



# Health Act 1999

## 1999 CHAPTER 8

### PART I

#### THE NATIONAL HEALTH SERVICE

##### *Local administration*

VALID FROM 08/09/1999

## 2 Primary Care Trusts.

(1) After section 16 of <sup>M1</sup>the National Health Service Act 1977 there is inserted—

### “16A Primary Care Trusts.

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

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- (5) In this section, “consultation requirements” means requirements about consultation contained in regulations (and the regulations must impose requirements where a PCT order establishes a Primary Care Trust).
- (6) Schedule 5A to this Act (which makes further provision about Primary Care Trusts) shall have effect.

### **16B Exercise of functions by Primary Care Trusts.**

- (1) This section applies to functions which are exercisable by a Primary Care Trust under or by virtue of this Act (including this section), the <sup>M2</sup>National Health Service and Community Care Act 1990 or any prescribed provision of any other Act.
- (2) Regulations may provide for any functions to which this section applies to be exercised—
- (a) by another Primary Care Trust,
  - (b) by a Special Health Authority, or
  - (c) jointly with any one or more of the following: Health Authorities, NHS trusts and other Primary Care Trusts.
- (3) Regulations may provide—
- (a) for any functions to which this section applies to be exercised, on behalf of the Primary Care Trust by whom they are exercisable, by a committee, sub-committee or officer of the trust,
  - (b) for any functions which, under this section, are exercisable by a Special Health Authority to be exercised, on behalf of that authority, by a committee, sub-committee or officer of the authority,
  - (c) for any functions which, under this section, are exercisable by a Primary Care Trust jointly with one or more Health Authorities or other Primary Care Trusts (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.”

(2) Schedule 1 (which inserts the new Schedule 5A in the 1977 Act) is to have effect.

#### **Commencement Information**

**II** S. 2 partly in force; s. 2 not in force at Royal Assent see s. 67(1); s. 2 in force for certain purposes (E.) at 8.9.1999 by S.I. 1999/2342, art. 2(2)(a)(b); s. 2 in force (E.) insofar as not already in force at 4.1.2000 by S.I. 1999/2342, art. 2(3)(a), Sch. 2

#### **Marginal Citations**

**M1** 1977 c.49  
**M2** 1990 c.19

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VALID FROM 01/04/2000

### **3 Primary Care Trusts: finance.**

Before section 98 of the 1977 Act there is inserted—

#### **“97C Public funding of Primary Care Trusts.**

- (1) It is the duty of every Health Authority, in respect of each financial year, to pay to each Primary Care Trust whose area falls within their area—
  - (a) sums equal to the trust’s general Part II expenditure, and
  - (b) sums not exceeding the amount allotted by the authority to the trust for that year towards meeting the trust’s main expenditure in that year.
- (2) Any payment under subsection (1)(a) above shall be made out of money paid to the Health Authority under subsection (1) of section 97 above and any payment under subsection (1)(b) above shall be made out of money paid to the authority under subsection (3) of that section.
- (3) An amount is allotted to a Primary Care Trust for a year under this section when the trust is notified by the Health Authority that the amount is allotted to it for that year; and the Health Authority may make an allotment under this section increasing or reducing an allotment previously so made.
- (4) The Secretary of State may give directions to a Primary Care Trust about the payment of sums by the trust to the Health Authority in whose area the area of the trust falls in respect of charges or other sums referable to the valuation or disposal of assets.
- (5) Where any part of a sum paid to a Primary Care Trust by a Health Authority under subsection (1) above derives from a sum which was paid to the authority under subsection (1) or (3) of section 97 above subject to a direction (under subsection (6)(a) of that section) that it be applied for a particular purpose, the authority shall direct the trust that the sum paid to the trust shall be applied for the same purpose.
- (6) Sums falling to be paid to Primary Care Trusts under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.

#### **97D Financial duties of Primary Care Trusts.**

- (1) It is the duty of every Primary Care Trust, in respect of each financial year, to perform its functions so as to secure that the expenditure of the trust which is attributable to the performance by the trust of its functions in that year (not including expenditure within subsection (1)(a) of section 97C above) does not exceed the aggregate of—
  - (a) the amount allotted to it for that year under subsection (1)(b) of that section,
  - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section), and

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- (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.
- (2) The Secretary of State may give such directions to a Primary Care Trust as appear to be requisite to secure that the trust complies with the duty imposed on it by subsection (1) above.
- (3) Directions under subsection (2) above may be specific in character.
- (4) To the extent to which—
- (a) any expenditure is defrayed by a Primary Care Trust as trustee or on behalf of a Primary Care Trust by special trustees, or
- (b) any sums are received by a Primary Care Trust as trustee or under section 96A above,
- that expenditure and, subject to subsection (6) below, those sums shall be disregarded for the purposes of this section.
- (5) For the purposes of this section sums which, in the hands of a Primary Care Trust, cease to be trust funds and become applicable by the Primary Care Trust otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Primary Care Trust otherwise than as trustee.
- (6) Of the sums received by a Primary Care Trust under section 96A above so much only as accrues to the Primary Care Trust after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.
- (7) Subject to subsection (4) above, the Secretary of State may by directions determine—
- (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Primary Care Trust,
- (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Primary Care Trust, or
- (c) the extent to which, and the circumstances in which, sums received by a Primary Care Trust under section 97C above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Primary Care Trust and to which financial year's expenditure they are to be attributed.
- (8) In subsection (7) above, “specified” means of a description specified in the directions.”

#### **Commencement Information**

**12** S. 3 partly in force; s. 3 not in force at Royal Assent see s. 67(1); s. 3 in force for certain purposes (E.) at 1.4.2000 by S.I. 1999/2342, art. 2(4)(a)

#### **4 Expenditure of Health Authorities and Primary Care Trusts.**

- (1) After Schedule 12 to the 1977 Act there is inserted—

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“SCHEDULE  
12A

EXPENDITURE OF HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS

*Health Authorities: general Part II expenditure*

- 1 (1) In section 97 above and this Schedule, general Part II expenditure, in relation to a Health Authority, means expenditure of the authority which—
- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II of this Act, and
  - (b) is not excluded by sub-paragraph (2) below.
- (2) Expenditure is excluded if it is attributable to—
- (a) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration referable to the cost of drugs,
  - (c) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
  - (d) remuneration of a designated description which is determined by the Health Authority and paid to persons providing general medical services in pursuance of Part II.

*Health Authorities: main expenditure*

- 2 (1) In section 97 above, main expenditure, in relation to a Health Authority and the year in question, means—
- (a) expenditure of the authority mentioned in sub-paragraph (2) below,
  - (b) any other expenditure of the authority attributable to the performance of their functions in that year (other than general Part II expenditure and remuneration referable to the cost of drugs), and
  - (c) expenditure attributable to remuneration referable to the cost of drugs for which the authority are accountable in that year (whether paid by them or another authority).
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
- (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or

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- (c) remuneration of a designated description which is determined by the Health Authority and paid in that year to persons providing general medical services in pursuance of Part II.
- 3
- (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Health Authorities the total of the remuneration referable to the cost of drugs which is paid by each Health Authority in that year.
  - (2) A Health Authority are accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to them under sub-paragraph (1) above.
  - (3) Where in any financial year any remuneration referable to the cost of drugs for which a Health Authority are accountable is paid by another Health Authority, the remuneration is to be treated (for the purposes of sections 97 and 97A above) as having been paid by the first authority in the performance of their functions.
  - (4) The Secretary of State may, in particular, exercise his discretion under sub-paragraph (1) above—
    - (a) so that any apportionment reflects, in the case of each Health Authority, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the authority in question,
    - (b) by reference to averaged or estimated amounts.
  - (5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Health Authority other than the Health Authority which are accountable for the payment to be reimbursed in such manner as he may determine.

*PCTs: general Part II expenditure*

- 4
- (1) In section 97C above and this Schedule, general Part II expenditure, in relation to a Primary Care Trust, means expenditure of the trust which—
    - (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II of this Act, and
    - (b) is not excluded by sub-paragraph (2) below.
  - (2) Expenditure is excluded if it is attributable to—
    - (a) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services), or
    - (b) remuneration of a designated description which is determined by the Health Authority within whose area the area of the trust falls and paid to persons providing general medical services in pursuance of Part II.

*PCTs: main expenditure*

- 5
- (1) In section 97C above, main expenditure, in relation to a Primary Care Trust and the year in question, means—
    - (a) expenditure of the trust mentioned in sub-paragraph (2) below, and

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- (b) any other expenditure of the trust attributable to the performance of its functions in that year (other than general Part II expenditure), and is to be treated as including any expenditure apportioned to the trust for that year under paragraph 6 below.
  - (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
    - (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services), or
    - (b) remuneration of a designated description which is determined by the Health Authority within whose area the area of the trust falls and paid in that year to persons providing general medical services in pursuance of Part II.
- 6 (1) For each financial year, a Health Authority may apportion, to such extent and in such manner as they think appropriate, among the Primary Care Trusts whose areas fall within their area, the remuneration referable to the cost of drugs for which the authority are accountable in that year.
- (2) Where in any financial year—
- (a) any remuneration referable to the cost of drugs for which the Health Authority are accountable is paid (whether by them or another Health Authority), and
  - (b) that remuneration is apportioned to a Primary Care Trust under sub-paragraph (1) above, that remuneration is to be treated for the purposes of sections 97C and 97D above as having been paid by the trust in the performance of its functions.

#### *Interpretation*

- 7 (1) In this Schedule—
- “designated” means designated in writing by the Secretary of State (and different designations may be made for different purposes),
  - “drugs” includes medicines and listed appliances (within the meaning of section 41 above),
  - “pharmaceutical services” does not include additional pharmaceutical services.
- (2) The Secretary of State shall determine what remuneration paid by Health Authorities to persons providing pharmaceutical services is to be treated for the purposes of this Schedule as remuneration referable to the cost of drugs.
- (3) The Secretary of State may treat all remuneration paid by Health Authorities to such persons, so far as it is met by an NHS trust or Primary Care Trust under section 103(3) below, as remuneration referable to the cost of drugs for those purposes.”
- (2) Section 97 of the 1977 Act (means of meeting expenditure of Health Authorities etc. out of public funds) is amended as follows—
- (a) subsection (2) is omitted,
  - (b) in subsection (3), at the end there is inserted “ in that year ”,

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- (c) for subsections (3A) and (3B) there is substituted—
- “(3BB) Schedule 12A to this Act (which defines “general Part II expenditure” and “main expenditure” for the purposes of, and supplements, this section and section 97C below) shall have effect”.
- (3) Section 103(3) of the 1977 Act (special arrangements as to payment of remuneration) is amended as follows—
- (a) in paragraph (a), for the words from “the Health Authority” to the end of that paragraph there is substituted “ a Health Authority so determined in respect of the whole or any part of that remuneration ”,
- (b) in paragraph (b), for “that” there is substituted “ the whole or (as the case may be) that part of the ”.
- (4) This section has effect for the financial year 1999-2000 and subsequent financial years.

#### Commencement Information

- I3** S. 4 wholly in force; s. 4 not in force at Royal Assent; s. 4 in force for certain purposes (E.) at 1.9.1999 by S.I. 1999/2342, art. 2(1), Sch. 1; s. 4 in force for certain purposes (E.) at 1.4.2000 by S.I. 1999/2342, art. 2(4)(a), Sch. 3; s. 4 in force so far as not already in force immediately before the National Health Service Act 2006 c. 41 (which Act came into force on 1.3.2007 in accordance with s. 227(1) (subject to s. 277(2)-(5) of that Act)) by [The National Health Service \(Pre-consolidation Amendments\) Order 2006 \(S.I. 2006/1407\)](#), arts. 1(1), 2, **Sch. 1 Pt. 2 para. 6(a)**

VALID FROM 04/01/2000

## 5 Primary Care Trusts: provision of services etc.

After section 18 of the 1977 Act there is inserted—

*“ Primary Care Trusts: further functions*

### 18A Provision of services etc.

- (1) A Primary Care Trust may provide services under an agreement made under section 28C below, and may do so as a member of a qualifying body (within the meaning of section 28D).
- (2) A Primary Care Trust may arrange for the provision by the trust to another health service body of goods or services (including accommodation) which are of the same description as those which, at the time of making the arrangement, the trust has power to provide in carrying out its other functions.
- (3) A Primary Care Trust may provide premises for the use of persons—
- (a) providing general medical, general dental, general ophthalmic or pharmaceutical services, or
- (b) performing personal medical or personal dental services under an agreement made under section 28C below,
- on any terms it thinks fit.



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- (4) A Primary Care Trust which manages any hospital may make accommodation or services available there for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the trust in respect of the accommodation or services.
- (5) A Primary Care Trust has power to do anything specified in section 7(2) of <sup>M3</sup>the Health and Medicines Act 1988 (provision of goods, services etc.), other than make accommodation or services available for patients at any hospital it manages, for the purpose of making additional income available for improving the health service.
- (6) A Primary Care Trust may only exercise a power conferred by subsection (4) or (5) above—
  - (a) to the extent that its exercise does not to any significant extent interfere with the performance by the trust of its functions or of its obligations under NHS contracts, and
  - (b) in circumstances specified in directions under section 17 above, with the Secretary of State’s consent.
- (7) In this section “hospital” means a health service hospital and includes any establishment or facility managed for the purposes of the health service.”

#### Commencement Information

**I4** S. 5 partly in force; s. 5 not in force at Royal Assent see s. 67(1); s. 5 in force for certain purposes (E.) at 4.1.2000 by S.I. 1999/2342, art. 2(3)(a), Sch. 2

#### Marginal Citations

**M3** 1988 c.49

VALID FROM 04/01/2000

## 6 Delegation of Health Authority functions relating to pilot schemes and section 28C arrangements.

- (1) After section 8 of the <sup>M4</sup>National Health Service (Primary Care) Act 1997, there is inserted—

### “8A Delegation of Health Authority functions relating to pilot schemes.

- (1) The following functions of a Health Authority are excepted functions for the purpose of section 17A of the 1977 Act—
  - (a) their function of entering into pilot schemes under which personal dental services are provided, and, where they have entered into such a scheme, any functions arising under the scheme which relate to those or any other services provided under the scheme,
  - (b) where a Primary Care Trust is providing any services under a pilot scheme, any functions of the Health Authority arising under that scheme (but the functions are only excepted in relation to that trust),

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- (c) their functions under section 4 (preparation of pilot scheme proposals),
  - (d) any function conferred under section 18 (funding work preparatory to pilot schemes).
- (2) The Secretary of State may by order make provision for any rights and liabilities arising under pilot schemes under which personal medical services are provided to be transferred from Health Authorities to Primary Care Trusts and from Primary Care Trusts to Health Authorities.
- (3) Subsection (2) is without prejudice to any other power of the Secretary of State to transfer rights and liabilities under the 1977 Act.”
- (2) After section 28E of the 1977 Act there is inserted—

**“28EE Delegation of Health Authority functions relating to section 28C arrangements.**

- (1) The following functions of a Health Authority are excepted functions for the purpose of section 17A above—
- (a) their function of entering into agreements under section 28C above under which personal dental services are provided, and, where they have entered into such an agreement, any functions arising under the agreement which relate to those or any other services provided under the agreement,
  - (b) where a Primary Care Trust is providing any services in accordance with section 28C arrangements, any functions of the Health Authority arising under those arrangements (but the functions are only excepted in relation to that trust),
  - (c) any function conferred under section 28E above of considering or approving proposals to provide services in accordance with section 28C arrangements,
  - (d) any function conferred under section 28E(3)(k) above of making payments of financial assistance to fund work relating to section 28C arrangements.
- (2) The Secretary of State may by order make provision for any rights and liabilities arising under an agreement to provide personal medical services under section 28C above to be transferred from Health Authorities to Primary Care Trusts and from Primary Care Trusts to Health Authorities.
- (3) Subsection (2) above is without prejudice to any other power of the Secretary of State to transfer rights and liabilities under this Act.”

**Commencement Information**

**I5** S. 6 partly in force; s. 6 not in force at Royal Assent, see s. 67(1); s. 6(1) in force for E. at 4.1.2000 by S.I. 1999/2342, art. 2(3)(a), **Sch. 2**; s. 6(2) in force for E. at 1.4.2004 by S.I. 2004/289, **art. 2**

**Marginal Citations**

**M4** 1997 c.46.

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VALID FROM 04/01/2000

## 7 Primary Care Trusts: trust-funds and trustees.

After section 96A of the 1977 Act there is inserted—

### “96B Trust-funds and trustees for Primary Care Trusts.

- (1) The Secretary of State may by order provide for the appointment of trustees for any Primary Care Trust.
- (2) Trustees for a Primary Care Trust may accept, hold and administer any property on trust—
  - (a) for the general or any specific purposes of the Primary Care Trust (including the purposes of any specific hospital or other establishment or facility which is managed by the trust), or
  - (b) for all or any purposes relating to the health service.
- (3) An order under subsection (1) above may—
  - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
  - (b) provide for any appointment to be subject to any conditions specified in the order (including conditions requiring the consent of the Secretary of State),
  - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with any persons he considers appropriate, and
  - (d) make provision about the term of office of any trustee and his removal from office.
- (4) Where trustees have been appointed for a Primary Care Trust under subsection (1) above, the Secretary of State may by order provide for the transfer of any trust property from the Primary Care Trust to the trustees so appointed.”

### Commencement Information

- I6** S. 7 wholly in force; s. 7 not in force at Royal Assent see s. 67(1); s. 7 in force (E.) at 4.1.2000 by S.I. 1999/2342, art. 2(3)(a), Sch. 2

## 8 Payments relating to past performance.

- (1) Section 97 of the 1977 Act (public funding of Health Authorities and Special Health Authorities) is amended as follows.
- (2) After subsection (3BB) there is inserted—

“(3C) Where the Secretary of State has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Health Authority under

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subsection (3) above, he may, if it appears to him that the authority satisfied in any preceding year any objectives notified as objectives to be met by Health Authorities for the purposes of this subsection in performing their functions, increase the initial amount by a further sum.

(3D) In subsection (3C) above, “notified” means specified or referred to in a notice given to Health Authorities by the Secretary of State.

(3E) In making any increase under subsection (3C) above, the Secretary of State may (whether by directions under subsection (6) below or otherwise) impose any conditions he thinks fit on the application or retention by the authority of the sum in question.

(3F) Where the Secretary of State has, under subsection (3C) above, increased by any sum the amount to be allotted for any year to a Health Authority and notified the authority of the allotment and it subsequently appears to him that the authority have failed (wholly or in part) to satisfy any conditions imposed in making that increase, he may—

- (a) reduce the allotment made to that authority for that year, or
- (b) when he has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the authority under subsection (3) above, reduce the initial amount,

by an amount not exceeding that sum.”

(3) In subsection (5)—

- (a) after “reducing” there is inserted “ (subject to subsection (3F) above) ”,
- (b) at the end there is inserted “ and the reference to a determination in subsection (3C) above includes a determination made with a view to increasing or reducing an allotment previously so made ”.

#### Commencement Information

**I7** S. 8 wholly in force; s. 8 not in force at Royal Assent see s. 67(1); s. 8 in force (E.) at 1.9.1999 by S.I. 1999/2342, art. 2(1), Sch. 1

VALID FROM 01/04/2000

## 9 Indemnity cover for Part II services.

(1) Before section 44 of the 1977 Act there is inserted—

*“ Indemnity cover*

### 43C Indemnity cover.

- (1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

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- (a) for securing that a person is not to be added to any list unless he holds approved indemnity cover;
- (b) for the removal from a list prepared by a Health Authority of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Authority in the prescribed manner satisfy the Health Authority that he holds approved indemnity cover.

(3) For the purposes of this section—

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

“approved indemnity cover” means indemnity cover made—

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

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

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

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

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

“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) In section 29A of the 1977 Act (medical lists), at the beginning of subsection (3) there is inserted “ Subject to any provision made under section 43C below, ”.

(3) In section 36 of that Act (regulations as to arrangements for general dental services), in subsection (1)(b), after “below” there is inserted “ to any provision made under section 43C below ”.

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- (4) In section 39 of that Act (regulations as to arrangements for general ophthalmic services), in paragraph (b), after “subject” there is inserted “ to any provision made under section 43C below and ”.

#### Commencement Information

- I8** S. 9 wholly in force at 1.4.2000; s. 9 not in force at Royal Assent see s. 67(1); s. 9 in force (E.) at 1.4.2000 by S.I. 1999/2793, art. 2(3)(b); s. 9 in force (W.) at 1.4.2000 by S.I. 2000/1041, art. 2(a)

## 10 Remuneration for Part II services.

- (1) For sections 43A and 43B of the 1977 Act (regulations as to Part II remuneration) there is substituted—

### “43A Remuneration for Part II services.

- (1) The remuneration to be paid to persons who provide <sup>F1</sup>. . . 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 43B below 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 Authority [<sup>F2</sup>, Primary Care Trust] or other person appointed by him in an instrument (referred to in this section and section 43B below 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 43B below, regulations may make provision about determining remuneration under subsection (1) above 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) above,
    - (ii) scales, indices or other data of any description specified in the regulations,

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- (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) above 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—
- (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 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 43B below to a determination is to a determination of remuneration under subsection (1) of this section.

### **43B 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 43A(1) above, 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.

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- (6) <sup>F1</sup> . . . remuneration under section 43A above 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,
- 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 time.
- (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 43A(1) above 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 43A(1) above, the reference in subsection (9)(a) above to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”
- (2) Sections 43A and 43B of the 1977 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,



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and in this subsection “determinations” means determinations under Part II of the 1977 Act of the remuneration to be paid to persons who provide services mentioned in section 43A(1).

(3) Section 7(4) of the <sup>M5</sup>Health and Social Security Act 1984 and section 15(3) of the <sup>M6</sup>Health and Medicines Act 1988 (determinations of remuneration for services under Part II of 1977 Act deemed to be valid) have effect in relation to England and Wales 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,

there were inserted “ and before the coming into force of section 10 of the <sup>M7</sup>Health Act 1999 ”.

#### Textual Amendments

- F1** S. 10(1): words in the inserted ss. 43A(1) and 43B(6) 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\(2\)\(p\)](#)
- F2** In s. 10(1) in the inserted s. 43A(2)(b) of the 1977 Act, words inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), s. 2(5), [Sch. 2 para. 68](#); S.I. 2002/2478, [art. 3\(1\)\(d\)](#) (subject to arts. 2(2), 3(3) and with transitional provisions in art. 4)

#### Marginal Citations

- M5** 1984 c.48.
- M6** 1988 c.49.
- M7** 1999 c.8.

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

(1) For sections 43A and 43B of the 1977 Act (regulations as to Part II remuneration) there is substituted—

### “43A 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 43B below 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 Authority or other person appointed by him in an instrument (referred to in this section and section 43B below as an instrument of appointment).
- (3) An instrument of appointment—

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- (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 43B below, regulations may make provision about determining remuneration under subsection (1) above 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) above,
    - (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) above 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—
- (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 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 43B below to a determination is to a determination of remuneration under subsection (1) of this section.

### **43B 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 43A(1) above, 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.

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- (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 29(4) and 35(2) above, remuneration under section 43A above 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,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 time.
- (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 43A(1) above 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,

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- (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 43A(1) above, the reference in subsection (9)(a) above to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”
- (2) Sections 43A and 43B of the 1977 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 1977 Act of the remuneration to be paid to persons who provide services mentioned in section 43A(1).
- (3) Section 7(4) of the <sup>M11</sup>Health and Social Security Act 1984 and section 15(3) of the <sup>M12</sup>Health and Medicines Act 1988 (determinations of remuneration for services under Part II of 1977 Act deemed to be valid) have effect in relation to England and Wales 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,
- there were inserted “ and before the coming into force of section 10 of the <sup>M13</sup>Health Act 1999 ”.

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#### Marginal Citations

**M11** 1984 c.48.

**M12** 1988 c.49.

**M13** 1999 c.8.

## 11 Local representative committees.

- (1) Section 44 of the 1977 Act (recognition of local representative committees) is amended as provided in subsections (2) to (4).
- (2) Before subsection (1) there is inserted—
  - “(A1) A Health Authority may recognise a committee formed for their area which they are satisfied is representative of—
    - (a) the medical practitioners providing general medical services or general ophthalmic services in that area;

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- (b) those medical practitioners and the deputy medical practitioners for that area; or
- (c) the medical practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,and the section 28C medical practitioners for that area,

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

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

- (a) the dental practitioners providing general dental services in that area;
- (b) those dental practitioners and the deputy dental practitioners for that area; or
- (c) the dental practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,and the section 28C dental practitioners for that area,

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

(3) In subsection (1), paragraphs (a) and (b) and “the Local Medical Committee, the Local Dental Committee,” are omitted.

(4) After subsection (2) there is inserted—

“(3) For the purposes of this section and section 45 below, a person who meets the condition in subsection (4) below—

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

(4) The condition referred to in subsection (3) above is that the person concerned has notified the Health Authority that he wishes to be represented under this section by the appropriate committee for their area (and has not notified them that he wishes to cease to be so represented).

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- (5) For the purposes of subsection (3) above—
- (a) a person is to be treated as assisting a medical practitioner or dental practitioner in the provision of services if he is employed by that practitioner for that purpose or if he acts as his deputy in providing those services; and
  - (b) “list” has the same meaning as in section 46 below.”
- (5) Section 45 of that Act (functions of local representative committees) is amended as provided in subsections (6) to (8).
- (6) For subsection (1) there is substituted—
- “(1) Regulations may require Health Authorities—
- (a) in the exercise of their functions under this Part of this Act to consult committees recognised by them under section 44 above,
  - (b) in the exercise of any of their functions which relate to arrangements under section 28C above to consult committees recognised by them under section 44(A1)(c) or (B1)(c) above,
- on such occasions and to such extent as may be prescribed.
- (1A) The power conferred by subsection (1) above is without prejudice to any other power to require a Health Authority to consult any committee recognised under section 44 above.
- (1B) Committees recognised under section 44 above shall exercise such other functions as may be prescribed.
- (1C) A committee recognised for an area under subsection (A1)(b) or (c) or (B1)(b) or (c) of section 44 above shall, in respect of each year, determine the amount of its administrative expenses for that year attributable —
- (a) in the case of a committee recognised under subsection (A1)(b) or (c) (ii) of that section, to the deputy medical practitioners for the area;
  - (b) in the case of a committee recognised under subsection (A1)(c) of that section, to the section 28C medical practitioners for the area;
  - (c) in the case of a committee recognised under subsection (B1)(b) or (c) (ii) of that section, to the deputy dental practitioners for the area;
  - (d) in the case of a committee recognised under subsection (B1)(c) of that section, to the section 28C dental practitioners for the area.”
- (7) In subsection (2), “(including travelling and subsistence allowances payable to its members)” is omitted.
- (8) After subsection (3) there is inserted—
- “(4) Where a committee has made a determination under subsection (1C) above, it shall apportion the amount so determined among the deputy medical practitioners, section 28C medical practitioners, deputy dental practitioners or section 28C dental practitioners, as the case may be, for the area and each such practitioner shall pay in accordance with the committee’s directions the amount so apportioned to him.
- (5) References in this section to administrative expenses of a committee include references to travelling and subsistence allowances payable to its members; but the reference in subsection (2) above to a committee’s administrative

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expenses does not include so much of the committee's administrative expenses as are determined under subsection (1C) above to be attributable to any practitioners mentioned in that subsection."

#### Commencement Information

- 19** S. 11 wholly in force; s. 11 not in force at Royal Assent see s. 67(1); s. 11 in force for certain purposes (E.) at 1.9.1999 by S.I. 1999/2342, art. 2(1), Sch. 1; s. 11 in force for certain purposes (W.) at 1.4.2000 by S.I. 2000/1026, art. 2(1), Sch

#### <sup>x1</sup>12 Directions.

- (1) For section 17 of the 1977 Act (Secretary of State's directions) there is substituted—

*“ Directions as to distribution and exercise of functions*

#### **16D Secretary of State's directions: distribution of functions.**

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

#### **17 Secretary of State's directions: exercise of functions.**

- (1) The Secretary of State may give directions to any of the bodies mentioned in subsection (2) below about their exercise of any functions.
- (2) The bodies are—
  - (a) Health Authorities;
  - (b) Special Health Authorities;
  - (c) Primary Care Trusts;
  - (d) NHS trusts.
- (3) The power conferred by subsection (1) above shall not be exercised so as to give any directions which may be given under—
  - (a) section 27, 28A, 41A, 97, 97A or 99 of, or paragraph 10 of Schedule 5 or paragraph 9 of Schedule 5A to, this Act;
  - (b) section 7(3)(ii) of the <sup>M8</sup>Health and Medicines Act 1988 (directions about the exercise of powers for financing the health service); or
  - (c) section 28 of the <sup>M9</sup>Health Act 1999 (plans for improving health etc.).

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### **17A Health Authority's directions: distribution of functions.**

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

### **17B Health Authority's directions: exercise of functions.**

- (1) A Health Authority may give directions to a Primary Care Trust about its exercise of any functions which the authority have directed the trust to exercise under section 17A above.
- (2) Directions under this section have effect subject to any directions given under section 17 above."
- (2) Subsection (3) of section 17 of the <sup>M10</sup>1977 Act applies in relation to the powers to give directions conferred by sections 4, 6 and 8 of the National Health Service (Primary Care) Act 1997 (proposals for, and making, variation and termination of, pilot schemes) as it applies in relation to the powers conferred by any of the provisions mentioned in paragraphs (a) to (c) of that subsection.
- (3) For section 18 of the 1977 Act (directions and regulations under sections 11 to 17) down to the end of subsection (1) there is substituted—



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*“ Directions and regulations: general*

**18 Directions and regulations under preceding provisions.**

- (1) Any directions given by the Secretary of State under section 16D, 17 or 17A above shall be given by regulations or by an instrument in writing.
- (1A) But any directions given by him—
- (a) under section 16D above about functions under section 4 above;
  - (b) under section 17A(4) above about functions relating to general medical services; or
  - (c) under section 16D, 17 or 17A above about functions conferred on the Secretary of State by section 20(1) or (2) below,
- shall be given by regulations.
- (1B) Directions given by a Health Authority under section 17A or 17B above shall be given by an instrument in writing.”
- (4) In subsection (3) of that section, for “11 to 17” there is substituted “ 16 to 17B above ”.
- (5) Section 13 of the 1977 Act (Secretary of State’s directions) is to cease to have effect.

**Editorial Information**

- X1** Editorial Note: s. 12(2) was substituted by Health and Social Care Act 2001 c. 15, ss. 67, 70(2), **Sch. 6 Pt. 1**, coming into force immediately before the National Health Service Act 2006 c. 41 (which Act came into force on 1.3.2007 in accordance with s. 227(1) (subject to s. 277(2)-(5) of that Act). The amendment was superseded by the repeal of s. 12 on 1.3.2007 by the National Health Service (consequential Provisions) Act 2006 c. 43, ss. 6, 8(2), **Sch. 4**

**Commencement Information**

- I10** S. 12 wholly in force at 4.1.2000; s. 12 not in force at Royal Assent see s. 67(1); s. 12(1)(3)(4) in force for certain purposes (E.) at 1.9.1999 by S.I. 1999/2342, art. 2(1), **Sch. 1**; s. 12(2)(5) in force at 1.9.1999 by S.I. 1999/2342, art. 2(1), **Sch. 1**; S. 12(1)(3)(4) in force for certain purposes (W.) at 1.12.1999 by S.I. 1999/3184 (W. 42), art. 2(2), Sch. 2; s. 12(2)(5) in force (W.) at 1.12.1999 by S.I. 1999/3184 (W. 42), art. 2(2), Sch. 2; s. 12 in force (E.) insofar as not already in force at 4.1.2000 by S.I. 1999/2342, art. 2(3)(a), **Sch. 2**

**Marginal Citations**

- M8** 1988 c.49.  
**M9** 1999 c.8.  
**M10** 1997 c.46.

**Status:**

Point in time view as at 01/09/1999. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Health Act 1999, Cross Heading: Local administration.