



# Health and Social Care Act 2001

## 2001 CHAPTER 15

### PART 1

#### NATIONAL HEALTH SERVICE

##### *Health service funding*

#### **1 Determination of allotments to and resource limits for Health Authorities and Primary Care Trusts**

- (1) Part 4 of the National Health Service Act 1977 (c. 49) (property and finance) shall be amended as follows.
- (2) In section 97 (payments to Health Authorities and Special Health Authorities), after subsection (3) there shall be inserted—

“(3AA) In determining the amount to be allotted for any year to a Health Authority under subsection (3) above (or in varying the amount under subsection (5) below), the Secretary of State may take into account (in whatever way he thinks appropriate)—

  - (a) the Authority’s general Part 2 expenditure, and
  - (b) expenditure which would have been the Authority’s general Part 2 expenditure but for an order under section 103(1) below,

during any period he thinks appropriate (or such elements of that expenditure as he thinks appropriate).”
- (3) In section 97AA (resource limits for Health Authorities and Special Health Authorities), after subsection (2) there shall be inserted—

“(2A) But in specifying an amount for a Health Authority under subsection (1) above (or in varying the amount under subsection (6) below), the Secretary of State may take into account (in whatever way he thinks appropriate)—

  - (a) any such use of resources, and

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- (b) the use of any resources which would have been for the purpose of the Authority’s general Part 2 expenditure but for an order under section 103(1) below,  
during any period he thinks appropriate (or such elements of such uses of resources as he thinks appropriate).”
- (4) In section 97C (public funding of Primary Care Trusts), after subsection (1) there shall be inserted—
- “(1A) In determining the amount to be allotted for any year to a Primary Care Trust under subsection (1)(b) above (or in varying the amount under subsection (3) below), the Authority may take into account, in whatever way they think appropriate, but subject to any directions, the distribution within their area of—
- (a) their general Part 2 expenditure, and
- (b) expenditure which would have been their general Part 2 expenditure but for an order under section 103(1) below,  
during any period the Authority think appropriate (or such elements of that expenditure as they think appropriate).”
- (5) In section 97E (resource limits for Primary Care Trusts), after subsection (2) there shall be inserted—
- “(2A) But in specifying an amount for a Primary Care Trust under subsection (1) above (or in varying the amount under subsection (4) below), the Health Authority may take into account, in whatever way they think appropriate, but subject to any directions, the distribution within their area of—
- (a) their use of resources for the purpose of their general Part 2 expenditure, and
- (b) the use of any resources which would have been for the purpose of their general Part 2 expenditure but for an order under section 103(1) below,  
during any period they think appropriate (or such elements of such uses of resources as they think appropriate).”

#### Commencement Information

- II** S. 1 partly in force; s. 1 not in force at Royal Assent see s. 70(2); s. 1 in force for E. at 22.10.2001 by S.I. 2001/3619, arts. 1(3), 2(1) (subject to art. 2(2))

VALID FROM 30/09/2002

## 2 Payments relating to past performance

- (1) Section 97 of the 1977 Act (means of meeting expenditure of Health Authorities out of public funds) shall be amended as follows.
- (2) For subsection (3C) there shall be substituted—

“(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 increase the initial amount by a further sum if it appears to him that over a period notified to the Authority—

- (a) they satisfied any objectives notified to them as objectives to be met in performing their functions, or
- (b) they performed well against any criteria notified to them as criteria relevant to the satisfactory performance of their functions (whether or not the method of measuring their performance against those criteria was also notified to them).”

(3) In subsection (3D), for “Health Authorities” there shall be substituted “ the Health Authority ”.

#### Commencement Information

- I2** S. 2 partly in force; s. 2 not in force at Royal Assent see s. 70(1); s. 2 in force for E. at 30.9.2002 by S.I. 2002/2363, art. 2(1) (subject to art. 2(2))

### 3 Supplementary payments to NHS trusts and Primary Care Trusts

(1) After paragraph 5 of Schedule 3 to the National Health Service and Community Care Act 1990 (c. 19) (which makes financial provision about NHS trusts) there shall be inserted—

#### “Supplementary payments

5A (1) If the Secretary of State considers it appropriate to do so, he may make a payment to the trust.

(2) The payment may be subject to such conditions as he thinks fit to impose, including conditions as to repayment.”

(2) In section 9 of the 1990 Act (financial provisions relating to NHS trusts), in subsection (9), after paragraph (c) there shall be inserted—

“(ca) the making of supplementary payments to them;”.

(3) In section 97C of the 1977 Act (public funding of Primary Care Trusts), after subsection (5) there shall be inserted—

“(5A) If the Secretary of State considers it appropriate to do so, he may make a supplementary payment to a Primary Care Trust, which may be subject to such conditions as he thinks fit to impose, including conditions as to repayment.”

(4) In section 97D of the 1977 Act (financial duties of Primary Care Trusts), in subsection (1)(b), after “section” there shall be inserted “ , apart from subsection (5A) ”.

#### Commencement Information

- I3** S. 3 partly in force; s. 3 not in force at Royal Assent, see s. 70(2); s. 3 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2)); s. 3(1)(2) in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

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## 4 Public-private partnerships

After section 96B of the 1977 Act there shall be inserted—

“ *Companies*

### 96C Public-private partnerships

- (1) The Secretary of State may form, or participate in forming, companies to provide facilities or services for—
  - (a) persons or bodies exercising functions, or otherwise providing services, under this Act; or
  - (b) NHS trusts.
- (2) The Secretary of State may, with a view to securing or facilitating the provision by companies of facilities or services for persons or bodies falling within subsection (1)(a) or (b)—
  - (a) invest in the companies (whether by acquiring assets, securities or rights or otherwise), or
  - (b) provide loans and guarantees and make other kinds of financial provision to or in respect of them,
 or both.
- (3) For the purposes of subsections (1) and (2) above it is immaterial that the facilities or services provided or to be provided by the companies in question are not provided or to be provided—
  - (a) only to persons or bodies falling within subsection (1)(a) or (b); or
  - (b) to persons or bodies falling within subsection (1)(a) only in their capacities as persons or bodies such as are mentioned in that provision.
- (4) In this section—
 

“companies” means companies within the meaning of the Companies Act 1985 (c. 6);

“facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus.
- (5) This section is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of this section.”

#### Commencement Information

**I4** S. 4 partly in force; s. 4 not in force at Royal Assent see s. 70(2); s. 4 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2))

VALID FROM 01/07/2002

## 5 Income generation

In section 7 of the Health and Medicines Act 1988 (c. 49) (additional powers for financing Health Service), after subsection (7) there shall be inserted—

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“(7A) The power specified in paragraph (g) of subsection (2) above includes power for the Secretary of State—

- (a) to form, or participate in the forming of, companies,
- (b) to invest in companies (whether by acquiring assets, securities or rights or otherwise), and
- (c) to provide loans and guarantees and make other kinds of financial provision to or in respect of companies,

where it appears to him that to do so is calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred by that subsection.

(7B) In subsection (7A) above “companies” means companies within the meaning of the Companies Act 1985 (c. 6); and that subsection is without prejudice to—

- (a) the generality of paragraph (g) of subsection (2) above, and
- (b) any powers of the Secretary of State exercisable otherwise than by virtue of this section.”

#### Commencement Information

- I5** S. 5 wholly in force at 12.9.2002; s. 5 not in force at Royal Assent, see s. 70(2); s. 5 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#); s. 5 in force for E. at 12.9.2002 by [S.I. 2002/2363](#), [art. 3](#)

### *Terms of employment of health service employees*

## 6 Terms and conditions of employment by health service bodies

- (1) In Schedule 5 to the 1977 Act (Health Authorities), in paragraph 10(1) (staff)—
- (a) for “at such remuneration and on such conditions of service” there shall be substituted “ and pay its officers such remuneration and allowances, and employ them on such other terms and conditions, ”; and
  - (b) for “may contain provision—” there shall be substituted “ may make provision with respect to any matter connected with the employment by an authority of its officers, including in particular provision— ”.
- (2) In Schedule 5A to the 1977 Act (Primary Care Trusts)—
- (a) for paragraph 8 there shall be substituted—

- “8
- (1) A Primary Care Trust may employ such officers as it thinks fit.
  - (2) Subject to sub-paragraph (3) below, a trust may—
    - (a) pay its officers such remuneration and allowances, and
    - (b) employ them on such other terms and conditions, as it thinks fit.
  - (3) A trust shall—
    - (a) in exercising its powers under sub-paragraph (2) above, and

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- (b) otherwise in connection with the employment of its officers, act in accordance with regulations and any directions given by the Secretary of State.
- (4) Before making any regulations under sub-paragraph (3) above, the Secretary of State shall consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.”;
- and
- (b) in paragraph 11 (remuneration and pensions etc), sub-paragraph (2) (remuneration and allowances payable to officers of a Primary Care Trust) shall accordingly be omitted.
- (3) In paragraph 16 of Schedule 2 to the 1990 Act (general powers of National Health Service Trusts)—
  - (a) sub-paragraph (1)(d) (general power to employ staff) shall be omitted; and
  - (b) after sub-paragraph (2) there shall be inserted—
    - “(3) An NHS trust may employ such staff as it thinks fit.
    - (4) Subject to sub-paragraph (5) below, an NHS trust may—
      - (a) pay its staff such remuneration and allowances, and
      - (b) employ them on such other terms and conditions, as it thinks fit.
    - (5) An NHS trust shall—
      - (a) in exercising its powers under sub-paragraph (4) above, and
      - (b) otherwise in connection with the employment of its staff, act in accordance with regulations and any directions given by the Secretary of State.
    - (6) Before making any regulations under sub-paragraph (5) above, the Secretary of State shall consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.”

#### Commencement Information

**I6** S. 6 partly in force; s. 6 not in force at Royal Assent see s. 70(2); s. 6 in force for E. at 1.10.2001 by S.I. 2001/3294, arts. 1(3), 2

### *Local authority scrutiny of health service provision*

## 7 Functions of overview and scrutiny committees

- (1) In section 21 of the Local Government Act 2000 (c. 22) (overview and scrutiny committees), in subsection (2), after paragraph (e) there shall be inserted—
  - “(f) in the case of the overview and scrutiny committee or committees of an authority to which section 7 of the Health and Social Care Act 2001 applies, to review and scrutinise, in accordance with regulations

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under that section, matters relating to the health service (within the meaning of that section) in the authority’s area, and to make reports and recommendations on such matters in accordance with the regulations.”

- (2) This section applies to—
- (a) any county council,
  - (b) any county borough council,
  - (c) the council of any district comprised in an area for which there is no county council,
  - (d) any London borough council.
- (3) Regulations may, in relation to an overview and scrutiny committee of an authority to which this section applies, make provision—
- (a) as to matters relating to the health service in the authority’s area which the committee may review and scrutinise,
  - (b) as to matters relating to the health service in the authority’s area on which the committee may make reports and recommendations to local NHS bodies,
  - (c) as to matters on which local NHS bodies must consult the committee in accordance with the regulations,
  - (d) as to information which local NHS bodies must provide to the committee,
  - (e) as to information which may not be disclosed by a local NHS body to the committee,
  - (f) requiring any officer of a local NHS body to attend before the committee to answer questions.
- (4) For the purposes of any provision of subsection (3) “local NHS body”, in relation to an overview and scrutiny committee, means a Health Authority, Primary Care Trust or NHS trust specified for those purposes by regulations in relation to the committee.
- (5) In this section—
- “the health service” has the same meaning as in the 1977 Act, except that it includes services provided in pursuance of section 31 arrangements in relation to the exercise of health-related functions of a local authority;
- “section 31 arrangements” means arrangements under regulations under section 31 of the Health Act 1999 (c. 8) (arrangements between NHS bodies and local authorities).

#### Commencement Information

**I7** S. 7 partly in force; s. 7 in force for certain purposes at 11.5.2001, see s. 70(2)

## 8 Joint overview and scrutiny committees etc.

- (1) In this section, “relevant functions”—
- (a) in relation to a local authority operating executive arrangements under Part 2 of the Local Government Act 2000 (c. 22) (“the 2000 Act”), are functions which are, or, but for regulations under this section, would be, exercisable under section 21(2)(f) of that Act by an overview and scrutiny committee of that authority, and

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- (b) in relation to a local authority operating alternative arrangements under that Part, are any corresponding functions which are, or, but for regulations under this section, would be, exercisable by a committee of the authority falling within paragraph (b) of section 32(1) of that Act;
- and references to an overview and scrutiny committee include references to a committee falling within that paragraph.
- (2) Regulations may make provision under which—
- (a) two or more local authorities may appoint a joint committee of those authorities (a “joint overview and scrutiny committee”) and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the committee;
- (b) a local authority may arrange for relevant functions in relation to that authority to be exercisable by an overview and scrutiny committee of another local authority;
- (c) a county council for any area may arrange for one or more of the members of an overview and scrutiny committee of the council for a district comprised in that area to be appointed as—
- (i) a member of an overview and scrutiny committee of the county council or another local authority, for the purposes of relevant functions of the committee in relation to the county council, or
- (ii) a member of an overview and scrutiny committee of the county council, for the purposes of relevant functions of the committee in relation to another local authority.
- (3) The regulations may in particular—
- (a) provide for arrangements to be made only in specified circumstances, or subject to specified conditions or limitations;
- (b) in relation to joint overview and scrutiny committees, make provision applying, or corresponding to, any provision of section 21(4) and (6) to (15) of the 2000 Act or section 9 of, and Schedule 1 to, this Act, with or without modifications.
- (4) The regulations may require, or enable the relevant authority to direct, a local authority—
- (a) to make arrangements of any description within subsection (2), and
- (b) to comply with such requirements in connection with the arrangements as may be specified in the regulations or as the relevant authority may direct.
- (5) In section 7(3) and (4), references to an overview and scrutiny committee include references to a joint overview and scrutiny committee.
- (6) In subsection (2)(c), references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority.
- (7) Section 21(4) of the 2000 Act does not apply to the discharge of functions by virtue of arrangements under regulations under subsection (2).
- (8) Section 21(10) of the 2000 Act does not apply to persons who are members of an overview and scrutiny committee by virtue of arrangements under regulations under subsection (2)(c).



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- (9) In this section “local authority” means a county council, county borough council, district council or London borough council.

#### Commencement Information

**I8** S. 8 partly in force; s. 8 in force for certain purposes at 11.5.2001, see s. 70(2)

## 9 Overview and scrutiny committees: exempt information

- (1) This section applies in relation to any item of business at a meeting of an overview and scrutiny committee which is an item relating to functions of the committee under section 21(2)(f) of the Local Government Act 2000 (c. 22).
- (2) In relation to any such item, information is exempt information for the purposes of section 100A(4) of the Local Government Act 1972 (c. 70) (exclusion of public from meetings to prevent disclosure of exempt information) if it falls within any of the descriptions of information which are for the time being specified in Part 1 of Schedule 1 to this Act, but subject to any qualifications contained in Part 2 of that Schedule.
- (3) Part 3 of that Schedule has effect for the interpretation of that Schedule.
- (4) The relevant authority may by order vary that Schedule—
- by adding any description or other provision in connection with a relevant body or services provided by, or under arrangements made by, a relevant body, or
  - by deleting or varying any description or other provision for the time being specified or contained in that Schedule.
- (5) The relevant authority may exercise the power conferred by subsection (4) by amending any Part of Schedule 1, with or without amendment of any other Part.
- (6) In this section and Schedule 1 “relevant body” means a body in respect of which overview and scrutiny committees exercise functions under regulations under section 7.

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

**C1** S. 9 applied (E.) (1.1.2003) by [The Local Authority \(Overview and Scrutiny Committees Health Scrutiny Functions\) Regulations 2002 \(S.I. 2002/3048\)](#), [reg. 7\(4\)](#)

#### Commencement Information

**I9** S. 9 partly in force; s. 9 in force for certain purposes at 11.5.2001, see s. 70(2)

VALID FROM 01/01/2003

## 10 Application to the City of London

- (1) The Common Council may establish a committee which has, in relation to the City of London, the powers which under section 21(2)(f) of the Local Government Act 2000

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a local authority's overview and scrutiny committee has in relation to the authority's area.

- (2) Sections 7(3) to (5), 8 and 9 and Schedule 1 apply as if such a committee were an overview and scrutiny committee and as if the Common Council were a London borough council.
- (3) Section 21 of the Local Government Act 2000 applies as if such a committee were an overview and scrutiny committee and as if the Common Council were a local authority, but with the omission—
  - (a) of subsections (1) to (3), (5) and (9),
  - (b) in subsection (8), of “Executive”,
  - (c) in subsection (11), of paragraph (b), and
  - (d) in subsection (13)(a), of the reference to members of the executive.
- (4) In the provisions applied by subsections (2) and (3), references to functions under any provision of section 21(2) of the 2000 Act are, in the case of the committee established under subsection (1), references to its functions under that subsection.
- (5) “The Common Council” means the Common Council of the City of London.

VALID FROM 01/01/2003

### *Public involvement and consultation*

## **11 Public involvement and consultation**

- (1) It is the duty of every body to which this section applies to make arrangements with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on—
  - (a) the planning of the provision of those services,
  - (b) the development and consideration of proposals for changes in the way those services are provided, and
  - (c) decisions to be made by that body affecting the operation of those services.
- (2) This section applies to—
  - (a) Health Authorities,
  - (b) Primary Care Trusts, and
  - (c) NHS trusts.
- (3) For the purposes of this section a body is responsible for health services—
  - (a) if the body provides or is to provide those services to individuals, or
  - (b) if another person provides, or is to provide, those services to individuals—
    - (i) at that body's direction,
    - (ii) on its behalf, or
    - (iii) in accordance with an agreement or arrangements made by that body with that other person;

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and references in this section to the provision of services include references to the provision of services jointly with another person.

VALID FROM 01/09/2003

### *Independent advocacy services*

## **12 Independent advocacy services**

After section 19 of the 1977 Act there shall be inserted—

### **“19A Independent advocacy services**

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

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

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

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### *Intervention powers*

## 13 Intervention orders

(1) After section 84 of the 1977 Act there shall be inserted—

### **“84A Intervention orders**

(1) If the Secretary of State—

- (a) is of the opinion that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and
- (b) is satisfied that it is appropriate for him to intervene under this section, he may make an order under this section in respect of the body (an “intervention order”).

(2) The bodies to which this section applies are—

- (a) Health Authorities,
- (b) Special Health Authorities,
- (c) NHS trusts,
- (d) Primary Care Trusts.

(3) An intervention order may make any provision authorised by section 84B below (including any combination of such provisions).

### **84B Intervention orders: effect**

(1) In this section—

- (a) “member” means a member of a Health Authority, Special Health Authority or Primary Care Trust, or a member of the board of directors of an NHS trust,
- (b) “employee member” means a member of a Health Authority, Special Health Authority or Primary Care Trust who is an officer of the Authority or Trust, or an executive director of an NHS trust.

(2) An intervention order may provide for the removal from office of—

- (a) all the members, or
- (b) those specified in the order,

and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).

(3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—

- (a) all the members, or
- (b) those specified in the order,

and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).

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- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
- (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified,
- and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.
- (6) If the person referred to in subsection (5)(a) is a body referred to in section 84A(2) above, the functions of that body include the performance of the functions specified in the directions under subsection (5); and, if that body is a Health Authority, are primary functions of the Authority.
- (7) Subsection (8) applies in relation to any provision—
- (a) in this Act, the National Health Service and Community Care Act 1990 (c. 19), or the Health and Social Care Act 2001; or
  - (b) in any order or regulations made, or directions given, under any of those Acts,
- which relates to the membership of the body to which an intervention order relates (or of its board of directors, in the case of an NHS trust), or relates to its procedure.
- (8) If the Secretary of State considers it appropriate, the intervention order may, in relation to any such provision specified in the order, provide—
- (a) that it is not to apply in relation to the body while the order remains in force; or
  - (b) that it is to apply in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.”
- (2) In section 126 of the 1977 Act (orders, regulations and directions), in subsection (1), after “section 28EE(2)” there shall be inserted “ or section 84A ”.

#### Commencement Information

**I10** S. 13 partly in force; s. 13 not in force at Royal Assent see s. 70(2); s. 13 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2))

**Status:** Point in time view as at 06/03/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Health and Social Care Act 2001 is up to date with all changes known to be in force on or before 02 July 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)

### *Abolition of Medical Practices Committee and National Health Service Tribunal*

VALID FROM 01/04/2002

#### **14 Abolition of Medical Practices Committee**

- (1) The Medical Practices Committee is abolished.
- (2) On the date this section comes into force—
  - (a) all property in the possession of the Medical Practices Committee, and
  - (b) all rights and liabilities to which the Medical Practices Committee is entitled or subject immediately before that date,
 shall be transferred to the Secretary of State.
- (3) In Schedule 10 to the 1977 Act (additional provisions as to sale of medical practices) —
  - (a) for each reference to “the Medical Practices Committee” and “the Committee”, and for “Medical Practices Committee” in the heading preceding paragraph 1, there shall be substituted “ the Secretary of State ”,
  - (b) in paragraph 1(3)—
    - (i) for “they are” there shall be substituted “ he is ”, and
    - (ii) for “they shall” there shall be substituted “ he shall ”, and
  - (c) in paragraph 1(7), for “them”—
    - (i) where it first occurs there shall be substituted “ the Secretary of State ”, and
    - (ii) where it occurs the second time there shall be substituted “ him ”.
- (4) A certificate issued by the Medical Practices Committee under paragraph 1(3) of Schedule 10 to the 1977 Act before the commencement of this section shall continue to have effect from then on as if it had been issued by the Secretary of State.

VALID FROM 08/03/2002

#### **15 Vacancies for medical practitioners**

- (1) Section 29B of the 1977 Act (which provides for regulations about the filling of vacancies for general practitioners) shall be amended as follows.
- (2) In subsection (2)—
  - (a) for paragraphs (a) and (b) there shall be substituted—
    - “(a) the determination by a Health Authority of whether there is, or will be, a vacancy for a medical practitioner in a locality;
    - (b) any consultation which a Health Authority must undertake before doing so;”,
 and
  - (b) in paragraph (c), for “the Medical Practices Committee” there shall be substituted “ a Health Authority ”.

**Status:** Point in time view as at 06/03/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Health and Social Care Act 2001 is up to date with all changes known to be in force on or before 02 July 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)

(3) In subsection (3)(b), for “Secretary of State” there shall be substituted “FHSAA”.

#### Commencement Information

**I11** S. 15 partly in force; s. 15 not in force at Royal Assent, see s. 70(2); s. 15 (except s. 15(3) in so far as it applies to W.) in force for certain purposes at 8.3.2002 and s. 15(1)(2) wholly in force and s. 15(3) in force for E. at 1.4.2002 by S.I. 2002/1095, art. 2(2) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, arts. 2, 3)

## 16 Abolition of NHS Tribunal

The National Health Service Tribunal is abolished.

#### Commencement Information

**I12** S. 16 wholly in force at 26.8.2002; s. 16 not in force at Royal Assent, see s. 70(2); s. 16 in force for E. at 14.12.2001 by S.I. 2001/3738, art. 2(4), Sch. 2 (subject to art. 2(5)(6)); s. 16 in force for W. at 26.8.2002 by S.I. 2002/1919, art. 2(1), Sch. Pt. I (subject to art. 2(2)(3))

*General and personal medical services, general dental services,  
general ophthalmic services and pharmaceutical services*

## 17 Remuneration of general medical practitioners

In section 29 of the 1977 Act (which makes provision for the arrangements for general medical services), subsection (4) (which prevents general medical practitioners’ remuneration from consisting wholly or mainly of a fixed salary except in special circumstances) shall cease to have effect.

#### Commencement Information

**I13** S. 17 partly in force; s. 17 not in force at Royal Assent see s. 70(2); s. 17 in force for E. for certain purposes at 14.12.2001 by S.I. 2001/3738, arts. 1(3), 2(3), Sch. 1 Pt. III

## 18 Out of hours medical services

(1) This section applies to arrangements made by—

- (a) a medical practitioner, in connection with any obligation of his to provide general medical services under arrangements under section 29 of the 1977 Act, or
- (b) any person (the “participant”), in connection with any obligation of his to provide personal medical services under section 28C arrangements, under which a person undertakes, or persons undertake, to provide out of hours services.

(2) Regulations may make provision—

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- (a) for such arrangements to be made, in the case of a service provider of a specified description, only if the service provider is approved in accordance with the regulations;
  - (b) for approval to be given, as respects out of hours services provided for persons in the area of any Health Authority, by that Authority or by another Health Authority;
  - (c) as to steps to be taken by any Health Authority for making available information about approvals which have been given;
  - (d) as to the procedure for applying for approval;
  - (e) as to requirements (including requirements imposed by a Health Authority) with which an approved service provider must comply;
  - (f) as to the suspension or withdrawal of any approval;
  - (g) as to circumstances in which, while the arrangements are in force, there may be transferred to the service provider—
    - (i) liabilities or obligations of the medical practitioner by virtue of Part 2 of the 1977 Act, or
    - (ii) (as the case may be) liabilities or obligations of the participant by virtue of the section 28C arrangements;
  - (h) as to criteria to be applied in making decisions under the regulations;
  - (i) as to appeals against decisions of Health Authorities under the regulations.
- (3) In this section—
- “medical practitioner” has the same meaning as in the 1977 Act;
  - “out of hours period” means any period specified by the regulations as such a period;
  - “out of hours services” means general medical services or personal medical services (as the case may be) provided during part or all of an out of hours period;
  - “section 28C arrangements” means arrangements made under section 28C of the 1977 Act;
  - “service provider”, in relation to arrangements to which this section applies, means the person or persons undertaking to provide out of hours services under the arrangements.

#### Commencement Information

**I14** S. 18 partly in force; s. 18 in force for certain purposes at 11.5.2001, see s. 70(2); s. 18 in force for E. at 12.9.2002 by S.I. 2002/2363, art. 3

VALID FROM 01/04/2002

#### 19 Enhanced criminal record certificates

- (1) Section 115 of the Police Act 1997 (c. 50) (enhanced criminal record certificates) shall be amended as follows.
- (2) In subsection (2)—
  - (a) the word “or” after paragraph (a) shall be omitted; and



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- (b) at the end of paragraph (b) there shall be inserted “or
- (c) in relation to an individual to whom subsection (6C), (6D) or (6E) applies.”

(3) After subsection (6B) there shall be inserted—

“(6C) This subsection applies to an individual included or seeking inclusion in any list prepared for the purposes of Part 2 of the National Health Service Act 1977 (c. 49) of—

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

(6D) This subsection applies to an individual who is—

- (a) a director of a body corporate included or seeking inclusion in a list referred to in subsection (6C)(b) or (c),
- (b) a member of a limited liability partnership included or seeking inclusion in a list referred to in subsection (6C)(c),
- (c) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership) included or seeking inclusion in a list referred to in subsection (6C)(d).

(6E) This subsection applies to an individual included or seeking inclusion in any list prepared by a Health Authority under—

- (a) section 28DA of the National Health Service Act 1977 or section 8ZA of the National Health Service (Primary Care) Act 1997 (lists of persons who may perform personal medical services or personal dental services), or
- (b) section 43D of the 1977 Act (supplementary lists),

and to an individual included or seeking inclusion in any list corresponding to a list referred to in paragraph (a) prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (which provides for the application of enactments in relation to local pharmaceutical services).”

#### Commencement Information

**I15** S. 19 wholly in force at 1.7.2002; s. 19 not in force at Royal Assent, see s. 70(2); s. 19 in force for E. at 1.4.2002 by S.I. 2002/1095, art. 2(3), Sch. (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 19 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

## 20 Medical, dental, ophthalmic and pharmaceutical etc. lists

(1) The 1977 Act shall be amended as follows.

(2) In section 29A (medical lists), after subsection (4) there shall be inserted—

**Status:** Point in time view as at 06/03/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Health and Social Care Act 2001 is up to date with all changes known to be in force on or before 02 July 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)

“(4A) Regulations may make provision in relation to the supply to a Health Authority, by a medical practitioner who is included in their medical list (or, as respects paragraph (a), by arrangement with him), of—

- (a) information of a prescribed description; and
- (b) a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act.”

(3) In section 29B (vacancies for medical practitioners)—

(a) after subsection (2) there shall be inserted—

“(2A) The regulations may also make provision in relation to—

- (a) grounds on which a Health Authority may, or must, refuse to nominate or approve a medical practitioner for appointment to fill a vacancy (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H(2) below);
- (b) information which must be supplied to a Health Authority by a medical practitioner seeking such nomination or approval (or by arrangement with him);
- (c) the supply to a Health Authority by such a medical practitioner of a certificate of a kind referred to in section 29A(4A)(b) above; and
- (d) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about such medical practitioners, and refusals by the Health Authority to nominate or approve them.”;

(b) in subsection (3), after paragraph (a) there shall be inserted—

“(aa) grounds on which a Health Authority may defer a decision whether or not to nominate or approve a medical practitioner for appointment to fill a vacancy;”;

(c) after subsection (3) there shall be inserted—

“(3A) If regulations made by virtue of subsection (2A)(a) provide that a Health Authority may refuse to nominate or approve a medical practitioner for appointment to fill a vacancy, they must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”

(4) In section 36 (regulations about general dental services)—

(a) in subsection (1)(b), for “(2) and (3)” there shall be substituted “ (2) to (7) ”,

(b) after subsection (1) there shall be inserted—

“(1A) The regulations may include provision as to—

- (a) information which must be supplied to a Health Authority by, or by arrangement with, a dental practitioner or dental corporation included or seeking inclusion in a list referred to in subsection (1)(a); and
- (b) the supply to a Health Authority—

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(i) by a dental practitioner who is included, or seeking inclusion, in such a list, or

(ii) by a director of a dental corporation included, or seeking inclusion, in such a list,

of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act.”;

and

(c) after subsection (3) there shall be inserted—

“(4) The provision which may be made by regulations under subsection (3) includes, in particular, provision in relation to grounds on which a Health Authority may, or must, refuse to include a dental practitioner or a dental corporation in a list referred to in subsection (1)(a) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below).

(5) Those regulations may make provision in relation to criteria to be applied in making decisions under the regulations.

(6) If those regulations provide that a Health Authority may refuse to include a dental practitioner or dental corporation in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.

(7) Regulations may provide for grounds on which a Health Authority may defer a decision whether or not to grant an application for inclusion in a list referred to in subsection (1)(a).

(8) Regulations may make provision as to the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about dental practitioners and dental corporations seeking inclusion in such a list, and refusals by the Health Authority to include them.”

(5) Section 39 (regulations about general ophthalmic services) shall be renumbered as subsection (1) of that section, and—

(a) in that subsection as so renumbered, in paragraph (b), after “subject to” there shall be inserted “ subsections (2) and (3) below, to ”, and

(b) after that subsection there shall be inserted—

“(2) The regulations may, in particular, make provision in relation to—

(a) grounds on which a Health Authority may, or must, refuse to include a medical practitioner or an ophthalmic optician in a list referred to in subsection (1)(a) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below);

(b) information which must be supplied to a Health Authority by a person included or seeking inclusion in such a list (or by arrangement with him);

(c) the supply to a Health Authority by an individual—

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- (i) who is included, or seeking inclusion, in such a list, or
    - (ii) who is a director of a body corporate or who is a member of a limited liability partnership included, or seeking inclusion, in such a list,

of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
  - (d) grounds on which a Health Authority may defer a decision whether or not to include a person in such a list;
  - (e) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to include them; and
  - (f) criteria to be applied in making decisions under the regulations.
- (3) If regulations made by virtue of subsection (2)(a) provide that a Health Authority may refuse to include a person in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”
- (6) In section 42 (regulations about pharmaceutical services)—
- (a) in subsection (3), the word “and” after paragraph (d) shall be omitted,
  - (b) after paragraph (e) there shall be inserted—
    - “(f) as to other grounds on which a Health Authority may, or must, refuse to grant an application (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below);
    - (g) as to information which must be supplied to a Health Authority by a person included, or seeking inclusion, in such a list (or by arrangement with him);
    - (h) for the supply to a Health Authority by an individual—
      - (i) who is included, or seeking inclusion, in such a list, or
      - (ii) who is a member of the body of persons controlling a body corporate included, or seeking inclusion, in such a list,

of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
    - (i) for grounds on which a Health Authority may defer a decision whether or not to grant an application;
    - (j) for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to grant such applications;

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- (k) as to criteria to be applied in making decisions under the regulations (other than decisions required by virtue of paragraph (d))”,

and

- (c) after subsection (4) there shall be inserted—

“(4A) If regulations made by virtue of subsection (3)(f) provide that a Health Authority may refuse to grant an application, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”

- (7) In section 43 (persons authorised to provide pharmaceutical services), after subsection (2B) there shall be inserted—

“(2BA) The regulations may, in particular, include provision—

- (a) as to grounds on which a Health Authority may, or must, refuse to grant an application for inclusion in a list of medical practitioners referred to in subsection (2A) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H(2) below);
- (b) as to information which must be supplied to a Health Authority by a medical practitioner included, or seeking inclusion, in such a list (or by arrangement with him);
- (c) for the supply to a Health Authority by a medical practitioner who is included, or seeking inclusion, in such a list of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
- (d) for grounds on which a Health Authority may defer a decision whether or not to grant an application for inclusion in such a list;
- (e) for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to grant such applications;
- (f) as to criteria to be applied in making decisions under the regulations

(2BB) If regulations made by virtue of subsection (2BA)(a) provide that a Health Authority may refuse to grant an application for inclusion in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”

#### Commencement Information

**I16** S. 20 partly in force; s. 20 not in force at Royal Assent see s. 70(2); s. 20(1)-(5) in force for E. for certain purposes at 22.11.2001 and 14.12.2001 by [S.I. 2001/3738](#), [arts. 1\(3\), 2\(2\)](#), [Sch. 1 Pt. II](#); s. 20 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. 1 Pt. 1](#)

## 21 Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists

After section 43 of the 1977 Act there shall be inserted—

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*Status: Point in time view as at 06/03/2002. This version of this Act contains provisions that are not valid for this point in time.*

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### **“43ZA Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists**

- (1) The Secretary of State may by regulations provide—
  - (a) that if a person is to be included in a list referred to in subsection (3), he is to be subject, while he remains included in the list, to conditions determined by the Health Authority,
  - (b) for the Health Authority to vary that person’s terms of service for the purpose of or in connection with the imposition of any such conditions,
  - (c) for the Health Authority to vary the conditions or impose different ones,
  - (d) for the consequences of failing to comply with a condition (including removal from the list), and
  - (e) for the review by the Health Authority of any decision made by virtue of the regulations.
- (2) The imposition of conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services in question, or
  - (b) preventing any acts or omissions within section 49F(3)(a) below.
- (3) The lists in question are—
  - (a) a list of persons undertaking to provide general medical services,
  - (b) a list of persons undertaking to provide general dental services,
  - (c) a list of persons undertaking to provide general ophthalmic services,
  - (d) a list of persons undertaking to provide pharmaceutical services.
- (4) If regulations provide for a practitioner’s removal from the list for breach of condition—
  - (a) the regulations may provide that he may not withdraw from the list while the Health Authority are investigating whether there are grounds for exercising their power to remove him, or after the Health Authority have decided to remove him but before they have given effect to that decision; and
  - (b) the regulations must include provision—
    - (i) requiring the practitioner to be given notice of any allegation against him,
    - (ii) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his removal from the list, and
    - (iii) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of his right of appeal under subsection (5).
- (5) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the FHSAA against the Health Authority’s decision—
  - (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to vary his terms of service,
  - (d) on any review of an earlier such decision of theirs,

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- (e) to remove him from the list for breach of condition,  
and the appeal shall be by way of redetermination of the Health Authority's decision.
- (6) The regulations may provide for any such decision not to have effect until the determination by the FHSAA of any appeal against it, and must so provide in relation to a decision referred to in subsection (5)(e).
- (7) Regulations under this section may provide for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about persons whose inclusion in the lists referred to in subsection (3) is subject to conditions imposed under this section, and about the removal of such persons from such lists for breach of condition."

#### Commencement Information

**I17** S. 21 wholly in force at 1.7.2002; s. 21 not in force at Royal Assent, see s. 70(2); s. 21 in force for E. at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 21 in force for W. at 1.7.2002, {art. 2(1)}, Sch. Pt. 1

## 22 Dental corporations

- (1) The 1977 Act shall be amended as follows.
- (2) In section 35 (arrangements for general dental services)—
  - (a) in subsection (1)—
    - (i) after “dental practitioners” there shall be inserted “ or dental corporations ”, and
    - (ii) after “dental practitioner” there shall be inserted “ or dental corporation ”,
  - (b) in subsection (2)—
    - (i) after “dental practitioner who” there shall be inserted “ , or dental corporation which, ”,
    - (ii) after “salary” there shall be inserted “ (or, in the case of a dental corporation, a fixed rate of remuneration) ”, and
    - (iii) in paragraph (b), after “practitioner” there shall be inserted “ or corporation ”, and
  - (c) after subsection (4) there shall be inserted—
    - “(5) In this Act, “dental corporation” means a body corporate which carries on the business of dentistry (within the meaning of section 40 of the Dentists Act 1984 (c. 24)).”
- (3) In section 36 (regulations about general dental services)—
  - (a) in subsection (1)(a), after “dental practitioners” there shall be inserted “ and dental corporations ”,
  - (b) in subsection (1)(b), after “dental practitioner” there shall be inserted “ or dental corporation ”,
  - (c) in subsection (1)(d), after “dental practitioners” there shall be inserted “ and dental corporations ”, and

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- (d) in subsection (3), after “dental practitioner” there shall be inserted “ or dental corporation ”.
- (4) In section 37 (Dental Practice Board), after subsection (1C) there shall be inserted—
- “(2) In subsections (1A) and (1B), references to a dental practitioner include references to a dental corporation.”
- (5) In section 128(1) (interpretation), in the appropriate place there shall be inserted—
- ““dental corporation” has the meaning given by section 35(5);”.

#### Commencement Information

**I18** S. 22 wholly in force at 1.7.2002; s. 22 not in force at Royal Assent see s. 70(2); s. 22 in force for E. at 22.11.2001 by [S.I. 2001/3738](#), arts. 1(3), 2(1), [Sch. 1 Pt. I](#); s. 22 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

VALID FROM 01/07/2002

### 23 Declaration of financial interests, gifts, etc.

- (1) The 1977 Act shall be amended as follows.
- (2) In section 29 (arrangements and regulations for general medical services), after subsection (5) there shall be inserted—
- “(5A) Regulations may include provision as to the making of declarations about—
- (a) financial interests;
  - (b) gifts above a prescribed value; and
  - (c) other benefits received.
- (5B) Before making regulations by virtue of subsection (5A), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent medical practitioners providing general medical services.”
- (3) In section 36 (regulations about general dental services), after the subsection (1A) inserted by section 20 of this Act there shall be inserted—
- “(1B) The regulations may include provision as to the making of declarations about—
- (a) financial interests;
  - (b) gifts above a prescribed value; and
  - (c) other benefits received.
- (1C) Before making regulations by virtue of subsection (1B), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent dental practitioners and dental corporations providing general dental services.”
- (4) In section 39 (regulations about general ophthalmic services), after the subsection (3) inserted by section 20 of this Act there shall be inserted—



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- “(4) The regulations may include provision as to the making of declarations about—
- (a) financial interests;
  - (b) gifts above a prescribed value; and
  - (c) other benefits received.
- (5) Before making regulations by virtue of subsection (4), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent persons providing general ophthalmic services.”
- (5) In section 42 (regulations about pharmaceutical services)—
- (a) in subsection (3), after the paragraph (k) inserted by section 20 of this Act there shall be inserted—
    - “(l) as to the making of declarations about—
      - (i) financial interests;
      - (ii) gifts above a prescribed value; and
      - (iii) other benefits received.”,
- and
- (b) after the subsection (3B) inserted by section 43 of this Act there shall be inserted—
    - “(3C) Before making regulations by virtue of subsection (3)(l), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent persons providing pharmaceutical services.”

#### Commencement Information

**I19** S. 23 partly in force; s. 23 not in force at Royal Assent see s. 70(2); s. 23 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

## 24 Supplementary lists

After section 43C of the 1977 Act there shall be inserted—

### “43D Supplementary lists

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of persons approved by the Health Authority for the purpose of assisting in the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services.
- (2) Such a list is referred to in this section as a “supplementary list”.
- (3) The regulations may, in particular, include provision as to—
  - (a) the Health Authority to which an application for inclusion in a supplementary list is to be made,

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

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- (7) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a supplementary list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.
- (9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the supplementary list for breach of condition,
  - (d) on any review of an earlier such decision of theirs.
- (10) Regulations may require a person (“A”) included in—
- (a) a medical list,
  - (b) a list referred to in section 36(1)(a),
  - (c) a list referred to in section 39(1)(a),
  - (d) a list referred to in section 42(2)(a), or
  - (e) a list referred to in section 43(2A),
- not to employ or engage a person (“B”) to assist him in the provision of the relevant service unless B is included in a list referred to in paragraphs (a) to (e), a supplementary list, a services list referred to in section 28DA above or section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46) or a list corresponding to a services list prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (or, in any of those cases, such a list of a prescribed description).
- (11) If regulations do so require, they—
- (a) need not require both A and B to be included in lists prepared by the same Health Authority, but
  - (b) may, in particular, require that both A and B be included in lists prepared by Health Authorities in England, or in lists prepared by Health Authorities in Wales.”

#### Commencement Information

**I20** S. 24 wholly in force at 1.7.2002; s. 24 not in force at Royal Assent, see s. 70(2); s. 24 in force for E. at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 24 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

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## 25 Suspension and disqualification of practitioners

After section 49E of the 1977 Act (which is repealed by this Act) there shall be inserted—

### “49F Disqualification of practitioners

- (1) If it appears to a Health Authority that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in any of the following prepared by them—
  - (a) a list of medical practitioners undertaking to provide general medical services,
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services,
  - (c) a list of dental practitioners and dental corporations undertaking to provide general dental services,
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or
  - (e) a list of persons undertaking to provide pharmaceutical services,
 (such a person being referred to in this group of sections as a “practitioner”), they may (or, in cases falling within subsection (6), must) decide to remove him from that list.
- (2) The first condition is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this group of sections as an “efficiency case”).
- (3) The second condition is that the person concerned—
  - (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit,
 (and such a case is referred to in this group of sections as a “fraud case”).
- (4) The third condition is that the person concerned is unsuitable to be included in the list (and such a case is referred to in this group of sections as an “unsuitability case”).
- (5) “This group of sections” means this section and sections 49G to 49R below.
- (6) In unsuitability cases, the Health Authority must remove the practitioner from the list in prescribed circumstances.
- (7) The Health Authority must state which condition (or conditions) they are relying on when removing a practitioner from a list.
- (8) In subsection (3), “health scheme” means—
  - (a) any of the health services under section 1(1) above or any corresponding enactment extending to Scotland or Northern Ireland, and

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(b) any prescribed scheme,  
and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.

(9) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.

#### **49G Contingent removal**

(1) In an efficiency case or a fraud case, the Health Authority may, instead of deciding to remove a practitioner from their list, decide to remove him contingently.

(2) If they so decide, they must impose such conditions as they may decide on his inclusion in the list with a view to—

- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or
- (b) preventing further acts or omissions within section 49F(3)(a) above (in a fraud case).

(3) If the Health Authority determine that the practitioner has failed to comply with a condition, they may decide to—

- (a) vary the conditions, or impose different conditions, or
- (b) remove him from their list.

(4) The Health Authority may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.

#### **49H Fraud and unsuitability cases: supplementary**

(1) Where the practitioner is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second or third condition referred to in section 49F(3) and (4) above—

- (a) in the case of an ophthalmic optician not referred to in paragraph (b) or a dental corporation, if any director meets that condition (whether or not he first did so when he was a director), and
- (b) in the case of a body corporate carrying on a retail pharmacy business or an ophthalmic optician which is a limited liability partnership, if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).

(2) A practitioner is to be treated for the purposes of this group of sections as meeting the condition referred to in section 49F(3) above if—

- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 49F(1) above on the practitioner's behalf, meets that condition; and
- (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 49F(3)(a) above occurring in the course of the provision of those services on his behalf.

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#### **49I Suspension**

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

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

#### **49J Suspension pending appeal**

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

#### **49K Effect of suspension**

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

#### **49L Review of decisions**

- (1) The Health Authority may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the FHSAA, or a suspension imposed under section 49J above).
- (2) The practitioner may not request a review before the expiry of the period of—
  - (a) three months beginning with the date of the Health Authority's decision to suspend or contingently remove him, or (as appropriate),

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- (b) six months beginning with the date of their decision on the previous review.
- (3) On such a review, the Health Authority may—
  - (a) confirm the contingent removal or the suspension,
  - (b) in the case of a suspension, terminate it,
  - (c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.

### 49M Appeals

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



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#### **49N National disqualification**

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

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#### **49O Notification of decisions**

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

#### **49P Withdrawal from lists**

Regulations may provide for circumstances in which a practitioner—

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

may not withdraw from a list in which he is included.

#### **49Q Regulations**

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

#### **49R Corresponding provision in Scotland and Northern Ireland**

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

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- (5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England and Wales.”

#### Commencement Information

- I21** S. 25 partly in force; s. 25 not in force at Royal Assent see s. 70(2); s. 25 in force for E. for certain purposes at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 25 in force for E. for certain purposes at 22.11.2001 and 14.12.2001 by S.I. 2001/3738, arts. 1(3), 2(2)(3), Sch. 1 Pts. II, III; s. 25 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 01/05/2002

### *Personal medical services and personal dental services*

#### **26 PMS and PDS lists**

- (1) After section 28D of the 1977 Act there shall be inserted—

#### **“28DA Lists of persons who may perform personal medical services or personal dental services**

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of—
- medical practitioners who may perform personal medical services in accordance with section 28C arrangements,
  - dental practitioners who may perform personal dental services in accordance with section 28C arrangements.
- (2) Such a list is referred to in this section as a “services list”.
- (3) The regulations may, in particular, include provision as to—
- the Health Authority to which an application for inclusion in a services list is to be made,
  - the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),
  - grounds on which the Health Authority may, or must, refuse a person’s application for inclusion in a services list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - requirements with which a person included in a services list must comply (including the declaration of financial interests and of gifts and other benefits),
  - grounds on which a Health Authority may, or must, suspend or remove a person from a services list, the procedure for doing so, and the consequences of doing so,
  - payments to or in respect of persons who are suspended from a services list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the

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- Secretary of State or by another person appointed for the purpose by the Secretary of State),
- (g) the supply to the Health Authority by an applicant for inclusion in a services list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a services list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a services list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person's inclusion in a services list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the services list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) below.
- (6) Regulations may provide—
- (a) that no person may perform personal medical services in accordance with section 28C arrangements unless he is included in a medical list, a supplementary list under section 43D or a services list,
  - (b) that no person may perform personal dental services in accordance with section 28C arrangements unless he is included in a list referred to in section 36(1)(a), a supplementary list under section 43D or a services list.
- (7) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N below.
- (8) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a services list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and

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- (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (9) or (10).
- (9) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a services list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.
- (10) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—
  - (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the services list for breach of condition,
  - (d) on any review of an earlier such decision of theirs.”
- (2) After section 8 of the National Health Service (Primary Care) Act 1997 (c. 46) there shall be inserted—

#### *“ Services Lists*

#### **8ZA Lists of persons who may perform personal medical services or personal dental services**

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

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- (f) payments to or in respect of persons who are suspended from a services list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Health Authority by an applicant for inclusion in a services list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a services list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a services list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person's inclusion in a services list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the services list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) of the 1977 Act.
- (6) Regulations may provide—
- (a) that no person may perform personal medical services unless he is included in a medical list, a supplementary list under section 43D of the 1977 Act or a services list,
  - (b) that no person may perform personal dental services unless he is included in a list referred to in section 36(1)(a) of the 1977 Act, a supplementary list under section 43D of that Act or a services list.
- (7) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N of the 1977 Act.
- (8) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a services list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;

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- (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (9) or (10).
- (9) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a services list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the Family Health Services Appeal Authority (“FHSAA”) against the Health Authority’s decision.
- (10) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the services list for breach of condition,
  - (d) on any review of an earlier such decision of theirs.”
- (3) In section 40(3) of the National Health Service (Primary Care) Act 1997 (c. 46) (interpretation) after “sections 28C” there shall be inserted “ , 28DA ”.

#### Commencement Information

**I22** S. 26 partly in force; s. 26 not in force at Royal Assent, see s. 70(2); s. 26(2) in force for E. at 31.5.2002 by [S.I. 2002/1095](#), [art. 2\(7\)](#) (with transitional provisions in [arts. 3, 4](#)) (as amended (26.3.2002) by [S.I. 2002/1170](#), [art. 3](#)); s. 26 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

### *The Family Health Services Appeal Authority*

## 27 The Family Health Services Appeal Authority

- (1) After section 49R of the 1977 Act (which is inserted by section 25 of this Act) there shall be inserted—

*“ The Family Health Services Appeal Authority*

### **49S The Family Health Services Appeal Authority**

- (1) There shall be a body to be known as the Family Health Services Appeal Authority (“FHSAA”).
- (2) The FHSAA shall be constituted in accordance with Schedule 9A to this Act, which also makes other provision in relation to the FHSAA.
- (3) The FHSAA shall have such functions as are conferred on it by this Act or by any other enactment.

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- (4) The Secretary of State may direct the FHSAA to exercise any of his functions relating to the determination of appeals to him which are specified in the directions.
- (5) Directions under subsection (4) shall be given by regulations or by an instrument in writing.
- (6) The Secretary of State may make available to the FHSAA any facilities (including the use of any premises) provided by him or by a Special Health Authority or NHS trust for any service under this Act, and the services of persons employed by the Secretary of State or by a Special Health Authority or NHS trust.
- (7) Subsections (1) to (3) of section 27 above apply in relation to the services of persons employed by a Special Health Authority and made available under subsection (6) as they apply in relation to the services of officers of Special Health Authorities to be made available under section 26 above.
- (8) For the purposes of subsection (6)—
  - (a) the Secretary of State may give directions to an NHS trust requiring it to make facilities or the services of persons available as mentioned there; but
  - (b) subsections (1) and (2) of section 27 above apply in relation to the services of such persons as they apply in relation to the services of officers to be made available by virtue of section 26 above by a Health Authority, Special Health Authority or Primary Care Trust.”
- (2) In section 102 of the 1977 Act (allowances and remuneration for members of certain bodies), in each of subsections (1)(a)(v) and (2)(d), for “the Tribunal constituted under section 46 above” there shall be substituted “ the FHSAA ”.
- (3) In section 128(1) of the 1977 Act (interpretation), in the appropriate place there shall be inserted—
 

““the FHSAA” means the Family Health Services Appeal Authority;”.
- (4) Before Schedule 10 to the 1977 Act there shall be inserted—

“SCHEDULE 9A

THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

**Constitution**

- 1 The Family Health Services Appeal Authority (“the FHSAA”) shall consist of—
  - (a) a President;
  - (b) one or more Deputy Presidents; and
  - (c) a number of other members,
 all appointed by the Lord Chancellor on terms to be determined by him.
- 2 The number of the other members shall be determined by the Lord Chancellor after consulting the Secretary of State.



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- 3 A person appointed as the President shall have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), and a person appointed as a Deputy President shall have a 7 year general qualification.
- 4 The qualifications which the other members must have in order to be eligible for appointment shall be determined by the Lord Chancellor.
- 5 Each person appointed under paragraph 1—
- (a) shall hold and vacate office in accordance with the terms of his appointment; and
  - (b) may be removed from office by the Lord Chancellor on grounds of incapacity or misbehaviour.
- 6 The other members must include at least one—
- (a) medical practitioner providing general medical services, or performing personal medical services under section 28C arrangements;
  - (b) dental practitioner providing general dental services, or performing personal dental services under section 28C arrangements;
  - (c) ophthalmic optician or medical practitioner providing general ophthalmic services; and
  - (d) registered pharmacist providing pharmaceutical services or local pharmaceutical services (whether under this Act or under a pilot scheme made under section 28 of the Health and Social Care Act 2001),
- and must also include such number of persons with a 7 year general qualification (construed as in paragraph 3) as the Lord Chancellor considers appropriate bearing in mind the requirements of paragraph 9, and a number of lay persons who do not fall within paragraphs (a) to (d) and who possess such qualifications and experience as the Lord Chancellor considers appropriate.

### **Procedure**

- 7 The procedure of the FHSAA shall be as it determines, subject to the following.
- 8 The functions of the FHSAA shall be exercised by panels consisting—
- (a) in the case of functions referred to in section 49S(4) above, of such one or more members as the President may choose; and
  - (b) in the case of other functions, of three members chosen by the President,
- and, in either case, the President may include himself (or, in the case of a one-member panel, may constitute the panel).
- 9 Subject to paragraph 10, at least one member of each panel (or, in the case of a one-member panel, that member) must have a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)).
- 10 In the case of a panel constituted for the purposes of section 49M or 49N above, one member of the panel must have the qualification mentioned in paragraph 9, and (unless the President decides otherwise)—

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- (a) if the practitioner provides general medical services, one member of the panel must fall within paragraph 6(a), and so on as respects a practitioner who provides one of the other services referred to in section 49F(1); and
  - (b) the third member must neither fall within any of sub-paragraphs (a) to (d) of paragraph 6 nor have a legal qualification.

11 Where a panel has more than one member—

  - (a) the President shall nominate one of the members as chairman,
  - (b) decisions shall be taken by a majority of votes, and
  - (c) if there is a tie the chairman shall have a second vote as a casting vote.

12 The FHSAA shall—

  - (a) give notice of a panel’s decision and of the reasons for it to each party to the proceedings; and
  - (b) publish each decision of a panel falling within paragraph 13 in such way as the FHSAA considers appropriate;

and it may send a copy of any such decision to such prescribed persons or persons of prescribed descriptions as it considers appropriate, together with any information relevant to the decision which the FHSAA considers it appropriate to include.

13 The following decisions fall within this paragraph—

  - (a) a decision on national disqualification (see section 49N above);
  - (b) a decision to allow an appeal brought by virtue of section 49M(2)(a), (b) or (c) above; and
  - (c) such other decisions as may be prescribed.

14 The FHSAA may publish a decision not falling within paragraph 13 if it considers it appropriate to do so.

15 The Lord Chancellor may make rules as to—

  - (a) the composition of panels,
  - (b) the allocation to panels of cases, or of particular proceedings in any case, and
  - (c) the procedure to be followed by a panel in considering any matter before it.

16 The Lord Chancellor shall make rules—

  - (a) giving each party to proceedings before a panel the opportunity of putting his case at a hearing,
  - (b) entitling each party to be legally represented at any hearing (whether it is held at the instance of the panel or of a party), and
  - (c) securing that any hearing is held in public unless the practitioner asks for it to be in private (a request which the panel must consider but need not grant).

17 Rules under this Schedule may, in particular, make provision—

  - (a) as to the carrying out by a Deputy President of functions of the President,
  - (b) as to how, and as to the time within which, an application to the FHSAA is to be made, or an appeal to the FHSAA is to be brought

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- (so far as the matter is not provided for in or by virtue of this or any other Act),
- (c) for a period which must elapse before an application, or a further application, may be made under section 49M(5)(a) above,
  - (d) as to the matters referred to in paragraph 12,
  - (e) for the giving by the panel of directions to the parties as to the conduct of the case, and for the consequences of failure to comply with such directions (which may include allowing or dismissing the appeal or application if the failure to comply was without reasonable excuse);
  - (f) empowering a panel to require persons to attend and give evidence or produce documents,
  - (g) about the admissibility of evidence, and
  - (h) enabling the panel to administer oaths.
- 18 No person shall be required by virtue of any such rules to give any evidence or produce any document or other material which he could not be compelled to give or produce in civil proceedings in a court in England and Wales.

### **Miscellaneous**

- 19 (1) The President must, in respect of each period of 12 months beginning on 1st April, prepare a written report about the FHSAA's activities during that period.
- (2) He must send a copy of the report to the Lord Chancellor, the Secretary of State and the National Assembly for Wales.
- (3) After consulting the Lord Chancellor and the National Assembly for Wales, the Secretary of State may give directions to the President as to subjects with which the report must deal.
- 20 The President must arrange such training for himself and the other members of the FHSAA as he considers appropriate.

### **Interpretation**

- 21 In this Schedule—
- “practitioner” means the person whose case is before the FHSAA;
  - “prescribed” means prescribed by the Lord Chancellor in rules.”
- (5) In the National Health Service (Primary Care) Act 1997 (c. 46)—
- (a) in section 22 (supplementary regulations about personal medical or dental services), in the section 28E to be inserted into the 1977 Act, in subsection (7) (e), for “Tribunal constituted under section 46” there shall be substituted “Family Health Services Appeal Authority constituted under section 49S”; and
  - (b) in Schedule 1 (preferential treatment on transferring to medical lists), in paragraph 9(a), for “Tribunal constituted under section 46” there shall be substituted “Family Health Services Appeal Authority constituted under section 49S”.

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

- C2** S. 27(2) amended (temp. from 22.7.2002) by [The Health and Social Care Act 2001 \(Commencement No. 3\) \(Wales\) Order 2002 \(S.I. 2002/1919\)](#), art. 3(2), **Sch. Pt. III**

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**C3** S. 27(5)(b) amended (temp. from 22.7.2002) by [The Health and Social Care Act 2001](#) (Commencement No. 3) (Wales) Order 2002 (S.I. 2002/1919), art. 3(2), **Sch. Pt. III**

**Commencement Information**

**I23** S. 27 wholly in force at 26.8.2002; s. 27 not in force at Royal Assent see s. 70(2); s. 27 in force for E. for certain purposes at 1.10.2001 and otherwise for E. at 1.12.2001 by [S.I. 2001/3294](#), arts. 1(3), 4(1), **Sch.** (subject to transitional provisions in art. 4(2)); s. 27 in force for W. at 26.8.2002 by [S.I. 2002/1919](#), **art. 3(1)**, **Sch. Pt. II** (subject to art. 3(2), **Sch. Pt. III**)

## PART 2

### PHARMACEUTICAL SERVICES

#### CHAPTER 1

##### LOCAL PHARMACEUTICAL SERVICES

###### *Preparation and making of pilot schemes*

### 28 Pilot schemes

- (1) Health Authorities may establish pilot schemes.
- (2) In this Chapter “pilot scheme” means one or more agreements—
  - (a) made by a Health Authority (“A”) in accordance with this Chapter;
  - (b) under which local pharmaceutical services are to be provided (otherwise than by A); and
  - (c) the parties to which do not include any other Health Authority.
- (3) A pilot scheme may include arrangements—
  - (a) for the provision of services which are not local pharmaceutical services, but which may be provided under Part 1 of the 1977 Act (whether or not of the kind usually provided by pharmacies);
  - (b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).
- (4) A pilot scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of personal medical services or personal dental services under any provision of, or made under, the 1977 Act or the National Health Service (Primary Care) Act 1997.
- (5) In this Chapter “piloted services” means services provided under a pilot scheme (including any services to which the scheme applies as a result of subsection (3)).
- (6) In determining the arrangements they need to make in order to comply with section 41 of the 1977 Act (arrangements to be made by Health Authorities for the provision of pharmaceutical services), a Health Authority may take into account arrangements under a pilot scheme made by them.

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- (7) The functions of an NHS trust or a Primary Care Trust include power to provide any services to which a pilot scheme applies.
- (8) In this Chapter—  
“pharmaceutical services” means services of a kind which may be provided under section 41 of the 1977 Act, or by virtue of section 41A of that Act; and  
“local pharmaceutical services” means such pharmaceutical services (other than practitioner dispensing services) as may be prescribed by regulations.
- (9) “Practitioner dispensing services” means the provision of drugs, medicines or listed appliances (within the meaning of section 41 of the 1977 Act) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 43(1) of the 1977 Act.

#### Commencement Information

**I24** S. 28 wholly in force at 1.7.2002; s. 28 in force for certain purposes at 11.5.2001, see s. 70(2); s. 28 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 28 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 08/03/2002

### 29 Making pilot schemes

Schedule 2 makes provision with respect to making pilot schemes, including provision with respect to the procedure to be followed.

#### Commencement Information

**I25** S. 29 wholly in force at 1.7.2002; s. 29 not in force at Royal Assent, see s. 70(2); s. 29 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 29 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

### 30 Designation of priority neighbourhoods or premises

- (1) The relevant authority may make regulations allowing a Health Authority to—  
(a) designate neighbourhoods,  
(b) designate premises, or  
(c) designate descriptions of premises,  
for the purposes of this section.
- (2) The regulations may, in particular, make provision—  
(a) as to the circumstances in which, and the neighbourhoods or premises in relation to which, designations may be made or maintained;

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- (b) allowing a Health Authority to defer consideration of Part 2 applications relating to neighbourhoods, premises or descriptions of premises that have been designated;
  - (c) allowing a designation to be cancelled in prescribed circumstances;
  - (d) requiring a designation to be cancelled—
    - (i) if a relevant authority gives a direction to that effect; or
    - (ii) in prescribed circumstances.
- (3) “Part 2 applications” means applications for inclusion in a list maintained under section 42 of the 1977 Act.
- (4) “Prescribed” means prescribed by the regulations.

#### Commencement Information

**I26** S. 30 wholly in force at 1.7.2002; s. 30 in force for certain purposes at 11.5.2001, see s. 70(2); s. 30 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 30 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 08/03/2002

### *Reviews, variation and termination of pilot schemes*

#### **31**      **Reviews of pilot schemes**

- (1) At least one review of the operation of each pilot scheme must be conducted by the relevant authority.
- (2) Each pilot scheme must be reviewed under this section before the end of the period of three years beginning with the date on which piloted services are first provided under the scheme.
- (3) When conducting a review of a pilot scheme, the relevant authority must give—
  - (a) the Health Authority concerned, and
  - (b) any person providing services under the scheme,
 an opportunity to comment on any matter relevant to the review.
- (4) Otherwise, the procedure on any review is to be determined by the relevant authority.

#### Commencement Information

**I27** S. 31 wholly in force at 1.7.2002; s. 31 not in force at Royal Assent, see s. 70(2); s. 31 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 31 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

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### 32 Variation and termination of pilot schemes

- (1) The relevant authority may give directions authorising Health Authorities to vary pilot schemes (otherwise than in response to directions given under subsection (2)) in such circumstances, and subject to such conditions, as may be specified in the directions.
- (2) The relevant authority may by directions require a pilot scheme to be varied by the Health Authority concerned in accordance with the directions.
- (3) If satisfied that a pilot scheme is (for any reason) unsatisfactory, the relevant authority may give directions to the Health Authority concerned requiring them to bring the scheme to an end in accordance with the terms of the directions.

#### Commencement Information

**I28** S. 32 wholly in force at 1.7.2002; s. 32 not in force at Royal Assent, see s. 70(2); s. 32 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 32 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

### NHS contracts and financial provisions

### 33 NHS contracts

- (1) In the case of a pilot scheme entered into, or to be entered into, by a single individual or body corporate, that individual or body may make an application under this section to become a health service body.
- (2) In the case of any other pilot scheme, all of those providing, or proposing to provide, piloted services under the scheme may together make an application under this section to become a single health service body.
- (3) An application must—
  - (a) be made to the relevant authority in accordance with such provisions as may be made by regulations; and
  - (b) specify the pilot scheme in relation to which it is made.
- (4) Except in such cases as may be prescribed by regulations, the relevant authority may grant an application.
- (5) If an application is granted, the relevant authority must specify a date in relation to that application and, as from that date—
  - (a) in the case of an application under subsection (1), the applicant is, and
  - (b) in the case of an application under subsection (2), the applicants together are, a health service body for the purposes of section 4 of the 1990 Act (NHS contracts).
- (6) That section has effect in relation to such a health service body (“a PHS body”), acting as acquirer, as if the functions referred to in subsection (1) of that section were the provision of piloted services.

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- (7) Except in such circumstances as may be prescribed by regulations, a PHS body resulting from an application under subsection (2) is to be treated, at any time, as consisting of those who are providing piloted services under the scheme.
- (8) A direction as to payment made under section 4(7) of the 1990 Act against, or in favour of, a PHS body is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.
- (9) Regulations may provide for a PHS body to cease to be a PHS body in prescribed circumstances.
- (10) The relevant authority must—
  - (a) maintain and publish a list of PHS bodies;
  - (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.
- (11) The list is to be published in such manner as the relevant authority considers appropriate.

#### **Commencement Information**

**I29** S. 33 wholly in force at 1.7.2002; s. 33 in force for certain purposes at 11.5.2001, see s. 70(2); s. 33 in force for E. at 8.3.2002 by [S.I. 2002/1095](#), [art. 2\(4\)](#) (with transitional provisions in [arts. 3, 4](#)) (as amended (26.3.2002) by [S.I. 2002/1170](#), [art. 3](#)); s. 33 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

### **34 Funding of preparatory work**

- (1) Provision may be made by regulations for Health Authorities to make payments of financial assistance for preparatory work.
- (2) “Preparatory work” means work which it is reasonable for a person to undertake—
  - (a) in connection with preparing proposals for a pilot scheme; or
  - (b) in preparing for the provision by him of any piloted services.
- (3) The regulations may, in particular, include provision—
  - (a) prescribing the circumstances in which payments of financial assistance may be made;
  - (b) imposing a limit on the amount of any payment of financial assistance which a Health Authority may make in any prescribed period in respect of any one person or any one pilot scheme;
  - (c) imposing a limit on the aggregate amount which a Health Authority may pay by way of financial assistance in any one financial year;
  - (d) requiring a person to whom assistance is given under this section to comply with such conditions as may be imposed in accordance with prescribed requirements; and
  - (e) for repayment in the case of a failure to comply with any condition so imposed.



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#### Commencement Information

**I30** S. 34 wholly in force at 1.7.2002; s. 34 in force for certain purposes at 11.5.2001, see s. 70(2); s. 34 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 34 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

### 35 Charges, recovery of payments and penalties

- (1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for local pharmaceutical services.
- (2) The regulations may, in particular provide for—
  - (a) exemptions from charges;
  - (b) the liability to pay charges to be disregarded in prescribed circumstances or for prescribed purposes;
  - (c) section 122A of the 1977 Act (recovery of certain charges and payments) to apply also in relation to local pharmaceutical services (with or without modification);
  - (d) section 122B of the 1977 Act (penalties) to apply also in relation to local pharmaceutical services (with or without modification).
- (3) The regulations must secure that the amount charged for any service is the same as the amount that would be charged for that service if it were provided under Part 2 of the 1977 Act.

#### Commencement Information

**I31** S. 35 wholly in force at 1.7.2002; s. 35 in force for certain purposes at 11.5.2001, see s. 70(2); s. 35 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 35 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

#### General

VALID FROM 08/03/2002

### 36 Effect of the 1977 Act

- (1) The provisions of the 1977 Act, apart from section 16D (power to direct Health Authority to exercise functions of relevant authority), apply in relation to functions of the relevant authority in relation to pilot schemes as if they were functions under Part 1 of the 1977 Act.
- (2) The 1977 Act (and in particular section 17) has effect in relation to piloted services—
  - (a) subject to any provision of, or made under, this Chapter; but
  - (b) otherwise as if those services were provided as a result of directions given under section 16D of the 1977 Act in relation to functions of the relevant authority under Part 1 of that Act.

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(3) The functions of a Health Authority in relation to piloted services are primary functions of the Authority for the purposes of the 1990 Act.

#### Commencement Information

**I32** S. 36 wholly in force at 1.7.2002; s. 36 not in force at Royal Assent, see s. 70(2); s. 36 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 36 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

### 37 Premises from which piloted services may be provided

The relevant authority may by regulations—

- (a) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both piloted services and pharmaceutical services from the same premises;
- (b) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a list under section 42 of the 1977 Act.

#### Commencement Information

**I33** S. 37 wholly in force at 1.7.2002; s. 37 in force for certain purposes at 11.5.2001, see s. 70(2); s. 37 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 37 in force for W. at 1.7.2008 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 08/03/2002

### 38 Control of entry regulations

The power to make regulations under section 42 of the 1977 Act (regulations as to pharmaceutical services) includes power to prescribe the extent to which the provision of piloted services is to be taken into account in determining whether to grant an application for inclusion in a list referred to in subsection (2) of that section.

#### Commencement Information

**I34** S. 38 wholly in force at 1.7.2002; s. 38 not in force at Royal Assent, see s. 70(2); s. 38 in force for E. at 8.3.2002 by S.I. 2002/1095, art. 2(4) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 38 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

**Status:** Point in time view as at 06/03/2002. This version of this Act contains provisions that are not valid for this point in time.  
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VALID FROM 08/03/2002

### *Assessing the result of pilot schemes*

#### **39 Assessing pilot schemes**

- (1) The relevant authority may not bring section 40 into force unless satisfied that pilot schemes have shown that continuing to provide for the provision of local pharmaceutical services in accordance with provisions of the kind made by pilot schemes would be in the interests of the health service or any part of the health service (within the meaning of section 128(1) of the 1977 Act).
- (2) In determining whether to bring section 40 into force, the relevant authority must have regard, in particular, to the results of the reviews of pilot schemes conducted under section 31.

#### **Commencement Information**

**I35** S. 39 wholly in force at 1.7.2002; s. 39 not in force at Royal Assent, see s. 70(2); s. 39 in force for E. at 8.3.2002 by [S.I. 2002/1095](#), [art. 2\(4\)](#) (with transitional provisions in [arts. 3, 4](#)) (as amended (26.3.2002) by [S.I. 2002/1170](#), [art. 3](#)); s. 39 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

VALID FROM 28/02/2006

### *Provision for local pharmaceutical schemes*

#### **40 Provision for LPS schemes**

- (1) In the 1977 Act there shall be inserted, after section 28I—

##### **“28J Local pharmaceutical services schemes**

- (1) Schedule 8A makes provision with respect to the provision of local pharmaceutical services in accordance with schemes made by Health Authorities.”
- (2) The Schedule set out in Schedule 3 to this Act shall be inserted in the 1977 Act as Schedule 8A to that Act.
- (3) In section 42 of the 1977 Act there shall be inserted after subsection (2)—  
“(2A) The regulations may prescribe the extent to which the provision of LP services (as defined by paragraph 1 of Schedule 8A to this Act) is to be taken into account in determining whether to grant an application for inclusion in a list.”

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*Corresponding provision, etc.*

#### 41 Corresponding provision and application of enactments

- (1) The relevant authority may by regulations make, in relation to Schedule 8A arrangements or persons providing or assisting in the provision of services under such arrangements, provision corresponding (whether or not exactly) to enactments containing provision relating to—
  - (a) arrangements made under section 28C of the 1977 Act (provision of personal medical or dental services); or
  - (b) pilot schemes made under Part 1 of the National Health Service (Primary Care) Act 1997 (c. 46),
 or relating to persons who provide or perform services under them.
- (2) The regulations may, in particular, provide for the application of any such enactment with such modifications, if any, as the relevant authority considers appropriate.
- (3) “Schedule 8A arrangements” means arrangements made under—
  - (a) an LPS scheme made under Schedule 8A to the 1977 Act; or
  - (b) a pilot scheme.

#### Commencement Information

**I36** S. 41 wholly in force at 1.7.2002; s. 41 in force for certain purposes at 11.5.2001, see s. 70(2); s. 41 in force for E. at 8.3.2002 by [S.I. 2002/1095](#), [art. 2\(4\)](#) (with transitional provisions in [arts. 3, 4](#)) (as amended (26.3.2002) by [S.I. 2002/1170](#), [art. 3](#)); s. 41 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

## CHAPTER 2

### CHANGES TO EXISTING ARRANGEMENTS

VALID FROM 08/03/2002

*England and Wales*

#### 42 Dispensing of NHS prescriptions and provision of pharmaceutical services

- (1) For section 41 of the 1977 Act (arrangements for pharmaceutical services) there shall be substituted—

##### “41 Arrangements for pharmaceutical services

- (1) It is the duty of every Health Authority, in accordance with regulations which shall be made for the purpose, to arrange as respects their area for the provision to persons who are in that area of—
  - (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in

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- pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown;
- (b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of—
    - (i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)); or
    - (ii) his functions in the armed forces of the Crown;
  - (c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision of general dental services or equivalent services in the Scottish health service or the Northern Ireland health service;
  - (d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown; and
  - (e) such other services as may be prescribed.
- (2) The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 41A, referred to in this Act as “pharmaceutical services”.
- (3) The descriptions of persons which may be prescribed for the purposes of subsection (1)(d) are the following, or any sub-category of such a description—
- (a) persons who are registered by any board established under the Professions Supplementary to Medicine Act 1960 (c. 66);
  - (b) persons who are registered pharmacists;
  - (c) persons whose names are entered in a roll or record established by the General Dental Council by virtue of section 45 of the Dentists Act 1984 (c. 24) (dental auxiliaries);
  - (d) persons who are ophthalmic opticians;
  - (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);
  - (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);
  - (g) persons who are registered in the register of qualified nurses, midwives and health visitors maintained under section 7 of the Nurses, Midwives and Health Visitors Act 1997 (c. 24);
  - (h) persons who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);
  - (i) any other description of persons which appears to the Secretary of State to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish

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Parliament or Northern Ireland legislation and which the Secretary of State considers it appropriate to specify.

- (4) A determination under subsection (1)(d) may—
- (a) make different provision for different cases;
  - (b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered;
  - (c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.
- (5) The arrangements which may be made by a Health Authority under subsection (1) include arrangements for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided.
- (6) Where a person with whom a Health Authority makes arrangements under subsection (1) wishes to provide services to persons outside the area of the Health Authority, he may, subject to any provision made by regulations in respect of arrangements under this section, provide such services under the arrangements.
- (7) In this section—
- “armed forces of the Crown” does not include forces of a Commonwealth country or forces raised in a colony;
- “listed” means included in a list for the time being approved by the Secretary of State for the purposes of this section; and
- “the Scottish health service” and “the Northern Ireland health service” mean respectively the health service established in pursuance of the National Health Service (Scotland) Act 1947 (c. 27) or any service provided in pursuance of Article 4(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).”
- (2) In section 43 of the 1977 Act (persons authorised to provide pharmaceutical services), in subsection (3), for “section 41(d)” there shall be substituted “section 41(1)(e)”.

#### **Commencement Information**

**I37** S. 42 wholly in force at 1.7.2002; s. 42 not in force at Royal Assent, see s. 70(2); s. 42 in force for E. for certain purposes at 8.3.2002 and otherwise for E. at 1.4.2002 by S.I. 2002/1095, art. 2(5) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 42 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 01/04/2002

#### **43 Remote provision of pharmaceutical, etc. services**

- (1) In section 41A of the 1977 Act (additional pharmaceutical services)—

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- (a) in subsection (1)(a), for “in their area” there shall be substituted “ within or outside their area ”;
- (b) after subsection (1) there shall be inserted—
  - “(1A) Directions under this section may require or authorise a Health Authority to arrange for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided (whether those premises are inside or outside the area of the Health Authority).”
- (2) In section 42 of that Act (regulations as to pharmaceutical services), in subsection (1), for the words from “enable persons” to the end of the subsection there shall be substituted—
  - “(a) enable persons for whom drugs, medicines or appliances mentioned in that section are ordered as there mentioned to receive them from persons with whom such arrangements have been made; and
  - (b) ensure the provision of services prescribed under subsection (1) (e) of that section by persons with whom such arrangements have been made.”
- (3) In subsection (2)(c) of that section, after “prescribed cases” there shall be inserted “ (which may, in particular, include cases of applications for the provision only of services falling within subsection (3A) below) ”.
- (4) After subsection (3) of that section there shall be inserted—
  - “(3A) A service falls within this subsection if the means of providing it is such that the person receiving it does so otherwise than at the premises from which it is provided.
  - (3B) The regulations may, in respect of services falling within subsection (3A) above, include provision—
    - (a) requiring persons to be approved for the purposes of providing such services, by the Secretary of State or such other person as may be specified in the regulations, in accordance with criteria to be specified in or determined under the regulations (whether by the Secretary of State or by another person so specified);
    - (b) requiring the Health Authority to make the grant of an application subject to prescribed conditions.”
- (5) In section 43(2A) of the 1977 Act (list of medical practitioners providing drugs, etc.) for “in the Authority’s area” there shall be substituted “ under arrangements with the Authority ”.
- (6) In section 44(1) of the 1977 Act (local representative committees), in paragraph (d), after “pharmaceutical services” there shall be inserted “ from premises ”.

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#### Commencement Information

**I38** S. 43 wholly in force at 1.7.2002; s. 43 not in force at Royal Assent, see s. 70(2); s. 43 in force for E. at 1.4.2002 by S.I. 2002/1095, art. 2(6) (with transitional provisions in arts. 3, 4) (as amended



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(26.3.2002) by S.I. 2002/1170, art. 3); s. 43 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

PROSPECTIVE

*Scotland*

**44 Dispensing of NHS prescriptions**

(1) Section 27 of the National Health Service (Scotland) Act 1978 (c. 29) (arrangements for provision of pharmaceutical services) shall be amended as follows.

(2) In subsection (1), in paragraph (cc)—

- (a) for “listed drugs and medicines and listed appliances” there shall be substituted “such drugs and medicines and such listed appliances as may be determined by the Scottish Ministers for the purposes of this paragraph”; and
- (b) for “registered nurse, midwife or health visitor” there shall be substituted “person in accordance with such conditions, if any, as may be prescribed,”.

(3) After that subsection there shall be inserted—

“(1A) The descriptions of persons which may be prescribed for the purposes of subsection (1)(cc) are the following, or any sub-category of such a description—

- (a) persons who are registered by any board established under the Professions Supplementary to Medicine Act 1960 (c. 66);
- (b) persons who are registered pharmacists;
- (c) persons whose names are entered in a roll or record established by the General Dental Council by virtue of section 45 of the Dentists Act 1984 (c. 24) (dental auxiliaries);
- (d) persons who are ophthalmic opticians;
- (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);
- (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);
- (g) persons who are registered in the register of qualified nurses, midwives and health visitors maintained under section 7 of the Nurses, Midwives and Health Visitors Act 1997 (c. 24);
- (h) persons who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);
- (i) any other description of persons which appears to the Scottish Ministers to be a description of persons whose profession is regulated by or under a provision of, or made under, Northern Ireland legislation and which the Scottish Ministers consider it appropriate to specify.

(1B) A determination under subsection (1)(cc) may—

- (a) make different provision for different cases;



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- (b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered;
- (c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.”

#### Commencement Information

**I39** S. 44 not in force at Royal Assent, see s. 70(2); s. 44 in force for S. at 1.4.2002 by [S.S.I. 2002/75](#), [art. 2](#)

## PART 3

### CARE TRUSTS AND PARTNERSHIP ARRANGEMENTS

#### 45 Care Trusts

- (1) Where—
  - (a) a Primary Care Trust or an NHS trust is, or is to be, a party to any existing or proposed LA delegation arrangements, and
  - (b) the relevant authority is of the opinion that designation of the trust as a Care Trust would be likely to promote the effective exercise by the trust of prescribed health-related functions of a local authority (in accordance with the arrangements) in conjunction with prescribed NHS functions of the trust, the relevant authority may designate the trust as a Care Trust.
- (2) A trust may, however, only be so designated in pursuance of an application made to the relevant authority jointly by every prescribed body.
- (3) If—
  - (a) the relevant authority is of the opinion that it would be appropriate to do so, and
  - (b) the application under subsection (2) requests the authority to do so, the authority may when designating a trust as a Care Trust direct that, while it is so designated, the trust may (in addition to exercising health-related functions of the local authority as mentioned in subsection (1)(b)) exercise such prescribed health-related functions of the local authority as are specified in the direction in relation to persons in any area so specified, even though it does not exercise any NHS functions in relation to persons in that area.
- (4) Where a body is designated as a Care Trust under this section—
  - (a) its designation may be revoked by the relevant authority at any time—
    - (i) of the authority’s own motion, and
    - (ii) after such consultation as the authority considers appropriate;
  - (b) if an application for the revocation of its designation is made to the relevant authority by one or more of the parties to the LA delegation arrangements, its designation shall be revoked by the relevant authority at the earliest time at which the authority considers it practicable to do so, having regard, in

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particular, to any steps that need to be taken in relation to those arrangements in connection with the revocation.

- (5) The designation of a body as a Care Trust under this section shall be effected by an order under section 16A of the 1977 Act or section 5(1) of the 1990 Act (as the case may be) which—
- (a) (in the case of an existing body) amends the order establishing the body so as to change its name to one that includes the words “Care Trust”, or
  - (b) (in the case of a new body) establishes the body with a name that includes those words;
- and any revocation of its designation shall be effected by a further order under that provision which makes such provision for changing the name of the body as the relevant authority considers expedient.
- (6) The power of the relevant authority to dissolve a Primary Care Trust or an NHS trust shall include power to dissolve such a trust where the authority is of the opinion that it is appropriate to do so in connection with the designation of any other such body (whether existing or otherwise) as a Care Trust.
- (7) Regulations may make such incidental, supplementary or consequential provision (including provision amending, repealing or revoking enactments) as the relevant authority considers expedient in connection with the preceding provisions of this section.
- (8) Regulations under subsection (7) may, in particular, make provision—
- (a) prescribing—
    - (i) the manner and circumstances in which, and
    - (ii) any conditions which must be satisfied before,
 an application may be made for a body to be designated as a Care Trust under this section, or to cease to be so designated, and the information to be supplied with such an application;
  - (b) enabling the relevant authority to terminate appointments of persons as members of a Primary Care Trust or of the board of directors of an NHS trust (or of a committee of such a trust) where the authority is of the opinion that it is appropriate to do so in connection with the designation of the trust as a Care Trust;
  - (c) requiring the consent of the relevant authority to be obtained before any prescribed change is made with respect to the governance of a body so designated;
  - (d) for supplementing or modifying, in connection with the operation of subsection (3), any provision made by regulations under section 31 of the Health Act 1999 (c. 8) (partnership arrangements between NHS bodies and local authorities).
- (9) The designation of a body as a Care Trust under this section shall not affect any of the functions, rights or liabilities of that body in its capacity as a Primary Care Trust or NHS trust (as the case may be).
- (10) In connection with the exercise by a body so designated of any relevant social services functions under LA delegation arrangements—
- (a) section 7 of the Local Authority Social Services Act 1970 (c. 42) (authorities to exercise social services functions under guidance of Secretary of State), and

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(b) section 7A of that Act (directions of Secretary of State as to exercise of such functions),

shall apply to the body as if it were a local authority within the meaning of that Act.

(11) In this section—

“health-related functions” and “local authority” have the same meaning as in section 31 of the Health Act 1999;

“LA delegation arrangements” means arrangements falling within section 31(2)(b) of the Health Act 1999 (c. 8), whether or not made in conjunction with any pooled fund arrangements;

“NHS functions” means functions exercisable by a Primary Care Trust or NHS trust in its capacity as such;

“pooled fund arrangements” means arrangements falling within section 31(2)(a) of the Health Act 1999;

“prescribed” means prescribed to any extent by regulations;

“relevant social services functions” means health-related functions which are social services functions within the meaning of the Local Authority Social Services Act 1970 (c. 42).

#### Commencement Information

**I40** S. 45 partly in force; s. 45 in force for certain purposes at 11.5.2001, see s. 70(2); s. 45 in force for E. at 19.12.2001 in so far as not already in force by S.I. 2001/4149, arts. 1(3), 2(a)

## 46 Directed partnership arrangements

(1) If the relevant authority is of the opinion—

(a) that a body to which this section applies (“the failing body”) is not exercising any of its functions adequately, and

(b) that it would be likely to lead to an improvement in the way in which that function is exercised if it were to be exercised—

(i) by another body to which this section applies under delegation arrangements, or

(ii) in accordance with pooled fund arrangements made with another such body,

the relevant authority may direct those bodies to enter into such delegation arrangements or pooled fund arrangements in relation to the exercise of the appropriate function or functions as are specified in the direction.

(2) In subsection (1) “the appropriate function or functions” means—

(a) the function of the failing body mentioned in that subsection; and

(b) such other function of that body (if any) as the relevant authority considers would, if exercised under or in accordance with the arrangements in question, be likely to contribute to an improvement in the exercise of the function referred to in paragraph (a).

(3) The bodies to which this section applies are—

(a) NHS bodies, and

(b) local authorities,

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but in subsections (1) and (2) any reference to functions is, in relation to a local authority, a reference only to relevant social services functions of the authority.

(4) In this section any reference to an improvement in the way in which any function is exercised includes an improvement in the provision to any individuals of any services to which that function relates.

(5) In this section—

“delegation arrangements” means arrangements falling within section 31(2)(b) or (c) of the Health Act 1999, whether or not made in conjunction with any pooled fund arrangements;

“health-related functions” and “local authority” have the same meaning as in section 31 of the Health Act 1999;

“NHS body” means a Health Authority, Primary Care Trust or NHS trust;

“pooled fund arrangements” means arrangements falling within section 31(2)(a) of the Health Act 1999;

“relevant social services functions” means health-related functions which are social services functions within the meaning of the Local Authority Social Services Act 1970 (c. 42).

#### **Commencement Information**

**I41** S. 46 partly in force; s. 46 not in force at Royal Assent see s. 70(2); s. 46 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2))

#### **47 Further provisions about directions in connection with directed partnership arrangements and Care Trusts**

(1) A direction given under section 46(1) (a “principal direction”) may make provision with respect to—

- (a) any of the matters with respect to which provision is required to be made by the specified arrangements by virtue of regulations under section 31 of the Health Act 1999 (c. 8); and
- (b) such other matters as the relevant authority considers appropriate.

(2) Without prejudice to the generality of subsection (1), the relevant authority may (either in a principal direction or in any subsequent direction) make provision—

- (a) for the determination, whether—
  - (i) by agreement, or
  - (ii) (in default of agreement) by the relevant authority or an arbitrator appointed by the authority,

of the amount of any payments which need to be made by one body to another for the purposes of the effective operation of the specified arrangements, and for the variation of any such determination;

- (b) specifying the manner in which the amount of any such payments is to be so determined (or varied);
- (c) requiring a body specified in the direction to supply to the relevant authority or an arbitrator, for the purpose of enabling any such amount to be so determined (or varied), such information or documents as may be so specified;

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- (d) requiring any amount so determined (or varied) to be paid by and to such bodies as are specified in the direction;
  - (e) requiring capital assets specified in the direction to be made available by and to such bodies as are so specified.
- (3) The relevant authority may, when giving a principal direction to any bodies to which section 46 applies, give such directions to any other such body as the authority considers appropriate for or in connection with securing that full effect is given to the principal direction.
- (4) Before giving a principal direction to any bodies to which section 46 applies, the relevant authority may—
- (a) direct either or both of the bodies in question to take such steps specified in the direction, or
  - (b) give such other directions,
- as the authority considers appropriate with a view to enabling the authority to determine whether the principal direction should be given.
- (5) Any direction given under any provision of section 45 or 46 or this section—
- (a) must be given in writing; and
  - (b) may be varied or revoked by a subsequent direction under that provision.
- (6) It is the duty of any body to which any such direction is given to comply with the direction.
- (7) The revocation of a principal direction shall not affect the continued operation of the specified arrangements.
- (8) In this section “the specified arrangements”, in relation to a principal direction, means the arrangements specified in the direction in pursuance of section 46(1).

#### Commencement Information

**I42** S. 47 partly in force; s. 47 not in force at Royal Assent see s. 70(2); s. 47(1)-(4)(7)(8) in force for E. at 1.8.2001, s. 47(5)(6) in force for E. for certain purposes at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a)(2); s. 47(5)(6) in force for E. in so far as not already in force by S.I. 2001/4149, arts. 1(3), 2(b)

## 48 Transfer of staff in connection with partnership arrangements

- (1) The Health Act 1999 (c. 8) shall be amended as follows.
- (2) At the end of section 31 (arrangements between NHS bodies and local authorities) there shall be added—
- “(9) Schedule 2A makes provision with respect to the transfer of staff in connection with arrangements made by virtue of this section.”
- (3) In section 62 (regulations and orders), at the end of subsection (1) there shall be inserted “, unless it is an order under paragraph 2 of Schedule 2A.”
- (4) The Schedule set out in Schedule 4 to this Act shall be inserted in the Health Act 1999 as Schedule 2A to that Act.

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**Commencement Information**

**I43** S. 48 partly in force; s. 48 not in force at Royal Assent see s. 70(2); s. 48 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2))

**PART 4**

SOCIAL CARE

*Nursing care*

**49 Exclusion of nursing care from community care services**

- (1) Nothing in the enactments relating to the provision of community care services shall authorise or require a local authority, in or in connection with the provision of any such services, to—
- (a) provide for any person, or
  - (b) arrange for any person to be provided with, nursing care by a registered nurse.
- (2) In this section “nursing care by a registered nurse” means any services provided by a registered nurse and involving—
- (a) the provision of care, or
  - (b) the planning, supervision or delegation of the provision of care,
- other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse.

**Commencement Information**

**I44** S. 49 partly in force; s. 49 not in force at Royal Assent see s. 70(2); s. 49 in force for E. for certain purposes at 1.10.2001 by S.I. 2001/3294, arts. 1(3), 3(1); s. 49 in force for W. for certain purposes at 3.12.2001 by S.I. 2001/3807, arts. 1(3), 2

*Preserved rights*

**50 Preserved rights: transfer to local authorities of responsibilities as to accommodation**

- (1) The following provisions, namely—
- (a) section 26A of the National Assistance Act 1948 (c. 29) (which prevents local authorities in England or Wales providing residential accommodation for persons who were in such accommodation on 31st March 1993), and
  - (b) section 86A of the Social Work (Scotland) Act 1968 (c. 49) (which makes corresponding provision for Scotland),
- shall cease to have effect on the appointed day.
- (2) For the purposes of this section a “qualifying person” is—

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- (a) (in relation to any time before the appointed day) a person to whom section 26A(1) or section 86A(1) applies; or
  - (b) (in relation to any later time) a person to whom either of those sections applied immediately before that day.
- (3) Where a qualifying person is immediately before the appointed day ordinarily resident in relevant premises in the area of a local authority (“the responsible authority”), that authority shall secure that—
  - (a) as from that day, or
  - (b) as soon thereafter as is reasonably practicable,the person is provided with such community care services with respect to his accommodation as appear to the authority to be appropriate having regard to his needs as assessed under section 47(1)(a) of the 1990 Act (assessment of needs for community care services in England or Wales) or section 12A(1)(a) of the 1968 Act (corresponding provision for Scotland).
- (4) Each local authority shall accordingly—
  - (a) use their best endeavours to identify every person ordinarily resident in relevant premises in their area who is a qualifying person; and
  - (b) carry out such a programme of assessments under section 47(1)(a) or 12A(1)
    - (a) in respect of persons so identified as appears to the authority to be required for the purpose of enabling them to discharge their duty under subsection (3) in relation to such persons.
- (5) Where a person—
  - (a) is a qualifying person immediately before the appointed day, and
  - (b) is provided by the responsible authority with any community care services with respect to his accommodation in accordance with subsection (3),his existing arrangements shall, by virtue of this subsection, terminate on the date as from which he is provided with those services.
- (6) Where any such person is not provided with any such services as from the appointed day, any liability of his to make any payment under his existing arrangements in respect of any period (or part of a period) falling within the period beginning with the appointed day and ending with—
  - (a) the date as from which he is provided with any such services, or
  - (b) the date on which he notifies (or is in accordance with regulations to be treated as notifying) the responsible authority that he does not wish to be provided with any such services,shall instead be a liability of the responsible authority.
- (7) However, the responsible authority may, in respect of any payment made by them in pursuance of subsection (6), recover from the person such amount (if any) as may be prescribed; and any such amount shall be so recoverable in accordance with section 56 of the 1948 Act as if it were an amount due to the authority under that Act.
- (8) The provisions of subsections (3) to (7) do not apply, to such extent as may be prescribed, in relation to any person falling within any prescribed description of persons.
- (9) Regulations may also—
  - (a) prescribe the circumstances in which persons are to be treated as ordinarily resident in any premises for the purposes of this section;

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- (b) for the purpose of prescribing any such amount as is mentioned in subsection (7), provide for any provision made by or under section 22 or 26 of the 1948 Act to apply with or without modifications.

(10) In this section—

“the appointed day” means the day appointed under section 70 for the coming into force of subsection (1);

“existing arrangements”, in relation to a person, means the arrangements for the provision of accommodation in the relevant premises mentioned in subsection (3), together with any arrangements for the provision of any services or facilities in connection with that accommodation;

“prescribed” means prescribed by regulations;

“relevant premises”—

(a) in relation to England or Wales, has the same meaning as in section 26A of the 1948 Act;

(b) in relation to Scotland, has the same meaning as in section 86A of the 1968 Act.

“the responsible authority” shall be construed in accordance with subsection (3).

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

- C4** S. 50(3)-(7) excluded (E.) (19.12.2001) by [S.I. 2001/3776, regs. 1\(3\), 2\(1\)](#)  
S. 50(3)-(7) excluded (S.) (8.4.2002) by [The Preserved Rights \(Transfer to Responsible Authorities\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/76\), reg. 2](#)
- C5** S. 50(7) modified (W.) (19.12.2001) by [S.I. 2001/3985, regs. 1\(3\), 3\(2\)](#)
- C6** S. 50(8) restricted (W.) (19.12.2001) by [S.I. 2001/3985, regs. 1\(3\), 2\(1\)](#)

#### **Commencement Information**

- I45** S. 50 partly in force; s. 50 in force for certain purposes at 11.5.2001, see s. 70(2); s. 50(1) in force at 8.4.2002 by [S.I. 2001/3752, art. 2\(1\)](#); s. 50(2)-(7)(10) in force for E. and s. 50(8) in force for E. in so far as not already in force at 20.12.2001 by [S.I. 2001/3752, art. 2\(2\)](#); s. 50(2)-(10) in force for W. at 19.12.2001 by [S.I. 2001/3807, art. 3](#); s. 50(2)-(10) in force for S. at 1.4.2002 by [S.S.I. 2002/75, art. 2](#)

## **51 Preserved rights: disclosure of information**

(1) For the purposes of this section a “claimant” is—

- (a) (in relation to any time before the appointed day) a person who is ordinarily resident in relevant premises and has a preserved right by virtue of which enhanced payments are being made to or in respect of him by way of income support or jobseeker’s allowance, or
- (b) (in relation to any later time) a person who fell within paragraph (a) immediately before that day.

(2) Any information—

- (a) held by, or by a person providing services to, the Secretary of State about a claimant, and
- (b) relating to income support or jobseeker’s allowance,



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may be supplied, for qualifying purposes, to the local authority in whose area the relevant premises referred to in subsection (1) are situated or to any person providing services to, or authorised to exercise functions of, the authority.

- (3) Where information relating to a claimant is supplied to any authority or person (“the recipient”) in accordance with subsection (2), the information may be supplied by the recipient, for qualifying purposes—
- (a) to any local authority appearing to the recipient to be providing the claimant with community care services with respect to his accommodation; or
  - (b) to any person providing services to, or authorised to exercise functions of, any such local authority.
- (4) In subsections (2) and (3) “qualifying purposes”, in relation to information relating to a claimant, means—
- (a) purposes connected with the performance of functions under section 50 in relation to the claimant, or
  - (b) other purposes connected with the termination of his preserved right in consequence of section 52(1), or
  - (c) (in subsection (2)) any further supply of the information under subsection (3).
- (5) Where information relating to a particular person is supplied to any authority or person in accordance with subsection (2) or (3), section 123 of the Social Security Administration Act 1992 (c. 5) (unauthorised disclosure of information relating to particular persons) shall apply in relation to the disclosure of the information by—
- (a) the recipient of the information, or
  - (b) any officer or employee of the recipient,
- without lawful authority (within the meaning of that section) as it applies to any disclosure of information to which subsection (1) of that section applies.
- (6) In this section—
- “the appointed day”, “ordinarily resident” and “relevant premises” have the same meaning as they have for the purposes of section 50;
  - “preserved right” means a preserved right within the meaning of the Income Support (General) Regulations 1987 (S.I. 1987/1967).

## **52 Preserved rights: alignment of social security benefits**

- (1) The Secretary of State shall so exercise his powers under—
- (a) section 135(1) of the Social Security Contributions and Benefits Act 1992 (c. 4) (applicable amount in relation to income-related benefits), and
  - (b) section 4(5) of the Jobseekers Act 1995 (c. 18) (amount payable by way of jobseeker’s allowance),
- as to secure that any special provision made in exercise of those powers as respects income support or jobseeker’s allowance payable to or in respect of persons who have preserved rights ceases to have effect on the appointed day.
- (2) In this section—
- “the appointed day” means the day appointed under section 70 for the coming into force of section 50(1);
  - “preserved rights” means preserved rights within the meaning of the Income Support (General) Regulations 1987.

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*Measures to increase availability of Part 3 accommodation*

**53 Disregarding of resources when determining need for residential accommodation**

In section 21 of the 1948 Act (duties of local authorities to provide accommodation), for subsections (2A) and (2B) there shall be substituted—

“(2A) In determining for the purposes of paragraph (a) or (aa) of subsection (1) of this section whether care and attention are otherwise available to a person, a local authority shall disregard so much of the person’s resources as may be specified in, or determined in accordance with, regulations made by the Secretary of State for the purposes of this subsection.

(2B) In subsection (2A) of this section the reference to a person’s resources is a reference to his resources within the meaning of regulations made for the purposes of that subsection.”

**Commencement Information**

**I46** S. 53 partly in force; s. 53 not in force at Royal Assent see s. 70(2); s. 53 in force for E. at 1.10.2001 by S.I. 2001/3167, arts. 1(3), 2, Sch.

**54 Funding by resident etc. of more expensive accommodation**

(1) Regulations may make provision for and in connection with the making, in respect of the provision of Part 3 accommodation, of additional payments—

- (a) by persons for whom such accommodation is provided (“residents”); or
- (b) by other persons (including persons liable to maintain residents by virtue of section 42 of the 1948 Act).

(2) In this section “additional payments”, in relation to a resident, means payments which—

- (a) are made for the purpose of meeting all or part of the difference between the actual cost of his Part 3 accommodation and the amount that the local authority providing it would usually expect to pay in order to provide Part 3 accommodation suitable for a person with the assessed needs of the resident; and
- (b) (in the case of additional payments by the resident) are made out of such of his resources as may be specified in, or determined in accordance with, regulations under subsection (1);

and for this purpose “resources” has the meaning given by such regulations.

(3) In this Part “Part 3 accommodation” means accommodation provided under sections 21 to 26 of the 1948 Act.

**Commencement Information**

**I47** S. 54 partly in force; s. 54 in force for certain purposes at 11.5.2001, see s. 70(2); s. 54 in force for E. at 1.10.2001 by S.I. 2001/3167, arts. 1(3), 2, Sch.

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## 55 Power for local authorities to take charges on land instead of contributions

- (1) Where a person (“the resident”)—
  - (a) is availing himself of Part 3 accommodation provided by a local authority, or is proposing to do so, and
  - (b) is liable, or would be liable, to pay for the accommodation (whether at the full standard rate determined in accordance with section 22(2) or 26(2) of the 1948 Act or at any lower rate),the local authority may enter into a deferred payment agreement with the resident.
- (2) The relevant authority may by directions require local authorities, where—
  - (a) they provide or are to provide Part 3 accommodation for a person falling within subsection (1) (“the resident”), and
  - (b) any conditions specified in the directions are satisfied,to enter into a deferred payment agreement with the resident.
- (3) A “deferred payment agreement” is an agreement whereby—
  - (a) during the exempt period the resident will not be required to make payment to the authority of any relevant contributions in respect of periods (or parts of periods) falling within the exempt period, but
  - (b) the total amount of the relevant contributions shall become payable to the authority on the day after the date on which the exempt period ends, and
  - (c) the resident will grant the authority a charge in their favour in respect of any land specified in the agreement in which he has a beneficial interest (whether legal or equitable) for the purpose of securing the payment to the authority of the total amount payable to them as mentioned in paragraph (b).
- (4) “The exempt period”, in relation to a deferred payment agreement, is the period beginning with the time when the agreement takes effect and ending—
  - (a) 56 days after the date of the resident’s death, or
  - (b) with any earlier date which, in accordance with the agreement, the resident has specified in a notice given by him to the authority for the purposes of subsection (5)(b).
- (5) The provisions of any deferred payment agreement and any such charge as is mentioned in subsection (3)(c)—
  - (a) shall be determined by the authority in accordance with any directions given by the relevant authority; but
  - (b) shall secure that the agreement and any such charge may be terminated by notice given to the authority by the resident on payment of the full amount which he is liable to pay as mentioned in subsection (3)(a) down to the date of the payment.
- (6) Where a deferred payment agreement is in force in respect of the resident—
  - (a) no interest shall accrue at any time on or before the date on which the exempt period ends in respect of any sum which he is liable to pay as mentioned in subsection (3)(a); but
  - (b) as from the day after that date, any such sum shall bear interest at such reasonable rate as the relevant authority may direct or, if no such directions are given, as the authority may determine;and accordingly any charge granted in pursuance of subsection (3)(c) shall secure payment to the authority of any interest falling due by virtue of paragraph (b) above.

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- (7) Any reference in this section to relevant contributions is a reference to so much of the payments which the resident is liable to pay to an authority for Part 3 accommodation (including any payments which are additional payments for the purpose of section 54) as may be specified, or determined in accordance with, regulations made for the purposes of this subsection.
- (8) Any directions given by the relevant authority under this section shall be given to local authorities generally.

#### Commencement Information

**I48** S. 55 partly in force; s. 55 in force for certain purposes at 11.5.2001, see s. 70(2); s. 55(1)-(6)(8) in force for E. for certain purposes at 1.10.2001 by [S.I. 2001/3167](#), arts. 1(3), 2, [Sch.](#)

## 56 Cross-border placements

- (1) Regulations may make provision for and in connection with authorising a local authority to make arrangements under section 21 of the 1948 Act for a person to be provided with residential accommodation in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man.
- (2) Regulations under this section may, in particular, make provision—
- (a) specifying conditions which must be satisfied before a local authority make any arrangements in pursuance of the regulations in respect of a person;
  - (b) for the application of provisions of the 1948 Act in relation to—
    - (i) any such arrangements, or
    - (ii) the person in respect of whom any such arrangements are made, with or without modifications.

#### Commencement Information

**I49** S. 56 partly in force; s. 56 in force for certain purposes at 11.5.2001, see s. 70(2)

### *Direct payments*

## 57 Direct payments

- (1) Regulations may make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person's consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in paragraph (a) or (b) of that subsection.
- (2) A person falls within this subsection if a local authority (“the responsible authority”) have decided—
- (a) under section 47 of the 1990 Act (assessment by local authorities of needs for community care services) that his needs call for the provision by them of a particular community care service (within the meaning of section 46 of that Act), or

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- (b) under section 2(1) of the Carers and Disabled Children Act 2000 (c. 16) (services for carers) to provide him with a particular service under that Act.
- (3) Regulations under this section may, in particular, make provision—
- (a) specifying circumstances in which the responsible authority are not required or authorised to make any payments under the regulations to a person, whether those circumstances relate to the person in question or to the particular service mentioned in paragraph (a) or (b) of subsection (2);
  - (b) for any payments required or authorised by the regulations to be made to a person by the responsible authority (“direct payments”) to be made to that person (“the payee”) as gross payments or alternatively as net payments;
  - (c) for the responsible authority to make for the purposes of subsection (4) or (5) such determination as to—
    - (i) the payee’s means, and
    - (ii) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution, as may be prescribed;
  - (d) as to the conditions falling to be complied with by the payee which must or may be imposed by the responsible authority in relation to the direct payments (and any conditions which may not be so imposed);
  - (e) specifying circumstances in which the responsible authority—
    - (i) may or must terminate the making of direct payments,
    - (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct payments;
  - (f) for any sum falling to be paid or repaid to the responsible authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;
  - (g) displacing functions or obligations of the responsible authority with respect to the provision of the service mentioned in subsection (2)(a) or (b) only to such extent, and subject to such conditions, as may be prescribed;
  - (h) authorising direct payments to be made to any prescribed person on behalf of the payee.
- (4) For the purposes of subsection (3)(b) “gross payments” means payments—
- (a) which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned; but
  - (b) which may be made subject to the condition that the payee pays to the responsible authority, by way of reimbursement, an amount or amounts determined under the regulations.
- (5) For the purposes of subsection (3)(b) “net payments” means payments—
- (a) which are made on the basis that the payee will himself pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
  - (b) which are accordingly made at such a rate below that mentioned in subsection (4)(a) as reflects any such contribution by the payee.
- (6) Regulations under this section shall provide that, where direct payments are made in respect of a service which, apart from the regulations, would be provided under section 117 of the Mental Health Act 1983 (c. 20) (after-care)—
- (a) the payments shall be made at the rate mentioned in subsection (4)(a); and

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- (b) subsection (4)(b) shall not apply.
- (7) Regulations made for the purposes of subsection (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.
- (8) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

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

**C7** S. 57(3)-(5)(7) applied (with modifications) (*prosp.*) by 1989 c. 41, s. 17A(3) (as substituted (*prosp.*) by 2001 c. 15, ss. 58, 70(2) (with ss. 64(9), 65(4))

**Commencement Information**

**I50** S. 57 partly in force; s. 57 in force for certain purposes at 11.5.2001, see s. 70(2)

VALID FROM 16/03/2003

**58 Direct payments in respect of children**

For section 17A of the Children Act 1989 (c. 41) there shall be substituted—

**“17A Direct payments**

- (1) The Secretary of State may by regulations make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person’s consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in that subsection.
- (2) A person falls within this subsection if he is—
  - (a) a person with parental responsibility for a disabled child,
  - (b) a disabled person with parental responsibility for a child, or
  - (c) a disabled child aged 16 or 17,
 and a local authority (“the responsible authority”) have decided for the purposes of section 17 that the child’s needs (or, if he is such a disabled child, his needs) call for the provision by them of a service in exercise of functions conferred on them under that section.
- (3) Subsections (3) to (5) and (7) of section 57 of the 2001 Act shall apply, with any necessary modifications, in relation to regulations under this section as they apply in relation to regulations under that section.
- (4) Regulations under this section shall provide that, where payments are made under the regulations to a person falling within subsection (5)—
  - (a) the payments shall be made at the rate mentioned in subsection (4) (a) of section 57 of the 2001 Act (as applied by subsection (3)); and
  - (b) subsection (4)(b) of that section shall not apply.

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- (5) A person falls within this subsection if he is—
- (a) a person falling within subsection (2)(a) or (b) and the child in question is aged 16 or 17, or
  - (b) a person who is in receipt of income support, working families' tax credit or disabled person's tax credit under Part 7 of the Social Security Contributions and Benefits Act 1992 (c. 4) or of an income-based jobseeker's allowance.
- (6) In this section—
- “the 2001 Act” means the Health and Social Care Act 2001;
  - “disabled” in relation to an adult has the same meaning as that given by section 17(11) in relation to a child;
  - “prescribed” means specified in or determined in accordance with regulations under this section (and has the same meaning in the provisions of the 2001 Act mentioned in subsection (3) as they apply by virtue of that subsection).”

### *Supplementary*

## **59 Interpretation of Part 4**

- (1) In this Part—
- “the 1948 Act” means the National Assistance Act 1948 (c. 29);
  - “the 1968 Act” means the Social Work (Scotland) Act 1968 (c. 49);
  - “community care services”—
    - (a) in relation to England or Wales, has the meaning given by section 46(3) of the 1990 Act (local authority plans for community care services);
    - (b) in relation to Scotland, has the same meaning as in the 1968 Act;  - “local authority”—
    - (a) in relation to England or Wales, has the meaning given by section 46(3) of the 1990 Act;
    - (b) in relation to Scotland, has the same meaning as in the 1968 Act;  - “Part 3 accommodation” means (in accordance with section 54(3)) accommodation provided under sections 21 to 26 of the 1948 Act.
- (2) In this Part any reference to Part 3 accommodation or to a local authority providing such accommodation shall be construed in accordance with section 21(5) or (6) of the 1948 Act, as the case may be.
- (3) In this Part any reference (however expressed) to services provided by a local authority includes services which the authority arrange to provide, where they have power to do so.

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## PART 5

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Patient information*

#### **60 Control of patient information**

- (1) The Secretary of State may by regulations make such provision for and in connection with requiring or regulating the processing of prescribed patient information for medical purposes as he considers necessary or expedient—
- (a) in the interests of improving patient care, or
  - (b) in the public interest.

This subsection and subsection (2) have effect subject to subsections (3) to (6).

- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for requiring prescribed communications of any nature which contain patient information to be disclosed by health service bodies in prescribed circumstances—
    - (i) to the person to whom the information relates,
    - (ii) (where it relates to more than one person) to the person to whom it principally relates, or
    - (iii) to a prescribed person on behalf of any such person as is mentioned in sub-paragraph (i) or (ii),
 in such manner as may be prescribed;
  - (b) for requiring or authorising the disclosure or other processing of prescribed patient information to or by persons of any prescribed description subject to compliance with any prescribed conditions (including conditions requiring prescribed undertakings to be obtained from such persons as to the processing of such information);
  - (c) for securing that, where prescribed patient information is processed by a person in accordance with the regulations, anything done by him in so processing the information shall be taken to be lawfully done despite any obligation of confidence owed by him in respect of it;
  - (d) for creating offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale or such other level as is prescribed or for creating other procedures for enforcing any provisions of the regulations.
- (3) Regulations under subsection (1) may not make provision requiring the processing of confidential patient information for any purpose if it would be reasonably practicable to achieve that purpose otherwise than pursuant to such regulations, having regard to the cost of and the technology available for achieving that purpose.
- (4) Where regulations under subsection (1) make provision requiring the processing of prescribed confidential patient information, then the Secretary of State—
- (a) shall, at any time within the period of one month beginning on each anniversary of the making of such regulations, consider whether any such provision could be included in regulations made at that time without contravening subsection (3), and



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- (b) if he determines that any such provision could not be so included, shall make further regulations varying or revoking the regulations made under subsection (1) to such extent as he considers necessary in order for the regulations to comply with that subsection.
- (5) Regulations under subsection (1) may not make provision for requiring the processing of confidential patient information solely or principally for the purpose of determining the care and treatment to be given to particular individuals.
- (6) Without prejudice to the operation of provisions made under subsection (2)(c), regulations under this section may not make provision for or in connection with the processing of prescribed patient information in a manner inconsistent with any provision made by or under the Data Protection Act 1998 (c. 29).
- (7) Before making any regulations under this section the Secretary of State shall, to such extent as he considers appropriate in the light of the requirements of section 61, consult such bodies appearing to him to represent the interests of those likely to be affected by the regulations as he considers appropriate.
- (8) In this section “patient information” means—
- (a) information (however recorded) which relates to the physical or mental health or condition of an individual, to the diagnosis of his condition or to his care or treatment, and
  - (b) information (however recorded) which is to any extent derived, directly or indirectly, from such information,
- whether the identity of the individual in question is ascertainable from the information or not.
- (9) For the purposes of this section, patient information is “confidential patient information” where—
- (a) the identity of the individual in question is ascertainable—
    - (i) from that information, or
    - (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person processing that information, and
  - (b) that information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.
- (10) In this section—
- “the health service” has the same meaning as in the 1977 Act;
  - “health service body” means any body (including a government department) or person engaged in the provision of the health service that is prescribed, or of a description prescribed, for the purposes of this definition;
  - “medical purposes” means the purposes of any of the following—
    - (a) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services, and
    - (b) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care or treatment;
  - “prescribed” means specified in, or determined in accordance with, regulations made by the Secretary of State under this section;

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“processing”, in relation to information, means the use, disclosure or obtaining of the information or the doing of such other things in relation to it as may be prescribed for the purposes of this definition.

## **61 Patient Information Advisory Group**

- (1) For the purposes of subsections (2) and (3), the Secretary of State shall, as soon as reasonably practicable after the passing of this Act, by regulations establish a committee to be known as the Patient Information Advisory Group (“the Advisory Group”).
- (2) Before laying before Parliament a draft of any statutory instrument containing regulations under section 60(1), or making any regulations pursuant to section 60(4)(b), the Secretary of State shall seek and have regard to the views of the Advisory Group on the proposed regulations.
- (3) The Secretary of State may seek the views of the Advisory Group on such other matters connected with the processing of patient information or of any information (other than patient information) obtained or generated in the course of the provision of the health service as he considers appropriate.
- (4) Regulations under subsection (1) may, in particular, make provision as to—
  - (a) the persons or bodies who are to be represented by members of the Advisory Group,
  - (b) the terms of appointment of members,
  - (c) the proceedings of the Advisory Group, and
  - (d) the payment by the Secretary of State of—
    - (i) such expenses incurred by the Advisory Group, and
    - (ii) such allowances in respect of expenses incurred by members of the Advisory Group,
 as he may determine.
- (5) The Secretary of State shall publish, in such manner as he considers appropriate, any views which he receives from the Advisory Group pursuant to subsection (2).
- (6) In this section “the health service”, “patient information” and “processing” have the same meaning as they have for the purposes of section 60.

VALID FROM 15/04/2002

### *Services for disabled people*

## **62 Reports to Parliament on services for disabled people**

- (1) Section 11 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33) shall be amended as follows.
- (2) Before subsection (1) there shall be inserted—
 

“(1ZA) In this section, subsection (1ZB) extends to England and Wales only and subsection (1) extends to Scotland only.

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(1ZB) The Secretary of State shall annually lay before Parliament—

- (a) a report containing such information as he considers appropriate with respect to the development of health and social services for persons with mental illness; and
- (b) a report containing such information as he considers appropriate with respect to the development of health and social services for persons with learning disability;

and each of those reports may contain such other information as the Secretary of State considers appropriate.”

(3) For subsection (2) there shall be substituted—

“(2) In this section—

“health service hospital” has the same meaning as in the 1978 Act, except that it does not include a State hospital;

“learning disability” means a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.”

#### Commencement Information

**I51** S. 62 partly in force; s. 62 not in force at Royal Assent, see s. 70(2); s. 62 in force for E. and S. at 15.4.2002 by [S.I. 2002/1312](#), [art. 2](#)

### *Prescribing rights*

#### **63 Extension of prescribing rights**

(1) The Medicines Act 1968 (c. 67) shall be amended as provided by subsections (2) to (7).

(2) In subsection (1) of section 58 (medicinal products on prescription), after paragraph (d) there shall be inserted “, and

- (e) other persons who are of such a description and comply with such conditions as may be specified in the order”.

(3) After subsection (1) of that section there shall be inserted—

“(1A) The descriptions of persons which may be specified in an order by virtue of subsection (1)(e) are the following, or any sub-category of such a description—

- (a) persons who are registered by any board established under the Professions Supplementary to Medicine Act 1960 (c. 66);
- (b) persons who are pharmacists;
- (c) persons whose names are entered in a roll or record established by the General Dental Council by virtue of section 45 of the Dentists Act 1984 (c. 24) (dental auxiliaries);
- (d) persons who are registered in either of the registers of ophthalmic opticians kept under section 7(a) of the Opticians Act 1989 (c. 44);
- (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);

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- (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);
  - (g) persons who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);
  - (h) any other description of persons which appears to the appropriate Ministers to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish Parliament or Northern Ireland legislation and which the appropriate Ministers consider it appropriate to specify.
- (1B) Where an order under this section includes provision by virtue of subsection (1)(e), the order shall specify such conditions as are necessary to secure that any person who is an appropriate practitioner by virtue of the provision may prescribe, give directions or administer only in respect of human use.”
- (4) In subsection (4)(a) of that section, after “health visitor,” there shall be inserted “ or is an appropriate practitioner by virtue of provision made under subsection (1)(e) of this section, ”.
- (5) After subsection (4) of that section there shall be inserted—
- “(4A) An order under this section may provide, in relation to a person who is an appropriate practitioner by virtue of subsection (1)(d) or (e), that such a person may—
- (a) give a prescription for a medicinal product falling within a description or class specified in the order;
  - (b) administer any such medicinal product; or
  - (c) give directions for the administration of any such medicinal product, only where he complies with such conditions as may be specified in the order in respect of the cases or circumstances in which he may do so.
- (4B) An order under this section may provide, in relation to a condition specified by virtue of subsection (4A), for the condition to have effect subject to such exemptions as may be specified in the order.
- (4C) Where a condition is specified by virtue of subsection (4A), any prescription or direction given by a person in contravention of the condition is not (subject to such exemptions or modifications as may be specified in the order by virtue of subsection (4)(a) of this section) given by an appropriate practitioner for the purposes of subsection (2)(a) or (b) of this section.”
- (6) In subsection (5) of that section, after “subsection (4)(a)” there shall be inserted “ or (4B) ”.
- (7) In section 67 (offences under Part 2 of the Act)—
- (a) after subsection (1) there shall be inserted—
- “(1A) Any person who gives a prescription or directions or administers a medicinal product in contravention of a condition imposed by an order under section 58 of this Act by virtue of subsection (4A) of that section shall be guilty of an offence.
- (1B) Any person who—

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- (a) is an appropriate practitioner by virtue of provision made under section 58(1) of this Act; and
  - (b) gives a prescription or directions in respect of a medicinal product of a description or class in relation to which he is not an appropriate practitioner,
- shall be guilty of an offence.”;
- (b) in subsection (4), after “under”, there shall be inserted “ subsection (1A), (1B),”
- .”
- (8) Each of the powers to establish a committee conferred by subsection (2) or (3) of section 4 of the Medicines Act 1968 (c. 67) may, before the commencement of subsections (1) to (6) of this section, be exercised in relation to section 58 of that Act as if those subsections were in force.

#### Commencement Information

**I52** S. 63 wholly in force at 1.4.2002; s. 63 not in force at Royal Assent, see s. 70(2); s. 63 in force for certain purposes at 6.3.2002 and wholly in force at 1.4.2002 by S.I. 2002/1095, art. 2(1) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3)

### Supplementary

#### 64 Regulations and orders

- (1) Any power under this Act to make any order or regulations shall (except in the case of regulations under section 65(3)(c)) be exercisable by statutory instrument.
- (2) A statutory instrument containing any order or regulations made by the Secretary of State under this Act other than—
  - (a) an order under section 70(2), or
  - (b) any regulations to which subsection (3) applies,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) This subsection applies to any regulations under section 60 (except where they are made pursuant to section 60(4)(b)); and no such regulations shall be made (whether alone or with other provisions) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing any regulations made by the Scottish Ministers shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) Any regulations made by virtue of section 65(3)(c) shall be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (6) Any power under this Act to make any order or regulations may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case;

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- (b) so as to make, as respects the cases in relation to which it is exercised—
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act;
  - (iii) any such provision either unconditionally or subject to any specified condition.
- (7) Where any such power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes.
- (8) 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 authority making the order or regulations considers to be expedient; and
  - (b) to provide for a person to exercise a discretion in dealing with any matter.
- (9) Nothing in this Act shall be read as affecting the generality of subsection (8).

#### **Subordinate Legislation Made**

- P1** S. 64(6)(8) power partly exercised: 1.10.2001 and 1.12.2001 appointed for specified provisions by [S.I. 2001/3294](#), [arts. 1\(3\), 2-4](#), [Sch.](#)  
 S. 64(6)(8) power partly exercised: different dates appointed for E. for specified provisions by [S.I. 2001/3738](#), [arts. 1\(3\), 2](#), [Schs. 1, 2](#)
- P2** S. 64(6) power partly exercised: 22.10.2001 appointed for specified provisions by [S.I. 2001/3619](#), [arts. 1\(3\), 2, 3](#)  
 S. 64(6) power partly exercised: different dates appointed for specified provisions by [S.I. 2001/3752](#), [arts. 1, 2, 3](#)  
 S. 64(6) power partly exercised: 3.12.2001 and 19.12.2001 appointed for W. for specified provisions by [S.I. 2001/3807](#), [arts. 1\(3\), 2, 3](#)  
 S. 64(6) power partly exercised: 19.12.2001 appointed for E. for specified provisions by [S.I. 2001/4149](#), [arts. 1\(3\), 2](#)

## **65 Supplementary and consequential provision etc**

- (1) The Secretary of State may by regulations 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.
- (3) The power to make regulations under this section is also exercisable—
  - (a) by the National Assembly for Wales, in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly;
  - (b) by the Scottish Ministers, in relation to provision that would be within the legislative competence of the Scottish Parliament;

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- (c) by the First Minister and deputy First Minister acting jointly, in relation to provision dealing with transferred matters (within the meaning of section 4(1) of the Northern Ireland Act 1998 (c. 47)).

(4) Nothing in this Act shall be read as affecting the generality of subsection (1).

## 66 Interpretation

In this Act (unless the context otherwise requires)—

“the 1977 Act” means the National Health Service Act 1977 (c. 49);

“the 1990 Act” means the National Health Service and Community Care Act 1990 (c. 19);

“NHS trust” has the same meaning as in the 1977 Act;

“regulations” means regulations made by the relevant authority;

“the relevant authority” means—

- (a) in relation to England, the Secretary of State,  
(b) in relation to Wales, the National Assembly for Wales, and  
(c) in relation to Scotland (in connection with regulations under section 50), the Scottish Ministers.

## 67 Minor and consequential amendments and repeals

- (1) The minor and consequential amendments specified in Schedule 5 shall have effect.  
(2) The enactments specified in Schedule 6 are repealed to the extent specified.

### Commencement Information

**I53** S. 67 partly in force; s. 67 not in force at Royal Assent, see s. 70(2); s. 67(1) in force for E. for certain purposes at 1.10.2001 and 1.12.2001 by [S.I. 2001/3294](#), [art. 4\(1\)](#), [Sch.](#) (subject to [art. 4\(2\)](#)); s. 67(1) in force for E. for certain purposes at 22.10.2001 by [S.I. 2001/3619](#), [art. 3](#); s. 67 in force for E. for certain purposes at 22.11.2001 and 14.12.2001 by [S.I. 2001/3738](#), [art. 2\(2\)-\(4\)](#), [Sch. 1 Pts. II, III](#), [Sch. 2](#) (subject to [art. 2\(5\)\(6\)](#)); s. 67 in force for certain purposes at 1.4.2002 by [S.I. 2002/1095](#), [art. 2\(3\)](#), [Sch.](#) (with transitional provisions in [arts. 3, 4](#)) (as amended (26.3.2002) by [S.I. 2002/1170](#), [art. 3](#)); s. 67(2) in force for certain purposes at 15.4.2002 by [S.I. 2002/1312](#), [art. 3](#); s. 67 in force for W. for certain purposes at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#); s. 67 in force for W. for certain purposes at 26.8.2002 by [S.I. 2002/1919](#), [art. 2\(1\)](#), [Sch. Pt. I](#) (subject to [art. 2\(2\)\(3\)](#)); s. 67(1) in force for W. for certain purposes at 26.8.2002 by [S.I. 2002/1919](#), [art. 3\(1\)](#), [Sch. Pt. II](#) (subject to [art. 3\(2\)](#), [Sch. Pt. III](#))

## 68 Powers of National Assembly for Wales under amended Acts

- (1) In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), any reference to an Act which is amended by this Act shall (as from the time when the Act is so amended) be treated as referring to the Act as so amended.  
(2) But for the purpose of so construing the reference in that Schedule to the 1977 Act the amendments made by this Act do not include those made by section 27 above.  
(3) The reference in that Schedule to the 1977 Act shall also be treated as referring to that Act as amended by sections 12(1) and 13(1) of the Government Resources and

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Accounts Act 2000 (c. 20) (but subject to the further amendments made by section 1 above).

- (4) Neither of subsections (1) and (3) affects the power to make further Orders varying or omitting any such reference as is mentioned in that subsection.

## **69 Financial provisions**

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State in consequence of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided by virtue of any other Act.

## **70 Short title, commencement and extent**

- (1) This Act may be cited as the Health and Social Care Act 2001.

- (2) With the exception of—

- (a) sections 59, 60, 61, 64 to 66, 68 and 69 and this section,
- (b) Part 3 of Schedule 5, and
- (c) any other provision of this Act so far as it confers any power to make an order or regulations under this Act which is exercisable by the Secretary of State,

this Act does not come into force until such day as the relevant authority may by order appoint; and different days may be so appointed for different purposes.

- (3) In subsection (2), in its application in relation to—

- (a) sections 14 to 17 and 27,
- (b) sections 50(1), 51 and 52,
- (c) sections 62 (except so far as extending to Wales) and 63, and
- (d) any repeals consequential on any provisions falling within paragraph (a) or (b),

the reference to the relevant authority shall be read as a reference to the Secretary of State.

- (4) In subsection (2), in its application in relation to—

- (a) section 44, and
- (b) the provisions of section 50(2) to (10) so far as relating to Scotland (and not within subsection (2)(c)),

the reference to the relevant authority shall be read as a reference to the Scottish Ministers.

- (5) Subject to subsections (6) to (8), this Act extends to England and Wales only.

- (6) The following provisions, namely—

- (a) sections 50 to 52 and 59,
- (b) sections 63 to 66, and
- (c) this section,

also extend to Scotland.

- (7) The following provisions, namely—



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- (a) sections 63 to 65, and
  - (b) this section,
- also extend to Northern Ireland.
- (8) The extent of any amendment or repeal made by this Act is the same as that of the enactment amended or repealed.
- (9) Subsection (8) does not apply in relation to any amendment or repeal relating to section 115 of the Police Act 1997, and any such amendment or repeal extends to England and Wales only.
- (10) 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.

#### Subordinate Legislation Made

- P3** S. 70(2) power partly exercised: 1.8.2001 appointed for E. for specified provisions by [S.I. 2001/2804](#), [arts. 1\(3\), 2](#)
- S. 70(2) power partly exercised: 1.10.2001 appointed for E. for specified provisions by [S.I. 2001/3167](#), [arts. 1\(3\), 2](#), [Sch.](#)
- S. 70(2) power partly exercised: 1.10.2001 and 1.12.2001 appointed for E. for specified provisions by [S.I. 2001/3294](#), [arts. 1\(3\), 2-4](#), [Sch.](#)
- S. 70(2) power partly exercised: 22.10.2001 appointed for E. for specified provisions by [S.I. 2001/3619](#), [arts. 1\(3\), 2, 3](#)
- S. 70(2) power partly exercised: different dates appointed for E. for specified provisions by [S.I. 2001/3738](#), [arts. 1\(3\), 2](#), [Schs. 1, 2](#)
- S. 70(2) power partly exercised: different dates appointed for specified provisions by [S.I. 2001/3752](#), [arts. 1, 2, 3](#)
- S. 70(2) power partly exercised: 3.12.2001 and 19.12.2001 appointed for W. for specified provisions by [S.I. 2001/3807](#), [arts. 1\(3\), 2, 3](#)
- S. 70(2) power partly exercised: 19.12.2001 appointed for E. for specified provisions by [S.I. 2001/4149](#), [arts. 1\(3\), 2](#)
- S. 70(2) power partly exercised: 1.4.2002 appointed for S. for specified provisions by [{S.I. 2002/75}](#), art. 2
- S. 70(2) power partly exercised: different dates appointed for specified provisions by [{S.I. 2002/1095}](#), art. 2 (with arts. 3, 4) (as amended by [{SI 2002/1170}](#), arts. 2, 3)
- S. 70(2) power partly exercised: 15.4.2002 appointed for specified provisions by [{S.I. 2002/1312}](#), arts. 2, 3
- S. 70(2) power partly exercised: different dates appointed for W. for specified provisions by [{S.I. 2002/1475}](#), art. 2, Sch.
- S. 70(2) power partly exercised: 26.8.2002 appointed for W. for specified provisions by [{S.I. 2002/1919}](#), arts. 2, 3, Sch. Pts. I-III
- S. 70(2) power partly exercised: different dates appointed for E. for specified provisions by [{S.I. 2002/2363}](#), arts. 2, 3

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