



# National Health Service Reform and Health Care Professions Act 2002

## 2002 CHAPTER 17

### PART 3

#### MISCELLANEOUS

#### **36 Amendments of health service legislation in connection with consolidation**

- (1) The Secretary of State may by order make such amendments of the legislation relating to the health service in England and Wales as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or greater part of that legislation.
- (2) An order under this section shall not come into force unless—
  - (a) a single Act, or
  - (b) a group of two or more Acts,is passed consolidating the whole or greater part of the legislation relating to the health service in England and Wales (with or without other legislation relating to any of the health services).
- (3) If such an Act or group of Acts is passed, the order shall (by virtue of this subsection) come into force immediately before the Act or group of Acts comes into force.
- (4) Once an order under this section has come into force, no further order may be made under this section.
- (5) In this section—

“the health services” means any of the health services within the meaning of the 1977 Act, the National Health Service (Scotland) Act 1978 (c. 29) or the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)),

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“the legislation relating to the health service in England and Wales” means the 1977 Act and any other Act relating to the health service (within the meaning of that Act), whenever passed.

#### Commencement Information

**II** S. 36 partly in force; s.36 in force for certain purposes at Royal Assent, see s. 42(3)

### 37 Minor and consequential amendments and repeals

- (1) The minor and consequential amendments specified in Schedule 8 are to have effect.
- (2) The enactments specified in Schedule 9 are repealed to the extent specified.

#### Commencement Information

- I2** S. 37 partly in force; s. 37 not in force at Royal Assent, see s. 42(3); s. 37(1) in force for specified purposes for E.W. at 1.10.2002 by S.I. 2002/2478, art. 3(1)(e) and in force for specified purposes for E. at 1.10.2002 by S.I. 2002/2478, art. 3(2)(b); s. 37 in force for specified purposes for W. at 10.10.2002 by S.I. 2002/2532, art. 2, Sch.; s. 37(1) in force for specified purposes for E. at 1.1.2003 by S.I. 2002/3190, art. 2(2)(c); s. 37(2) in force for specified purposes for E.W. at 1.1.2003 by S.I. 2002/3190, art. 2(2)(d); s. 37 in force for specified purposes at 1.4.2003 by S.I. 2003/833, art. 3(b)(c) (with art. 4)
- I3** S. 37(1) in force at 11.7.2003 for specified purposes for E.W. by S.I. 2003/1580, art. 2(2)(b)
- I4** S. 37(1) in force at 1.9.2003 for specified purposes by S.I. 2003/2246, art. 2(b)
- I5** S. 37(2) in force at 11.7.2003 for specified purposes for E.W. by S.I. 2003/1580, art. 2(2)(c)

### 38 Regulations and orders

- (1) Any power under this Act to make any order or regulations is (except in the case of orders under section 22(5)) exercisable by statutory instrument or, in the case of an order made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 27, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) A statutory instrument containing any order or regulations made by the Secretary of State under this Act, other than regulations under section 28 or an order under section 27, 36 or 42(3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing regulations under section 28 or an order under section 36, or an order of the Secretary of State under section 27, shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) No order shall be made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 27 unless a draft of the order has been laid before, and approved by resolution of, the Northern Ireland Assembly.
- (5) Any power under this Act to make any order or regulations may be exercised—

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- (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,
- (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.
- (6) 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.
- (7) 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.
- (8) Subsections (5) to (7) do not apply to orders under section 27.
- (9) Subject to subsection (8), nothing in this Act shall be read as affecting the generality of subsection (7).
- (10) Directions given in pursuance of any provision of this Act are, except where otherwise stated, to be given by instrument in writing.
- (11) Any power conferred by this Act to give directions by instrument in writing includes power to vary or revoke them by subsequent directions.

### **39 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, or 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, including an enactment contained in an Act passed in the same session as this Act.
- (3) The power to make regulations under this section is also exercisable by the National Assembly for Wales, in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly.
- (4) Nothing in this Act shall be read as affecting the generality of subsection (1).

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#### **40 Wales**

- (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 is (as from the time when the Act is so amended) to be treated as referring to the Act as so amended.
- (2) Subsection (1) does not affect the power to make further Orders varying or omitting any such reference.

#### **41 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.

#### **42 Short title, interpretation, commencement and extent**

- (1) This Act may be cited as the National Health Service Reform and Health Care Professions Act 2002.
- (2) In this Act—
  - “the 1977 Act” means the National Health Service Act 1977 (c. 49),
  - “the 1999 Act” means the Health Act 1999 (c. 8),
  - “NHS trust” has the same meaning as in the 1977 Act.
- (3) This Act, apart from—
  - (a) this section and sections 38 to 41, and
  - (b) any other provision of this Act so far as it confers any power to make an order or regulations under this Act,
 shall come into force on such day as the appropriate authority may by order appoint, and different days may be appointed for different provisions and for different purposes.
- (4) In subsection (3), the “appropriate authority” is—
  - (a) in relation to sections 1 to 5, 7, 8, 15 to 22, Part 2, and section 36, the Secretary of State,
  - (b) in relation to sections 11 to 14, the Secretary of State after consulting the National Assembly for Wales,
  - (c) in relation to sections 6, 9 and 24, the National Assembly for Wales,
  - (d) in relation to sections 10 and 23—
    - (i) the Secretary of State, in relation to England, and
    - (ii) the National Assembly for Wales, in relation to Wales,
  - (e) in relation to section 37—
    - (i) the Secretary of State, as respects any amendment or repeal consequential on provisions falling within paragraph (a),
    - (ii) the Secretary of State, after consulting the National Assembly for Wales, as respects any amendment or repeal consequential on provisions falling within paragraph (b),
    - (iii) the National Assembly for Wales, as respects any amendment or repeal consequential on provisions falling within paragraph (c),

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- (iv) otherwise, the Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales.
- (5) Subject to subsection (6), this Act extends to the whole of the United Kingdom, except for Part 1, which extends to England and Wales only.
- (6) The extent of any amendment or repeal made by this Act is the same as that of the enactment amended or repealed.
- (7) Subsection (6) does not apply to the amendment of the Police Act 1997 (c. 50) made by paragraph 64 of Schedule 2, which extends to England and Wales only.
- (8) 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**

- P1** S. 42(3) power partly exercised: different dates appointed for specified provisions and purposes by [S.I. 2002/2202](#), [arts. 2, 3](#); 1.10.2002 appointed for specified provisions and purposes by [S.I. 2002/2478](#), [arts. 3, 5](#) (with [arts. 2\(2\), 3\(3\), 4](#))
- S. 42(3)(4)(c)(d)(e)(iii)(iv) power partly exercised: 10.10.2002 appointed for specified provisions and purposes by [S.I. 2002/2532](#), [art. 2](#), [Sch.](#)
- S. 42(3) power partly exercised: 1.1.2003 appointed for specified provisions and purposes by [S.I. 2002/3190](#), [art. 2](#); 1.4.2003 appointed for specified provisions and purposes by [S.I. 2003/833](#), [arts. 2, 3](#) (with [art. 4](#))

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