHS Tribunal: supplementary.**

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).
- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).
- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—

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- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 29(8) 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 29(7)(a) occurring in the course of the provision of those services on his behalf.
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
- (5) In a fraud case, regulations may make provision (including provision modifying the effect of this Part) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.
- (6) For the purposes of this group of sections, in a fraud or efficiency case proceedings are finally concluded—
  - (a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;
  - (b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
  - (c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

## **29B Powers of NHS Tribunal.**

- (1) Subsection (2) applies where the Tribunal are of the opinion—
  - (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
  - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
  - (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates; and
  - (b) may also make a national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 29(8) as that list.
- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.

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- (5) A disqualification under this section shall have effect when the case is finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.

### **29C Conditional disqualification etc.**

- (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
  - (2) Conditions may be imposed by virtue of subsection (1) with a view to—
    - (a) removing any prejudice to the efficiency of the services in question; or
    - (b) preventing any acts or omissions within section 29(7)(a),
 (as the case may be).
  - (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
  - (4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.
  - (5) The Tribunal may by directions—
    - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);
    - (b) confer functions on any Health Board,
 for the purpose of or in connection with the imposition of any conditions by virtue of this section.
  - (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.”
- (2) For section 30 of the 1978 Act (removal of disqualification) there is substituted—

### **“30 Review etc. of disqualification.**

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—
  - (a) if the disqualified or conditionally disqualified person requests a review; or
  - (b) in any other circumstances in which they consider it appropriate.
- (2) On a review under subsection (1), the Tribunal may—
  - (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect;
  - (b) make a disqualification conditional;
  - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,



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and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.

- (3) If any Health Board request a review of a conditional disqualification on the ground that—
  - (a) there has been a change in the circumstances by reference to which the conditions were imposed;
  - (b) the person concerned has failed to comply with the conditions; or
  - (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,the Tribunal shall review the conditional disqualification.
- (4) In the case of a person who is providing services in England and Wales or Northern Ireland, the reference in subsection (3) to a Health Board includes any corresponding authority under the provisions in force in England and Wales or Northern Ireland corresponding to this Part.
- (5) On a review under subsection (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (6) If, on a review under this section of a fraud case—
  - (a) there is a national disqualification which the Tribunal do not remove or make conditional;
  - (b) there is a national disqualification which is conditional and which the Tribunal make unconditional; or
  - (c) the Tribunal make a national disqualification,they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
  - (a) in the case of a conditional disqualification, make it unconditional or vary the conditions; or
  - (b) make any further disqualification or conditional disqualification;
  - (c) make a declaration of unfitness,if they are of the opinion that it would be unjust to do so.
- (8) A determination by the Tribunal under this section shall have effect—
  - (a) if no appeal is brought against it, at the end of the period for bringing an appeal;
  - (b) if an appeal is brought against it, when the appeal process is exhausted.
- (9) The Tribunal may hold an inquiry for the purposes of any review under this section.”

#### Commencement Information

**19** S. 58 wholly in force at 4.3.2004: s. 58 not in force at Royal Assent see s. 67; s. 58 in force at 31.1.2004 for certain purposes and wholly in force at 4.3.2004 by S.S.I. 2004/32, art. 2

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## 59 Recovery of charges and payments. **S**

(1) After section 99 of the 1978 Act there is inserted—

### “99ZA Recovery of 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) is recoverable as a debt from the person in question by the responsible authority.
- (2) That amount—
  - (a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction;
  - (b) in a case within subsection (1)(b), is the amount of the payment.
- (3) Where two or more persons are liable under section 99 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 99ZB, “responsible authority” means—
  - (a) in relation to the recovery of any charge under section 99 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), 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;

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- (b) the functions of any responsible authority under this section and section 99ZB,  
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.
- 99ZB.—(1) Regulations may provide that, where a person fails to pay—
  - (a) any amount recoverable from him under section 99 in respect of the provision of goods or services to which section 99ZA applies; or
  - (b) any amount recoverable from him under section 99ZA,a notice (referred to in this section as a penalty notice) may be served on the person, by or on behalf of 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) multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) 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)) may be recovered by the responsible authority as a 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) 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.

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- (8) Section 99ZA and this section apply to charges which may be made and recovered under section 20 of the <sup>M11</sup>National Health Service (Primary Care) Act 1997 as they apply to charges under this Act which may be recovered under section 99; and the reference to this Act in section 99ZA(7)(a) includes a reference to a pilot scheme (within the meaning of the 1997 Act).”
- (2) In section 105(3) of the 1978 Act (Parliamentary procedure for certain regulations) after “endowments)” there is inserted “ or orders under section 99ZB(3) ”.

#### Marginal Citations

M11 1997 c.46.

### PART III U.K.

#### MISCELLANEOUS AND SUPPLEMENTARY

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

C2 Pt. III applied to Isles of Scilly (with modifications) (14.3.2001) by S.I. 2001/448, art. 2

#### Miscellaneous

### 60 Regulation of health care and associated professions. U.K.

- (1) Her Majesty may by Order in Council make provision—
- (a) modifying the regulation of any profession to which subsection (2) applies, so far as appears to Her to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes,
  - (b) regulating any other profession which appears to Her to be concerned (wholly or partly) with the physical or mental health of individuals and to require regulation in pursuance of this section.
  - <sup>F45</sup>(c) modifying the functions, powers or duties of [<sup>F46</sup>the Council for Healthcare Regulatory Excellence],
  - (d) modifying the list of regulatory bodies (in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002) in relation to which that Council performs its functions,
  - (e) modifying, as respects any such regulatory body, the range of functions of that body in relation to which the Council performs its functions.
  - [<sup>F47</sup>(f) modifying the constitution, functions, powers or duties of the Office of the Health Professions Adjudicator.]
- (2) The professions referred to in subsection (1)(a) are—
- (a) the professions regulated by <sup>F48</sup>. . . the <sup>M12</sup>Medical Act 1983, the <sup>M13</sup>Dentists Act 1984, the <sup>M14</sup>Opticians Act 1989, the <sup>M15</sup>Osteopaths Act 1993 and the <sup>M16</sup>Chiropractors Act 1994,

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- [<sup>F49</sup>(aa) the professions regulated by [<sup>F50</sup>the Pharmacy Order 2010] and the Pharmacy (Northern Ireland) Order 1976,]  
(b) the professions regulated by [<sup>F51</sup>the Nursing and Midwifery Order 2001] ,  
(c) the professions regulated by [<sup>F52</sup>the Health Professions Order 2001] ,  
[<sup>F53</sup>(ca) the profession regulated by so much of the Hearing Aid Council Act 1968 as relates to dispensers of hearing aids,]  
(d) any other profession regulated by an Order in Council under this section.
- [<sup>F54</sup>(2A) Her Majesty may also by Order in Council make provision relating to, or connected with, the functions of the relevant regulatory body in relation to—  
(a) the registration of premises under Part 4 of the Medicines Act 1968 (pharmacies),  
(b) the regulation of the use of premises for the purposes of a retail pharmacy business, within the meaning of the Medicines Act 1968,  
(c) compliance with the provisions of that Act,  
(d) compliance with the provisions of the Poisons Act 1972 or the Poisons (Northern Ireland) Order 1976 by persons admitted to practice and persons carrying on a retail pharmacy business, and  
(e) the grant of authorisations under section 28 of the Regulation of Investigatory Powers Act 2000 (authorisation of directed surveillance).
- (2B) In subsection (2A) “the relevant regulatory body” means the body (or main body) responsible for the regulation of the professions referred to in subsection (2)(aa).]
- (3) The Professions Supplementary to Medicine Act 1960 and the Nurses, Midwives and Health Visitors Act 1997 are to cease to have effect.
- (4) Schedule 3 (which makes further provision about Orders under this section) is to have effect.

#### Textual Amendments

- F45** S. 60(1)(c)-(e) inserted (1.4.2003) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), s. 26(9); S.I. 2002/2202, art. 2(3)(b)
- F46** Words s. 60(1) substituted (1.1.2009) by Health and Social Care Act 2008 (c. 14), ss. 127, 170(3), Sch. 10 para. 10; S.I. 2008/3244, art. 2(i)(viii)
- F47** S. 60(1)(f) inserted (1.1.2009) by Health and Social Care Act 2008 (c. 14), ss. 111, 170(3), Sch. 8 para. 1(2); S.I. 2008/3244, art. 3(a)(c)(i)
- F48** Words in s. 60(2)(a) omitted (1.1.2009) and repealed (prosp.) by virtue of Health and Social Care Act 2008 (c. 14), ss. 111, 166, 170(3), Sch. 8 para. 1(3)(a), Sch. 15 Pt. 2; S.I. 2008/3244, art. 3(a)(c)(i)
- F49** S. 60(2)(aa) inserted (1.1.2009) by Health and Social Care Act 2008 (c. 14), ss. 111, 170(3), Sch. 8 para. 1(3)(b); S.I. 2008/3244, art. 3(a)(c)(i)
- F50** Words in s. 60(2)(aa) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), arts. 1(5), 68, Sch. 4 para. 7; S.I. 2010/1621, art. 2(1), Sch.
- F51** Words in s. 60(2)(b) substituted by The Nursing and Midwifery Order 2001 (S.I. 2002/253), art. 54(3), Sch. 5 para. 16(a) (with savings in art. 3(18) and transitional provisions in art. 54(1), Sch. 2) (the amendment coming into force in accordance with art. 1(2)(3) of the amending S.I.)
- F52** Words in s. 60(2)(c) substituted by The Health Professions Order 2001 (S.I. 2002/254), art. 48(3), Sch. 4 para. 8(a) (with savings in art. 3(19) and transitional provisions in art. 48(1), Sch. 2) (the amendment coming into force in accordance with art. 1(2)(3) of the amending S.I.)
- F53** S. 60(2)(ca) inserted (1.1.2009) by Health and Social Care Act 2008 (c. 14), ss. 111, 170(3), Sch. 8 para. 1(3)(c); S.I. 2008/3244, art. 3(a)(c)(i)

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**F54** S. 60(2A)(2B) inserted (1.1.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 111, 170(3), [Sch. 8 para. 1\(4\)](#); [S.I. 2008/3244](#), [art. 3\(a\)\(c\)\(i\)](#)

#### Commencement Information

**I10** S. 60 wholly in force at 1.8.2004; s. 60 not in force at Royal Assent, see s. 67(1); s. 60(3) in force for certain purposes at 1.7.1999, see s. 67(3); s. 60(1)(2)(4) in force at 15.3.2000 by [S.I. 2000/779](#), [art. 2\(1\)](#) (subject to [art. 2\(2\)](#)); s. 60(3) in force for certain further purposes at 11.5.2001 by [S.I. 2001/1985](#), [art. 2\(2\)](#); s. 60(3) in force for certain further purposes at 1.4.2002 by [S.I. 2002/1167](#), [arts. 2-5](#); s. 60(3) in force for certain further purposes at 9.7.2003 by [S.I. 2003/1689](#). {art. 2}; s. 60(3) in force so far as not already in force at 1.8.2004 by [S.I. 2004/1859](#), [art. 3](#)

#### Marginal Citations

**M12** 1983 c.54.  
**M13** 1984 c.24.  
**M14** 1989 c.44.  
**M15** 1993 c.21.  
**M16** 1994 c.17.

### [<sup>F55</sup> 60A Standard of proof in fitness to practise proceedings **U.K.**

- (1) The standard of proof applicable to any proceedings to which this subsection applies is that applicable to civil proceedings.
- (2) Subsection (1) applies to any proceedings before—
  - (a) the Office of the Health Professions Adjudicator, or
  - (b) a committee of a regulatory body, a regulatory body itself or any officer of a regulatory body,
 which relate to a person's fitness to practise a profession to which section 60(2) applies.
- (3) In subsection (2) “regulatory body” means the body (or main body) responsible for the regulation of a profession to which section 60(2) applies.
- (4) An Order in Council under section 60 may not—
  - (a) amend this section, or
  - (b) make any provision that is inconsistent with subsection (1).]

#### Textual Amendments

**F55** S. 60A inserted (3.11.2008 for specified purposes) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 112, 170(3); [S.I. 2008/2717](#), [art. 2](#)

### 61 English and Scottish border provisions. **U.K.**

- (1) Her Majesty may by Order in Council provide for any functions to which subsection (2) applies which are specified in the Order, so far as exercisable in respect of the provision of services to persons in English border areas, to be exercisable (instead of any corresponding function to which subsection (4) applies) in respect of the provision of the services in question to persons in Scottish border areas who are specified in the Order.

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- (2) This subsection applies to any functions under [<sup>F56</sup>the National Health Service Act 2006, or the National Health Service (Wales) Act 2006]<sup>F57</sup>. . . which are exercisable by the Secretary of State or any [<sup>F58</sup>Strategic Health Authority] or Primary Care Trust.
- (3) Her Majesty may by Order in Council provide for any functions to which subsection (4) applies which are specified in the Order, so far as exercisable in respect of the provision of services to persons in Scottish border areas, to be exercisable (instead of any corresponding function to which subsection (2) applies) in respect of the provision of the services in question to persons in English border areas who are specified in the Order.
- (4) This subsection applies to any functions under the 1978 Act, or Part I of the National Health Service (Primary Care) Act 1997, which are exercisable by the Scottish Ministers or any Health Board or NHS trust established under the 1978 Act.
- (5) In this section—
  - “English border area” means the area of any [<sup>F59</sup>Primary Care Trust] adjacent to Scotland,
  - “Scottish border area” means the area of any Health Board adjacent to England.

#### Textual Amendments

- F56** Words in s. 61(2) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 2, 8\(2\), Sch. 1 para. 196](#) (with Sch. 3 Pt. 1)
- F57** Words in s. 61(2) repealed (1.4.2006) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 196, 199, Sch. 14 Pt. 4](#); S.I. 2005/2925, arts. 1(3), **11(2)(p)**
- F58** Words in s. 61(2) substituted (1.10.2002 for E.W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\), ss. 1\(3\), 42\(3\), Sch. 1 para. 54](#); S.I. 2002/2478, **art. 3(1)(c)** (subject to arts. 2(2), 3(3) and with transitional provisions in art. 4)
- F59** Words in s. 61(5) substituted (1.10.2002) by [The National Health Service Reform and Health Care Professions Act 2002 \(Supplementary, Consequential etc. Provisions\) Regulations 2002 \(S.I. 2002/2469\), reg. 4, Sch. 1 para. 26](#) (with regs. 2(4), 15, Sch. 12)

### Supplementary

#### 62 Regulations and orders. **U.K.**

- (1) Any power to make regulations or an order under this Act is exercisable by statutory instrument [<sup>F60</sup>F61 . . . ].
- [<sup>F62</sup>(2) Directions under section 20 or 28 or Schedule 2, or by virtue of section 38(1)(b), are to be given by an instrument in writing.]
- (3) <sup>F63</sup> . . . . .
- [<sup>F64</sup>(4) Any power under this Act to make Orders in Council or orders—
  - (a) may be exercised either in relation to all cases to which the power extends, or in relation to all cases subject to specified exceptions, or in relation to any specified cases or classes of case,
  - (b) may be exercised so as to make, as respects the cases in relation to which it is exercised—

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- (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,
  - (iii) any such provision either unconditionally or subject to any specified condition, and
  - (c) may, in particular, be exercised so as to make different provision for different areas.
- (4A) Any such power includes power—
- (a) to make such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking enactments) as the person exercising the power considers to be expedient, and
  - (b) to provide for a person to exercise a discretion in dealing with any matter.]
- (5) <sup>F65</sup> .....
- (6) Subject to the following subsections, a statutory instrument containing subordinate legislation under this Act is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Subsection (6) does not apply to—
- (a) an order under section 63 which contains only provision for or in connection with the transfer of any property, rights or liabilities, or
  - (b) an order under section 67.
- [<sup>F66</sup>(8) No order is to be made under section 37(10) unless a draft has been laid before, and approved by resolution of, each House of Parliament.]
- (9) No recommendation is to be made to Her Majesty to make an Order in Council under section 60 unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (10) But if any provision made by an Order in Council under that section would, if it were included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament [<sup>F67</sup>and is not merely incidental to, or consequential on, provision that (if so included) would be outside that competence], no recommendation is to be made to Her Majesty to make the Order unless a draft—
- (a) has been laid before, and approved by resolution of, each House of Parliament, and
  - (b) has been laid before, and approved by resolution of, the Scottish Parliament.
- (11) No recommendation is to be made to Her Majesty to make an Order in Council under section 61 unless a draft—
- (a) has been laid before, and approved by resolution of, each House of Parliament, and
  - (b) has been laid before, and approved by resolution of, the Scottish Parliament.



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### Textual Amendments

- F60** Words in s. 62(1) inserted (1.8.2001 for E. and 1.11.2004 for W.) by 2001 c. 15, ss. 48(3), 70(2) (with ss. 64(a), 65(4)); S.I. 2001/2804, art. 2(1)(a); S.I. 2004/1754, **art. 2(2)(a)**
- F61** Words in s. 62(1) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)
- F62** S. 62(2) repealed by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 6, **Sch. 4** (with Sch. 2 Pt. 1), the repeal coming into force for certain purposes at 1.3.2007 and otherwise in accordance with s. 8(2)(7) of the repealing Act
- F63** S. 62(3) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)
- F64** S. 62(4)(4A) substituted (1.1.2009) for s. 62(4) by Health and Social Care Act 2008 (c. 14), ss. 127, 170(3), **Sch. 10 para. 11**; S.I. 2008/3244, **art. 3(b)(d)**
- F65** S. 62(5) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1)
- F66** S. 62(8) repealed by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 6, **Sch. 4** (with Sch. 2 Pt. 1), the repeal coming into force in accordance with s. 8(2)(8) of the repealing Act
- F67** Words in s. 62(10) inserted (1.1.2009) by Health and Social Care Act 2008 (c. 14), ss. 111, 170(3), **Sch. 8 para. 2**; S.I. 2008/3244, **art. 3(a)(c)(i)**

## 63 Supplementary and consequential provision etc. **U.K.**

- (1) The Secretary of State may by order make—
- (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
- as he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The provision which may be made under subsection (1) includes provision amending or repealing any enactment, instrument or document.

### Modifications etc. (not altering text)

- C3** S. 63: transfer of certain functions (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1** (as inserted (30.6.1999) by 1999 c. 8, ss. 66(4)(5)(c), 67(4))
- C4** S. 63 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 4, 8(2), **Sch. 2 para. 1(6)(b)** (with Sch. 3 Pt. 1)

## 64 Interpretation. **U.K.**

In this Act—

**F68**

“the 1978 Act” means the <sup>M17</sup>National Health Service (Scotland) Act 1978,

**F69**

**F70**

“enactment” includes an enactment whenever passed or made,

“NHS trust” has the same meaning—

(a) <sup>F71</sup>

(b) in Part II of this Act as in the 1978 Act.

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### Textual Amendments

- F68** S. 64: definition of "the 1977 Act" repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#))
- F69** S. 64: definition of "the 1990 Act" repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#))
- F70** S. 64: definition of "Commission" repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13\(2\)\(g\)](#)
- F71** S. 64: para. (a) in definition of "NHS Trust" repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#))

### Marginal Citations

- M17** 1978 c.29.

## Final provisions

### 65 Amendments and repeals. **U.K.**

- (1) Schedule 4 (amendments of enactments) is to have effect.
- (2) The repeals set out in Schedule 5 (which include the repeal of an enactment which is spent) are to have effect.

### Commencement Information

- I11** S. 65 partly in force; s. 65(2) in force at 1.7.1999 for certain purposes, see s. 67(1)(3); s. 65 in force for further purposes as follows: for E. at 1.9.1999 by [S.I. 1999/2342](#), [art. 2\(1\)](#), [Sch. 1](#); for E. at 1.10.1999 by [S.I. 1999/2540](#), [art. 2\(1\)\(a\)](#), [Sch. 1](#); for S. at 1.10.1999 by [S.S.I. 1999/90](#), [art. 2\(1\)\(a\)](#), [Sch. 1](#); for E. at 1.11.1999 by [S.I. 1999/2793](#), [art. 2\(1\)\(a\)](#), [Sch. 1](#); for E.W. at 1.11.1999 by [S.I. 1999/2793](#), [art. 2\(1\)\(b\)](#), [Sch. 2](#); at 1.11.1999 by [S.I. 1999/2793](#), [art. 2\(1\)\(d\)](#); for W. at 1.11.1999 by [S.I. 1999/3184](#), [art. 2\(1\)](#), [Sch. 1](#); for W. at 1.12.1999 by [S.I. 1999/3184](#), [art. 2\(2\)](#), [Sch. 2](#); for E. at 4.1.2000 by [S.I. 1999/2342](#), [art. \(2\)\(3\)\(a\)](#), [Sch. 2](#); for E.W. at 4.1.2000 by [S.I. 1999/2342](#), [art. 2\(3\)\(b\)](#); for E. at 4.1.2000 by [S.I. 1999/2540](#), [art. 2\(2\)](#); for E. at 1.4.2000 by [S.I. 1999/2342](#), [art. 2\(4\)\(a\)](#), [Sch. 3](#); for E.W. at 1.4.2000 by [S.I. 1999/2342](#), [art. 2\(4\)\(b\)](#); for E.W. at 1.4.2000 by [S.I. 1999/2793](#), [art. 2\(3\)\(a\)\(c\)](#), [Sch. 3](#); for W. at 1.4.2000 by [S.I. 2000/1026](#), [art. 2\(1\)](#), [Sch.](#); for E.W. at 1.4.2000 by [S.I. 2000/1041](#), [art. 2\(c\)](#); for W. at 1.12.2000 by [S.I. 2000/2991](#), [art. 2\(1\)](#), [Sch. 1](#); for W. at 1.1.2001 by [S.I. 2000/2991](#), [art. 2\(2\)](#), [Sch. 2](#); for E.W. at 9.2.2001 by [S.I. 2001/270](#), [art. 2\(b\)](#); for S. at 31.1.2004 and 4.3.2004 by [S.S.I. 2004/32](#), [art. 2\(1\)\(b\)\(2\)\(b\)](#); for E. at 1.8.2004 by [S.I. 2004/1859](#), [arts. 4, 6](#)

### 66 Devolution. **U.K.**

- (1) For the purposes of the <sup>M18</sup>Scotland Act 1998, any provision of this Act which extends to Scotland is to be taken to be a pre-commencement enactment within the meaning of that Act; but this subsection does not apply to section 22.
- (2) The power of a Minister of the Crown under section 67 to appoint a day for any of the following provisions to come into force in relation to Wales—
  - (a) sections 1 to 8 and 10 to 18 and Schedule 1,
  - (b) sections 26 to 32,

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- (c) section 65(1) and Schedule 4, so far as concerns the following provisions of that Schedule: paragraphs 1 to 16, 23 to 26, 27(a), 28 to 35, 37, 38 (except sub-paragraph (2)(b) and (d)), 39, 40, 71, 72, 74, 75, 76(b), 77 to 80, 81 (except sub-paragraph (2)(b)), 83, 84, 85 (except sub-paragraph (2)(a)) and 87 to 90, is exercisable instead by the National Assembly for Wales.
- (3) In Schedule 5 to the <sup>M19</sup>Government of Wales Act 1998 (bodies and offices covered by section 74), after paragraph 12 there is inserted—

“12A The Commission for Health Improvement.”

- (4) The National Assembly for Wales (Transfer of Functions) Order 1999 is amended as follows; and those amendments are to have effect as if made by an Order in Council under section 22 of the <sup>M20</sup>Government of Wales Act 1998 (transfer of Ministerial functions).

- (5) In Schedule 1—

- (a) in the entry for the 1977 Act, after paragraph (c) there is inserted—

“(cc) section 43C;

<sup>F72</sup> .....

- (b) at the end of the entry for the 1990 Act, there is inserted—

“The references above to paragraph 1 of Schedule 3 are references to that paragraph before the amendments made by section 17 of the <sup>M21</sup>Health Act 1999.

The Treasury consent requirement under paragraph 8 of that Schedule (inserted by Schedule 4 to the Health Act 1999), so far as relating to the matters referred to in paragraph (b) of that paragraph, shall continue in effect.”

- (c) after the entry for the <sup>M22</sup>National Minimum Wage Act 1998 there is inserted—

“In the Health Act 1999—

- (a) Part I and Schedule 4, except sections 20(1), 22 and 33 to 38 and Schedule 2 (other than paragraph 2);
- (b) section 63, so far as it relates to any of the provisions which, by virtue of section 66(2), may be brought into force by the Assembly”.

- (6) <sup>F73</sup> .....

#### Subordinate Legislation Made

- P1** S. 66(2) power partly exercised (27.3.2000): 1.4.2000 appointed for specified provisions by S.I. 2000/1026, art. 2(1), Sch. (with art. 2(2))
- S. 66(2) power partly exercised (7.11.2000): different dates appointed for specified provisions by S.I. 2000/2991, art. 2, Sch. 1, Sch. 2

#### Textual Amendments

- F72** Words in s. 66(5) repealed by 2001 c. 15, ss. 67, 70(2), Sch. 5 Pt. 1 para. 12(3), Sch. 6 Pt. 1 (with ss. 64(a), 65(4)), the repeal coming into force immediately before the coming into force of the National Health Service Act 2006 (c. 41) (as to which see s. 227 of that 2006 Act) by virtue of The National

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Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407), arts. 1(1), 2, **Sch. 1 Pt. 2 para. 8(c)**

**F73** S. 66(6) repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199, **Sch. 14 Pt. 2**; S.I. 2004/759, **art. 13(2)(g)**

#### Commencement Information

**I12** S. 66 wholly in force at 1.7.1999; s. 66(1)(3)-(6) in force at Royal Assent and s. 66(2) in force at 1.7.1999 see s. 67(1)(4).

#### Marginal Citations

**M18** 1998 c.46.

**M19** 1998 c.38.

**M20** S.I. 1999/672.

**M21** 1999 c.8.

**M22** 1998 c.39.

## 67 Commencement. **U.K.**

- (1) The preceding provisions of this Act (including the Schedules) are to come into force on such day as the Secretary of State may by order appoint.
- (2) Different days may be appointed under this section for different purposes.
- (3) Subsection (1) does not apply to the repeal of section 10 of the <sup>M23</sup>Professions Supplementary to Medicine Act 1960 (power to extend or restrict application of Act), which comes into force on 1st July 1999 or, if later, on the day on which this Act is passed.
- (4) Subsection (1) does not apply to section 66, of which—
  - (a) subsections (1) and (3) to (6) come into force on the day on which this Act is passed,
  - (b) subsection (2) comes into force on 1st July 1999 or, if later, the day on which this Act is passed.

#### Subordinate Legislation Made

**P2** S. 67(1) power partly exercised as follows:

different dates appointed for specified provisions by S.I. 1999/2177, **art. 2(2)(3)**;

different dates appointed for specified provisions by S.I. 1999/2342, **art. 2, Schs. 1-3**;

different dates appointed for specified purposes by S.I. 1999/2540, **art. 2(1)(2), Sch. 1**;

1.10.1999 appointed for specified provisions by S.S.I. 1999/90, **art. 2, Sch. 1, 2**;

14.10.1999 appointed for specified provisions by S.S.I. 1999/115, **art. 2**;

different dates appointed for specified provisions by S.I. 1999/2793, **art. 2, Schs. 1-3**;

different dates appointed for specified provisions by S.I. 1999/3184, **art. 2, Schs. 1, 2**;

1.3.2000 appointed for specified provisions by S.S.I. 2000/38, **art. 2**;

15.3.2000 appointed for specified provisions by S.I. 2000/779, **art. 2(1)**;

1.4.2000 appointed for specified provisions by S.I. 2000/1041, **art. 2, Sch.**;

9.2.2001 appointed for specified provisions by S.I. 2001/270, **art. 2**;

11.5.2001 appointed for specified provisions by S.I. 2001/1985, **art. 2**;

1.4.2002 appointed for specified provisions by S.I. 2002/1167, **art. 2**

9.7.2003 for specified provision by {S.I. 2003/1689}, **art. 2**;

1.4.2004 for specified provision by {S.I. 2004/289}, **art. 2**;

**Status:** Point in time view as at 27/09/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Health Act 1999 is up to date with all changes known to be in force on or before 11 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- 31.1.2004 and 4.3.2004 for specified provisions by {S.S.I. 2004/32}, art. 2;
- 1.8.2004 for specified provisions by {S.I. 2004/1859}, arts. 2-6;
- 1.3.2007 for specified provisions by {S.I. 2006/1407};
- 3.4.2007 for specified provisions by {S.I. 2007/1179}, art. 2

#### Marginal Citations

M23 1960 c.66.

### 68 Extent. U.K.

- (1) Subject to the following provisions—
  - (a) <sup>F74</sup> .....
  - (b) Part II extends only to Scotland, and
  - (c) this Part extends to Northern Ireland (as well as to England and Wales and Scotland).
- (2) The amendment or repeal of an enactment, or a power to amend or repeal an enactment, which extends to any part of the United Kingdom extends also to that part.
- (3) Sections 22 and 25 extend to Scotland and Northern Ireland.
- (4) <sup>F75</sup> .....
- (5) The Secretary of State may by order provide that so much of this Act as extends to England and Wales is to apply to the Isles of Scilly with such modifications (if any) as are specified in the order; but otherwise this Act does not extend there.

#### Textual Amendments

- F74** S. 68(1)(a) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)
- F75** S. 68(4) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1)

### 69 Short title. U.K.

This Act may be cited as the Health Act 1999.

**Status:**

Point in time view as at 27/09/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Health Act 1999 is up to date with all changes known to be in force on or before 11 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.