



# National Health Service Reform and Health Care Professions Act 2002

## 2002 CHAPTER 17

### PART 3

#### MISCELLANEOUS

#### **F136 Amendments of health service legislation in connection with consolidation**

.....

#### **Textual Amendments**

- F1** S. 36 repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

#### **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- (2) The enactments specified in Schedule 9 are repealed to the extent specified.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**

- I1** 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](#))
- I2** S. 37(1) in force at 11.7.2003 for specified purposes for E.W. by [S.I. 2003/1580](#), [art. 2\(2\)\(b\)](#)
- I3** S. 37(1) in force at 1.9.2003 for specified purposes by [S.I. 2003/2246](#), [art. 2\(b\)](#)

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**14** 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 [<sup>F2</sup>regulations under 29(2A) or]<sup>F3</sup>... an order under section <sup>F4</sup>... <sup>F5</sup>... 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 [<sup>F6</sup>or 29(2A)]<sup>F7</sup>... or an order of [<sup>F8</sup>the Privy Council] 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.
- [<sup>F9</sup>(3A) A statutory instrument containing regulations made by the Privy Council under section 25A shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3B) Regulations made by the Privy Council under section 25A that include provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament shall be subject to the negative procedure in that Parliament (in addition to the statutory instrument containing the regulations being subject to annulment under subsection (3A)).
- (3C) Sections 28 and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) shall apply in relation to regulations of the description given in subsection (3B) as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) that is subject to the negative procedure, but as if references to a Scottish statutory instrument were references to a statutory instrument.
- (3D) Section 32 of that Act (laying) shall apply in relation to the laying of a statutory instrument containing regulations of the description given in subsection (3B) before the Scottish Parliament as it applies in relation to the laying of a Scottish statutory instrument (within the meaning of Part 2 of that Act) before that Parliament.]
- [<sup>F10</sup>(3E) A statutory instrument containing regulations made by the Privy Council under section 27 is subject to annulment in pursuance of a resolution of either House of Parliament.]
- [<sup>F11</sup>(3F) A statutory instrument containing regulations made by the Privy Council under paragraph 6 of Schedule 7 is subject to annulment in pursuance of a resolution of either 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.
- [<sup>F12</sup>(4A) The quorum for the exercise by the Privy Council of the power under section 25A, 27 or 28 or paragraph 6 of Schedule 7 is two; and anything done by the Privy

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Council under either of those sections or that paragraph is sufficiently signified by an instrument signed by the Clerk of the Council.]

- (5) 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,
  - (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 [<sup>F13</sup>by instrument in writing] includes power to vary or revoke them by subsequent directions.

#### Textual Amendments

- F2** Words in s. 38(2) inserted (1.4.2018) by Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 4 para. 16(2)**; S.I. 2018/346, reg. 4(cc)(v)
- F3** Words in s. 38(2) omitted (16.3.2015) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 225(3), 306(4)**; S.I. 2015/409, art. 2
- F4** Word in s. 38(2) omitted (4.6.2018) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 223(11), 306(4)**; S.I. 2018/617, art. 2(a)
- F5** Words in s. 38(2) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)
- F6** Words in s. 38(3) inserted (1.4.2018) by Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 4 para. 16(3)**; S.I. 2018/346, reg. 4(cc)(v)
- F7** Words in s. 38(3) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)
- F8** Words in s. 38(3) substituted (4.6.2018) by Health and Social Care Act 2012 (c. 7), **ss. 223(12), 306(4)**; S.I. 2018/617, art. 2(a)

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- F9** S. 38(3A)-(3D) inserted (27.3.2012 for specified purposes, 16.3.2015 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 224(3)**, 306(1)(d)(4); S.I. 2015/409, art. 2
- F10** S. 38(3E) inserted (4.6.2018) by Health and Social Care Act 2012 (c. 7), **ss. 223(13)**, 306(4); S.I. 2018/617, art. 2(a)
- F11** S. 38(3F) inserted (4.6.2018) by Health and Social Care Act 2012 (c. 7), **ss. 226(9)**, 306(4); S.I. 2018/617, art. 2(b) (with art. 3)
- F12** S. 38(4A) inserted (27.3.2012 for specified purposes, 1.8.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 230(5)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(4)
- F13** Words in s. 38(11) omitted (E.W.) (1.3.2007 immediately before the National Health Service Act 2006 comes into force) by virtue of The National Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407), art. 1(1), **Sch. 1 para. 9** (with art. 4)

### 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).

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

- C1** S. 39 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 1(6)(d)** (with Sch. 3 Pt. 1)

### 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.

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## 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—
  - F14 ...
  - “the 1999 Act” means the Health Act 1999 (c. 8),
  - F14 ...
- (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),
    - (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) [F15 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.

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### 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](#))

### Textual Amendments

- F14** Words in s. 42(2) repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006](#) (c. 43), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#), [Sch. 3 Pt. 1](#))
- F15** S. 42(7) repealed (E.W.) (6.4.2006) by [Criminal Justice Act 2003](#) (c. 44), s. 336(3)(4), [Sch. 37 Pt. 11](#); [S.I. 2006/751](#), [art. 2\(d\)\(iv\)](#)

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