



# Health Act 2006

## 2006 CHAPTER 28

### PART 1

#### SMOKING

### CHAPTER 1

#### SMOKE-FREE PREMISES, PLACES AND VEHICLES

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

- C1** Pt. 1 Ch. 1 modified (30.5.2007) by National Assembly for Wales Commission (Crown Status) (No.2) Order 2007 (S.I. 2007/1353), arts. 1(2), 7

#### *Introduction*

### **1 Introduction**

- (1) This Chapter makes provision for the prohibition of smoking in certain premises, places and vehicles which are smoke-free by virtue of this Chapter.
- (2) In this Chapter—
  - (a) “smoking” refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and
  - (b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.
- (3) In this Chapter, “smoke” and other related expressions are to be read in accordance with subsection (2).

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#### Commencement Information

- I1** S. 1 in force at 2.4.2007 for W. by [S.I. 2007/204, art. 2\(a\)](#)  
**I2** S. 1 in force at 1.7.2007 for E. by [S.I. 2007/1375, art. 2\(a\)](#)

### *Smoke-free premises, etc.*

## 2 Smoke-free premises

- (1) Premises are smoke-free if they are open to the public.

But unless the premises also fall within subsection (2), they are smoke-free only when open to the public.

- (2) Premises are smoke-free if they are used as a place of work—
- (a) by more than one person (even if the persons who work there do so at different times, or only intermittently), or
  - (b) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).

They are smoke-free all the time.

- (3) If only part of the premises is open to the public or (as the case may be) used as a place of work mentioned in subsection (2), the premises are smoke-free only to that extent.
- (4) In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed.
- (5) The appropriate national authority may specify in regulations what “enclosed” and “substantially enclosed” mean.
- (6) Section 3 provides for some premises, or areas of premises, not to be smoke-free despite this section.
- (7) Premises are “open to the public” if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.
- (8) “Work”, in subsection (2), includes voluntary work.

#### Commencement Information

- I3** S. 2 in force for certain purposes at Royal Assent, see s. 83  
**I4** S. 2 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)  
**I5** S. 2 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

## 3 Smoke-free premises: exemptions

- (1) The appropriate national authority may make regulations providing for specified descriptions of premises, or specified areas within specified descriptions of premises, not to be smoke-free despite section 2.

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- (2) Descriptions of premises which may be specified under subsection (1) include, in particular, any premises where a person has his home, or is living whether permanently or temporarily (including hotels, care homes, and prisons and other places where a person may be detained).
- (3) The power to make regulations under subsection (1) is not exercisable so as to specify any description of—
- (a) premises in respect of which a premises licence under the Licensing Act 2003 (c. 17) authorising the sale by retail of alcohol for consumption on the premises has effect,
  - (b) premises in respect of which a club premises certificate (within the meaning of section 60 of that Act) has effect.
- (4) But subsection (3) does not prevent the exercise of that power so as to specify any area, within a specified description of premises mentioned in subsection (3), where a person has his home, or is living whether permanently or temporarily.
- (5) For the purpose of making provision for those participating as performers in a performance, or in a performance of a specified description, not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for them to smoke—
- (a) the power in subsection (1) also includes power to provide for specified descriptions of premises or specified areas within such premises not to be smoke-free in relation only to such performers, and
  - (b) subsection (3) does not prevent the exercise of that power as so extended.
- (6) The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that the premises or areas are not smoke-free—
- (a) in specified circumstances,
  - (b) if specified conditions are satisfied, or
  - (c) at specified times,
- or any combination of those.
- (7) The conditions may include conditions requiring the designation in accordance with the regulations, by the person in charge of the premises, of any rooms in which smoking is to be permitted.
- (8) For the purposes of subsection (5), the references to a performance—
- (a) include, for example, the performance of a play, or a performance given in connection with the making of a film or television programme, and
  - (b) if the regulations so provide, include a rehearsal.

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#### Commencement Information

**I6** S. 3 in force for certain purposes at Royal Assent, see s. 83

**I7** S. 3 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204](#), [art. 2\(a\)](#)

**I8** S. 3 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375](#), [art. 2\(a\)](#)

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#### 4 Additional smoke-free places

- (1) The appropriate national authority may make regulations designating as smoke-free any place or description of place that is not smoke-free under section 2.
- (2) The place, or places falling within the description, need not be enclosed or substantially enclosed.
- (3) The appropriate national authority may designate a place or description of place under this section only if in the authority's opinion there is a significant risk that, without a designation, persons present there would be exposed to significant quantities of smoke.
- (4) The regulations may provide for such places, or places falling within the description, to be smoke-free only—
  - (a) in specified circumstances,
  - (b) at specified times,
  - (c) if specified conditions are satisfied,
  - (d) in specified areas,
 or any combination of those.

#### Commencement Information

**I9** S. 4 in force for certain purposes at Royal Assent, see s. 83

**I10** S. 4 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

#### 5 Vehicles

- (1) The appropriate national authority may make regulations providing for vehicles to be smoke-free.
- (2) The regulations may in particular make provision—
  - (a) for the descriptions of vehicle which are to be smoke-free,
  - (b) for the circumstances in which they are to be smoke-free,
  - (c) for them to be smoke-free only in specified areas, or except in specified areas,
  - (d) for exemptions.
- (3) The power to make regulations under this section is not exercisable in relation to—
  - (a) any ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c. 21) (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968 (c. 59), or
  - (b) persons on any such ship or hovercraft.
- (4) In section 85 of the Merchant Shipping Act 1995, at the end add—
  - (8) Safety regulations which make provision in respect of the prohibition of smoking on any ship (“the smoking provisions”) may include provision—
    - (a) for the appointment by the Secretary of State of persons to enforce the smoking provisions (whether in respect of ships generally or for any particular case or purpose), and for the removal of any person so appointed,

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- (b) for such persons (if they are not surveyors of ships appointed under section 256) to have the powers of such surveyors for the purposes of their enforcement functions,
- (c) for any such persons to have, for the purposes of their enforcement functions, powers corresponding to those which authorised officers have under paragraphs 2(b) to (e), 3 and 4, as read with paragraphs 5 and 9, of Schedule 2 to the Health Act 2006 (which confers powers of entry, etc., on authorised officers of enforcement authorities in relation to the enforcement of the provisions of that Act in relation to smoking),
- (d) in relation to an offence of smoking in a place where smoking is prohibited under the smoking provisions, for purposes corresponding to those of section 9 of and Schedule 1 to the Health Act 2006 (which provide for the giving by authorised officers of penalty notices in respect of such an offence).

In this subsection, “smoking” has the same meaning as in Chapter 1 of Part 1 of the Health Act 2006.”

- (5) In this Chapter, “vehicle” means every type of vehicle, including train, vessel, aircraft and hovercraft.

#### Commencement Information

- I11** S. 5 in force for certain purposes at Royal Assent, see s. 83
- I12** S. 5 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)
- I13** [S. 5\(1\)-\(3\)\(5\)](#) in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)
- I14** [S. 5\(4\)](#) in force at 1.7.2007 for E.S.N.I. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

### *No-smoking signs*

## 6 No-smoking signs

- (1) It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the requirements of this section are displayed in those premises in accordance with the requirements of this section.
- (2) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) places which are smoke-free by virtue of section 4,
  - (b) vehicles which are smoke-free by virtue of section 5.

The duty is to be imposed on persons, or on persons of a description, specified in the regulations.

- (3) The signs must be displayed in accordance with any requirements contained in regulations made by the appropriate national authority.
- (4) The signs must conform to any requirements specified in regulations made by the appropriate national authority (for example, requirements as to content, size, design, colour, or wording).

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- (5) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (2), commits an offence.
- (6) It is a defence for a person charged with an offence under subsection (5) to show —
- (a) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was smoke-free), or
  - (b) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
  - (c) that on other grounds it was reasonable for him not to comply with the duty.
- (7) If a person charged with an offence under subsection (5) relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.
- (9) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Chapter (and references to smoke-free premises include premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers).

#### Commencement Information

**I15** S. 6 in force for certain purposes at Royal Assent, see s. 83

**I16** S. 6 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)

**I17** S. 6 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

*Offences relating to smoking in smoke-free premises, etc.*

## 7 Offence of smoking in smoke-free place

- (1) In this section, a “smoke-free place” means any of the following—
- (a) premises, so far as they are smoke-free under or by virtue of sections 2 and 3 (including premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers),
  - (b) a place, so far as it is smoke-free by virtue of section 4,
  - (c) a vehicle, so far as it is smoke-free by virtue of section 5.
- (2) A person who smokes in a smoke-free place commits an offence.
- (3) But a person who smokes in premises which are not smoke-free in relation to performers by virtue of regulations under section 3(5) does not commit an offence if he is such a performer.

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- (4) It is a defence for a person charged with an offence under subsection (2) to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place.
- (5) If a person charged with an offence under this section relies on a defence in subsection (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.

#### Commencement Information

- I18** S. 7 in force for certain purposes at Royal Assent, see s. 83  
**I19** S. 7 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204](#), [art. 2\(a\)](#)  
**I20** S. 7 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375](#), [art. 2\(a\)](#)

## 8 Offence of failing to prevent smoking in smoke-free place

- (1) It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking.
- (2) The reference in subsection (1) to a person smoking does not include a performer in relation to whom the premises are not smoke-free by virtue of regulations under section 3(5).
- (3) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) places which are smoke-free by virtue of section 4,
  - (b) vehicles which are smoke-free by virtue of section 5.

The duty is to be imposed on persons, or on persons of a description, specified in the regulations.

- (4) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (3), commits an offence.
- (5) It is a defence for a person charged with an offence under subsection (4) to show—
  - (a) that he took reasonable steps to cause the person in question to stop smoking, or
  - (b) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or
  - (c) that on other grounds it was reasonable for him not to comply with the duty.
- (6) If a person charged with an offence under this section relies on a defence in subsection (5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

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- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.
- (8) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Chapter (and references to smoke-free premises include premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers).

#### Commencement Information

- I21** S. 8 in force for certain purposes at Royal Assent, see s. 83
- I22** S. 8 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)
- I23** S. 8 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

### *Fixed penalties*

## 9 Fixed penalties

- (1) An authorised officer of an enforcement authority (see section 10) who has reason to believe that a person has committed an offence under section 6(5) or 7(2) on premises, or in a place or vehicle, in relation to which the authorised officer has functions may give him a penalty notice in respect of the offence.
- (2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Chapter.
- (3) Schedule 1 makes further provision about fixed penalties.

#### Commencement Information

- I24** S. 9 in force at 2.4.2007 for W. by [S.I. 2007/204, art. 2\(b\)](#)
- I25** S. 9 in force at 1.7.2007 for E. by [S.I. 2007/1375, art. 2\(a\)](#)

### *Enforcement*

## 10 Enforcement

- (1) The appropriate national authority may make regulations designating the bodies or descriptions of body which are to be enforcement authorities for the purposes of this Chapter.
- (2) The regulations—
- (a) must specify the descriptions of premises, place or vehicle in relation to which an enforcement authority has enforcement functions,
  - (b) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred, or transferred back) to, and taken over by, another enforcement authority.



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- (3) It is the duty of an enforcement authority to enforce, as respects the premises, places and vehicles in relation to which it has enforcement functions, the provisions of this Chapter and regulations made under it.
- (4) The appropriate national authority may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority by subsection (3) is to be discharged instead by the appropriate national authority.
- (5) In this Chapter, “authorised officer”, in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under this Chapter.
- (6) If regulations under this section so provide, no person is to be so authorised unless he has such qualifications as are prescribed by the regulations.
- (7) Schedule 2 makes provision about powers of entry, etc.

#### Commencement Information

**I26** S. 10 in force for certain purposes at Royal Assent, see s. 83

**I27** S. 10 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204](#), [art. 2\(a\)](#)

**I28** [S. 10](#) in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375](#), [art. 2\(a\)](#)

## 11 Obstruction etc. of officers

- (1) Any person who intentionally obstructs an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Chapter, commits an offence.
- (2) Any person who without reasonable cause fails to give to an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Chapter, any facilities, assistance or information which the authorised officer reasonably requires of him for the performance of those functions commits an offence.
- (3) A person commits an offence if, in purported compliance with any requirement of an authorised officer mentioned in subsection (2)—
  - (a) he makes a statement which is false or misleading, and
  - (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

“False or misleading” means false or misleading in a material particular.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) If a direction of the appropriate national authority has effect under section 10(4), this section has effect, in relation to any case or case of a description specified in the direction, as if references to an authorised officer of an enforcement authority were to a person acting on behalf of the appropriate national authority.

#### Commencement Information

**I29** S. 11 in force at 2.4.2007 for W. by [S.I. 2007/204](#), [art. 2\(b\)](#)

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**I30** S. 11 in force at 1.7.2007 for E. by S.I. 2007/1375, art. 2(a)

*Interpretation, etc.*

## 12 Interpretation and territorial sea

(1) In this Chapter—

“authorised officer” has the meaning given by section 10(5),

“premises” includes a tent, and (if not a ship within the meaning of the Merchant Shipping Act 1995 (c. 21)) a moveable structure and an offshore installation (as defined in regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738)),

“specified”, in relation to regulations, means specified in the regulations,

“vehicle” is to be construed in accordance with section 5(5).

(2) The appropriate national authority may by order provide for the definition of “premises” in subsection (1) to be read as if a reference to another enactment were substituted for the reference to regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995.

(3) This Chapter—

(a) has effect in relation to the territorial sea adjacent to England as it has effect in relation to England, and

(b) has effect in relation to the territorial sea adjacent to Wales as it has effect in relation to Wales.

(4) The following have effect for the purposes of subsection (3) if or in so far as expressed to apply for the general or residual purposes of the Act in question or for the purposes of this section—

(a) an Order in Council under section 126(2) of the Scotland Act 1998 (c. 46),

(b) an order or Order in Council under or by virtue of section [F1 158(3) and (4) of the Government of Wales Act 2006]).

### Textual Amendments

**F1** Words in s. 12(4) substituted (25.5.2007) by [Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007](#) (S.I. 2007/1388), art. 1(2), [Sch. 1 para. 123](#)

### Commencement Information

**I31** S. 12 in force for certain purposes at Royal Assent, see s. 83

**I32** S. 12 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204](#), [art. 2\(a\)](#)

**I33** S. 12 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375](#), [art. 2\(a\)](#)

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## CHAPTER 2

### AGE FOR SALE OF TOBACCO ETC.

#### 13 Power to amend age for sale of tobacco etc.

- (1) The Secretary of State may from time to time by order amend the following enactments by substituting, in each place where a person's age is specified, a different age specified in the order—
  - (a) section 7 of the Children and Young Persons Act 1933 (c. 12) (sale of tobacco etc. to persons under 16),
  - (b) section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23) (display of warning statements in retail premises and on vending machines).
- (2) But the age specified in an order under subsection (1) may not be lower than 16 or higher than 18.

#### Commencement Information

- I34** S. 13 in force for certain purposes at Royal Assent, see s. 83  
**I35** S. 13 in force at 1.7.2007 by [S.I. 2007/1375](#), [art. 2\(a\)](#)

## PART 2

### PREVENTION AND CONTROL OF HEALTH CARE ASSOCIATED INFECTIONS

#### 14 Code of practice relating to health care associated infections

After section 47 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (referred to in this Act as “the 2003 Act”) insert—

##### “47A Code of practice relating to health care associated infections

- (1) The Secretary of State may issue a code of practice—
  - (a) applying to bodies within subsection (2), and
  - (b) relating to the prevention and control of health care associated infections in connection with health care provided by or for those bodies.
- (2) The bodies within this subsection are—
  - (a) English NHS bodies other than Strategic Health Authorities; and
  - (b) cross-border SHAs.
- (3) The code may provide for provisions of the code to apply to—
  - (a) such description or descriptions of bodies within subsection (2) as may be specified in the code;
  - (b) such body or bodies within that subsection as may be so specified.
- (4) The code may in particular—

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- (a) make such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them;
  - (b) contain provisions imposing on bodies to which the provisions apply requirements in relation to health care provided for such bodies by other persons as well as in relation to health care provided by such bodies.
- (5) The code may—
- (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);
  - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
  - (c) make different provision for different cases or circumstances.
- (6) Nothing in subsections (3) to (5) is to be read as prejudicing the generality of subsection (1).
- (7) The Secretary of State must keep the code under review and may from time to time—
- (a) revise the whole or any part of the code, and
  - (b) issue a revised code.
- (8) In this section “health care associated infection” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where—
- (a) health care is being, or has been, provided to that or any other individual, and
  - (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of the health care.
- (9) But subsection (8) does not include an infection to which the individual is deliberately exposed as part of any health care.
- (10) Any reference in this Part to a code of practice issued under this section includes a revised code issued under it.

#### **47B Consultation etc.**

- (1) Where the Secretary of State proposes to issue a code of practice under section 47A, he must—
- (a) prepare a draft of the code, and
  - (b) consult such persons as he considers appropriate about the draft.
- (2) Where the Secretary of State proposes to issue a revised code under section 47A which in his opinion would result in a substantial change in the code, he must—
- (a) prepare a draft of the revised code, and
  - (b) consult such persons as he considers appropriate about the change.

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**Status:** Point in time view as at 09/05/2013. This version of this Act contains provisions that are prospective.  
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- (3) Where, following consultation under subsection (1) or (2), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as he thinks fit), it comes into force at the time when it is issued by the Secretary of State.
- (4) Where—
- (a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is a document published by the Secretary of State in connection with his functions relating to health,
  - (b) the Secretary of State proposes to revise the document, and
  - (c) in the opinion of the Secretary of State, the revision would result in a substantial change in the code,
- the Secretary of State must, before revising the document, consult such persons as he considers appropriate about the change.
- (5) Where—
- (a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is not one to which subsection (4)(a) above applies,
  - (b) the document is revised, and
  - (c) in the opinion of the Secretary of State, the revision results in a substantial change in the code,
- the Secretary of State must consult such persons as he considers appropriate about whether the code should be revised in connection with the change.
- (6) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

#### **47C Effect of code under section 47A**

- (1) Where any provisions of a code of practice issued under section 47A apply to an NHS body, the body must observe those provisions in discharging its duty under section 45.
- (2) A failure to observe any provision of a code of practice issued under section 47A does not of itself make a person liable to any criminal or civil proceedings.
- (3) A code of practice issued under section 47A is admissible in evidence in any criminal or civil proceedings.”

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#### **Commencement Information**

**I36** S. 14 in force at 1.10.2006 by S.I. 2006/2603, art. 2

## **15 Code of practice: effects on existing functions of Commission for Healthcare Audit and Inspection**

- (1) Sections 50 to 52 and 54 of the 2003 Act are amended as follows.

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(2) In section 50 (annual reviews), for subsection (4) substitute—

“(4) In exercising its functions under this section in relation to any health care, the CHAI must take into account—

- (a) the standards set out in statements published under section 46, and
- (b) any code of practice issued under section 47A.

(4A) In conducting a review under subsection (1) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body.”

(3) In section 51 (reviews: England and Wales), in subsection (4)(a) after “section 46” insert “ and any code of practice issued under section 47A ”.

(4) In section 52 (reviews and investigations: England), for subsection (3) substitute—

“(3) The CHAI has the function of conducting reviews of—

- (a) the arrangements made by English NHS bodies and cross-border SHAs for the purpose of discharging their duty under section 45;
- (b) the arrangements made by particular bodies within paragraph (a) for the purpose of discharging that duty.”

(5) For section 52(5) substitute—

“(5) In exercising its functions under this section in relation to any health care, the CHAI must take into account—

- (a) the standards set out in statements published under section 46, and
- (b) any code of practice issued under section 47A.

(5A) In conducting a review under subsection (3) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body.”

(6) In section 54 (functions relating to Secretary of State and Assembly), in subsection (2) after “section 46 or 47” insert “ , or any code of practice issued under section 47A, ”.

#### Commencement Information

I37 S. 15 in force at 1.10.2006 by S.I. 2006/2603, art. 2

## 16 Code of practice: improvement notices

After section 53 of the 2003 Act insert—

### “53A Failings in connection with code under section 47A: improvement notices

(1) This section applies where, following such a review or investigation as is mentioned in section 53(1), the CHAI—

- (a) is of the view that any provisions of a code of practice issued under section 47A and applying to an English NHS body or a cross-border

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- SHA are not being observed in any material respect in relation to the provision of health care by or for the body, but
- (b) having regard to all the circumstances, is not of the view that it is required to make a report under section 53(2) (or, if relevant, section 53(6)).
- (2) The CHAI may serve a notice under this section (an “improvement notice”) on the body in respect of the failure to observe the code, if it considers that serving the notice is the most appropriate course of action for it to take with a view to securing that the failure is remedied.
- (3) An improvement notice must—
- (a) state that the CHAI has formed the view mentioned in subsection (1) (a) in relation to the provision of health care by or for the body, giving particulars of the material respect in which the CHAI considers that the provisions of the code are not being observed as mentioned in that subsection,
- (b) state the CHAI's reasons for its view, and
- (c) require the body to remedy the failure to observe the code, and to do so within such period as is specified in the notice.
- (4) An improvement notice may (but need not) include a recommendation by the CHAI as to the way in which the failure should be remedied.
- (5) An improvement notice may relate to more than one failure within subsection (1)(a), and in such a case—
- (a) subsections (2) to (4) and section 53B apply separately in relation to each such failure, but
- (b) any report required by that section may relate to more than one such failure.
- (6) Where the CHAI serves an improvement notice on a body under this section, the CHAI must notify the Secretary of State and—
- (a) the regulator, if the body is an NHS foundation trust, and
- (b) any relevant Strategic Health Authority, if the body is a Primary Care Trust or an NHS trust.
- (7) In this section and section 53B “relevant Strategic Health Authority” means—
- (a) in relation to a Primary Care Trust, any Strategic Health Authority whose area includes any part of the Trust's area;
- (b) in relation to an NHS Trust (other than one responsible for providing ambulance services), the Strategic Health Authority in whose area all or most of the Trust's hospitals, establishments or facilities are situated;
- (c) in relation to an NHS Trust responsible for providing ambulance services, the Strategic Health Authority in whose area the headquarters establishment responsible for the control of those services is situated.
- (8) Subsection (9) applies where—
- (a) an improvement notice is served on a body in respect of a particular failure to observe a code of practice issued under section 47A, and
- (b) a review under section 52(3)(b) is conducted by the CHAI in pursuance of section 53B(4)(a) with a view to assessing the body's compliance with the notice.

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- (9) In such a case subsection (1)—
- (a) does not apply in relation to that review so as to enable the CHAI to serve a further improvement notice on that body in respect of that failure; but
  - (b) does apply in relation to that review so as to enable the CHAI (if the conditions in subsections (1) and (2) are satisfied) to serve an improvement notice on that body in respect of a different failure to observe the code.

### **53B Code of practice: action by CHAI following service of improvement notice**

- (1) This section applies where the CHAI has served an improvement notice on a body under section 53A.
- (2) If, before the end of the specified period—
  - (a) the body requests the CHAI to extend that period, and
  - (b) the CHAI considers that there are exceptional circumstances which justify its extending that period by a further period of time,
 the CHAI may, by a notice served on the body, extend the specified period by that further period.
- (3) In this section “the specified period” means—
  - (a) the period specified under section 53A(3)(c), or
  - (b) if that period has been extended under subsection (2) above, that period as so extended.
- (4) Where the specified period has ended or the body notifies the CHAI before the end of that period that it has complied with the improvement notice, the CHAI must—
  - (a) conduct a review under section 52(3)(b) with a view to assessing the body's compliance with the notice, and
  - (b) then comply with subsection (5) or (6);
 and the making of any report in accordance with subsection (5) or (6) is to be taken as satisfying the requirement to publish a report under section 52(7) in respect of the review.
- (5) If the CHAI—
  - (a) remains of the view that the relevant provisions of the code are not being observed in any material respect in relation to the provision of health care by or for the body, and
  - (b) having regard to all the circumstances, is of the view that it is required to make a report under section 53(2) (and, if relevant, section 53(6)),
 the CHAI must accordingly make a report under that provision (or, as the case may be, under each of those provisions).
- (6) If the CHAI does not make any such report or reports, it must instead make a report—
  - (a) to the Secretary of State, and
  - (b) (if the body is an NHS foundation trust) to the regulator,
 setting out the matters mentioned in subsection (7) or (8).



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- (7) If the CHAI is of the view that the relevant provisions of the code are being observed in relation to the provision of health care by or for the body, the matters are—
- (a) that the CHAI is of that view, and
  - (b) its reasons for that view.
- (8) If the CHAI is of the view that the relevant provisions of the code are not being so observed in any respect (material or otherwise), the matters are—
- (a) that the CHAI is of that view,
  - (b) its reasons for that view,
  - (c) if its view is that those provisions are not being observed in any material respect, its reasons for not forming the view mentioned in subsection (5)(b), and
  - (d) (whether or not paragraph (c) applies) any action which it proposes to take in relation to the body in connection with the failure to observe the code.
- (9) The CHAI must send a copy of any report made by it in accordance with subsection (5) or (6) in relation to a Primary Care Trust or an NHS trust to the relevant Strategic Health Authority.
- (10) In this section “the relevant provisions of the code” means the provisions of the code in relation to which the CHAI formed the view mentioned in section 53A(1)(a).”

**Commencement Information**

**I38** S. 16 in force at 1.10.2006 by S.I. 2006/2603, art. 2

**PART 3**

**DRUGS, MEDICINES AND PHARMACIES**

**CHAPTER 1**

**SUPERVISION OF MANAGEMENT AND USE OF CONTROLLED DRUGS**

**17 Accountable officers and their responsibilities as to controlled drugs**

- (1) The relevant authority may by regulations make provision for or in connection with requiring designated bodies to nominate or appoint persons who are to have prescribed responsibilities in relation to the safe, appropriate and effective management and use of controlled drugs in connection with—
- (a) activities carried on by or on behalf of the designated bodies, and
  - (b) activities carried on by or on behalf of bodies or persons providing services under arrangements made with the designated bodies.
- (2) The person who is to be so nominated or appointed by a designated body is to be known as its accountable officer.

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This is subject to any regulations made by virtue of subsection (5)(e).

- (3) In this Chapter “designated body” means—
- (a) a body falling within any description of bodies prescribed as designated bodies for the purposes of this section, or
  - (b) a body prescribed as a designated body for those purposes.
- (4) The descriptions of bodies, or bodies, that may be so prescribed are descriptions of bodies, or bodies, appearing to the relevant authority—
- (a) to be directly or indirectly concerned with the provision of health care (whether or not for the purposes of the health service), or
  - (b) to be otherwise carrying on activities that involve, or may involve, the supply or administration of controlled drugs.
- (5) Regulations under this section may make provision—
- (a) for conditions that must be satisfied in relation to a person if he is to be nominated or appointed by a designated body as the body's accountable officer;
  - (b) for a single person to be nominated or appointed as the accountable officer for each of two or more designated bodies where those bodies are satisfied as to the prescribed matters;
  - (c) requiring a designated body that has an accountable officer to provide the officer with funds and other resources necessary for enabling the officer to discharge his responsibilities as accountable officer for the body;
  - (d) for ensuring that an accountable officer, in discharging his responsibilities, has regard to best practice in relation to the use of controlled drugs;
  - (e) for the persons required to be nominated or appointed as mentioned in subsection (1) to be known by such name as is prescribed;
  - (f) for making such amendments of any enactment as appear to the relevant authority to be required in connection with any provision made in pursuance of paragraph (e);
  - (g) for creating offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale or for creating other procedures for enforcing any provisions of the regulations.
- (6) The responsibilities that may be imposed on a designated body's accountable officer by regulations under this section include responsibilities as to the establishment and operation of arrangements for—
- (a) securing the safe management and use of controlled drugs;
  - (b) monitoring and auditing the management and use of such drugs;
  - (c) ensuring that relevant individuals receive appropriate training and that their training needs are regularly reviewed;
  - (d) monitoring and assessing the performance of such individuals in connection with the management or use of such drugs;
  - (e) making periodic inspections of premises used in connection with the management or use of such drugs;
  - (f) recording, assessing and investigating concerns expressed about incidents that may have involved improper management or use of such drugs;

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- (g) ensuring that appropriate action is taken for the purpose of protecting patients or members of the public in cases where such concerns appear to be well-founded;
  - (h) where required by regulations under section 18, the sharing of information.
- (7) The arrangements mentioned in subsection (6) may be arrangements established (according to the circumstances)—
- (a) by the accountable officer,
  - (b) by the designated body (or any of the designated bodies) for which he is the accountable officer, or
  - (c) by a body or person acting on behalf of, or providing services under arrangements made with, the designated body (or any of the designated bodies).
- (8) In subsection (6)—
- (a) references to the management or use of controlled drugs are to the management or use of drugs in connection with activities carried on by a body or person within subsection (7)(b) or (c), and
  - (b) “relevant individual” means an individual who, whether as—
    - (i) a health care professional, or
    - (ii) an employee who is not a health care professional, or
    - (iii) otherwise,is engaged in any activity carried on by a body or person within subsection (7) (b) or (c) that involves, or may involve, the management or use of controlled drugs.
- (9) A designated body may confer on its accountable officer such powers as it thinks appropriate to enable him to discharge any of the responsibilities imposed on him as accountable officer for the body by regulations under this section.
- (10) Nothing in subsections (5) to (7) is to be read as prejudicing the generality of subsection (1).
- (11) In this section “prescribed” means prescribed by regulations under this section.

#### Commencement Information

- I39** S. 17 in force for certain purposes at Royal Assent, see s. 83
- I40** S. 17 in force at 1.1.2007 for E. in so far as not already in force by [S.I. 2006/3125](#), **art. 2(1)**
- I41** [S. 17](#) in force at 1.3.2007 for S. in so far as not already in force by [S.I. 2006/3125](#), **art. 2(2)**
- I42** [S. 17](#) in force at 13.12.2008 for W. in so far as not already in force by [S.I. 2008/3171](#), **art. 2(a)**
- I43** [S. 17](#) in force at 1.8.2012 for N.I. in so far as not already in force by [S.R. 2012/307](#), **art. 2(a)**

## 18 Co-operation between health bodies and other organisations

- (1) The relevant authority may by regulations make provision for or in connection with requiring responsible bodies to co-operate with each other in connection with—
- (a) the identification of cases in which action may need to be taken in respect of matters arising in relation to the management or use of controlled drugs by relevant persons (see section 19);

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- (b) the consideration of issues relating to the taking of action in respect of such matters;
  - (c) the taking of action in respect of such matters.
- (2) In this Chapter “responsible body” means—
  - (a) a body falling within any description of bodies prescribed as responsible bodies for the purposes of this section, or
  - (b) a body prescribed as a responsible body for those purposes.
- (3) The descriptions of bodies, or bodies, that may be so prescribed are—
  - (a) descriptions of bodies, or bodies, which fall within subsection (4); and
  - (b) police forces.
- (4) Descriptions of bodies, or bodies, fall within this subsection if they appear to the relevant authority—
  - (a) to be directly or indirectly concerned with the provision of health care (whether or not for the purposes of the health service),
  - (b) to be otherwise carrying on activities that involve, or may involve, the supply or administration of controlled drugs,
  - (c) to have powers of inspection in relation to the management or use of controlled drugs,
  - (d) to be public or local authorities with responsibilities in relation to social care, or
  - (e) to be public or local authorities (not within paragraphs (a) to (d)) whose responsibilities include responsibilities with respect to matters such as are mentioned in subsection (1).
- (5) Regulations under this section may make provision—
  - (a) for requiring a responsible body to disclose information to any other such body or bodies in prescribed circumstances, or in circumstances where it appears to the responsible body that the prescribed conditions are satisfied, whether or not the disclosure of information has been requested;
  - (b) in relation to a responsible body which has an accountable officer, for requiring disclosures to be made by or to that officer instead of by or to the body;
  - (c) in relation to a responsible body which is a police force, for imposing duties on the chief officer;
  - (d) for requiring a responsible body, in prescribed circumstances, to consult the prescribed accountable officer in connection with any requirement imposed on the body under the regulations;
  - (e) for imposing duties on accountable officers in relation to the taking of action for the purpose of protecting the safety of patients or the general public.
- (6) The duties that may be imposed on an accountable officer in pursuance of subsection (5)(e) include a duty to make recommendations to a responsible body as to any action which the officer considers that the body should take for the purpose mentioned in that provision.
- (7) The action that may be so recommended includes action in relation to the institution of disciplinary proceedings.

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- (8) Nothing in subsections (5) to (7) is to be read as prejudicing the generality of subsection (1).
- (9) In this section—
- (a) “chief officer” means—
- (i) in relation to a police force in England and Wales, the chief officer of police;
  - (ii) in relation to <sup>[F2]</sup>the Police Service of Scotland, the chief constable of that Service];
  - (iii) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;
- (b) “police force” means—
- (i) a police force in England <sup>[F3]</sup>and Wales,]
  - <sup>[F4]</sup>(ia) the Police Service of Scotland, or]
  - (ii) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;
- (c) “prescribed” means prescribed by regulations under this section.

#### Textual Amendments

- F2** Words in s. 18(9)(a)(ii) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 51(2)(a)**
- F3** Words in s. 18(9)(b)(i) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 51(2)(b)**
- F4** S. 18(9)(b)(ia) inserted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 51(2)(c)(ii)**

#### Commencement Information

- I44** S. 18 in force for certain purposes at Royal Assent, see s. 83
- I45** S. 18 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**
- I46** S. 18 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**
- I47** S. 18 in force at 13.12.2008 for W. in so far as not already in force by S.I. 2008/3171, **art. 2(a)**
- I48** S. 18 in force at 1.8.2012 for N.I. in so far as not already in force by S.R. 2012/307, **art. 2(a)**

## 19 Meaning of “relevant person” in section 18

- (1) In section 18 “relevant person” means—
- (a) a person falling within any description of persons prescribed as relevant persons for the purposes of that section, or
  - (b) an individual to whom subsection (3) applies.
- (2) The descriptions of persons that may be prescribed for the purposes of section 18 are descriptions of persons appearing to the relevant authority to be carrying on, or engaged in, activities that involve, or may involve, the supply or administration of controlled drugs.
- (3) This subsection applies to an individual who, whether as—

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- (a) a health care professional, or
- (b) an employee who is not a health care professional, or
- (c) otherwise,

is engaged in any activity carried on by a designated body, or by a body or person acting on behalf of, or providing services under arrangements made with, a designated body that involves, or may involve, the management or use of controlled drugs.

- (4) In this section “prescribed” means prescribed by regulations under section 18.

#### Commencement Information

- I49** S. 19 in force for certain purposes at Royal Assent, see s. 83
- I50** S. 19 in force at 1.1.2007 for E. in so far as not already in force by [S.I. 2006/3125, art. 2\(1\)](#)
- I51** [S. 19](#) in force at 1.3.2007 for S. in so far as not already in force by [S.I. 2006/3125, art. 2\(2\)](#)
- I52** [S. 19](#) in force at 13.12.2008 for W. in so far as not already in force by [S.I. 2008/3171, art. 2\(a\)](#)
- I53** [S. 19](#) in force at 1.8.2012 for N.I. in so far as not already in force by [S.R. 2012/307, art. 2\(a\)](#)

## 20 Controlled drugs: power to enter and inspect

- (1) A constable or an authorised person may, for the purpose of securing the safe, appropriate and effective management and use of controlled drugs—
- (a) enter any relevant premises;
  - (b) inspect any precautions taken on the premises for the safe custody of controlled drugs;
  - (c) inspect any stocks of controlled drugs kept on the premises;
  - (d) require any relevant records kept on the premises to be produced for his inspection.

- (2) The powers conferred by subsection (1) may be exercised only—
- (a) at a reasonable hour, and
  - (b) on production (if required) of the written authority of the person exercising them.

- (3) The power conferred by subsection (1)(a) may be exercised by an authorised person to enter relevant premises which are or form part of a private dwelling only if he is accompanied by a constable.

But this subsection does not apply in such circumstances as may be prescribed by regulations made by the relevant authority.

- (4) The power conferred by subsection (1)(d) includes power—
- (a) to take copies of or extracts from relevant records, and
  - (b) to take possession of any relevant records kept on the premises and retain them for so long as the person exercising the power considers necessary.

- (5) In this section “authorised person” means (subject to subsection (6))—
- (a) a person authorised by the relevant authority,
  - (b) an accountable officer, or
  - (c) where a designated body is required by regulations under section 17 to nominate or appoint an accountable officer, a member of the staff of the designated body authorised by it.

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Authorisations given under this subsection may be general or specific.

- (6) The accountable officer of a designated body specified, or of a description specified, in directions given by the relevant authority is not an authorised person for the purposes of this section; and such a designated body may not authorise members of its staff under subsection (5)(c).
- (7) The relevant authority may by regulations prescribe descriptions of premises which are to be “relevant premises” for the purposes of this section in relation to constables and authorised persons of descriptions prescribed in the regulations.
- (8) The descriptions of premises that may be so prescribed are descriptions of premises (or parts thereof) appearing to the relevant authority to be used in connection with—
  - (a) the provision of health care (whether or not for the purposes of the health service), or
  - (b) the supply or administration of controlled drugs.
- (9) In this Chapter “relevant records” means records kept with respect to controlled drugs in pursuance of regulations under section 10 of the Misuse of Drugs Act 1971 (c. 38).
- (10) Directions under subsection (6) are to be given by regulations or in writing; but any such directions which relate to more than one designated body are to be given by regulations.
- (11) Directions under subsection (6) given in writing may be varied or revoked by subsequent directions under that subsection.

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

- C2** S. 20(3) excluded (E.S.) (1.1.2007 for E., 1.3.2007 for S.) by [The Controlled Drugs \(Supervision of Management and Use\) Regulations 2006 \(S.I. 2006/3148\)](#), regs. 1(1), **21**
- C3** S. 20(3) excluded (E.S.) (temp. from 1.4.2013 to 31.3.2020) by [The Controlled Drugs \(Supervision of Management and Use\) Regulations 2013 \(S.I. 2013/373\)](#), regs. 1(1), **18(3)**
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**Commencement Information**

- I54** S. 20 in force for certain purposes at Royal Assent, see s. 83
- I55** S. 20 in force at 1.1.2007 for E. in so far as not already in force by [S.I. 2006/3125](#), **art. 2(1)**
- I56** S. 20 in force at 1.3.2007 for S. in so far as not already in force by [S.I. 2006/3125](#), **art. 2(2)**
- I57** S. 20 in force at 13.12.2008 for W. in so far as not already in force by [S.I. 2008/3171](#), **art. 2(a)**
- I58** S. 20 in force at 1.8.2012 for N.I. in so far as not already in force by [S.R. 2012/307](#), **art. 2(a)**

## 21 Offences in connection with power to enter and inspect

- (1) A person commits an offence if he—
  - (a) intentionally obstructs a person in the exercise of his powers under section 20(1),
  - (b) conceals from a person acting under section 20(1) anything which that person is entitled to inspect, or
  - (c) without reasonable excuse fails to produce any relevant records which a person acting under section 20(1) requires to be produced.
- (2) A person guilty of an offence under subsection (1) is liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.
- (3) In the application of this section to Scotland and Northern Ireland, the reference to 12 months in subsection (2)(b) is to be read as a reference to 6 months.

#### Commencement Information

- I59** S. 21 in force at 1.1.2007 for E. by S.I. 2006/3125, **art. 2(1)**  
**I60** S. 21 in force at 1.3.2007 for S. by S.I. 2006/3125, **art. 2(2)**  
**I61** S. 21 in force at 13.12.2008 for W. by S.I. 2008/3171, **art. 2(a)**  
**I62** S. 21 in force at 1.8.2012 for N.I. by S.R. 2012/307, **art. 2(a)**

## 22 Guidance

- (1) The relevant authority may issue guidance to designated bodies in connection with—
- (a) determining whether conditions specified in regulations under section 17 have been satisfied in relation to the nomination or appointment of a person as a designated body's accountable officer;
  - (b) the discharge by a designated body's accountable officer of any responsibilities imposed on him by regulations under section 17;
  - (c) the exercise by designated bodies of their powers under section 17(9);
  - (d) the exercise by designated bodies of their powers under section 20(5)(c).
- (2) The relevant authority may issue guidance to responsible bodies in connection with their discharge of any duties imposed on them by regulations under section 18.
- (3) Guidance under this section may make different provision for different cases or circumstances.
- (4) Designated bodies and responsible bodies must have regard to any guidance under this section in exercising any functions to which the guidance relates.

#### Commencement Information

- I63** S. 22 in force at 1.1.2007 for E. by S.I. 2006/3125, **art. 2(1)**  
**I64** S. 22 in force at 1.3.2007 for S. by S.I. 2006/3125, **art. 2(2)**  
**I65** S. 22 in force at 13.12.2008 for W. by S.I. 2008/3171, **art. 2(a)**  
**I66** S. 22 in force at 1.8.2012 for N.I. by S.R. 2012/307, **art. 2(a)**

## 23 Crown application

- (1) This Chapter binds the Crown.
- (2) No contravention by the Crown of any provision of this Chapter shall make the Crown criminally liable; but the High Court (or, in Scotland, the Court of Session) may declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) The provisions of this Chapter apply to persons in the public service of the Crown as they apply to other persons.



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#### Commencement Information

- I67** S. 23 in force at 1.1.2007 for E. by S.I. 2006/3125, **art. 2(1)**  
**I68** S. 23 in force at 1.3.2007 for S. by S.I. 2006/3125, **art. 2(2)**  
**I69** S. 23 in force at 13.12.2008 for W. by S.I. 2008/3171, **art. 2(a)**  
**I70** S. 23 in force at 1.8.2012 for N.I. by S.R. 2012/307, **art. 2(a)**

## 24 Relevant authorities

- (1) This section applies to functions conferred on the relevant authority by this Chapter.
- (2) Subject to subsection (4), any functions to which this section applies are exercisable in relation to England by the Secretary of State.
- (3) Subject to subsection (4), any functions to which this section applies are exercisable in relation to Wales by the National Assembly for Wales.
- (4) Any power of the relevant authority to make regulations under this Chapter is exercisable in relation to cross-border bodies by the Secretary of State after consultation with the Assembly.
- (5) A “cross-border body” is a body which—
  - (a) performs (and only performs) functions in respect of England and Wales, and
  - (b) does not perform functions mainly in respect of England or mainly in respect of Wales.
- (6) Any functions to which this section applies are exercisable in relation to Scotland by the Secretary of State after consultation with the Scottish Ministers.
- (7) Any functions to which this section applies are exercisable in relation to Northern Ireland by the Department of Health, Social Services and Public Safety.

#### Commencement Information

- I71** S. 24 in force for certain purposes at Royal Assent, see s. 83  
**I72** S. 24 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**  
**I73** S. 24 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**  
**I74** S. 24 in force at 13.12.2008 for W. in so far as not already in force by S.I. 2008/3171, **art. 2(a)**  
**I75** S. 24 in force at 1.8.2012 for N.I. in so far as not already in force by S.R. 2012/307, **art. 2(a)**

## 25 Interpretation

- (1) In this Chapter—
  - “accountable officer” is to be read in accordance with section 17(2);
  - “body” includes an unincorporated association;
  - “controlled drug” has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38);
  - “designated body” has the meaning given by section 17(3);
  - “health care” means—
    - (a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

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- (b) the promotion and protection of public health;
    - “health care professional”—
    - (a) in relation to England and Wales, has the meaning given by [<sup>F5</sup>section 91(2)(a) of the National Health Service Act 2006 (referred to in this Act as “the 2006 Act”)],
    - (b) in relation to Scotland, has the meaning given by section 17D(2) of the National Health Service (Scotland) Act 1978 (c. 29), and
    - (c) in relation to Northern Ireland, has the meaning given by Article 15C of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));
  - “illness”—
  - (a) in relation to England and Wales, has the meaning given by [<sup>F6</sup>section 275 of the 2006 Act],
  - (b) in relation to Scotland, has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978, and
  - (c) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972;
    - “relevant authority” is to be read in accordance with section 24;
    - “relevant records” has the meaning given by section 20(9);
    - “responsible body” has the meaning given by section 18(2).
- (2) In this Chapter any reference to the management or use of controlled drugs includes—
- (a) the storage, carriage and safe custody of such drugs,
  - (b) the prescribing and supply of such drugs,
  - (c) the administration of such drugs,
  - (d) the recovery of such drugs when no longer needed, and
  - (e) the disposal of such drugs.

#### Textual Amendments

- F5** Words in s. 25(1) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 1 para. 282\(a\)](#) (with Sch. 3 Pt. 1)
- F6** Words in s. 25(1) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 1 para. 282\(b\)](#) (with Sch. 3 Pt. 1)

#### Commencement Information

- I76** S. 25 in force for certain purposes at Royal Assent, see s. 83
- I77** S. 25 in force at 1.1.2007 for E. in so far as not already in force by [S.I. 2006/3125](#), [art. 2\(1\)](#)
- I78** S. 25 in force at 1.3.2007 for S. in so far as not already in force by [S.I. 2006/3125](#), [art. 2\(2\)](#)
- I79** S. 25 in force at 13.12.2008 for W. in so far as not already in force by [S.I. 2008/3171](#), [art. 2\(a\)](#)
- I80** S. 25 in force at 1.8.2012 for N.I. in so far as not already in force by [S.R. 2012/307](#), [art. 2\(a\)](#)

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## CHAPTER 2

### MEDICINES AND PHARMACIES

PROSPECTIVE

#### 26 Requirements about supervision

- (1) In section 10 of the Medicines Act 1968 (c. 67) (which provides for exemptions for pharmacists in relation to certain dealings with medicinal products), after subsection (7) insert—

“(7A) The Health Ministers may make regulations prescribing conditions which must be complied with if a thing is to be considered for the purposes of this section as done under the supervision of a pharmacist.

(7B) Conditions prescribed under subsection (7A) may relate to supervision in the case where the pharmacist is not at the place where the thing is being done, and in that case the thing is not to be so considered if no such conditions are prescribed.

(7C) In any case, compliance with any applicable conditions is sufficient for the thing to be so considered.”

- (2) In section 52 of that Act (sale or supply of medicines not on general sale list)—

(a) the existing text is to be subsection (1),

(b) after that subsection insert—

“(2) The Health Ministers may make regulations prescribing conditions which must be complied with if a transaction mentioned in subsection (1)(c) is to be considered for the purposes of this section as done under the supervision of a pharmacist.

(3) Conditions prescribed under subsection (2) may relate to supervision in the case where the pharmacist is not on the premises, and in that case the transaction is not to be so considered if no such conditions are prescribed.

(4) In any case, compliance with any applicable conditions is sufficient for the transaction to be so considered.”

#### 27 Control of pharmacy premises: individuals and partnerships

- (1) For section 70 of the Medicines Act 1968 (pharmacy business carried on by individual pharmacist or by partners) substitute—

##### “70 Business carried on by individual pharmacist or by partners

- (1) The conditions referred to in section 69(1)(a) of this Act are that subsections (2) and (3) of this section are both satisfied as respects each of the premises where the retail pharmacy business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail.

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- (2) This subsection is satisfied if a responsible pharmacist who satisfies the requirements of subsections (4) and (5) of this section is in charge of the business at those premises, so far as concerns—
- (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and
  - (b) the supply at those premises of such products in circumstances corresponding to retail sale.
- (3) This subsection is satisfied if a notice is conspicuously displayed at those premises stating—
- (a) the name of the responsible pharmacist for the time being,
  - (b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and
  - (c) the fact that he is for the time being in charge of the business at those premises.
- (4) The responsible pharmacist must be—
- (a) the person carrying on the business, or
  - (b) if the business is carried on by a partnership, one of the partners or, in Scotland, one of the partners who is a <sup>F7</sup> person registered in Part 1 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007], or
  - (c) another pharmacist.
- (5) In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of section 4A of the Pharmacy Act 1954 (qualification by European diploma) or any corresponding provision applying to Northern Ireland.”
- (2) In section 78 of the Medicines Act 1968 (c. 67) (restrictions on use of titles, descriptions and emblems), in subsection (7), for the words from “under whose” to the end substitute “ who is in charge of the business at those premises (so far as concerns the retail sale of medicinal products or the supply of such products in circumstances corresponding to retail sale) is also a pharmacist ”.

#### Textual Amendments

**F7** Word in s. 27(1) substituted (3.12.2007) by [The European Qualifications \(Health and Social Care Professions\) Regulations 2007 \(S.I. 2007/3101\)](#), regs. 1(2), **103(a)**

#### Commencement Information

**I81** S. 27 in force at 1.10.2009 by [S.I. 2008/2714](#), art. 2(a)

## 28 Control of pharmacy premises: bodies corporate

- (1) For section 71 of the Medicines Act 1968 (pharmacy business carried on by body corporate) substitute—

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### **“71 Business carried on by body corporate**

- (1) The conditions referred to in section 69(1)(b) of this Act are—
  - (a) that the retail pharmacy business, so far as concerns the keeping, preparing and dispensing of medicinal products other than medicinal products on a general sale list, is under the management of a superintendent in respect of whom the requirements specified in subsection (6) of this section are fulfilled, and
  - (b) that subsections (2) and (3) of this section are both satisfied as respects each of the premises where the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail.
- (2) This subsection is satisfied if a responsible pharmacist who satisfies the requirements of subsections (4) and (5) of this section is in charge of the business at the premises mentioned in subsection (1)(b) of this section, so far as concerns—
  - (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and
  - (b) the supply at those premises of such products in circumstances corresponding to retail sale.
- (3) This subsection is satisfied if a notice is conspicuously displayed at those premises stating—
  - (a) the name of the responsible pharmacist for the time being,
  - (b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and
  - (c) the fact that he is for the time being in charge of the business at those premises.
- (4) The responsible pharmacist must be—
  - (a) the superintendent mentioned in subsection (1)(a) of this section, or
  - (b) a manager or assistant subject to the directions of the superintendent and who is a pharmacist.
- (5) In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of section 4A of the Pharmacy Act 1954 (qualification by European diploma) or any corresponding provision applying to Northern Ireland.
- (6) The requirements referred to in subsection (1)(a) of this section in relation to a superintendent are that—
  - (a) he is a pharmacist,
  - (b) a statement in writing signed by him, and signed on behalf of the body corporate, specifying his name and stating whether he is a member of the board of that body or not, has been sent to the registrar, and
  - (c) he does not act in a similar capacity for any other body corporate.

<sup>F8</sup>(7) In subsection (6)(a) “pharmacist” does not include a person registered in Part 3 of the Register of Pharmacists maintained under article 10(1) of the

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Pharmacists and Pharmacy Technicians Order 2007 (visiting pharmacists from relevant European States) [<sup>F9</sup>or a person registered in the register of visiting pharmaceutical chemists from a relevant European State maintained under Article 9 of the Pharmacy (Northern Ireland) Order 1976.]”]

- (2) In section 124 of the Medicines Act 1968 (c. 67) (offences by bodies corporate), in subsection (2)(b), for “subsection (1)(a)” substitute “ subsection (4)(b) ”.

#### Textual Amendments

- F8** Words in s. 28(1) added (3.12.2007) by [The European Qualifications \(Health and Social Care Professions\) Regulations 2007 \(S.I. 2007/3101\)](#), regs. 1(2), **103(b)**
- F9** Words in s. 28(1) inserted (22.5.2008) by [The European Qualifications \(Pharmacy\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/192\)](#), regs. 1(2), **15**

#### Commencement Information

- I82** S. 28 in force at 1.10.2009 by [S.I. 2008/2714](#), **art. 2(a)**

## 29 Control of pharmacy premises: representative of pharmacist in case of death or disability

In section 72 of the Medicines Act 1968 (representative of pharmacist in case of death or disability), for subsection (2) substitute—

- “(2) The conditions referred to in section 69(1)(c) of this Act are—
- (a) that the name and address of the representative, and the name of the pharmacist whose representative he is, have been notified to the registrar, and
  - (b) that subsections (2A) and (2B) of this section are both satisfied as respects each of the premises at which the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail.
- (2A) This subsection is satisfied if a responsible pharmacist is in charge of the business at the premises mentioned in subsection (2)(b) of this section, so far as concerns—
- (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and
  - (b) the supply at those premises of such products in circumstances corresponding to retail sale.
- (2B) This subsection is satisfied if a notice is conspicuously displayed at those premises stating—
- (a) the name of the responsible pharmacist for the time being,
  - (b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and
  - (c) the fact that he is for the time being in charge of the business at those premises.”

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#### Commencement Information

**183** S. 29 in force at 1.10.2009 by S.I. 2008/2714, art. 2(a)

### 30 The responsible pharmacist

(1) After section 72 of the Medicines Act 1968 (c. 67) insert—

#### “72A The responsible pharmacist

- (1) It is the duty of the responsible pharmacist mentioned in sections 70, 71 and 72 of this Act to secure the safe and effective running of the pharmacy business at the premises in question so far as concerns—
  - (a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and
  - (b) the supply at those premises of such products in circumstances corresponding to retail sale.
- (2) A person may not be the responsible pharmacist in respect of more than one set of premises at the same time, except in circumstances specified by the Health Ministers in regulations, and then only if such conditions as may be so specified are complied with.
- (3) The responsible pharmacist must establish (if they are not already established), maintain and keep under review procedures designed to secure the safe and effective running of the business as mentioned in subsection (1) of this section.
- (4) The responsible pharmacist must make a record (which must be available at the premises) of—
  - (a) who the responsible pharmacist is in relation to the premises on any day and at any time, and
  - (b) such other matters as the Health Ministers specify in regulations.
- (5) It is the duty of the person carrying on the business to secure that—
  - (a) the record is properly maintained, and
  - (b) it is preserved for at least as long as is specified in regulations made by the Health Ministers.
- (6) The Health Ministers may make further provision in regulations in relation to the responsible pharmacist.
- (7) The regulations may, in particular, make further provision about the matters mentioned in subsections (1) to (4) of this section, and make provision about—
  - (a) the qualifications and experience which a person must have if he is to be a responsible pharmacist,
  - (b) the responsible pharmacist's absence from the premises,
  - (c) the supervision by the responsible pharmacist, when he is not present on the premises, of relevant activities there,

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- (d) circumstances in which the responsible pharmacist may supervise relevant activities at a pharmacy of which he is not the responsible pharmacist,
  - (e) the form in which the procedures referred to in subsection (3) of this section are to be recorded and matters which must be covered by them,
  - (f) the form in which the record referred to in subsection (4) of this section is to be kept and particulars which must be included in it.
- (8) In subsection (7)(c) and (d), “relevant activities” means things mentioned in section 10 and transactions mentioned in section 52(1)(c) of this Act.

### **72B Section 72A: supplementary**

- (1) The failure by a person to comply with any requirements of section 72A of this Act, or of regulations made under that section, may constitute misconduct for the purposes of section 80 of this Act, section 8 of the Pharmacy Act 1954 and Article 20 of the Pharmacy (Northern Ireland) Order 1976; and the Statutory Committee may deal with such a failure accordingly.
  - (2) A person who does not have the qualifications and experience required by regulations made by virtue of section 72A(7)(a) of this Act is not to be considered as a responsible pharmacist for the purposes of sections 70 to 72 of this Act.
  - (3) Subsection (4) of this section applies if a person—
    - (a) fails to comply with the requirements of subsection (2) of section 72A of this Act, or of regulations made under that subsection,
    - (b) fails to comply with any requirements as to absence from the premises contained in regulations made by virtue of subsection (7)(b) of that section.
  - (4) If this subsection applies, the person in question is not to be considered while the failure continues as being in charge of the business at the premises in question (or in a subsection (3)(a) case at any of them) for the purposes of sections 70 to 72 of this Act.”
- (2) In section 77 of the Medicines Act 1968 (c. 67) (annual return of premises to registrar), omit paragraph (b) and the “and” immediately preceding it.
- (3) In section 84 of the Medicines Act 1968 (offences), before subsection (1) insert—
- “(A1) A person who fails to comply with either of the following shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale—
- (a) subsection (4) of section 72A of this Act (which requires the making of entries in a record relating to the responsible pharmacist),
  - (b) subsection (5) of that section (which requires the keeping and preservation of the record).”

#### **Commencement Information**

**I84** S. 30 in force for certain purposes at Royal Assent, see s. 83

**I85** S. 30 in force at 1.10.2009 in so far as not already in force by [S.I. 2008/2714, art. 2\(b\)](#)



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## 31 Enforcement

- (1) In section 108 of the Medicines Act 1968 (c. 67) (enforcement in England and Wales)
- (a) in subsection (1), at the beginning insert “ Subject to the provisions of subsection (6C) of this section, ”,
  - (b) after subsection (6) insert—
    - “(6A) The Pharmaceutical Society shall be under a duty, concurrently with the appropriate Minister, to enforce the provisions of subsections (4) and (5) of section 72A of this Act in their application to England and Wales.
    - (6B) The Pharmaceutical Society shall be under a duty to enforce the other provisions of section 72A of this Act, and any regulations made under them, in their application to England and Wales.
    - (6C) The appropriate Minister shall be under no duty to enforce those other provisions, or any regulations made under them, in their application to England and Wales.
    - (6D) Notwithstanding subsection (6C) of this section the appropriate Minister is to be treated for the purposes of sections 111 to 114 of this Act—
      - (a) as empowered by this section to enforce those other provisions, or any regulations made under them, in their application to England and Wales, and
      - (b) to that extent as an enforcement authority in relation to those other provisions or those regulations in their application to England and Wales.”,
    - (c) in subsection (9)(a), after “hospital” insert “ (except in relation to so much of the hospital premises as is a registered pharmacy) ”,
    - (d) in subsection (10), for “(4) to (8)” substitute “ (4) to (6A), (7) and (8) ”.
- (2) In section 109 of the Medicines Act 1968 (enforcement in Scotland), in subsection (1), at the beginning insert “ Subject to the provisions of section 108(6C) of this Act as applied by subsection (2) of this section, ”.
- (3) In section 110 of the Medicines Act 1968 (enforcement in Northern Ireland)—
- (a) in subsection (1), for “subsection (4)” substitute “ subsections (3C) and (4) ”,
  - (b) after subsection (3) insert—
    - “(3A) The Pharmaceutical Society shall be under a duty, concurrently with the Minister, to enforce the provisions of subsections (4) and (5) of section 72A of this Act in their application to Northern Ireland.
    - (3B) The Pharmaceutical Society shall be under a duty to enforce the other provisions of section 72A of this Act, and any regulations made under them, in their application to Northern Ireland.
    - (3C) The Minister shall be under no duty to enforce those other provisions, or any regulations made under them, in their application to Northern Ireland.

*Status: Point in time view as at 09/05/2013. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Health Act 2006 is up to date with all changes known to be in force on or before 11 August 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)*

(3D) Notwithstanding subsection (3C) of this section the Minister is to be treated for the purposes of sections 111 to 114 of this Act—

- (a) as empowered by this section to enforce those other provisions, or any regulations made under them, in their application to Northern Ireland, and
- (b) to that extent as an enforcement authority in relation to those other provisions or those regulations in their application to Northern Ireland.”,
- (c) in subsection (5)(a), for “and (3)” substitute “ to (3D) ”,
- (d) in subsection (5)(b), for “(4) to (8)” substitute “ (4) to (6A), (7) and (8) ”.

**Commencement Information**

**I86** S. 31 in force at 1.10.2009 by [S.I. 2008/2714](#), [art. 2\(a\)](#)

PROSPECTIVE

**32 Order-making powers**

In section 129 of the Medicines Act 1968 (c. 67) (orders and regulations), in subsection (5)—

- (a) after “power to make” insert “ an order or ”,
- (b) after “making the” insert “ order or ”.

**33 Orders under s.60 of the Health Act 1999**

In Schedule 3 to the Health Act 1999 (c. 8) (which makes further provision about orders under section 60 of that Act regulating health care professions), omit paragraph 2(2) (which imposes a limitation on amendment of the Medicines Act 1968).

**Commencement Information**

**I87** S. 33 in force at 1.10.2006 by [S.I. 2006/2603](#), [art. 3](#)

**PART 4**

THE NATIONAL HEALTH SERVICE

**CHAPTER 1**

PHARMACEUTICAL SERVICES

**F10 34 Power to charge**

.....

**Status:** Point in time view as at 09/05/2013. This version of this Act contains provisions that are prospective.  
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#### Textual Amendments

**F10** S. 34 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

#### Commencement Information

**I88** S. 34 in force at 28.2.2007 for specified purposes by [S.I. 2006/3125](#), [art. 3\(a\)](#)  
**I89** S. 34 in force at 9.5.2013 for W. by [S.I. 2013/1112](#), [art. 2](#)

### <sup>F11</sup>35 Applications for provision of pharmaceutical services

#### Textual Amendments

**F11** S. 35 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

#### Commencement Information

**I90** S. 35 in force at 28.2.2007 for specified purposes by [S.I. 2006/3125](#), [art. 3\(b\)](#)

PROSPECTIVE

### 36 Arrangements for dispensing of medicines

(1) [<sup>F12</sup>In section 43 of the 1977 Act (persons authorised to provide pharmaceutical services), for subsection (2) substitute—

“(2) Except as may be provided for by or under regulations, no arrangements for the dispensing of medicines shall be made under this Part of this Act with persons other than persons who—

- (a) are registered pharmacists or persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968; and
- (b) undertake that all medicines supplied by them under the arrangements will be dispensed either by or under the supervision of a registered pharmacist.”]

(2) In section 17S of the National Health Service (Scotland) Act 1978 (c. 29) (eligibility to be contractor under pharmaceutical care services contract), after subsection (1) insert—

“(1A) In such circumstances, and subject to such conditions, as may be prescribed, subsection (1) has effect with the omission of the words from “who undertakes” to the end.”

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**Textual Amendments**

- F12** S. 36(1) repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

## CHAPTER 2

### OPHTHALMIC SERVICES

#### <sup>F13</sup>37 Provision of primary ophthalmic services

.....

**Textual Amendments**

- F13** Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

**Commencement Information**

- I91** S. 37 in force at 1.8.2008 by [S.I. 2008/1972](#), **art. 2(a)**

#### <sup>F13</sup>38 General ophthalmic services contracts

.....

**Textual Amendments**

- F13** Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

**Commencement Information**

- I92** S. 38 in force at 1.8.2008 by [S.I. 2008/1972](#), **art. 2(a)**

#### <sup>F13</sup>39 Persons performing primary ophthalmic services

.....

**Textual Amendments**

- F13** Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

**Commencement Information**

- I93** S. 39 in force at 1.8.2008 by [S.I. 2008/1972](#), **art. 2(a)**

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## <sup>F13</sup> 40 Assistance and support

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### Textual Amendments

**F13** Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

### Commencement Information

**I94** S. 40 in force at 1.8.2008 by [S.I. 2008/1972](#), [art. 2\(a\)](#)

## <sup>F13</sup> 41 Local Optical Committees

.....

### Textual Amendments

**F13** Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

### Commencement Information

**I95** S. 41 in force at 1.8.2008 by [S.I. 2008/1972](#), [art. 2\(a\)](#)

## <sup>F13</sup> 42 Payments in respect of optical appliances

.....

### Textual Amendments

**F13** Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

### Commencement Information

**I96** S. 42 in force at 1.8.2008 by [S.I. 2008/1972](#), [art. 2\(a\)](#)

## 43 General ophthalmic services: transitional

- (1) The Secretary of State shall in regulations make transitional provision in respect of persons who, immediately before the coming into force of section 38 of this Act, are providing services in England under section 38 of the [<sup>F14</sup>National Health Service Act 1977 ] (general ophthalmic services).
- (2) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes, enter into a general ophthalmic services contract with him; and the regulations may make provision as to the terms of any such contract.
- (3) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes,

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enter into a contract with him, containing such terms as the regulations may specify, for the provision of ophthalmic services.

- (4) Regulations under this section may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under subsection (2) or (3), including provision for the determination of disputes by the Secretary of State or a person appointed by him.
- (5) Regulations under this section may make provision in respect of a period beginning before the coming into force of the provision (or of section 38 of this Act), but such provision must not as a whole be detrimental to the remuneration of the persons to whom it relates.
- (6) In this section, “general ophthalmic services contract” means a contract under <sup>F15</sup>section 117 of the 2006 Act].

#### Textual Amendments

- F14** Words in s. 43(1) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 1 para. 283\(a\)](#) (with Sch. 3 Pt. 1)
- F15** Words in s. 43(6) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 1 para. 283\(b\)](#) (with Sch. 3 Pt. 1)

#### Commencement Information

- I97** S. 43 in force for certain purposes at Royal Assent, see s. 83
- I98** S. 43 in force at 1.5.2008 by [S.I. 2008/1147, art. 2](#)

## CHAPTER 3

### PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES

#### *Preliminary*

#### <sup>F16</sup>44 **Compulsory disclosure of documents for purposes of counter fraud or security management functions**

.....

#### Textual Amendments

- F16** [Ss. 44-56](#) repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 4](#) (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

#### Commencement Information

- I99** S. 44 in force for certain purposes at Royal Assent, see s. 83
- I100** S. 44 in force at 1.2.2007 for W. by [S.I. 2007/204, art. 3\(b\)](#)
- I101** [S. 44](#) in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147, art. 3\(a\)](#)

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**F1645 Meaning of “NHS body” etc.**

.....

**Textual Amendments**

**F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

**Commencement Information**

**I102** S. 45 in force for certain purposes at Royal Assent, see s. 83  
**I103** S. 45 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(b\)](#)  
**I104** S. 45 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)

*Disclosure notices*

**F1646 Notice requiring production of documents**

.....

**Textual Amendments**

**F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

**Commencement Information**

**I105** S. 46 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(b\)](#)  
**I106** S. 46 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)

**F1647 Production of documents**

.....

**Textual Amendments**

**F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

**Commencement Information**

**I107** S. 47 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(b\)](#)  
**I108** S. 47 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)

**F1648 Delegation of functions**

.....

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### Textual Amendments

- F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

### Commencement Information

- I109** S. 48 in force for certain purposes at Royal Assent, see s. 83
- I110** S. 48 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(a\)](#)
- I111** S. 48 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)

## <sup>F16</sup>49 Code of practice relating to delegated functions

.....

### Textual Amendments

- F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

### Commencement Information

- I112** S. 49 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(b\)](#)
- I113** S. 49 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)

## <sup>F16</sup>50 Disclosure of information

.....

### Textual Amendments

- F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

### Commencement Information

- I114** S. 50 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(b\)](#)
- I115** S. 50 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)

## <sup>F16</sup>51 Protection of personal information disclosed for purposes of proceedings

.....

### Textual Amendments

- F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#) [Sch. 3 Pt. 1](#))

### Commencement Information

- I116** S. 51 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(b\)](#)
- I117** S. 51 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)



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## Offences

### F1652 Offences in connection with production of documents

.....

#### Textual Amendments

**F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

#### Commencement Information

**I118** S. 52 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

**I119** S. 52 in force at 22.4.2008 in so far as not already in force by S.I. 2008/1147, **art. 3(a)**

### F1653 Offences relating to disclosure or use of information

.....

#### Textual Amendments

**F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

#### Commencement Information

**I120** S. 53 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

**I121** S. 53 in force at 22.4.2008 in so far as not already in force by S.I. 2008/1147, **art. 3(a)**

## Supplementary

### F1654 Manner in which disclosure notice may be served

.....

#### Textual Amendments

**F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

#### Commencement Information

**I122** S. 54 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

**I123** S. 54 in force at 22.4.2008 in so far as not already in force by S.I. 2008/1147, **art. 3(a)**

### F1655 Interpretation

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#### Textual Amendments

- F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1 Sch. 3 Pt. 1](#))

#### Commencement Information

- I124** S. 55 in force for certain purposes at Royal Assent, see s. 83  
**I125** S. 55 in force at 1.2.2007 for W. by [S.I. 2007/204](#), [art. 3\(a\)](#)  
**I126** S. 55 in force at 22.4.2008 in so far as not already in force by [S.I. 2008/1147](#), [art. 3\(a\)](#)

## CHAPTER 4

### AUDIT

#### <sup>F16</sup> 56 Accounts and audit

.....

#### Textual Amendments

- F16** Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1 Sch. 3 Pt. 1](#))

#### Commencement Information

- I127** S. 56 in force at 1.10.2006 except so far as relating to Welsh NHS bodies by [S.I. 2006/2603](#), [art. 5\(a\)](#) (with [art. 6](#))  
**I128** S. 56 in force at 1.2.2007 in so far as not already in force by [S.I. 2007/204](#), [art. 4\(a\)](#) (with [art. 5](#))

## <sup>F17</sup> PART 5

### APPOINTMENTS COMMISSION

.....

#### Textual Amendments

- F17** Pt. 5 repealed (31.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 279\(2\), 306\(4\)](#) (with [Sch. 20 para. 8](#)); [S.I. 2012/1831](#), [art. 2\(3\)](#)

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## PART 6

### MISCELLANEOUS

#### *Social care bursary*

#### **72 Exercise by Special Health Authority of social care training functions**

After section 67 of the Care Standards Act 2000 (c. 14) insert—

##### **“67A Exercise by Special Health Authority of functions under s. 67(4)(a)**

- (1) The Secretary of State may direct a Special Health Authority to exercise such of his functions under section 67(4)(a) as may be specified in the directions.
- (2) If the Secretary of State gives a direction under subsection (1), the National Health Service Act 2006 shall have effect as if—
  - (a) the direction were a direction of the Secretary of State under section 7 of that Act, and
  - (b) the functions were exercisable by the Special Health Authority under section 7.
- (3) Directions under subsection (1)—
  - (a) shall be given by an instrument in writing, and
  - (b) may be varied or revoked by subsequent directions.”

#### *NHS costs recovery*

#### **73 NHS costs recovery**

In section 153 of the 2003 Act (information contained in certificates relating to recovery of NHS charges in cases of injury requiring NHS services), for subsection (9) substitute—

- “(9) For the purposes of subsection (10), a claim made by or on behalf of an injured person is a qualifying claim if—
- (a) it does not fall within subsection (3) or within any other description of claim specified in regulations, and
  - (b) it is settled, and the damages payable under the settlement are to be reduced to reflect the injured person's share in the responsibility for the injury in question.”

#### **Commencement Information**

**I129** S. 73 in force at 29.1.2007 for S. in so far as not already in force by S.S.I. 2007/9, **art. 2(a)**

**I130** S. 73 in force at 29.1.2007 except in so far as it extends to S. by S.I. 2006/3125, **art. 4**

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### *Transfer of criminal liabilities*

#### **F2074 Transfer of criminal liabilities of certain NHS bodies**

.....

##### **Textual Amendments**

**F20** S. 74 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](#))

### *Local Health Boards and Welsh health authorities*

#### **75 Amendments relating to Local Health Boards and abolition of Welsh health authorities**

- (1) The Secretary of State or the Assembly may by order make such amendments of any enactment as he or it considers appropriate—
  - (a) in order to reflect the fact that (by virtue of relevant directions) transferred functions may be exercised by Local Health Boards, or
  - (b) otherwise in consequence of, or in connection with, the abolition of Welsh health authorities effected under section 27(5) of the Government of Wales Act 1998 (c. 38).
- (2) Where a transferred function which became exercisable by a Local Health Board by virtue of relevant directions ceases to be so exercisable, the Secretary of State or the Assembly may by order—
  - (a) substitute for any reference to a Local Health Board in any enactment relating to the function a reference to the Assembly, and
  - (b) make such amendments of any enactment as he or it considers appropriate in consequence of any such substitution.
- (3) No order may be made under subsection (1)(a) in relation to a transferred function on or after the date on which subsection (4) applies to the function.
- (4) This subsection applies to a transferred function on the date when either of the following comes into force in relation to the function—
  - (a) an order made under subsection (1)(b) which amends an enactment so as to provide for the function to be exercisable only by the Assembly, or
  - (b) an order made under subsection (2).

(5) In this section—

“amendments” includes repeals, revocations and modifications;

“the Assembly” means the National Assembly for Wales;

“relevant directions” means directions given in regulations made under section 16BB of the National Health Service Act 1977 (c. 49) [<sup>F21</sup>or section 12 of the National Health Service (Wales) Act 2006];

“transferred function” means a function transferred to the Assembly by the Health Authorities (Transfer of Functions, Staff, Property, Rights and Liabilities and Abolition) (Wales) Order 2003 (S.I. 2003/813 (W. 98));

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“Welsh health authority” means a Health Authority for an area in, or consisting of, Wales.

### Textual Amendments

**F21** Words in s. 75(5) inserted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 1 para. 288** (with Sch. 3 Pt. 1)

## PART 7

### FINAL PROVISIONS

#### *Offences*

#### **76 Offences by bodies corporate etc.**

- (1) If an offence committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on his part,
 the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “officer”, in relation to the body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) If an offence committed by a partnership is proved—
  - (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on his part,
 the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In subsection (4) “partner” includes a person purporting to act as a partner.
- (6) If an offence committed by an unincorporated association (other than a partnership) is proved—
  - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member,
 the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) In this section and section 77 “offence” means an offence under any provision of this Act.

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#### Commencement Information

- I131** S. 76 in force at 1.2.2007 for specified purposes for W. by [S.I. 2007/204, art. 3\(c\)](#)
- I132** S. 76 in force at 2.4.2007 for specified purposes for W. by [S.I. 2007/204, art. 2\(c\)](#)
- I133** S. 76 in force at 1.7.2007 for specified purposes for E. by [S.I. 2007/1375, art. 2\(b\)](#)
- I134** S. 76 in force at 22.4.2008 for specified purposes by [S.I. 2008/1147, art. 3\(b\)](#)
- I135** S. 76 in force at 22.4.2008 for specified purposes for E.S. by [S.I. 2008/1147, art. 3\(c\)](#)
- I136** S. 76 in force at 13.12.2008 for specified purposes for W. by [S.I. 2008/3171, art. 2\(b\)](#)
- I137** S. 76 in force at 1.8.2012 for specified purposes for N.I. by [S.R. 2012/307, art. 2\(b\)](#)

## 77 Offences committed by partnerships and other unincorporated associations

- (1) Proceedings for an offence alleged to have been committed by a partnership shall be brought in the name of the partnership (and not in that of any of the partners).
- (2) Proceedings for an offence alleged to have been committed by an unincorporated association (other than a partnership) shall be brought in the name of the association (and not in that of any of its members).
- (3) Rules of court relating to the service of documents shall have effect as if the partnership or unincorporated association were a body corporate.
- (4) In proceedings for an offence brought against a partnership or an unincorporated association, the following provisions apply as they apply in relation to a body corporate—
  - (a) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43);
  - (b) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46);
  - (c) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (5) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets.
- (6) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.
- (7) Subsections (1) and (2) are not to be read as prejudicing any liability of a partner, officer or member under section 76(4) or (6).

#### Commencement Information

- I138** S. 77 in force at 1.2.2007 for specified purposes for W. by [S.I. 2007/204, art. 3\(c\)](#)
- I139** S. 77 in force at 2.4.2007 for specified purposes for W. by [S.I. 2007/204, art. 2\(c\)](#)
- I140** S. 77 in force at 1.7.2007 for specified purposes for E. by [S.I. 2007/1375, art. 2\(b\)](#)
- I141** S. 77 in force at 22.4.2008 for specified purposes for E.S. by [S.I. 2008/1147, art. 3\(c\)](#)
- I142** S. 77 in force at 22.4.2008 for specified purposes by [S.I. 2008/1147, art. 3\(b\)](#)
- I143** S. 77 in force at 13.12.2008 for specified purposes for W. by [S.I. 2008/3171, art. 2\(b\)](#)
- I144** S. 77 in force at 1.8.2012 for specified purposes for N.I. by [S.R. 2012/307, art. 2\(b\)](#)

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## 78 Penalties for offences: transitional modification for England and Wales

- (1) This section contains transitional modifications in respect of penalties for certain offences committed in England and Wales.
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' courts power to impose imprisonment), the references in [<sup>F22</sup>section 21(2)(b)] of this Act to periods of imprisonment of 12 months are to be read as references to periods of imprisonment of 6 months.

<sup>F23</sup>(3) .....

### Textual Amendments

**F22** Words in s. 78(2) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 1 para. 289](#) (with [Sch. 3 Pt. 1](#))

**F23** S. 78(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](#))

### Commencement Information

**I145** S. 78 in force at 1.2.2007 for specified purposes for W. by [S.I. 2007/204](#), [art. 3\(c\)](#)

**I146** S. 78 in force at 2.4.2007 for specified purposes for W. by [S.I. 2007/204](#), [art. 2\(c\)](#)

**I147** S. 78 in force at 22.4.2008 for specified purposes by [S.I. 2008/1147](#), [art. 3\(b\)](#)

**I148** S. 78 in force at 22.4.2008 for specified purposes for E. by [S.I. 2008/1147](#), [art. 3\(c\)](#)

**I149** [S. 78](#) in force at 13.12.2008 for specified purposes for W. by [S.I. 2008/3171](#), [art. 2\(b\)](#)

## General

## 79 Orders and regulations

- (1) Subject to subsection (2), any power to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Any power of the Department of Health, Social Services and Public Safety to make an order or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) Any power to make an order or regulations under this Act—
  - (a) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the authority making the order or regulations considers appropriate.
- (4) No statutory instrument containing—
  - (a) regulations under section 3, 4, 5, 6(8), 7(6) or 8(7),
  - (b) an order under section 13,
  - (c) regulations under section 17 which amend or repeal any provision of an Act or an Act of the Scottish Parliament,
  - (d) an order under section 45(7),

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- (e) an order under section 75 or 80(3) which amends or repeals any provision of an Act or an Act of the Scottish Parliament, or
  - (f) regulations under paragraph 5 or 8 of Schedule 1,
- may be made by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Otherwise, a statutory instrument containing any order or regulations made by the Secretary of State under this Act (other than an order under section 83) is to be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (6) No statutory instrument containing an order under section 80(4) which amends or repeals any provision of an Act or an Act of the Scottish Parliament may be made by the Scottish Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.
  - (7) Otherwise, a statutory instrument containing an order under section 80(4) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.
  - (8) A statutory rule containing regulations made by the Department of Health, Social Services and Public Safety under section 17 which amend or repeal any provision of an Act is to be subject to affirmative resolution within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
  - (9) Otherwise, a statutory rule containing regulations made by the Department of Health, Social Services and Public Safety under Chapter 1 of Part 3 is to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

## **80 Amendments, repeals and revocations**

- (1) Schedule 8 contains minor and consequential amendments.
- (2) Schedule 9 makes provision for the repeal and revocation of enactments (including enactments which are spent).
- (3) The Secretary of State may by order make—
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
 as he considers appropriate for the general purposes, or any particular purposes, of this Act or in consequence of, or for giving full effect to, any provision made by this Act.
- (4) The Scottish Ministers may by order make—
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
 as they consider appropriate for the general purposes, or any particular purposes, of the provisions specified in subsection (5) or in consequence of, or for giving full effect to, any of those provisions.
- (5) Those provisions are—
  - (a) section 36(2),
  - (b) so far as extending to Scotland, section 73 and paragraph 55 of Schedule 8.



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- (6) An order under subsection (4) may not include any provision which would be outside the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (7) An order under subsection (3) may not include any provision which it would be competent for the Scottish Ministers to make in an order under subsection (4).
- (8) An order under subsection (3) or (4) may amend, repeal, revoke or otherwise modify any enactment.

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

- C4** S. 80 modified (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 2 para. 1\(6\)\(f\)](#) (with [Sch. 3 Pt. 1](#))

#### Commencement Information

- I150** S. 80(1) in force at Royal Assent for specified purposes and s. 80(3)-(8) in force at Royal Assent, see s. 83
- I151** S. 80(1) in force at 1.10.2006 for specified purposes except so far as relating to Welsh NHS bodies by [S.I. 2006/2603](#), [art. 5\(b\)](#)
- I152** S. 80(1) in force at 1.10.2006 for specified purposes by [S.I. 2006/2603](#), [art. 4\(5\)\(d\)](#)
- I153** S. 80(1) in force at 29.1.2007 for specified purposes for S. by [S.I. 2007/9](#), [art. 2\(c\)](#)
- I154** S. 80(1) in force at 1.2.2007 for specified purposes for W. by [S.I. 2007/204](#), [art. 4\(b\)](#)
- I155** S. 80(1) in force at 1.8.2008 for specified purposes by [S.I. 2008/1972](#), [art. 2\(b\)](#)
- I156** S. 80(2) in force at 1.10.2006 for specified purposes by [S.I. 2006/2603](#), [art. 4\(5\)\(e\)](#), [Sch.](#)
- I157** S. 80(2) in force at 1.10.2006 for specified purposes except so far as relating to Welsh NHS bodies by [S.I. 2006/2603](#), [art. 5\(d\)](#)
- I158** S. 80(2) in force at 1.2.2007 for specified purposes for W. by [S.I. 2007/204](#), [art. 4\(d\)](#)
- I159** S. 80(2) in force at 1.8.2008 for specified purposes by [S.I. 2008/1972](#), [art. 2\(c\)](#)

## 81 Expenses

There shall be paid out of money provided by Parliament—

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

## 82 Interpretation

(1) In this Act—

<sup>F24</sup> ...

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003 (c. 43);

[<sup>F25</sup>“the 2006 Act” means the National Health Service Act 2006]

“the appropriate national authority” means—

- (a) in relation to England, the Secretary of State, and
- (b) in relation to Wales, the National Assembly for Wales;

“the health service”—

- (a) in relation to England and Wales, has the same meaning as in [<sup>F26</sup>the 2006 Act],

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- (b) in relation to Scotland, has the same meaning as in the National Health Service (Scotland) Act 1978 (c. 29), and
  - (c) in relation to Northern Ireland, means health services within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).
- (2) In this Act “enactment” includes—
- (a) any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), and
  - (b) (in sections 17(5)(f) and 80(8)) any provision made by or under an Act of the Scottish Parliament or Northern Ireland legislation,
- and references to enactments include enactments passed or made after the passing of this Act.
- (3) Subsection (2) applies except where the context otherwise requires.

#### Textual Amendments

- F24** Words in s. 82(1) omitted (1.3.2007) by virtue of [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 1 para. 290\(a\)](#) (with [Sch. 3 Pt. 1](#))
- F25** Words in s. 82(1) inserted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 1 para. 290\(b\)](#) (with [Sch. 3 Pt. 1](#))
- F26** Words in s. 82(1) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), [Sch. 1 para. 290\(c\)](#) (with [Sch. 3 Pt. 1](#))

## 83 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) sections 74 and 75,
  - (b) sections 79, 80(3) to (8), 81 and 82, this section and section 84,
  - (c) paragraphs 36, 53 and 54 of Schedule 8,
  - (d) section 80(1) so far as relating to those paragraphs, and
  - (e) (except for section 36(2)) any other provision of this Act so far as it—
    - (i) confers power to make an order or regulations, or
    - (ii) defines any expression relevant to the exercise of any such power.
- Subsections (2)(b) and (3) to (6) have effect subject to paragraph (e).
- (2) The following provisions come into force on such day as the Scottish Ministers may by order appoint—
- (a) section 36(2), and
  - (b) so far as extending to Scotland—
    - (i) section 73,
    - (ii) paragraph 55 of Schedule 8, and
    - (iii) section 80(1) so far as relating to that paragraph.
- (3) Part 5 comes into force on such day as the Secretary of State, after consulting the National Assembly for Wales, may by order appoint.
- (4) The following provisions come into force in relation to Wales on such day as the National Assembly for Wales may by order appoint—

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- (a) Chapter 1 of Part 1 and sections 76 and 77 so far as relating to offences under that Chapter, and
  - (b) paragraph 24(a) of Schedule 8 and section 80(1) so far as relating to that paragraph.
- (5) The following provisions come into force on such day as the National Assembly for Wales may by order appoint—
- (a) Chapter 1 of Part 3 and sections 76 to 78 so far as relating to the Assembly's functions under that Chapter (see section 24) or to offences committed in relation to those functions,
  - (b) Chapter 1 of Part 4 so far as relating to the Assembly's functions under sections 42 and 42B of the 1977 Act,
  - (c) Chapter 3 of Part 4 and sections 76 to 78 so far as relating to the Assembly's counter fraud functions in relation to the health service in Wales (see section 44) or to offences committed in relation to those functions,
  - (d) section 56, Schedule 3 and paragraph 44 of Schedule 8 so far as relating to Welsh NHS bodies,
  - (e) paragraphs 43 and 62 of Schedule 8,
  - (f) so far as relating to Welsh NHS bodies, any provision of Schedule 9 which repeals or revokes an enactment amending or repealing section 98 of the 1977 Act, and
  - (g) section 80(1) and (2) so far as relating to the provisions in paragraphs (d), (e) and (f).

In this subsection “Welsh NHS body” has the meaning given by paragraph 2 of the Schedule 12B inserted by Schedule 3.

- (6) The following provisions come into force on such day as the Department of Health, Social Services and Public Safety may by order appoint—
- (a) Chapter 1 of Part 3 so far as relating to the functions of the Department of Health, Social Services and Public Safety under that Chapter (see section 24), and
  - (b) sections 76 and 77 so far as relating to offences committed in relation to those functions.
- (7) Otherwise, this Act comes into force on such day as the Secretary of State may by order appoint.
- (8) Different days may be appointed for different provisions, different purposes or different areas.

## **84 Short title and extent**

- (1) This Act may be cited as the Health Act 2006.
- (2) Subject to subsections (3) and (4), this Act extends to England and Wales only.
- (3) The following provisions extend also to Scotland and Northern Ireland—
  - (a) Chapter 1 of Part 3,
  - (b) Part 5, and
  - (c) sections 75, 76, 77, 79 to 83 and this section.

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- (4) Any amendment, repeal or revocation made by this Act has the same extent as the enactment to which it relates.

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