

Status: Point in time view as at 01/10/2014.

Changes to legislation: National Health Service Act 2006 is up to date with all changes known to be in force on or before 19 June 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)

SCHEDULES

[^{F1}SCHEDULE A1

Section 1H(4)

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Textual Amendments

- F1** Sch. A1 inserted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 9(2), 306(4), [Sch. 1](#) (with [Sch. 6 para. 2](#)); [S.I. 2012/1831](#), art. 2(2) (with art. 3(3)); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

^{F1}Status

- 1 (1) The Board is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown.
- (2) The Board's property is not to be regarded as property of, or property held on behalf of, the Crown.

^{F1}Membership

- 2 (1) The Board is to consist of—
 - (a) a chair appointed by the Secretary of State,
 - (b) at least five other members so appointed, and
 - (c) the chief executive and other members appointed in accordance with paragraph 3.
- (2) In this Schedule—
 - (a) references to non-executive members of the Board are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and
 - (b) references to executive members of the Board are references to the other members.
- (3) The number of executive members must be less than the number of non-executive members.

^{F1}The chief executive and other executive members: appointment and status

- 3 (1) The chief executive and the other executive members of the Board are to be appointed by the non-executive members.
- (2) A person may not be appointed as chief executive without the consent of the Secretary of State.
- (3) The chief executive and the other executive members are to be employees of the Board.

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(4) The first chief executive of the Board is to be appointed by the Secretary of State.

^{F1}Non-executive members: tenure

- 4 (1) A person holds and vacates office as a non-executive member of the Board in accordance with that person's terms of appointment.
- (2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.
- (3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds—
- (a) incapacity,
 - (b) misbehaviour, or
 - (c) failure to carry out his or her duties as a non-executive member.
- (4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove that person from office under sub-paragraph (3).
- (5) A person may not be appointed as a non-executive member for a period of more than four years.
- (6) A person who ceases to be a non-executive member is eligible for re-appointment.

^{F1}Suspension of non-executive members

- 5 (1) This paragraph applies where a person is suspended under paragraph 4(4).
- (2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.
- (3) The notice may be—
- (a) delivered in person (in which case the person is taken to receive it when it is delivered), or
 - (b) sent by first class post to the person's last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).
- (4) The initial period of suspension must not exceed six months.
- (5) The Secretary of State may at any time review the suspension.
- (6) The Secretary of State—
- (a) must review the suspension if requested in writing by the person to do so, but
 - (b) need not review the suspension less than three months after the beginning of the initial period of suspension.
- (7) Following a review during a period of suspension, the Secretary of State may—
- (a) revoke the suspension, or
 - (b) suspend the person for another period of not more than six months from the expiry of the current period.
- (8) The Secretary of State must revoke the suspension if the Secretary of State —

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- (a) decides that there are no grounds to remove the person from office under paragraph 4(3), or
 - (b) decides that there are grounds to do so but does not remove the person from office under that provision.
- 6 (1) Where a person is suspended from office as the chair under paragraph 4(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair's functions.
- (2) Appointment as interim chair is for a term not exceeding the shorter of—
 - (a) the period ending with either—
 - (i) the appointment of a new chair, or
 - (ii) the revocation or expiry of the existing chair's suspension, and
 - (b) the remainder of the interim chair's term as a non-executive member.
- (3) A person who ceases to be the interim chair is eligible for re-appointment.

F1 Payment of non-executive members

- 7 (1) The Board must pay to its non-executive members such remuneration as the Secretary of State may determine.
- (2) The Board must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member of the Board.
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the Board must pay compensation to the person of such amount as the Secretary of State may, with the approval of the Treasury, determine.

F1 Staff

- 8 The Board may appoint such persons to be employees of the Board as it considers appropriate.
- 9 (1) Employees of the Board are to be paid such remuneration and allowances as the Board may determine.
- (2) Employees of the Board are to be appointed on such other terms and conditions as the Board may determine.
- (3) The Board may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the Board.
- (4) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of this paragraph, the Board must obtain the approval of the Secretary of State to its policy on the matter.

F1 Committees

- 10 (1) The Board may appoint such committees and sub-committees as it considers appropriate.

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- (2) A committee or sub-committee may consist of or include persons who are not members or employees of the Board.
- (3) The Board may pay such remuneration and allowances as it determines to any person who—
 - (a) is a member of a committee or a sub-committee, but
 - (b) is not an employee of the Board,
 whether or not that person is a non-executive member of the Board.

^{F1}Trust funds and trustees

- 11 (1) The Secretary of State may by order provide for the appointment of trustees for the Board to hold property on trust—
 - (a) for the general or any specific purposes of the Board, or
 - (b) for any purposes relating to the health service in England.
- (2) An order under sub-paragraph (1) may—
 - (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and
 - (d) make provision with respect to the term of office of any trustee and his or her removal from office.
- (3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the Board to the trustees.

^{F1}Procedure

- 12 (1) The Board may regulate its own procedure.
- (2) The validity of any act of the Board is not affected by any vacancy among the members or by any defect in the appointment of any member.

^{F1}Exercise of functions

- 13 The Board may arrange for the exercise of any of its functions on its behalf by—
 - (a) any non-executive member,
 - (b) any employee (including any executive member), or
 - (c) a committee or sub-committee.

^{F1}Provision of information to Secretary of State

- 14 (1) The Secretary of State may require the Board to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

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- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

^{F1}Accounts

- 15 (1) The Board must keep proper accounts and proper records in relation to the accounts.
- (2) The Secretary of State may, with the approval of the Treasury, give directions to the Board as to—
 - (a) the content and form of its accounts, and
 - (b) the methods and principles to be applied in the preparation of its accounts.
- (3) In sub-paragraph (2) the reference to accounts includes a reference to the Board's consolidated annual accounts prepared under paragraph 16 and any interim accounts prepared by virtue of paragraph 17.
- (4) The chief executive of the Board is to be its accounting officer.

^{F1}Annual accounts

- 16 (1) The Board must prepare consolidated annual accounts in respect of each financial year.
- (2) The consolidated annual accounts must contain—
 - (a) the Board's annual accounts, and
 - (b) a consolidation of the Board's annual accounts and the annual accounts of each clinical commissioning group.
- (3) The Board must send copies of the consolidated annual accounts to—
 - (a) the Secretary of State, and
 - (b) the Comptroller and Auditor General,within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.
- (4) The Comptroller and Auditor General must—
 - (a) examine, certify and report on the consolidated annual accounts, and
 - (b) lay copies of the accounts and the report on them before Parliament.
- (5) In this paragraph, "financial year" includes the period which begins with the day on which the Board is established and ends on the following 31 March.

^{F1}Interim Accounts

- 17 (1) The Secretary of State may, with the approval of the Treasury, direct the Board to prepare accounts in respect of such period or periods as may be specified in the direction ("interim accounts").
- (2) The interim accounts in respect of any period must contain—
 - (a) the Board's accounts in respect of that period, and
 - (b) a consolidation of the Board's accounts in respect of that period and any accounts of clinical commissioning groups in respect of that period which are prepared by virtue of paragraph 17(3) of Schedule 1A.

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- (3) The Board must send copies of any interim accounts to—
- (a) the Secretary of State, and
 - (b) if the Secretary of State so directs, the Comptroller and Auditor General, within such period as the Secretary of State may direct.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on any interim accounts sent by virtue of subparagraph (3)(b),
 - (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and
 - (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

^{F1}Seal and evidence

- 18 (1) The application of the Board’s seal must be authenticated by the signature of any member of the Board or any other person who has been authorised (generally or specially) for that purpose.
- (2) A document purporting to be duly executed under the Board’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.]

SCHEDULE 1

Section 5

FURTHER PROVISION ABOUT THE SECRETARY OF STATE AND SERVICES UNDER THIS ACT

Medical inspection of pupils

- 1 [F2A local authority] must provide for the medical inspection at appropriate intervals of pupils in attendance at schools maintained by [F3the local authority] and for the medical treatment of such pupils.

Textual Amendments

- F2** Words in Sch. 1 para. 1 substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(3\)\(a\), 306\(4\); S.I. 2013/160, art. 2\(2\) \(with arts. 7-9\)](#)
- F3** Words in Sch. 1 para. 1 substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(3\)\(b\), 306\(4\); S.I. 2013/160, art. 2\(2\) \(with arts. 7-9\)](#)

- 2 (1) [F4A local authority] may ^{F5}... provide for any medical inspection or treatment of—
- (a) senior pupils in attendance at any educational establishment, other than a school, which is maintained by the authority and at which full-time further education is provided, or
 - (b) any child or young person who, in pursuance of section 19 or 319 of the Education Act 1996 (c. 56), is receiving primary or secondary education otherwise than at a school.

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- (2) [^{F6}A local authority] may, by arrangement with the proprietor of any educational establishment [^{F7}in its area] which is not maintained by [^{F8}the local authority], provide for any medical inspection or treatment of junior or senior pupils in attendance at the establishment.

^{F9}(3)

Textual Amendments

- F4** Words in Sch. 1 para. 2(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(4\)\(a\)\(i\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F5** Words in Sch. 1 para. 2(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 17\(4\)\(a\)\(ii\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F6** Words in Sch. 1 para. 2(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(4\)\(b\)\(i\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F7** Words in Sch. 1 para. 2(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(4\)\(b\)\(ii\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F8** Words in Sch. 1 para. 2(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(4\)\(b\)\(iii\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F9** Sch. 1 para. 2(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 17\(4\)\(c\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

- 3 An arrangement under paragraph [^{F10}2(2)] may provide for payments by the proprietor in question.

Textual Amendments

- F10** Word in Sch. 1 para. 3 substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\), s. 170\(3\)\(4\), Sch. 14 para. 6; S.I. 2009/462, art. 5](#)

- 4 [^{F11}A local authority may not provide for any medical inspection or treatment] under paragraph 2(1)(a) unless the governing body of the educational establishment agrees to [^{F12}the inspection or (as the case may be) treatment].

Textual Amendments

- F11** Words in Sch. 1 para. 4 substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(5\)\(a\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F12** Words in Sch. 1 para. 4 substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(5\)\(b\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

- 5 (1) Sub-paragraph (2) applies to—
- ^{F13}(a)
- (b) each governing body of a foundation, voluntary or foundation special school, in respect of the school.
- (2) The ^{F14}... governing body must make available to [^{F15}a local authority] such accommodation as is appropriate for the purpose of assisting [^{F16}it] to make provision under paragraph 1 in relation to the pupils in attendance at the schools or school in question.

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Textual Amendments

- F13** Sch. 1 para. 5(1)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(6)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F14** Words in Sch. 1 para. 5(2) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(6)(b)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F15** Words in Sch. 1 para. 5(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(6)(b)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F16** Word in Sch. 1 para. 5(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(6)(b)(iii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

6 In paragraphs 1 to 5 any expression to which a meaning is given for the purposes of the Education Act 1996 (c. 56) or the School Standards and Framework Act 1998 (c. 31) has that meaning.

7 Any charge made under regulations under this Act in respect of the supply of drugs, medicines or appliances must be disregarded for the purposes of paragraphs 1 and 2.

[^{F17}Weighing and measuring of children

Textual Amendments

- F17** Sch. 1 paras. 7A, 7B and cross-heading inserted (21.7.2008 for specified purposes, 1.10.2008 in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 143(1)**, 170 (with s. 143(2)); S.I. 2008/2497, art. 6

- 7A (1) [^{F18}A local authority] may ^{F19} ... provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.
- (2) [^{F18}A local authority] may, by arrangement with the proprietor of any school [^{F20}in its area] which is not maintained by [^{F21}the local authority], provide for the weighing and measuring of junior pupils in attendance at that school.
- (3) [^{F18}A local authority] may, by arrangement with any person who is registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect of early years provision, provide for the weighing and measuring of young children for whom childcare is provided by that person.
- (4) In sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of Part 3 of the Childcare Act 2006 has the same meaning as in that Part.

Textual Amendments

- F18** Words in Sch. 1 para. 7A substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(7)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F19** Words in Sch. 1 para. 7A(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(7)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F20** Words in Sch. 1 para. 7A(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(7)(c)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F21 Words in Sch. 1 para. 7A(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(7\)\(c\)\(ii\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

7B (1) The Secretary of State may by regulations—

- (a) authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,
- (b) require any weighing and measuring provided for [^{F22}by a local authority] under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,
- (c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and
- (d) make other provision regulating the processing of information resulting from any weighing or measuring provided for [^{F23}by a local authority] under paragraph 7A [^{F24}and of any other prescribed information relating to the children concerned].

(2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring [^{F25}or in relation to information prescribed under sub-paragraph (1)] to have regard to any guidance given from time to time by the Secretary of State.

(3) In sub-paragraph (1)(d), “ processing ”, in relation to information, has the same meaning as in the Data Protection Act 1998.

(4) Regulations under this paragraph cannot include provision by virtue of section 272(8) (a) amending or repealing an Act.]

Textual Amendments

F22 Words in Sch. 1 para. 7B(1)(b) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(8\)\(a\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F23 Words in Sch. 1 para. 7B(1)(d) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(8\)\(b\)\(i\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F24 Words in Sch. 1 para. 7B(1)(d) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(8\)\(b\)\(ii\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F25 Words in Sch. 1 para. 7B(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(8\)\(c\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[^{F26}Supply of blood and other human tissues

Textual Amendments

F26 Sch. 1 para. 7C and cross-heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 17\(9\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

7C The Secretary of State must for the purposes of the health service make arrangements for—

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- (a) collecting, screening, analysing, processing and supplying blood or other tissues,
- (b) preparing blood components and reagents, and
- (c) facilitating tissue and organ transplantation.]

Contraceptive services

- 8 The Secretary of State must arrange, to such extent as he considers necessary to meet all reasonable requirements, for—
- (a) the giving of advice on contraception,
 - (b) the medical examination of persons seeking advice on contraception,
 - (c) the treatment of such persons, and
 - (d) the supply of contraceptive substances and appliances.

Provision of vehicles for disabled persons

- 9 [F27(1)] [F28A clinical commissioning group may make arrangements for the provision of] vehicles (including wheelchairs) for [F29persons for whom the group has responsibility and who appear to it to have a physical impairment] which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

[F30(2) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of sub-paragraph (1) as they apply for the purposes of that section.]

Textual Amendments

- F27** Sch. 1 para. 9(1): Sch. 1 para. 9 renumbered as Sch. 1 para. 9(1) (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(10)(a)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F28** Words in Sch. 1 para. 9(1) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(10)(b)(i)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F29** Words in Sch. 1 para. 9(1) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(10)(b)(ii)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F30** Sch. 1 para. 9(2) inserted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(10)(c)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- 10 (1) Sub-paragraphs (2) and (3) apply in respect of—
- (a) a vehicle provided [F31in pursuance of arrangements made] under paragraph 9, and
 - (b) a vehicle belonging to a person mentioned in that paragraph.
- (2) [F32The clinical commissioning group may make arrangements for] —
- (a) [F33the adaptation of] the vehicle to make it suitable for the circumstances of the person in question,
 - (b) [F34the maintenance and repair of] the vehicle,

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- (c) [^{F35}the taking out of] insurance policies relating to the vehicle and [^{F36}the payment of] any duty with which the vehicle is chargeable under the Vehicle Excise and Registration Act 1994 (c. 22),
 - (d) [^{F37}the provision of] a structure in which the vehicle may be kept, and [^{F37}the provision of] all material and [^{F38}the execution of] all works necessary to erect the structure.
- (3) [^{F39}A clinical commissioning group] may make payments by way of grant towards costs incurred by a person mentioned in paragraph 9 in respect of any matter mentioned in sub-paragraph (4) in relation to the vehicle.
- (4) The matters are—
- (a) the taking of action referred to in sub-paragraph (2),
 - (b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel, and
 - (c) the taking of instruction in the driving of the vehicle.
- (5) The powers under sub-paragraph (2) and sub-paragraph (3) may be exercised on such terms and subject to such conditions as [^{F40}the clinical commissioning group] may determine.

Textual Amendments

- F31** Words in Sch. 1 para. 10(1)(a) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(a\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F32** Words in Sch. 1 para. 10(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(b\)\(i\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F33** Words in Sch. 1 para. 10(2)(a) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(b\)\(ii\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F34** Words in Sch. 1 para. 10(2)(b) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(b\)\(iii\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F35** Words in Sch. 1 para. 10(2)(c) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(b\)\(iv\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F36** Words in Sch. 1 para. 10(2)(c) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(b\)\(v\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F37** Words in Sch. 1 para. 10(2)(d) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(b\)\(vi\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F38** Words in Sch. 1 para. 10(2)(d) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(b\)\(vii\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F39** Words in Sch. 1 para. 10(3) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(c\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F40** Words in Sch. 1 para. 10(5) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 17\(11\)\(d\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

- 11 Regulations may provide for any incidental or supplementary matter for which it appears to the Secretary of State necessary or expedient to provide in connection with—
- (a) the taking of action under paragraph 10(2), or
 - (b) the making of any payment under paragraph 10(3).

Status: Point in time view as at 01/10/2014.

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Provision of a microbiological service by the Secretary of State

- 12 (1) The Secretary of State may—
- ^{F41}(a)
- (b) carry on such ^{F42}... activities as in his opinion can conveniently be carried on in conjunction with [^{F43}a microbiological service provided under section 2A].
- ^{F44}(2)
- (3) Charges may be made for services or materials supplied.
- (4) A power under this paragraph may be exercised both for the purposes of the health service and for other purposes.

Textual Amendments

- F41** Sch. 1 para. 12(1)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(12)(a)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F42** Word in Sch. 1 para. 12(1)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(12)(a)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F43** Words in Sch. 1 para. 12(1)(b) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(12)(a)(iii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F44** Sch. 1 para. 12(2) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(12)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[^{F45}Powers in relation to research etc.]

Textual Amendments

- F45** Sch. 1 para. 13 and cross-heading substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 17(13)**, 306(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- ^{F45}13 (1) The Secretary of State, the Board or a clinical commissioning group may conduct, commission or assist the conduct of research into—
- (a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and
- (b) any such other matters connected with any service provided under this Act as the Secretary of State, the Board or the clinical commissioning group (as the case may be) considers appropriate.
- (2) A local authority may conduct, commission or assist the conduct of research for any purpose connected with the exercise of its functions in relation to the health service.
- (3) The Secretary of State, the Board, a clinical commissioning group or a local authority may for any purpose connected with the exercise of its functions in relation to the health service—
- (a) obtain and analyse data or other information;
- (b) obtain advice from persons with appropriate professional expertise.

Status: Point in time view as at 01/10/2014.

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- (4) The power under sub-paragraph (1) or (2) to assist any person to conduct research includes power to do so by providing financial assistance or making the services of any person or other resources available.
- (5) In this paragraph, “local authority” has the same meaning as in section 2B.]

[^{F46}SCHEDULE 1A

Sections 14B(6), 14D(2) and 14I(4)

CLINICAL COMMISSIONING GROUPS

Textual Amendments

F46 Sch. 1A inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 25(2), 306(1)(d)(4), [Sch. 2](#) (with [Sch. 6 paras. 7-13](#)); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

PART 1

CONSTITUTION OF CLINICAL COMMISSIONING GROUPS

General

- 1 A clinical commissioning group must have a constitution.
- 2 (1) The constitution must specify—
 - (a) the name of the clinical commissioning group,
 - (b) the members of the group, and
 - (c) the area of the group.
- (2) The name of the group must comply with such requirements as may be prescribed.
- 3 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of its functions (including its functions in determining the terms and conditions of its employees).
- (2) The arrangements may include provision—
 - (a) for the appointment of committees or sub-committees of the clinical commissioning group, and
 - (b) for any such committees to consist of or include persons other than members or employees of the clinical commissioning group.
- (3) The arrangements may include provision for any functions of the clinical commissioning group to be exercised on its behalf by—
 - (a) any of its members or employees,
 - (b) its governing body, or
 - (c) a committee or sub-committee of the group.

Status: Point in time view as at 01/10/2014.

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Modifications etc. (not altering text)

- C1 Sch. 1A para. 3(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(p\)](#); S.I. 2012/1831, art. 2(2)
- C2 Sch. 1A para. 3(3) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(p\)](#); S.I. 2012/1831, art. 2(2)

- 4 (1) The constitution must specify the procedure to be followed by the clinical commissioning group in making decisions.
- (2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the group and the manner in which they are made.
- 5 The constitution must specify the arrangements made by the clinical commissioning group for discharging its duties under section 14O(1) to (4).
- 6 The provision made by virtue of paragraphs 3 and 4 must secure that there is effective participation by each member of the clinical commissioning group in the exercise of the group's functions.

Modifications etc. (not altering text)

- C3 Sch. 1A para. 6 modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(p\)](#); S.I. 2012/1831, art. 2(2)

Governing bodies of clinical commissioning groups

- 7 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of the functions of its governing body.
- (2) The arrangements—
- (a) must include provision for the appointment of the audit committee and remuneration committee of the governing body, and
 - (b) may include provision for the appointment of other committees or sub-committees of the governing body.
- (3) Arrangements under sub-paragraph (2)(a) may include provision for the audit committee to include individuals who are not members of the governing body.
- (4) Arrangements under sub-paragraph (2)(b) may include provision for a committee or sub-committee to include individuals who are not members of the governing body but are—
- (a) members of the clinical commissioning group, or
 - (b) individuals of a description specified in the constitution.
- (5) The arrangements may include provision for any functions of the governing body to be exercised on its behalf by—
- (a) any committee or sub-committee of the governing body,
 - (b) a member of the governing body,
 - (c) a member of the clinical commissioning group who is an individual (but is not a member of the governing body), or
 - (d) an individual of a description specified in the constitution.

Status: Point in time view as at 01/10/2014.

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- (6) In this paragraph, references to the functions of the governing body of a clinical commissioning group include references to the functions of the clinical commissioning group which are exercisable by the governing body under arrangements specified in the constitution by virtue of paragraph 3(3).
- 8 (1) The constitution must specify the procedure to be followed by the governing body in making decisions.
- (2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the governing body and the manner in which they are made.
- (3) The provision made under sub-paragraph (2) must include provision for meetings of governing bodies to be open to the public, except where the clinical commissioning group considers that it would not be in the public interest to permit members of the public to attend a meeting or part of a meeting.

Supplemental

- 9 In addition to the provision authorised or required to be included under this Part of this Schedule, the constitution may make further provision.

PART 2

FURTHER PROVISION ABOUT CLINICAL COMMISSIONING GROUPS

Status

- 10 (1) A clinical commissioning group is a body corporate.
- (2) A clinical commissioning group is not to be regarded as a servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.
- (3) The property of a clinical commissioning group is not to be regarded as property of, or property held on behalf of, the Crown.

Staff

- 11 (1) A clinical commissioning group may appoint such persons to be employees of the group as it considers appropriate.
- (2) A clinical commissioning group must—
- (a) pay its employees remuneration and travelling or other allowances in accordance with determinations made by its governing body under section 14L(3)(a), and
 - (b) employ them on such other terms and conditions as it may determine.
- (3) A clinical commissioning group may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.
- (4) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.

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- (5) The arrangements that may be made under sub-paragraph (3) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any of the clinical commissioning group's employees who suffer loss of office or employment or loss or diminution of emoluments.

Accountable officer

- 12 (1) A clinical commissioning group must have an accountable officer.
- (2) The accountable officer is to be appointed by the Board.
- (3) The Board may appoint a person to be the accountable officer for more than one clinical commissioning group (and in the following provisions of this paragraph such an appointment is referred to as a “joint appointment”).
- (4) The accountable officer may be—
- (a) an individual who is a member of the clinical commissioning group or of any body that is a member of the group or, in the case of a joint appointment, an individual who is a member of any of the groups in question or of any body that is a member of any of those groups, or
 - (b) an employee of the group or of any member of the group or, in the case of a joint appointment, an employee of any of the groups in question or of any member of those groups.
- (5) If the accountable officer is not an employee of the clinical commissioning group or, in the case of a joint appointment, of any of the groups in question, the group or any of the groups may pay remuneration and travelling or other allowances to the accountable officer in accordance with determinations made by its governing body under section 14L(3)(a).
- (6) A clinical commissioning group may, for or in respect of its accountable officer, make arrangements for providing pensions, allowances or gratuities.
- (7) The arrangements that may be made under sub-paragraph (6) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of the accountable officer where the officer suffers loss of office or loss or diminution of emoluments.
- (8) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (6) include arrangements for the accountable officer to be a member of the scheme.
- (9) The accountable officer is responsible for ensuring that the clinical commissioning group or, in the case of a joint appointment, each of the groups in question—
- (a) complies with its obligations under—
 - (i) sections 14Q and 14R,
 - (ii) sections 223H to 223J,
 - (iii) paragraphs 17 to 19 of this Schedule, and
 - (iv) any other provision of this Act specified in a document published by the Board for the purposes of this sub-paragraph, and
 - (b) exercises its functions in a way which provides good value for money.

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Modifications etc. (not altering text)

- C4 Sch. 1A para. 12(9)(b) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 6 para. 11\(2\)\(p\)](#); [S.I. 2012/1831, art. 2\(2\)](#)

Remuneration etc for members of governing bodies

- 13 (1) A clinical commissioning group may pay members of its governing body such remuneration and travelling or other allowances as it considers appropriate.
- (2) A clinical commissioning group may, for or in respect of such members of its governing body as it may determine, make arrangements for providing pensions, allowances or gratuities.
- (3) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.
- (4) The arrangements that may be made under sub-paragraph (2) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any members of the governing body who suffer loss or diminution of emoluments.
- (5) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (2) include arrangements for members of the governing body to be members of the scheme.
- (6) Sub-paragraph (2) does not apply to members of the governing body who are—
- (a) members or employees of the clinical commissioning group, or
 - (b) members or employees of a body that is a member of the clinical commissioning group.

Additional powers in respect of payment of allowances

- 14 A clinical commissioning group may pay such travelling or other allowances as it considers appropriate to any of the following—
- (a) members of the clinical commissioning group who are individuals;
 - (b) individuals authorised to act on behalf of a member of the clinical commissioning group in dealings between the member and the group;
 - (c) members of any committee or sub-committee of the clinical commissioning group or its governing body.

Trust funds and trustees

- 15 (1) The Secretary of State may by order provide for the appointment of trustees for a clinical commissioning group to hold property on trust—
- (a) for the general or any specific purposes of the group, or
 - (b) for any purposes relating to the health service in England.
- (2) An order under sub-paragraph (1) may—
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

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- (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and
 - (d) make provision with respect to the term of office of any trustee and his or her removal from office.
- (3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the clinical commissioning group to the trustees.

Externally financed development agreements

- 16 (1) The powers of a clinical commissioning group include power to enter into externally financed development agreements.
- (2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.
- (3) The Secretary of State may give a certificate under this paragraph if—
- (a) in the Secretary of State's opinion the purpose or main purpose of the agreement is the provision of services or facilities in connection with the discharge by a clinical commissioning group of any of its functions, and
 - (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
- (4) If a clinical commissioning group enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.
- (5) In sub-paragraph (3)(b) “another party” means any party to the agreement other than the clinical commissioning group.
- (6) The fact that an agreement made by a clinical commissioning group has not been certified under this paragraph does not affect its validity.

Accounts and audits

- 17 (1) A clinical commissioning group must keep proper accounts and proper records in relation to the accounts.
- (2) A clinical commissioning group must prepare annual accounts in respect of each financial year.
- (3) The Board may, with the approval of the Secretary of State, direct a clinical commissioning group to prepare accounts in respect of such period or periods as may be specified in the direction.
- (4) The Board may, with the approval of the Secretary of State, give directions to a clinical commissioning group as to—
- (a) the methods and principles according to which its annual or other accounts must be prepared, and

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- (b) the form and content of such accounts.
- (5) The annual accounts and, if the Board so directs, accounts prepared by virtue of sub-paragraph (3) must be audited in accordance with the Audit Commission Act 1998 by an auditor or auditors appointed in accordance with arrangements made by the Board for the purposes of this paragraph.
- (6) The Comptroller and Auditor General may examine—
 - (a) the annual accounts and any records relating to them, and
 - (b) any report on them by the auditor or auditors.
- (7) A clinical commissioning group must send its audited annual accounts, and any audited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.
- (8) The Board may direct a clinical commissioning group to send its unaudited annual accounts, and any unaudited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.
- (9) For the purposes of this paragraph “financial year” includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

Provision of financial information to Board

- 18 (1) The Board may direct a clinical commissioning group to supply it with such information relating to its accounts or to its income or expenditure, or its use of resources, as may be specified in the direction.
- (2) The power conferred by sub-paragraph (1) includes power to direct a clinical commissioning group to supply the Board with—
 - (a) estimates of its future income or expenditure or its future use of resources;
 - (b) any information which the Board considers is necessary to enable it to verify any other information supplied to it under sub-paragraph (1).
- (3) A clinical commissioning group must supply the Board with any information specified in a direction under sub-paragraph (1) within such period as may be specified in the direction.
- (4) In this paragraph, a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

Provision of information required by the Secretary of State

- 19 (1) The Secretary of State may require each clinical commissioning group to provide the Board with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.
- (3) The powers conferred by this paragraph must be exercised in the same way in relation to each clinical commissioning group.

Status: Point in time view as at 01/10/2014.

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- (4) The Board must give any information obtained by it under sub-paragraph (1) to the Secretary of State, in such form, and at such time or within such period, as the Secretary of State may require.

Incidental powers

- 20 The power conferred on a clinical commissioning group by section 2 includes, in particular, power to—
- (a) enter into agreements,
 - (b) acquire and dispose of property, and
 - (c) accept gifts (including property to be held on trust for the purposes of the clinical commissioning group).

Seal and evidence

- 21 (1) The application of a clinical commissioning group's seal must be authenticated by the signature of any person who has been authorised (generally or specially) for that purpose.
- (2) Any instrument which, if executed by an individual, would not need to be under seal may be executed on behalf of a clinical commissioning group by any person who has been authorised (generally or specially) for that purpose.
- (3) A document purporting to be duly executed under a clinical commissioning group's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proven, taken to be so executed or signed.

PART 3

TRANSFER SCHEMES

- 22 The things that may be transferred under a property transfer scheme or a staff transfer scheme under section 14I include—
- (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (c) criminal liabilities.
- 23 A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
 - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
 - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee.

Status: Point in time view as at 01/10/2014.

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- 24 A property transfer scheme may make provision for the shared ownership or use of property.
- 25 A staff transfer scheme may make provision which is the same or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
- 26 A property transfer scheme or a staff transfer scheme may provide—
- (a) for the scheme to be modified by agreement after it comes into effect, and
 - (b) for any such modifications to have effect from the date when the original scheme comes into effect.]

F47 SCHEDULE 2

Section 13

Textual Amendments

F47 Sch. 2 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 20](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F48 SCHEDULE 3

Section 18

Textual Amendments

F48 Sch. 3 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 21](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 4

Section 25

NHS TRUSTS ESTABLISHED UNDER SECTION 25

PART 1

CONSTITUTION, ESTABLISHMENT, ETC

Status

- 1 Each NHS trust is a body corporate.
- 2 (1) An NHS trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

Status: Point in time view as at 01/10/2014.

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- (2) An NHS trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Board of directors

- 3 (1) Each NHS trust has a board of directors consisting of—
- (a) a chairman appointed by the Secretary of State, and
 - (b) executive and non-executive directors.
- (2) Sub-paragraph (1)(b) is subject to paragraph 7(2).
- (3) An executive director is a director who is an employee of the NHS trust, and a non-executive director is a director who is not an employee of the NHS trust.
- (4) Sub-paragraph (3) is subject to any provision made by regulations under paragraph 4(1)(d).

Regulations

- 4 (1) The Secretary of State may by regulations make provision with respect to—
- (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they cease to hold, or may be removed from, office or may be suspended from performing the functions of the office),
 - (b) the persons by whom the directors and any of the officers must be appointed and the manner of their appointment,
 - (c) the maximum and minimum numbers of the directors,
 - (d) the circumstances in which a person who is not an employee of the NHS trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director,
 - (e) the proceedings of the NHS trust (including the validation of proceedings in the event of a vacancy or defect in appointment), and
 - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the NHS trust (whether or not consisting of or including any members of the board).
- (2) Regulations under sub-paragraph (1) may, in particular, make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

Provision to be made by first NHS trust order

- 5 (1) The first NHS trust order made in relation to any NHS trust must specify—
- (a) the name of the NHS trust,
 - (b) the functions of the NHS trust,
 - (c) the number of executive directors and non-executive directors,
 - (d) where the NHS trust has a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order,

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- (e) the operational date of the NHS trust, and
 - (f) if a scheme is to be made under paragraph 8, the ^{F49}... Special Health Authority or Local Health Board which is to make the scheme.
- (2) The functions which may be specified in an NHS trust order include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.
- (3) For the purposes of sub-paragraph (1)(d), an NHS trust has a significant teaching commitment in the following cases—
- (a) if the NHS trust is established to provide services at a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment, and
 - (b) in any other case, if the Secretary of State so provides in the order.
- (4) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—
- (a) is employed by the university in question, and
 - (b) would also, apart from this sub-paragraph, be regarded as employed by the NHS trust,
- his employment by the NHS trust must be disregarded in determining whether, if appointed, he will be a non-executive director of the NHS trust.
- (5) The operational date of the NHS trust is the date on which it will begin to undertake the whole of the functions conferred on it.
- (6) An NHS trust order must specify the accounting date of the NHS trust.

Textual Amendments

F49 Words in Sch. 4 para. 5(1)(f) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 22\(2\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Temporary availability of staff etc.

- 6 (1) An NHS trust order may require a ^{F50}... Special Health Authority ^{F51}... or Local Health Board to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the NHS trust and the transfer of premises or other facilities to the NHS trust.
- (2) An NHS trust order making provision under this paragraph may make provision with respect to the time when the functions of the ^{F52}... Special Health Authority ^{F53}... or Local Health Board under the provision are to come to an end.

Textual Amendments

F50 Words in Sch. 4 para. 6(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 22\(3\)\(a\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F51 Words in Sch. 4 para. 6(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 22\(3\)\(a\)\(ii\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F52 Words in Sch. 4 para. 6(2) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 22\(3\)\(b\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F53 Words in Sch. 4 para. 6(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 22(3)(b)(ii); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Establishment of NHS trust prior to operational date

- 7 (1) An NHS trust order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust and, during the period between that earlier date and the operational date, the NHS trust has such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.
- (2) If an NHS trust order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust must be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.
- (3) If an NHS trust order makes the provision referred to in sub-paragraph (1), the order may require a^{F54} ... Special Health Authority or Local Health Board to discharge such liabilities of the NHS trust as—
- (a) may be incurred during the period referred to in that sub-paragraph, and
 - (b) are of a description specified in the order.

Textual Amendments

F54 Words in Sch. 4 para. 7(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 22(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Transfer of staff to NHS trusts

- 8 (1) This paragraph applies to any person who, immediately before an NHS trust's operational date—
- (a) is employed by a Special Health Authority^{F55} ... or Local Health Board to work solely at, or for the purposes of, a hospital or other establishment or facility which will become the responsibility of the NHS trust, or
 - (b) is employed by a Special Health Authority^{F55} ... or Local Health Board to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this paragraph by a scheme made by the Special Health Authority^{F55} ... or Local Health Board specified as mentioned in paragraph 5(1)(f).
- (2) Sub-paragraph (1) is subject to sub-paragraph (6).
- (3) A scheme under this paragraph does not have effect unless approved by the Secretary of State.
- (4) Subject to sub-paragraphs (9) to (11), the contract of employment between a person to whom this paragraph applies and the Special Health Authority^{F56} ... or Local Health Board by whom he is employed has effect from the operational date as if originally made between him and the NHS trust.
- (5) In particular—

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- (a) all the rights, powers, duties and liabilities of the Special Health Authority^{F57} ... or Local Health Board under or in connection with a contract to which sub-paragraph (4) applies are by virtue of this paragraph transferred to the NHS trust on its operational date, and
 - (b) anything done before that date by or in relation to the Special Health Authority^{F57} ... or Local Health Board in respect of that contract or the employee is deemed from that date to have been done by or in relation to the NHS trust.
- (6) In any case where—
- (a) an NHS trust order provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust,
 - (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the NHS trust to a person who at that time is employed by a Special Health Authority^{F58} ... or Local Health Board to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which will become the responsibility of the NHS trust, and
 - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,
- sub-paragraphs (4) and (5) have effect in relation to that person's contract of employment as if he were a person to whom this paragraph applies and as if any reference in those sub-paragraphs to the operational date of the NHS trust were a reference to the date on which he takes up employment with the NHS trust.
- (7) Sub-paragraphs (4) and (5) do not affect any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only of the change in employer effected by this paragraph.
- (8) A scheme under this paragraph may designate a person either individually or as a member of a class or description of employees.
- (9) In the case of a person who falls within sub-paragraph (1)(b), a scheme under this paragraph may provide that, with effect from the NHS trust's operational date, his contract of employment (his “original contract”) must be treated, in accordance with the scheme, as divided so as to constitute—
- (a) a contract of employment with the NHS trust, and
 - (b) a contract of employment with the Special Health Authority^{F59} ... or Local Health Board by whom he was employed before that date (the “transferor authority”).
- (10) Where a scheme makes provision as mentioned in sub-paragraph (9)—
- (a) the scheme must secure that the benefits to the employee under the two contracts referred to in that sub-paragraph, when taken together, are not less favourable than the benefits under his original contract,
 - (b) this paragraph applies in relation to the contract referred to in sub-paragraph (9)(a) as if it were a contract transferred under this paragraph from the transferor authority to the NHS trust, and
 - (c) so far as necessary to preserve any rights and obligations, the contract referred to in sub-paragraph (9)(b) must be regarded as a continuation of the employee's original contract.

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- (11) Where, as a result of the provisions of this paragraph, by virtue of his employment during any period after the operational date of the NHS trust—
- (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
 - (b) he also has statutory rights against the trust under Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy payments),
- any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) must be taken as satisfying his entitlement to benefits under that Part of that Act.

Textual Amendments

- F55** Words in Sch. 4 para. 8(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(5\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F56** Words in Sch. 4 para. 8(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(5\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F57** Words in Sch. 4 para. 8(5) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(5\)\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F58** Words in Sch. 4 para. 8(6)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(5\)\(d\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F59** Words in Sch. 4 para. 8(9)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(5\)\(e\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Transfer of property and liabilities to NHS trusts

- 9 (1) The Secretary of State may by order transfer, or provide for the transfer of, any of the property and liabilities of ^{F60} ... ^{F61} ... a Special Health Authority, a Local Health Board or the Secretary of State, to an NHS trust, with effect from any date as may be specified in the order.
- (2) An order under this paragraph may create or impose such new rights or liabilities in respect of what is transferred or what is retained as appear to the Secretary of State to be necessary or expedient.
- (3) Nothing in this paragraph affects the power of the Secretary of State or any power of a ^{F62} ... ^{F63} ... Special Health Authority or Local Health Board to transfer property or liabilities to an NHS trust otherwise than under sub-paragraph (1).
- (4) Stamp duty is not chargeable in respect of any transfer to an NHS trust effected by or by virtue of an order under this paragraph.
- (5) Where an order under this paragraph provides for the transfer—
- (a) of land held on lease from a third party, or
 - (b) of any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer is binding on the third party notwithstanding that, apart from this sub-paragraph, it would have required his consent or concurrence.
- (6) “Third party” means a person other than the Secretary of State, ^{F64} ... ^{F65} ... a Special Health Authority or a Local Health Board.
- (7) Any property and liabilities which—

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- (a) belong to, or are used or managed by, a ^{F66}... Special Health Authority or Local Health Board ^{F67}..., and
- (b) will be transferred to an NHS trust by or by virtue of an order under this paragraph,
- must be identified by agreement between the ^{F68}... ^{F69}... Special Health Authority or Local Health Board and the NHS trust or, in default of agreement, by direction of the Secretary of State.
- (8) Where, for the purpose of a transfer pursuant to an order under this paragraph, it becomes necessary to apportion any property or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose.
- (9) Where any such property or rights fall within sub-paragraph (5), the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (10) In the case of any transfer made by or pursuant to an order under this paragraph, a certificate issued by the Secretary of State that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order is conclusive evidence of that fact for all purposes.
- (11) An order under this paragraph may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (12) Sub-paragraph (11) does not affect section 272(8).

Textual Amendments

- F60** Words in Sch. 4 para. 9(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(a\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F61** Words in Sch. 4 para. 9(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(a\)\(ii\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F62** Words in Sch. 4 para. 9(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(b\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F63** Words in Sch. 4 para. 9(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(b\)\(ii\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F64** Words in Sch. 4 para. 9(6) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(c\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F65** Words in Sch. 4 para. 9(6) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(c\)\(ii\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F66** Words in Sch. 4 para. 9(7)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(d\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F67** Words in Sch. 4 para. 9(7)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(d\)\(ii\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F68** Words in Sch. 4 para. 9(7) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(d\)\(iii\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F69** Words in Sch. 4 para. 9(7) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 22\(6\)\(d\)\(iii\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Trust funds and trustees

- 10 (1) The Secretary of State may by order provide for the appointment of trustees for an NHS trust to hold property on trust—
- (a) for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the NHS trust), or
 - (b) for any purposes relating to the health service.
- (2) An order under sub-paragraph (1) may—
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate, and
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where under sub-paragraph (1) trustees have been appointed for an NHS trust, the Secretary of State may by order provide for the transfer of any trust property from the NHS trust to the trustees.

Pay and allowances

- 11 (1) An NHS trust must pay—
- (a) to the chairman and any non-executive director of the NHS trust remuneration of an amount determined by the Secretary of State, not exceeding such amount as may be approved by the Treasury,
 - (b) to the chairman and any non-executive director of the NHS trust such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury,
 - (c) to any member of a committee or sub-committee of the NHS trust who is not also a director such travelling and other allowances as may be so determined.
- (2) If an NHS trust so determines in the case of a person who is or has been a chairman of the NHS trust, the NHS trust must pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury.
- (3) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) in relation to different cases or descriptions of cases.

Reports and other information

- 12 (1) For each accounting year an NHS trust must prepare and send to the Secretary of State an annual report in such form as may be determined by the Secretary of State.
- (2) At such time or times as may be prescribed, an NHS trust must hold a public meeting at which must be presented—
- (a) its audited accounts and annual report, and

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- (b) any report on the accounts made pursuant to section 8 of the Audit Commission Act 1998 (c. 18) or paragraph 19 of Schedule 8 to the Government of Wales Act 2006 (c. 32).

[^{F70}(2A) In the case of NHS Direct National Health Service Trust the reference to a report under section 8 of the Audit Commission Act 1998 has effect as a reference to a report under paragraph 6(2) of Schedule 15 to this Act.]

- (3) In such circumstances and at such time or times as may be prescribed, an NHS trust must hold a public meeting at which such documents as may be prescribed must be presented.

Textual Amendments

F70 Sch. 4 para. 12(2A) inserted (26.3.2008) by [Government Resources and Accounts Act 2000 \(Audit of Public Bodies\) Order 2008 \(S.I. 2008/817\)](#), arts. 1, **5(2)** (with art. 10)

Modifications etc. (not altering text)

C5 Sch. 4 para. 12(2)(b) modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 3 para. 10(4)(a)** (with Sch. 3 Pt. 1)

- 13 An NHS trust must furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning, as, and in such form as, he may require.

PART 2

POWERS AND DUTIES

General

- 14 (1) An NHS trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.
- (2) In particular it may—
 - (a) acquire and dispose of property,
 - (b) enter into contracts, and
 - (c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the NHS trust or for any purposes relating to the health service).
- (3) The reference in sub-paragraph (2)(c) to specific purposes of the NHS trust includes a reference to the purposes of a specific hospital or other establishment or facility at or from which services are provided by the NHS trust.

NHS contracts

- 15 (1) In addition to carrying out its other functions, an NHS trust may, as the provider, enter into NHS contracts.

^{F71}(2)

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^{F71}(3)

Textual Amendments

F71 Sch. 4 para. 15(2)(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 4 para. 22\(7\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Research

- 16 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

Training

- 17 An NHS trust may—
- (a) provide training for persons employed or likely to be employed by the NHS trust or otherwise in the provision of services under this Act, and
 - (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.

Joint exercise of functions

- 18 An NHS trust may enter into arrangements for the carrying out, on such terms as the NHS trust considers appropriate, of any of its functions jointly with any ^{F72}... ^{F73}... Special Health Authority, Local Health Board or other NHS trust, or any other body or individual.

Textual Amendments

F72 Words in [Sch. 4 para. 18](#) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 4 para. 22\(8\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F73 Words in [Sch. 4 para. 18](#) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 4 para. 22\(8\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Payment for accommodation or services

- 19 (1) According to the nature of its functions, an NHS trust may make accommodation or services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS trust in respect of the accommodation or services.
- (2) An NHS trust may exercise the power conferred by sub-paragraph (1) only—
- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
 - (b) in circumstances specified in directions under section 8, with the Secretary of State's consent.

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Additional income

- 20 (1) For the purpose of making additional income available in order better to perform its functions, an NHS trust has the powers specified in section 7(2) of the Health and Medicines Act 1988 (c. 49) (extension of powers of Secretary of State for financing the health service).
- (2) The power conferred by sub-paragraph (1) may be exercised only—
- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
 - (b) in circumstances specified in directions under section 8, with the consent of the Secretary of State.

Provision of accommodation and services outside England and Wales

- 21 An NHS Trust may arrange for the provision of accommodation and services outside England and Wales.

Conferral of further powers by order

- 22 The Secretary of State may by order confer specific powers on NHS trusts, further to those provided for by paragraphs 15 to 21.

Powers of NHS trusts to enter into externally financed development agreements

- 23 (1) The powers of an NHS trust include power to enter into externally financed development agreements.
- (2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.
- (3) The Secretary of State may give a certificate under this paragraph if—
- (a) in his opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the NHS trust of any of its functions, and
 - (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
- (4) If an NHS trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.
- (5) “Another party” means any party to the agreement other than the NHS trust.
- (6) The fact that an agreement made by an NHS trust has not been certified under this paragraph does not affect its validity.

Agreements under section 92 or 107

- 24 An NHS trust may provide services under an agreement made under section 92 (primary medical services) or section 107 (primary dental services) and may do so as a member of a qualifying body (within the meaning given by section 93 or section 108).

Status: Point in time view as at 01/10/2014.

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Staff

- 25 (1) An NHS trust may employ such staff as it considers appropriate.
- (2) An NHS trust may—
- (a) pay its staff such remuneration and allowances, and
 - (b) employ them on such other terms and conditions, as it considers appropriate.
- (3) An NHS trust must—
- (a) in exercising its powers under sub-paragraph (2), and
 - (b) otherwise in connection with the employment of its staff, act in accordance with regulations and any directions given by the Secretary of State.
- (4) Before making any regulations under sub-paragraph (3), the Secretary of State must consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.

Pensions, etc.

- 26 (1) An NHS trust may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.
- (2) Such arrangements may include the establishment and administration, by the NHS trust or otherwise, of one or more pension schemes.
- (3) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the NHS trust's employees who suffer loss of office or employment or loss or diminution of emoluments.
- (4) This paragraph does not affect the generality of paragraphs 14 and 25.

Compulsory acquisition

- 27 (1) An NHS trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the NHS trust and confirmed by the Secretary of State.
- (2) Subject to sub-paragraph (3), the Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.
- (3) No order may be made by an NHS trust under Part 2 of the Acquisition of Land Act 1981 with respect to any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the Secretary of State in such form and together with such information as he may require, and
 - (b) has been approved by him.

PART 3

DISSOLUTION

- 28 (1) The Secretary of State may by order dissolve an NHS trust.

Status: Point in time view as at 01/10/2014.

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- (2) An order under this paragraph may be made—
- (a) on the application of the NHS trust concerned, or
 - (b) if the Secretary of State considers it appropriate in the interests of the health service.
- (3) Except where it appears to the Secretary of State necessary to make an order under this paragraph as a matter of urgency [^{F74}or where the order is made following the publication of a final report under section 65I(3)] , no such order may be made until after the completion of such consultation as may be prescribed.

Textual Amendments

F74 Words in Sch. 4 para. 28(3) inserted (15.2.2010) by [Health Act 2009 \(c. 21\)](#), ss. **18(10)**, 40(1); S.I. 2010/30, art. 3(b)

- 29
- (1) If an NHS trust is dissolved under paragraph 28, the Secretary of State may by order transfer, or provide for the transfer, to himself or an NHS body of such of the property and liabilities of the NHS trust which is dissolved as in his opinion is appropriate; and any such order may include provisions corresponding to those of paragraph 9.
 - (2) The liabilities which may be transferred by virtue of sub-paragraph (1) to an NHS body include criminal liabilities.
 - (3) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of paragraph 8, including provision for the making of a scheme by such ^{F75}... Special Health Authority, Local Health Board or other body as may be specified in the order.
 - (4) No order may be made under this paragraph until after completion of such consultation as may be prescribed.

Textual Amendments

F75 Words in Sch. 4 para. 29(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 22\(9\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- 30
- (1) If an NHS trust is dissolved under paragraph 28, the Secretary of State or such other NHS trust, ^{F76}... ^{F77}... Special Health Authority or Local Health Board as he may direct must undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 11(2) or paragraph 26, would otherwise have been the responsibility of the NHS trust which has been dissolved.
 - (2) Sub-paragraph (1) does not affect the generality of paragraph 29.

Textual Amendments

F76 Words in Sch. 4 para. 30(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 22\(10\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F77 Words in Sch. 4 para. 30(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 22\(10\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Status: Point in time view as at 01/10/2014.

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- 31 An NHS trust may not be dissolved or wound up except in accordance with paragraph 28 or section 57.

PART 4

MISCELLANEOUS

Use and development of consecrated land and burial grounds

- 32 Section 128 of the Town and Country Planning Act 1971 (c. 78) (use and development of consecrated land and burial grounds) applies to consecrated land and land comprised in a burial ground, within the meaning of that section, which an NHS trust holds for any of its purposes as if—
- (a) that land had been acquired by the NHS trust as mentioned in subsection (1) of that section, and
 - (b) the NHS trust were a statutory undertaker, within the meaning of that Act.

Instruments etc.

- 33 (1) The fixing of the seal of an NHS trust must be authenticated by the signature—
- (a) of the chairman or of some other person authorised (whether generally or specifically) by the NHS trust for that purpose, and
 - (b) of one other director.
- (2) A document purporting to be duly executed under the seal of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so executed.
- (3) A document purporting to be signed on behalf of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so signed.

Interpretation

- 34 In this Schedule—
- “provide” includes manage,
- “operational date” has the meaning given by paragraph 5(5).

SCHEDULE 5

Section 27

FINANCIAL PROVISION ABOUT NHS TRUSTS ESTABLISHED UNDER SECTION 25

Originating capital of NHS trusts

- 1 (1) Each NHS trust has an originating capital of an amount specified in an order made by the Secretary of State.
- (2) The originating capital of an NHS trust is an amount representing the excess of the valuation of its assets over the amounts of its liabilities.

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- (3) In determining the originating capital of an NHS trust, there must be left out of account such assets or liabilities as are, or are of a class, determined for the purposes of this paragraph by the Secretary of State with the consent of the Treasury.
- (4) An NHS trust's originating capital is deemed to have been issued out of moneys provided by Parliament and is an asset of the Consolidated Fund.
- (5) An NHS trust's originating capital is public dividend capital.
- (6) With the consent of the Treasury, the Secretary of State may determine—
 - (a) the dividend which is payable at any time on any public dividend capital issued, or treated as issued, to an NHS trust under this Act,
 - (b) the amount of any such public dividend capital which must be repaid at any time,
 - (c) any other terms on which any public dividend capital is so issued, or treated as issued.
- (7) An order under sub-paragraph (1) may be made only with the consent of the Treasury.
- (8) In this paragraph—

“assets” means the assets which, on or in connection with the establishment of the NHS trust, are or will be transferred to it (whether before, on or after its operational date), and

“liabilities” means the liabilities which are or will be so transferred.

Financial obligations of NHS trusts

- 2 (1) Each NHS trust must ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.
- (2) Each NHS trust must achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it.
- (3) Any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.

Borrowing

- 3 (1) For the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State or from any other person.
- (2) Sub-paragraph (1) is subject to any direction given by the Secretary of State under section 8, to the provisions of this paragraph and to any limit imposed under this Schedule.
- (3) An NHS trust may not mortgage or charge any of its assets or in any other way use any of its assets as security for a loan.
- (4) The Secretary of State must determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).

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Guarantees of borrowing

- 4 (1) The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the principal of, and the payment of interest on, any sums which an NHS trust borrows from a person other than the Secretary of State.
- (2) Immediately after a guarantee is given under this paragraph, the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (3) Where any sum is issued for fulfilling a guarantee so given, the Secretary of State must lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned must make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—
- (a) payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued, and
 - (b) payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued.

Limits on indebtedness

- 5 The aggregate of all sums borrowed by NHS trusts which are required to provide or manage services at or from hospitals or other establishments or facilities which are situated in England must not exceed £5,000 million or such other sum not exceeding £10,000 million as may be specified by order made by the Secretary of State with the consent of the Treasury.

Additional public dividend capital

- 6 The Secretary of State may, with the consent of the Treasury, instead of making a loan to an NHS trust under paragraph 3, pay an amount to the NHS trust as public dividend capital.

Supplementary payments

- 7 (1) The Secretary of State may make a payment to an NHS trust.
- (2) The payment may be subject to such conditions as he considers appropriate, including conditions as to repayment.

Surplus funds

- 8 If it appears to the Secretary of State that any sum held by an NHS trust otherwise than as trustee is surplus to its foreseeable requirements, the trust must, if the Secretary of State with the approval of the Treasury and after consultation with the trust so directs, pay that sum into the Consolidated Fund.

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Investment

- 9 (1) An NHS trust has power to invest money held by it in any investments, including investments which do not produce income, specified in directions under section 8.
- (2) Sub-paragraph (1) does not apply in relation to money held by an NHS trust as trustee.
- 10 Any direction under section 8 with respect to—
- (a) the power conferred on an NHS trust by paragraph 3, or
 - (b) the maximum amount which an NHS trust may invest in any investments or class of investments,
- may be given only with the consent of the Treasury.

SCHEDULE 6

Section 28

SPECIAL HEALTH AUTHORITIES ESTABLISHED UNDER SECTION 28

Corporate status

- 1 Each Special Health Authority is a body corporate.

Pay and allowances

- 2 (1) The Secretary of State may pay to—
- (a) the chairman of a Special Health Authority, and
 - (b) any member of a Special Health Authority who is appointed by the Secretary of State,
- such remuneration as he may determine with the approval of the Treasury.
- (2) The Secretary of State may provide as he may determine with the approval of the Treasury for the payment of a pension, allowance or gratuity to or in respect of the chairman of a Special Health Authority.
- (3) Where a person ceases to be chairman of a Special Health Authority, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may determine with the approval of the Treasury.
- (4) The Secretary of State may pay to a member of a Special Health Authority, or of a committee or sub-committee of, or joint committee or joint sub-committee including, a Special Health Authority, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as he may determine with the approval of the Treasury.
- (5) Allowances may not be paid under sub-paragraph (4) except in connection with the exercise, in such circumstances as the Secretary of State may determine with the approval of the Treasury, of such functions as he may so determine.
- (6) Payments under this paragraph must be made at such times, and in such manner and subject to such conditions, as the Secretary of State may determine with the approval of the Treasury.

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Staff

- 3 (1) A Special Health Authority may employ such officers as it may determine.
- (2) A Special Health Authority may—
 - (a) pay its officers such remuneration and allowances, and
 - (b) employ them on such other terms and conditions,
 as it may determine.
- (3) A Special Health Authority must, in exercising its powers under sub-paragraph (1) or (2), act in accordance with regulations and any directions given by the Secretary of State.
- (4) Regulations and directions under sub-paragraph (3) may make provision with respect to any matter connected with the employment by a Special Health Authority of its officers, including in particular provision—
 - (a) with respect to the qualifications of persons who may be employed as officers of a Special Health Authority,
 - (b) requiring a Special Health Authority to employ a chief officer and officers of such other descriptions as may be prescribed and to employ, for the purpose of performing prescribed functions of the Special Health Authority or any other body, officers having prescribed qualifications or experience, and
 - (c) as to the manner in which any officers of a Special Health Authority must be appointed.
- (5) A direction under sub-paragraph (3) may relate to a particular officer or class of officer specified in the direction.
- (6) Regulations and directions under sub-paragraph (3) may provide for approvals or determinations to have effect from a date specified in them.
- (7) The date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate.
- (8) Regulations may provide for the transfer of officers from one Special Health Authority to another Special Health Authority or [^{F78}to the Board], and for arrangements under which the services of an officer of a Special Health Authority are placed at the disposal of another Special Health Authority, [^{F79}the Board] or a local authority.
- (9) Sub-paragraph (11) applies where the registration of a dental practitioner in the dentists register is suspended—
 - (a) by an interim suspension order under section 32 of the Dentists Act 1984 (c. 24) (interim orders), or
 - (b) by a direction or an order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.
- (10) For the purposes of sub-paragraph (9), a “relevant determination” that a practitioner's fitness to practice is impaired is a determination which is based solely on—

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- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),
 - (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or
 - (c) both those grounds.
- (11) The suspension does not terminate any contract of employment made between the dental practitioner and a Special Health Authority, but a person whose registration is so suspended must not perform any duties under a contract made between him and a Special Health Authority which involves the practice of dentistry within the meaning of the Dentists Act 1984.
- (12) Directions may be given—
- (a) by the Secretary of State to a Special Health Authority to place the services of any of its officers at the disposal of another Special Health Authority or [^{F80}of the Board],
 - (b) by the Secretary of State to any Special Health Authority to employ as an officer of the Special Health Authority any person who is or was employed by another Special Health Authority ^{F81} ... and is specified in the direction.
- (13) Regulations made in pursuance of this paragraph may not require that all consultants employed by a Special Health Authority must be so employed whole-time.

Textual Amendments

- F78** Words in Sch. 6 para. 3(8) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 23\(2\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F79** Words in Sch. 6 para. 3(8) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 23\(2\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F80** Words in Sch. 6 para. 3(12)(a) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 23\(3\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F81** Words in Sch. 6 para. 3(12)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 23\(3\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- 4 (1) The Secretary of State must, before he makes regulations under paragraph 3, consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.
- (2) The Secretary of State must, before he gives directions to a Special Health Authority under paragraph 3(12) in respect of any officer of a Special Health Authority—
- (a) consult the officer about the directions,
 - (b) satisfy himself that the Special Health Authority of which he is an officer has consulted the officer about the placing or employment in question, or
 - (c) in the case of a direction under paragraph 3(12)(a), consult with respect to the directions such body as he may recognise as representing the officer.
- (3) But if the Secretary of State—
- (a) considers it necessary to give directions under paragraph 3(12)(a) for the purpose of dealing temporarily with an emergency, and
 - (b) has previously consulted bodies recognised by him as representing the relevant officers about the giving of directions for that purpose,
- the Secretary of State may disregard sub-paragraph (2) in relation to the directions.

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Miscellaneous

- 5 Provision may be made by regulations as to—
- (a) the appointment and tenure of office of the chairman, vice-chairman and members of a Special Health Authority,
 - (b) the appointment and tenure of office of any members of a committee or sub-committee of a Special Health Authority who are not members of the Special Health Authority,
 - (c) the appointment and tenure of office of any members of a joint committee or joint sub-committee including a Special Health Authority who are not members of the Special Health Authority,
 - [^{F82}(d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office,]
 - (e) the appointment and constitution of committees and sub-committees (and joint committees and joint sub-committees) of (or including) a Special Health Authority (including any such committees consisting wholly or partly of persons who are not members of the Special Health Authority in question), and
 - (f) the procedure of a Special Health Authority and of such committees and sub-committees as are mentioned in paragraph (e).

Textual Amendments

F82 Sch. 6 para. 5(d) substituted (19.1.2010) by [Health Act 2009 \(c. 21\), s. 40\(1\), Sch. 3 paras. 11, 18\(1\)\(a\)](#) (with [Sch. 3 para. 19](#)); [S.I. 2010/30, art. 2\(d\)](#)

- 6 Regulations made under this Schedule may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Special Health Authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- 7 A Special Health Authority may pay subscriptions, of such amounts as the Secretary of State may approve, to the funds of such bodies as he may approve.
- 8 A Special Health Authority has power to accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Special Health Authority or for any purposes relating to the health service).
- 9 (1) The Secretary of State may by order provide for the appointment of trustees for a Special Health Authority to hold property on trust—
- (a) for the general or any specific purposes of the Special Health Authority (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the Special Health Authority), or
 - (b) for any purposes relating to the health service.
- (2) An order under sub-paragraph (1) may—
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

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- (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate, and
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where under sub-paragraph (1) trustees have been appointed for a Special Health Authority, the Secretary of State may by order provide for the transfer of any trust property from the Special Health Authority to the trustees.
- 10 The proceedings of a Special Health Authority are not invalidated by any vacancy in its membership or by any defect in a member's appointment.
- 11 (1) A Special Health Authority may—
 - (a) make available at a hospital for which it has responsibility accommodation or services for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Special Health Authority in respect of the accommodation or services, and
 - (b) make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis.
- (2) A Special Health Authority may exercise the power conferred by sub-paragraph (1) only if it is satisfied that its exercise—
 - (a) does not to any significant extent interfere with the performance by the Special Health Authority of any function conferred on it under this Act to provide accommodation or services of any kind, and
 - (b) does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.
- (3) Before a Special Health Authority decides to make accommodation or services available under sub-paragraph (1), it must consult organisations representative of the interests of persons likely to be affected by the decision.
- (4) A Special Health Authority may allow accommodation or services which are made available under sub-paragraph (1) to be so made available in connection with treatment in pursuance of arrangements—
 - (a) made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital,
 - (b) for the treatment of private patients of that practitioner.
- (5) References in this paragraph to a health service hospital include references to such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.
- 12 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Special Health Authority of any function exercisable by it by virtue of section 7 or section 29 are enforceable by or against that Special Health Authority (and no other body).

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- (2) This paragraph does not apply in relation to the joint exercise of any functions by a Special Health Authority with another body under section 29(1)(b).
- 13 Provision may be made by regulations with respect to the recording of information by a Special Health Authority, and the furnishing of information by a Special Health Authority to the Secretary of State, another Special Health Authority or [^{F83}the Board].

Textual Amendments

F83 Words in Sch. 6 para. 13 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 23(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 7

Section 30

CONSTITUTION OF PUBLIC BENEFIT CORPORATIONS

Requirement for a constitution

- 1 (1) A public benefit corporation must have a constitution.
- (2) As well as any provision authorised or required to be made by this Schedule, the constitution may make further provision (other than provision as to the powers of the corporation) consistent with this Schedule.
- 2 [^{F84}(1)] The constitution must name the corporation and, if the corporation is an NHS foundation trust, its name must include the words “NHS foundation trust”.
- [^{F85}(2) If the corporation is an NHS foundation trust, the constitution must specify its principal purpose (as to which, see section 43(1)).]

Textual Amendments

F84 Sch. 7 para. 2(1); Sch. 7 para. 2 renumbered as Sch. 7 para. 2(1) (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 164(6), 306(4); S.I. 2012/1831, art. 2(2)

F85 Sch. 7 para. 2(2) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 164(6), 306(4); S.I. 2012/1831, art. 2(2)

Eligibility for membership

- 3 (1) The persons who may become or continue as members of a public benefit corporation are—
- (a) individuals who live in any area specified in the constitution as the area for a public constituency,
- (b) individuals employed by the corporation under a contract of employment and, if the constitution so provides, individuals who exercise functions for the purposes of the corporation otherwise than under a contract of employment with the corporation,

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- (c) if the constitution so provides, individuals who have attended any of the corporation's hospitals as either a patient or the carer of a patient within a period specified in the constitution.
- (2) The constitution may specify one or more areas as areas for public constituencies, each of which must be an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more such electoral areas.
- (3) A person may become or continue as a member of the corporation by virtue of sub-paragraph (1)(b) only if—
 - (a) he is employed by the corporation under a contract of employment which has no fixed term or has a fixed term of at least 12 months, or
 - (b) he has been continuously employed by the corporation for at least 12 months or, where he exercises functions for the purposes of the corporation as mentioned in that sub-paragraph, he has done so continuously for such a period.
- (4) Chapter 1 of Part 14 of the Employment Rights Act 1996 (c. 18) applies for the purpose of determining whether an individual has been continuously employed by the corporation, or has continuously exercised functions for the purposes of the corporation, as it applies for the purposes of that Act.
- (5) The constitution may divide those who come within sub-paragraph (1)(b) into two or more descriptions of individuals.
- (6) An individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation, does not come within sub-paragraph (1)(c).
- (7) The constitution may divide those who come within sub-paragraph (1)(c) into three or more descriptions of individuals, one of which must comprise the carers of patients.
- (8) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member.

Constituencies

- 4 (1) Members of a public benefit corporation are referred to as follows.
- (2) Those who live in an area specified in the constitution as an area for any public constituency are referred to collectively as a public constituency.
- (3) Those who come within paragraph 3(1)(b) are referred to collectively as the staff constituency and, if the power in paragraph 3(5) is exercised, each description of members is referred to as a class within that constituency.
- (4) Those who come within paragraph 3(1)(c) are referred to collectively as the patient's constituency and, if the power in paragraph 3(7) is exercised, each description of members is referred to as a class within that constituency.
- (5) A person who is a member of a constituency, or of a class within a constituency, may not while that membership continues be a member of any other constituency or class.

Status: Point in time view as at 01/10/2014.

Changes to legislation: National Health Service Act 2006 is up to date with all changes known to be in force on or before 19 June 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)

(6) A person who comes within paragraph 3(1)(b) may not become or continue as a member of any constituency other than the staff constituency.

5 The constitution must require a minimum number of members of each constituency or, where there are classes within the constituency, of each class.

Becoming a member

6 (1) An individual who is eligible to become a member of a public benefit corporation may do so on an application made to the corporation.

(2) The constitution may provide for any individual who is—

- (a) eligible to become a member of the staff constituency, and
- (b) invited by the corporation to become a member of that constituency (and, where there are classes within the constituency, a member of the appropriate class),

to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.

(3) The constitution may provide for any individual who is—

- (a) eligible to become a member of the patients' constituency (otherwise than as the carer of a patient), and
- (b) invited by the corporation to become a member of a specified constituency (and where there are classes within the constituency, a member of the specified class),

to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.

(4) The constituency and, where applicable, class to be specified—

- (a) if he is eligible to be a member of any public constituency, is that constituency,
- (b) otherwise, is the patients' constituency and, where applicable, the class of which he is eligible to become a member.

[^{F86}Council of Governors]

Textual Amendments

F86 Sch. 7 para. 7 cross-heading substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(e\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

7 (1) A public benefit corporation has [^{F87}a council of governors].

(2) Only members of the corporation and persons appointed under the following provisions may become or continue as members of [^{F88}the council] .

(3) The members of [^{F88}the council] other than the appointed members must be chosen by election.

Status: Point in time view as at 01/10/2014.

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- (4) Members of a constituency or, where there are classes within it, members of each class may elect any of their number to be a member of [^{F88}the council].

Textual Amendments

- F87** Words in Sch. 7 para. 7(1) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(1\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)
- F88** Words in Sch. 7 para. 7(2)(3)(4) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(1\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

- 8 (1) The following may not become or continue as members of [^{F89}the council] of governors—
- (a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged,
 - [^{F90}(aa) a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986),]
 - (b) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,
 - (c) a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- (2) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member of [^{F89}the council].

Textual Amendments

- F89** Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)
- F90** Sch. 7 para. 8(1)(aa) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\), art. 1, Sch. 2 para. 57](#) (with art. 5)

- 9 (1) More than half of the members of [^{F89}the council] of governors must be elected by members of the corporation other than those who come within paragraph 3(1)(b).
- (2) At least three members of [^{F89}the council] must be elected by the staff constituency or, where there are classes within it, at least one member of [^{F89}the council] must be elected by each class and at least three members must be elected altogether.
- [^{F91}(3)]
- (4) At least one member of [^{F89}the council] must be appointed by one or more qualifying local authorities.
- (5) A qualifying local authority is a local authority for an area which includes the whole or part of an area specified in the constitution as the area for a public constituency.
- (6) If any of the corporation's hospitals includes a medical or dental school provided by a university, at least one member of [^{F89}the council] must be appointed by that university.

Status: Point in time view as at 01/10/2014.

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[^{F92}(7) Any organisation specified in the constitution for the purposes of this sub-paragraph may appoint one or more members of the council (but no more than the number specified for those purposes in the constitution).]

Textual Amendments

- F89** Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)
- F91** Sch. 7 para. 9(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 151\(2\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F92** Sch. 7 para. 9(7) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(3\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

- 10 (1) An elected member of [^{F89}the council] of governors may hold office for a period of three years.
- (2) Such a member is eligible for re-election at the end of that period.
- (3) But such a member ceases to hold office if he ceases to be a member of the corporation.

Textual Amendments

- F89** Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

- [^{F93}10A The general duties of the council of governors are—
- (a) to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and
- (b) to represent the interests of the members of the corporation as a whole and the interests of the public.]

Textual Amendments

- F93** Sch. 7 para. 10A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(4\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

- [^{F94}10B A public benefit corporation must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.]

Textual Amendments

- F94** Sch. 7 para. 10B inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(5\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

- [^{F95}10C For the purpose of obtaining information about the corporation's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the corporation's or directors' performance), the council of governors may require one or more of the directors to attend a meeting.]

Status: Point in time view as at 01/10/2014.

Changes to legislation: National Health Service Act 2006 is up to date with all changes known to be in force on or before 19 June 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)

Textual Amendments

F95 Sch. 7 para. 10C inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 151\(6\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

- 11 The corporation may pay travelling and other expenses to members of [^{F89}the council] of governors at rates decided by the corporation.

Textual Amendments

F89 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 151\(9\)\(b\)](#), 306(4); [S.I. 2012/1831](#), [art. 2\(2\)](#)

- 12 The constitution must provide for the chairman of the corporation or (in his absence) another person to preside at meetings of [^{F89}the council] of governors.

Textual Amendments

F89 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 151\(9\)\(b\)](#), 306(4); [S.I. 2012/1831](#), [art. 2\(2\)](#)

- 13 (1) The constitution must provide for meetings of [^{F89}the council] of governors to be open to members of the public.
- (2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.

Textual Amendments

F89 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 151\(9\)\(b\)](#), 306(4); [S.I. 2012/1831](#), [art. 2\(2\)](#)

- 14 (1) The constitution must make provision as to—
- (a) the conduct of elections for membership of [^{F89}the council],
 - (b) the appointment of persons to membership,
 - (c) the practice and procedure of [^{F89}the council],
 - (d) the removal of a member from office.
- (2) The constitution may make further provision about [^{F89}the council].

Textual Amendments

F89 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 151\(9\)\(b\)](#), 306(4); [S.I. 2012/1831](#), [art. 2\(2\)](#)

- Directors*
- 15 (1) A public benefit corporation has a board of directors.

Status: Point in time view as at 01/10/2014.

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- (2) The constitution must provide for all the powers of the corporation to be exercisable by the board of directors on its behalf.
- (3) But the constitution may provide for any of those powers to be delegated to a committee of directors or to an executive director.

Modifications etc. (not altering text)

C6 Sch. 7 para. 15(3) modified by 1983 c. 20, s. 142B (as inserted (24.7.2007) by [Mental Health Act 2007](#) (c. 12), [ss. 45\(3\), 56\(1\)](#); S.I. 2007/2156, art. 2)

- 16 (1) The board consists of—
 - (a) executive directors, one of whom is the chief executive (and accounting officer) and another the finance director,
 - (b) non-executive directors, one of whom is the chairman.
- (2) One of the executive directors must be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984 (c 24)); and another must be a registered nurse or a registered midwife.
- (3) A person may not be appointed as an executive director if he is within paragraph 8(1).
- (4) A person may be appointed as a non-executive director only if—
 - (a) he is a member of a public constituency or the patients' constituency, or
 - (b) where any of the corporation's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university,
 and he is not within paragraph 8(1).
- 17 (1) It is for ^{F96}the council] of governors at a general meeting to appoint or remove the chairman and the other non-executive directors.
- (2) Removal of a non-executive director under sub-paragraph (1) requires the approval of three-quarters of the members of ^{F96}the council] .
- (3) It is for the non-executive directors to appoint or remove the chief executive.
- (4) It is for a committee consisting of the chairman, the chief executive and the other non-executive directors to appoint or remove the executive directors.
- (5) The appointment of a chief executive requires the approval of ^{F96}the council] of governors.

Textual Amendments

F96 Words in Sch. 7 para. 17 substituted (1.10.2012) by [Health and Social Care Act 2012](#) (c. 7), [ss. 151\(9\)\(b\), 306\(4\)](#); S.I. 2012/1831, art. 2(2)

- 18 (1) It is for ^{F97}the council] of governors at a general meeting to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors.

Status: Point in time view as at 01/10/2014.

Changes to legislation: National Health Service Act 2006 is up to date with all changes known to be in force on or before 19 June 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)

- (2) The corporation must establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors; but the constitution may make provision for those matters to be decided pending the establishment of such a committee.

Textual Amendments

F97 Words in Sch. 7 para. 18 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

- [^{F98}18A The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public.]

Textual Amendments

F98 Sch. 7 para. 18A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 152\(1\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

- [^{F99}18B(1) The duties that a director of a public benefit corporation has by virtue of being a director include in particular—
- (a) a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation;
 - (b) a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- (2) The duty referred to in sub-paragraph (1)(a) is not infringed if—
- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - (b) the matter has been authorised in accordance with the constitution.
- (3) The duty referred to in sub-paragraph (1)(b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (4) In sub-paragraph (1)(b), “third party” means a person other than—
- (a) the corporation, or
 - (b) a person acting on its behalf.]

Textual Amendments

F99 Sch. 7 para. 18B inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 152\(2\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

- [^{F100}18(1) If a director of a public benefit corporation has in any way a direct or indirect interest in a proposed transaction or arrangement with the corporation, the director must declare the nature and extent of that interest to the other directors.
- (2) If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

Status: Point in time view as at 01/10/2014.

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- (3) Any declaration required by this paragraph must be made before the corporation enters into the transaction or arrangement.
- (4) This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- (5) A director need not declare an interest—
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the directors are already aware of it;
 - (c) if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered—
 - (i) by a meeting of the board of directors, or
 - (ii) by a committee of the directors appointed for the purpose under the constitution.]

Textual Amendments

F100 Sch. 7 para. 18C inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **152(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[^{F101}18D) Before holding a meeting, the board of directors must send a copy of the agenda of the meeting to the council of governors.

- (2) As soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors.]

Textual Amendments

F101 Sch. 7 para. 18D inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **152(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[^{F102}18E) The constitution must provide for meetings of the board of directors to be open to members of the public.

- (2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.]

Textual Amendments

F102 Sch. 7 para. 18E inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **152(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Initial directors of former NHS trusts

- 19 (1) This paragraph applies, where the application for authorisation is made under section 33, to the exercise of the powers mentioned in paragraph 17 to appoint the initial non-executive directors and the initial chief executive.

Status: Point in time view as at 01/10/2014.

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- (2) The power to appoint the initial chairman of the corporation must be exercised by appointing the chairman of the NHS trust, if he wishes to be appointed.
- (3) The power to appoint the other initial non-executive directors of the corporation must be exercised, so far as possible, by appointing any of the non-executive directors of the NHS trust (other than the chairman) who wish to be appointed.
- (4) A person appointed in accordance with sub-paragraph (2) or (3) must be appointed for the unexpired period of his term of office as chairman or non-executive director of the NHS trust; but if, on any such appointment, that period is less than 12 months, he must be appointed for 12 months.
- (5) The power to appoint the initial chief executive of the corporation must be exercised by appointing the chief officer of the NHS trust, if he wishes to be appointed.
- (6) Sub-paragraphs (a) and (b) of paragraph 16(4) do not apply to the appointment of any initial non-executive director in pursuance of this paragraph; and paragraph 17(5) does not apply to the appointment of the initial chief executive of the corporation in pursuance of sub-paragraph (5).

Register of members etc

- 20 (1) A public benefit corporation must have—
- (a) a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs,
 - (b) a register of members of [^{F103}the council] of governors,
 - (c) a register of interests of the members of [^{F103}the council] of governors,
 - (d) a register of directors,
 - (e) a register of interests of the directors.
- (2) The constitution may make further provision about the registers including, in particular, admission to, and removal from, the registers.

Textual Amendments

F103 Words in Sch. 7 para. 20 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

- 21 The constitution must make provision for dealing with conflicts of interest of members of [^{F104}the council] of governors and of the directors.

Textual Amendments

F104 Words in Sch. 7 para. 21 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

- 22 (1) A public benefit corporation must make the following documents available for inspection by members of the public free of charge at all reasonable times—
- (a) a copy of the current constitution,
 - ^{F105}(b)

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- (c) a copy of the latest annual accounts and of any report of the auditor on them,
 - (d) a copy of the latest annual report,
 - ^{F106}(e)
 - ^{F107}(f)
 - ^{F108}(g) a copy of any order made under section 65D, 65J, 65KC, 65L or 65LA,
 - (h) a copy of any report laid under section 65D,
 - (i) a copy of any information published under section 65D,
 - (j) a copy of any draft report published under section 65F,
 - (k) a copy of any statement provided under section 65F,
 - (l) a copy of any notice published under section 65F, 65G, 65H, 65J, 65KA, 65KB, 65KC or 65KD,
 - (m) a copy of any statement published or provided under section 65G,
 - (n) a copy of any final report published under section 65I,
 - (o) a copy of any statement published under section 65J or 65KC,
 - (p) a copy of any information published under section 65M.]
- (2) Any person who requests it must be provided with a copy of or extract from any of the above documents.
- (3) The corporation is also to make the registers mentioned in paragraph 20 available for inspection by members of the public, except in circumstances prescribed; and, so far as the registers are required to be available—
- (a) they must be available free of charge at all reasonable times,
 - (b) a person who requests it must be provided with a copy of or extract from them.
- (4) If the person requesting a copy or extract under this paragraph is not a member of the corporation, the corporation may impose a reasonable charge for doing so.

Textual Amendments

F105 Sch. 7 para. 22(1)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(9), 306(4)**; S.I. 2013/671, art. 2(3)

F106 Sch. 7 para. 22(1)(e) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 156(6), 306(1)(d)(4)**; S.I. 2013/671, art. 2(3)

F107 Sch. 7 para. 22(1)(f) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 111(11)(b), 306(4)**; S.I. 2013/671, art. 2(3)

F108 Sch. 7 para. 22(1)(g)-(p) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 178(10), 306(4)**; S.I. 2012/2657, art. 2(2)

Auditor

- 23 (1) A public benefit corporation must have an auditor.
- (2) It is for ^{F109}the council] of governors to appoint or remove the auditor at a general meeting of ^{F109}the council] .
- ^{F110}(3) An auditor may be—
- (a) an officer of the Audit Commission (if appointed by ^{F109}the council] with the agreement of the Commission),

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- (b) an individual who is not an officer of the Audit Commission, or
- (c) a firm.]

[^{F110}(4) A person appointed as auditor must be—

- (a) eligible for appointment as a statutory auditor (see Part 42 of the Companies Act 2006),
- (b) a member of one or more of the bodies listed in section 3(7)(a) to (e) of the Audit Commission Act 1998, or
- (c) a member of any other body of accountants approved by the regulator for the purposes of this paragraph.]

(5) Where an officer of the Audit Commission is appointed as auditor, the Commission must charge the public benefit corporation such fees for his services as will cover the full cost of providing them.

(6) The corporation must establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

[^{F111}(7) In this paragraph—

“the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England; and

“firm” has the same meaning as in the Audit Commission Act 1998 (see section 53(1) of that Act).]

Textual Amendments

F109 Words in Sch. 7 para. 23 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

F110 Sch. 7 para. 23(3)(4) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 1\(2\), Sch. 1 para. 258\(3\)\(a\)](#) (with art. 10)

F111 Sch. 7 para. 23(7) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 1\(2\), Sch. 1 para. 258\(3\)\(b\)](#) (with art. 10)

Accounts

24 [^{F112}(1) A public benefit corporation must keep proper accounts and proper records in relation to the accounts.

(1A) The regulator may with the approval of the Secretary of State give directions to the corporation as to the content and form of its accounts.]

(2) The accounts must be audited by the corporation's auditor.

(3) But the Comptroller and Auditor General may examine—

- (a) the accounts,
- (b) [^{F113}the records] relating to them, and
- (c) any report of the auditor on them.

(4) If trustees are appointed under section 51, the Comptroller and Auditor General may also examine—

Status: Point in time view as at 01/10/2014.

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- (a) the accounts kept by the trustees,
- (b) any records relating to them, and
- (c) any report of an auditor on them.

(5) In auditing the accounts the auditor must comply with any directions given by the regulator as to the standards, procedures and techniques to be adopted.

Textual Amendments

F112 Sch. 7 para. 24(1)(1A) substituted for Sch. 7 para. 24(1) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(1)**, 306(1)(d)(4); [S.I. 2012/1831](#), [art. 2\(2\)](#)

F113 Words in Sch. 7 para. 24(3)(b) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(2)**, 306(1)(d)(4); [S.I. 2012/1831](#), [art. 2\(2\)](#)

25 (1) A public benefit corporation must prepare in respect of each financial year annual accounts in such form as the regulator may with the approval of ^[F114]the Secretary of State] direct.

^[F115](1A) The regulator may with the approval of the Secretary of State direct a public benefit corporation—

- (a) to prepare accounts in respect of such period or periods as may be specified in the direction;
- (b) that any accounts prepared by it by virtue of paragraph (a) are to be audited in accordance with such requirements as may be specified in the direction.]

(2) In preparing its annual accounts ^[F116]or in preparing any accounts by virtue of sub-paragraph (1A)(a)], the corporation must comply with any directions given by the regulator with the approval of ^[F117]the Secretary of State] as to—

- (a) the methods and principles according to which the accounts must be prepared,
- (b) the ^[F118]content and form of] the accounts.

(3) In determining the form and content of the annual accounts^[F119], or of any accounts to be prepared by it by virtue of sub-paragraph (1A)(a),] the regulator must aim to ensure that the accounts present a true and fair view.

(4) The corporation must—

- (a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and
- (b) ^{F120}... send copies of those documents to the regulator ^[F121]within such period as the regulator may direct].

^[F122](4A) The corporation must send to the regulator within such period as the regulator may direct—

- (a) a copy of any accounts prepared by the corporation by virtue of sub-paragraph (1A)(a), and
- (b) a copy of any report of an auditor on them prepared by virtue of sub-paragraph (1A)(b).]

Status: Point in time view as at 01/10/2014.

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- (5) The constitution must provide for the functions of the corporation under this paragraph to be delegated to the accounting officer.
- (6) In this paragraph and paragraph 27 “financial year” means—
- (a) the period beginning with the date on which the corporation is authorised under section 35 and ending with the next 31st March, and
 - (b) each successive period of twelve months beginning with 1st April.

Textual Amendments

- F114** Words in Sch. 7 para. 25(1) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(3)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F115** Sch. 7 para. 25(1A) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(4)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F116** Words in Sch. 7 para. 25(2) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(5)(a)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F117** Words in Sch. 7 para. 25(2) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(5)(b)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F118** Words in Sch. 7 para. 25(2) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(5)(c)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F119** Words in Sch. 7 para. 25(3) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(6)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F120** Words in Sch. 7 para. 25(4)(b) omitted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(7)(a)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F121** Words in Sch. 7 para. 25(4)(b) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(7)(b)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F122** Sch. 7 para. 25(4A) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 154(8)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

Annual reports and forward plans

- 26 (1) A public benefit corporation must prepare annual reports and send them to the regulator.
- (2) The reports must give—
- (a) information on any steps taken by the corporation to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership,
 - [^{F123}(aa) information on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C,]
 - [^{F124}(ab) information on the corporation's policy on pay and on the work of the committee established under paragraph 18(2) and such other procedures as the corporation has on pay,
 - (ac) information on the remuneration of the directors and on the expenses of the governors and the directors,]

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(b) any other information the regulator requires.

[^{F125}(2A) Before imposing a requirement under sub-paragraph (2)(b) that the regulator considers is sufficiently significant to justify consultation, the regulator must consult such persons as it considers appropriate.]

(3) It is for the regulator to decide—

- (a) the form of the reports,
- (b) when the reports must be sent to it,
- (c) the periods to which the reports are to relate.

Textual Amendments

- F123** Sch. 7 para. 26(2)(aa) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(8\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F124** Sch. 7 para. 26(2)(ab)(ac) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 156\(1\)](#), 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F125** Sch. 7 para. 26(2A) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 156\(2\)](#), 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

Modifications etc. (not altering text)

- C7** Sch. 7 para. 26(2): power to amend conferred (27.3.2012 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\), ss. 156\(3\)\(a\)](#), 306(1)(d)(4)
- C8** Sch. 7 para. 26(2A): power to repeal conferred (27.3.2012 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\), ss. 156\(3\)\(b\)](#), 306(1)(d)(4)

- 27 (1) A public benefit corporation must give information to [^{F126}the regulator][^{F126}the Secretary of State] as to its forward planning in respect of each financial year.
- (2) The document containing the information must be prepared by the directors.
- (3) In preparing the document the directors must have regard to the views of [^{F127}the council] of governors.

Textual Amendments

- F126** Words in Sch. 7 para. 27(1) substituted (27.3.2012 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\), ss. 156\(4\)](#), 306(1)(d)(4)
- F127** Words in Sch. 7 para. 27 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\)](#), 306(4); S.I. 2012/1831, art. 2(2)

[^{F128}Annual meeting of members

Textual Amendments

- F128** Sch. 7 para. 27A and cross-heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 157\(1\)](#), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- 27A (1) A public benefit corporation must hold an annual meeting of its members.
- (2) The meeting must be open to members of the public.

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- (3) At least one member of the board of directors of the corporation must attend the meeting and present the following documents to the members at the meeting—
- (a) the annual accounts,
 - (b) any report of the auditor on them,
 - (c) the annual report.
- (4) Where an amendment is made to the constitution in relation to the powers or duties of the council of governors of a public benefit corporation (or otherwise with respect to the role that the council has as part of the corporation)—
- (a) at least one member of the council of governors must attend the next meeting to be held under this paragraph and present the amendment, and
 - (b) the corporation must give the members an opportunity to vote on whether they approve the amendment.
- (5) If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the corporation must take such steps as are necessary as a result.]

Meeting of [^{F129}council] of governors to consider annual accounts and reports

Textual Amendments

F129 Word in Sch. 7 para. 28 cross-heading substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(d\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

- 28^{F130}(1)] The following documents must be presented to [^{F131}the council] of governors of a public benefit corporation at a general meeting—
- (a) the annual accounts,
 - (b) any report of the auditor on them,
 - (c) the annual report.

- [^{F132}(2) Nothing in sub-paragraph (1) prevents the council of governors from holding a general meeting more than once a year.]

Textual Amendments

F130 Sch. 7 para. 28(1): Sch. 7 para. 28 renumbered as Sch. 7 para. 28(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 157\(2\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

F131 Words in Sch. 7 para. 28 substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

F132 Sch. 7 para. 28(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 157\(2\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

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[^{F133} Combined meetings of members and governors

Textual Amendments

F133 Sch. 7 para. 28A and cross-heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 157(3), 306(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

28A A public benefit corporation may hold a meeting which combines a meeting under paragraph 27A with a meeting under paragraph 28.

Instruments etc

- 29 (1) The constitution must make provision for the authentication of the fixing of the corporation's seal.
- (2) A document purporting to be duly executed under the corporation's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

[^{F134} Power to make provision about voting

Textual Amendments

F134 Sch. 7 para. 30 and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 158(1), 306(1)(d)(4)**; S.I. 2012/1831, art. 2(2)

- 30 (1) Regulations may amend this Chapter so as to add, vary or omit provision relating to voting by members of the council of governors of a public benefit corporation that is an NHS foundation trust, by its directors or by its members.
- (2) The power under sub-paragraph (1) is exercisable only in relation to provision in this Chapter that was inserted, or otherwise provided for, by Part 4 of the Health and Social Care Act 2012.]]

Textual Amendments

F135 Sch. 8 omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 13 para. 9(1)**; S.I. 2012/2657, art. 2(2)

Status: Point in time view as at 01/10/2014.

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Textual Amendments

F136 Sch. 8A omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(4)**, 306(4); [S.I. 2012/2657](#), art. 2(2)

F137 SCHEDULE 9

Section 54

Textual Amendments

F137 Sch. 9 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(2)**, 306(4); [S.I. 2013/671](#), art. 2(3)

SCHEDULE 10

Section 62

AUDIT OF ACCOUNTS OF NHS FOUNDATION TRUSTS

General duty

- 1 In auditing the accounts of any NHS foundation trust an auditor must by examination of the accounts and otherwise satisfy himself that—
- (a) they are prepared in accordance with directions under paragraph 25 of Schedule 7,
 - (b) they comply with the requirements of all other provisions contained in, or having effect under, any enactment which are applicable to them,
 - (c) proper practices have been observed in their compilation, and
 - (d) the trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

Right to documents and information

- 2 (1) An auditor of an NHS foundation trust has a right of access at all reasonable times to every document relating to the trust which appears to him necessary for the purposes of his functions under this Chapter.
- (2) The auditor may—
- (a) require a person holding or accountable for any such document to give him such information and explanation as he considers necessary for the purposes of his functions under this Chapter,
 - (b) if he considers it necessary, require the person to attend before him in person to give the information or explanation or to produce the document.
- (3) The auditor may also—

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- (a) require any director or officer of the trust to give him such information or explanation as he considers necessary for the purposes of his functions under this Chapter,
 - (b) if he considers it necessary, require the director or officer to attend before him in person to give the information or explanation.
- (4) The trust must provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under this Chapter; but this sub-paragraph does not affect the generality of sub-paragraphs (1) to (3).
- (5) A person who without reasonable excuse fails to comply with any requirement of an auditor of an NHS foundation trust under any of sub-paragraphs (1) to (3) is guilty of an offence.
- (6) A person guilty of an offence under sub-paragraph (5) is liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale, and
 - (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for the offence.
- (7) Any expenses incurred by an auditor of an NHS foundation trust in connection with proceedings for an offence under sub-paragraph (5) alleged to have been committed in relation to the audit of the accounts of the trust, so far as not recovered from any other source, are recoverable from the trust.

Reports

- 3 In auditing the accounts of an NHS foundation trust, the auditor must consider—
- (a) whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the trust or brought to the attention of the public, and
 - (b) whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit.
- 4 (1) When an auditor of an NHS foundation trust has concluded his audit of the trust's accounts, he must enter on the accounts—
- (a) a certificate that he has completed the audit in accordance with this Chapter, and
 - (b) his opinion on the accounts.
- (2) But where the auditor makes a report to the [^{F138}council of governors] and board of directors of the trust under paragraph 3 at the conclusion of the audit, he may instead include the certificate and his opinion in that report.

Textual Amendments

F138 Words in Sch. 10 para. 4(2) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(e\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

- 5 (1) Any report under paragraph 3 must be sent by the auditor to the [^{F139}council of governors] and board of directors of the trust and to the regulator—
- (a) at once if it is an immediate report,

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- (b) otherwise not later than 14 days after conclusion of the audit.
- (2) The directors must take the report into consideration as soon as practicable after receiving it.

Textual Amendments

F139 Words in Sch. 10 para. 5(1) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(e\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

Referral to regulator

- 6 If the auditor of an NHS foundation trust has reason to believe that the trust or a director or officer of the trust—
 - (a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful, or
 - (b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,he must refer the matter at once to the regulator.

Audit of accounts of directors or officers

- 7 (1) Where a director or officer of an NHS foundation trust receives money or other property—
 - (a) on behalf of the trust, or
 - (b) for which he ought to account to the trust,the accounts of the director or officer must be audited by the auditor of the accounts of the trust.
- (2) The accounts of the director or officer must be made up to 31st March.
- (3) Paragraph 25(5) of Schedule 7 and paragraphs 1 to 5 of this Schedule apply with the necessary modifications to the audit under this paragraph.

Restriction on disclosure of information

- 8 (1) No information relating to an NHS foundation trust or other person and obtained by an auditor (or by a person acting on the auditor's behalf) under this Chapter or in the course of an audit under this Chapter may be disclosed except—
 - (a) with the consent of the person to whom the information relates,
 - (b) for the purposes of any functions of an auditor of an NHS foundation trust,
 - (c) for the purposes of the functions of the regulator,
 - (d) for the purposes of the functions of the Comptroller and Auditor General under this Chapter,
 - (e) for the purposes of the functions of [F140the Care Quality Commission] ,
 - (f) for the purposes of any criminal proceedings.
- (2) A person who discloses information in contravention of sub-paragraph (1) is guilty of an offence.
- (3) A person guilty of an offence under sub-paragraph (2) is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or to both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or to both).
- (4) 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 reference in sub-paragraph (3) to a period of imprisonment of 12 months is a reference to a period of imprisonment of 6 months.

Textual Amendments

F140 Words in Sch. 10 para. 8(1)(e) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), s. 170(3)(4), [Sch. 5 para. 86](#); S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

SCHEDULE 11

Section 135

PILOT SCHEMES

How pilot schemes may be initiated

- 1 (1) A pilot scheme may be made—
- (a) on the initiative of [^{F141}the Board], or
 - (b) in response to a request made by a person wishing to participate in the scheme.
- (2) The request referred to in sub-paragraph (1)(b) must—
- (a) be made in writing, and
 - (b) comply with such requirements (if any) as may be prescribed.

Textual Amendments

F141 Words in [Sch. 11 para. 1\(1\)\(a\)](#) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 92\(2\)](#) (with [Sch. 4 para. 92\(8\)](#)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Preliminary steps to be taken

- 2 (1) Before making a pilot scheme, [^{F142}the Board] must prepare proposals for the scheme and submit them to the Secretary of State.
- (2) But proposals may be submitted by [^{F143}the Board] only with the agreement of the other proposed participants.
- (3) In preparing proposals for a pilot scheme, [^{F144}the Board] must comply with any directions given to it by the Secretary of State as to—
- (a) the matters to be dealt with, and information to be included, in the proposals, and
 - (b) the procedure to be followed by [^{F145}the Board].

Status: Point in time view as at 01/10/2014.

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- (4) Before submitting proposals for a pilot scheme, [^{F146}the Board] must (in addition to complying with any requirements about consultation imposed by or under any other enactment) comply with any directions given to it by the Secretary of State about the extent to which, and manner in which, it must consult on the proposals.
- (5) The Secretary of State may give directions—
- (a) requiring [^{F147}the Board] to submit proposals to him,
 - (b) as to the matters to which [^{F147}the Board] must have regard in making any recommendation to the Secretary of State when submitting proposals for a pilot scheme,
 - (c) as to the form in which any such recommendation must be made,
 - (d) requiring [^{F148}the Board] to provide the Secretary of State with summaries (prepared and presented in the manner specified in the directions) of all requests received by [^{F149}it] during the period specified in the directions.
- (6) A direction under this paragraph may be given so as to apply—
- (a) generally in circumstances specified in the direction, or
 - (b) in relation to a particular case.

Textual Amendments

- F142** Words in Sch. 11 para. 2(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F143** Words in Sch. 11 para. 2(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F144** Words in Sch. 11 para. 2(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F145** Words in Sch. 11 para. 2(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(c) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F146** Words in Sch. 11 para. 2(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F147** Words in Sch. 11 para. 2(5)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F148** Words in Sch. 11 para. 2(5)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(d)(i) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F149** Word in Sch. 11 para. 2(5)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(3)(d)(ii) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Approval

- 3 (1) If proposals for a pilot scheme are submitted under paragraph 2, the Secretary of State must—
- (a) approve them as submitted,
 - (b) make such modifications as he considers appropriate and approve them as modified, or
 - (c) reject them.
- (2) The Secretary of State may not approve proposals for a pilot scheme unless satisfied that they include satisfactory provision for any participant other than [^{F150}the Board] to withdraw from the scheme if he wishes to do so.

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- (3) When the Secretary of State makes a decision under this paragraph—
- (a) he must notify [^{F151}the Board] of the decision, and
 - (b) [^{F152}the Board] must, without delay, notify the other participants in the proposed scheme.

Textual Amendments

- F150** Words in Sch. 11 para. 3(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(4)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F151** Words in Sch. 11 para. 3(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(4)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F152** Words in Sch. 11 para. 3(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(4)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Preliminary approval

- 4 (1) This paragraph applies if [^{F153}the Board] proposes to make a pilot scheme but has not determined who the participants, or who all of the participants, will be.
- (2) [^{F154}The Board] may apply to the Secretary of State for preliminary approval to be given to its proposals.
- (3) If such an application is made, the Secretary of State must—
- (a) give preliminary approval to the proposals as submitted,
 - (b) make such modifications as he considers appropriate and give preliminary approval to them as modified, or
 - (c) reject them.
- (4) If [^{F155}the Board] is given preliminary approval, it must take such steps, with a view to obtaining final approval for the proposed pilot scheme, as the Secretary of State may direct.
- (5) The fact that the Secretary of State has given preliminary approval to proposals for a pilot scheme does not affect his right to refuse to approve the completed proposals when they are submitted under paragraph 2.
- (6) Sub-paragraphs (3) to (6) of paragraph 2 apply in relation to an application for preliminary approval of proposals under this paragraph as they apply in relation to proposals under that paragraph.

Textual Amendments

- F153** Words in Sch. 11 para. 4(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(5)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F154** Words in Sch. 11 para. 4(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(5)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F155** Words in Sch. 11 para. 4(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(5)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Effect of proposals on existing services

- 5 (1) Proposals for a pilot scheme submitted under paragraph 2, or included in an application for preliminary approval of proposals under paragraph 4, must include—
- (a) an assessment by [^{F156}the Board] of the likely effect of the implementation of the proposals in [^{F157}the area concerned] on the services mentioned in sub-paragraph (2),
 - (b) any assessment [^{F158}prepared under sub-paragraph (3)].
- (2) The services are—
- (a) pharmaceutical services,
 - (b) local pharmaceutical services provided under existing pilot schemes or LPS schemes,
 - (c) primary medical services.
- (3) If it appears to [^{F159}the Board] that the proposals would, if implemented, affect any of the services mentioned in sub-paragraph (2) provided in [^{F160}another area], it must [^{F161}prepare an assessment of the likely effect on those services of the implementation of] the proposals before submitting them under paragraph 2 or including them in an application for preliminary approval under paragraph 4.

^{F162}(4)

Textual Amendments

- F156** Words in Sch. 11 para. 5(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(6)(a)(i) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F157** Words in Sch. 11 para. 5(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(6)(a)(ii) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F158** Words in Sch. 11 para. 5(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(6)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F159** Words in Sch. 11 para. 5(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(6)(c)(i) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F160** Words in Sch. 11 para. 5(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(6)(c)(ii) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F161** Words in Sch. 11 para. 5(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(6)(c)(iii) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F162** Sch. 11 para. 5(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(6)(d) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Guidance

- 6 The Secretary of State may issue guidance about the criteria by reference to which, as a general rule, powers under paragraph 3 or 4 are likely to be exercised.

Making a scheme

- 7 (1) If the Secretary of State approves proposals for a pilot scheme under paragraph 3 and notifies [^{F163}the Board] in accordance with that paragraph, [^{F164}the Board must] implement the proposals in accordance with directions given by the Secretary of State.

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- (2) A proposed participant in a pilot scheme (other than [^{F165}the Board]) may withdraw at any time before the proposals relating to him are implemented.
- (3) A pilot scheme, as implemented, may differ from the proposals for the scheme approved by the Secretary of State only if he agrees to the variation or—
 - (a) directions given by him (either under sub-paragraph (1) or generally) authorise variations that satisfy specified requirements, and
 - (b) the variation satisfies those requirements.
- (4) As soon as is reasonably practicable after implementing proposals for a pilot scheme, [^{F166}the Board] must (in accordance with any directions given to it by the Secretary of State) publish details of the scheme.

Textual Amendments

F163 Words in Sch. 11 para. 7(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(7)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F164 Words in Sch. 11 para. 7(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(7)(b) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F165 Words in Sch. 11 para. 7(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(7)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F166 Words in Sch. 11 para. 7(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 92(7)(a) (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 12

Section 144

LPS SCHEMES

Provision of local pharmaceutical services

- 1 (1) [^{F167}The Board or the Secretary of State]^{F168} ... may establish LPS schemes.
- (2) In this Act, an “LPS scheme” means one or more agreements—
 - (a) made by [^{F169}the Board or the Secretary of State (the “commissioner”)]^{F170} ... in accordance with this Schedule,
 - (b) under which local pharmaceutical services will be provided (otherwise than by the [^{F171}the commissioner]).^{F172} ...
 - ^{F172}(c)
- ^{F173}(2A)
- [^{F174}(2B) The Secretary of State may establish an LPS scheme only where the other party is the Board.
- (2C) The Board may provide local pharmaceutical services under an LPS scheme only in such circumstances as may be prescribed.]
- (3) An LPS scheme may include arrangements—

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- (a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Act, other than under Chapter 1 of this Part, and whether or not of the kind usually provided by pharmacies,
 - (b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).
- (4) An LPS scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services or primary dental services.
- (5) In determining the arrangements it needs to make in order to comply with section 126, [F175the Board] may take into account arrangements under an LPS scheme F176
- (6) The functions of an NHS trust [F177, an NHS foundation trust and [F178the Board]] include power to provide any services to which an LPS scheme applies.
- (7) In this Schedule—
- “local pharmaceutical services” means such services of a kind which may be provided under section 126, or by virtue of section 127, (other than practitioner dispensing services) as may be prescribed for the purposes of this Schedule, and
- “LP services” means services provided under an LPS scheme (including any services to which the scheme applies as a result of sub-paragraph (3)).
- (8) “Practitioner dispensing services” means the provision of drugs, medicines or listed appliances (within the meaning given by section 126) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 132(1).

Textual Amendments

- F167** Words in Sch. 12 para. 1(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(a)(i) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F168** Words in Sch. 12 para. 1(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(a)(ii) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F169** Words in Sch. 12 para. 1(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(b)(i) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F170** Words in Sch. 12 para. 1(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(b)(ii) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F171** Words in Sch. 12 para. 1(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(b)(iii) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F172** Sch. 12 para. 1(2)(c) and word repealed (1.9.2012) by Health Act 2009 (c. 21), ss. 29(8)(c), 40(1), Sch. 6; S.I. 2012/1902, art. 2(d)
- F173** Sch. 12 para. 1(2A) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(c) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F174** Sch. 12 para. 1(2B)(2C) substituted for Sch. 12 para. 1(2B) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(d) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F175** Words in Sch. 12 para. 1(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(e) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F176** Words in Sch. 12 para. 1(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(f) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F177 Words in Sch. 12 para. 1(6) substituted (1.9.2012) by Health Act 2009 (c. 21), ss. 29(11), 40(1); S.I. 2012/1902, art. 2(d)

F178 Words in Sch. 12 para. 1(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(2)(e) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Designation of priority neighbourhoods or premises

- 2 (1) The Secretary of State may make regulations allowing [^{F179}the Board]^{F180} ... to designate—
- [^{F181}(a) relevant areas],
 - (b) premises, or
 - (c) descriptions of premises,
- for the purposes of this paragraph.
- (2) The regulations may, in particular, make provision—
- (a) as to the circumstances in which, and the [^{F182}relevant areas] or premises in relation to which, designations may be made or maintained,
 - (b) allowing [^{F183}the Board] to defer consideration of pharmaceutical list applications relating to [^{F182}relevant areas], premises or descriptions of premises that have been designated,
 - (c) allowing a designation to be cancelled in prescribed circumstances,
 - (d) requiring a designation to be cancelled—
 - (i) if the Secretary of State gives a direction to that effect, or
 - (ii) in prescribed circumstances.
- (3) “Pharmaceutical list applications” means applications for inclusion in a pharmaceutical list.
- [^{F184}(4) “Relevant area” has the same meaning as in section 129(2A).]

Textual Amendments

F179 Words in Sch. 12 para. 2(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(3)(a) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F180 Words in Sch. 12 para. 2(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(3)(b) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F181 Words in Sch. 12 para. 2(1)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 207(12)(a), 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F182 Words in Sch. 12 para. 2(2)(a)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 207(12)(a), 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F183 Words in Sch. 12 para. 2(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 93(3)(a) (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F184 Sch. 12 para. 2(4) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 207(12)(b), 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Modifications etc. (not altering text)

- C9 Sch. 12 para. 2 modified (1.4.2013) by [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013 \(S.I. 2013/349\)](#), regs. 1, **99(1)**

Regulations

- 3 (1) The Secretary of State may make regulations with respect to LP services.
- (2) The regulations must include provision for participants other than [^{F185}the commissioner] to withdraw from an LPS scheme if they wish to do so.
- (3) The regulations may, in particular—
- (a) provide that an LPS scheme may be made only—
 - (i) in prescribed circumstances,
 - (ii) in relation to an area, a community or a category of persons determined in accordance with the regulations, or
 - (iii) in relation to premises determined in accordance with the regulations,
 - (b) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with an LPS scheme,
 - (c) make provision as to the services, or categories of service, for which an LPS scheme must provide,
 - (d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons providing LP services,
 - (e) require details of each LPS scheme to be published,
 - (f) make provision with respect to the variation and termination of an LPS scheme,
 - (g) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both LP services and pharmaceutical services from the same premises,
 - (h) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list,
 - (i) provide for parties to an LPS scheme to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 9,
 - (j) provide for directions, as to payments, made under section 9(11) (as it has effect as a result of regulations made by virtue of paragraph (i)) to be enforceable in [^{F186}the county court] (if the court so orders) as if they were judgments or orders of that court,
 - (k) authorise [^{F187}the Board or the Secretary of State]^{F188}... to make payments of financial assistance for prescribed categories of preparatory work undertaken—
 - (i) in connection with preparing proposals for an LPS scheme, or
 - (ii) in preparation for the provision of services under a proposed LPS scheme.

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Textual Amendments

- F185** Words in Sch. 12 para. 3(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 93\(4\)\(a\)](#) (with [Sch. 4 para. 93\(6\)](#)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F186** Words in Sch. 12 para. 3(3)(j) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 9 para. 52](#); S.I. 2014/954, art. 2(c) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F187** Words in Sch. 12 para. 3(3)(k) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 93\(4\)\(b\)\(i\)](#) (with [Sch. 4 para. 93\(6\)](#)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F188** Words in Sch. 12 para. 3(3)(k) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 93\(4\)\(b\)\(ii\)](#) (with [Sch. 4 para. 93\(6\)](#)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[^{F189}SCHEDULE 12A

Section 165A(3)

PHARMACEUTICAL REMUNERATION

Textual Amendments

- F189** [Sch. 12A](#) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 51\(2\), 306\(4\), Sch. 3](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Interpretation

- 1 In this Schedule—
- (a) “drugs” includes medicines and listed appliances (within the meaning of section 126), and
 - (b) “pharmaceutical remuneration” means remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services.

Pharmaceutical remuneration to be apportioned among clinical commissioning groups

- 2
- (1) The Board must determine the elements of pharmaceutical remuneration in respect of which apportionments are to be made in relation to a financial year in accordance with this paragraph.
 - (2) In this Schedule, those elements of pharmaceutical remuneration are referred to as “designated elements”.
 - (3) The Board must notify each clinical commissioning group of a determination under sub-paragraph (1).
 - (4) The Board must apportion the sums paid by it in respect of each designated element during the financial year among all clinical commissioning groups, in such manner as the Board thinks appropriate.
 - (5) In apportioning sums under sub-paragraph (4), the Board may, in particular, take into account the financial consequences of orders for the provision of drugs that are attributable to the members of each clinical commissioning group.

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- (6) Where an amount of pharmaceutical remuneration is apportioned to a clinical commissioning group, the Board—
 - (a) may deduct that amount from the sums that it would otherwise pay to the group under section 223G(1), and
 - (b) if it does so, must notify the group accordingly.
- (7) The Secretary of State may direct the Board that an element of pharmaceutical remuneration specified in the direction is not to be included in a determination under sub-paragraph (1).
- (8) In determining the amount to be allotted to a clinical commissioning group for the purposes of section 223G, the Board must take into account the effect of this Schedule.
- (9) For the purposes of sections 223H and 223I(3) and paragraph 17 of Schedule 1A, any amount of which a clinical commissioning group is notified under sub-paragraph (6) is to be treated as expenditure of the group which is attributable to the performance by it of its functions in the year in question.

Other pharmaceutical remuneration

- 3 (1) This paragraph applies in relation to pharmaceutical remuneration paid in a financial year other than—
 - (a) designated elements of such remuneration, and
 - (b) remuneration of a prescribed description.
- (2) The Board may require a person to reimburse the Board for any pharmaceutical remuneration to which this paragraph applies if the drugs or services to which the remuneration relates were—
 - (a) ordered by that person, or
 - (b) ordered in the course of the delivery of a service arranged by that person.
- (3) Any sum payable to the Board by virtue of sub-paragraph (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

Exercise of functions

- 4 The Board may, with the consent of the Secretary of State—
 - (a) direct a Special Health Authority to exercise any functions of the Board under this Schedule, or
 - (b) arrange for any other person to exercise any of those functions.]

.....

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Textual Amendments

F190 Sch. 13 omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), **Sch. 2 para. 128** (with Sch. 5)

F191 SCHEDULE 14

Section 231

Textual Amendments

F191 Sch. 14 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 4 para. 124**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 15

Section 232

ACCOUNTS AND AUDIT

NHS bodies

- 1 (1) The following are NHS bodies for the purposes of this Schedule—
- ^{F192}(a)
 - (b) any Special Health Authority to which sub-paragraph (2) applies,
 - ^{F193}(c)
 - (d) any NHS trust all or most of whose hospitals, establishments and facilities are situated in England,
 - (e) any trustees for such an NHS trust appointed under paragraph 10 of Schedule 4,
 - (f) any special trustees appointed as mentioned in section 212(1) for a trust all or most of whose hospitals, establishments and facilities are situated in England,
 - ^{F194}(g)
- (2) This sub-paragraph applies to any Special Health Authority which—
- (a) performs functions only or mainly in respect of England, or
 - (b) neither performs functions only or mainly in respect of England, nor performs functions only or mainly in respect of Wales.
- [^{F195}(3) References in this Schedule to “NHS Direct” are to NHS Direct National Health Service Trust.]

Textual Amendments

F192 Sch. 15 para. 1(1)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 4 para. 125(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)

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- F193** Sch. 15 para. 1(1)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 125(2)(b); S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)
- F194** Sch. 15 para. 1(1)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 125(2)(c); S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)
- F195** Sch. 15 para. 1(3) inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, 6(2) (with art. 10)

Accounts to be kept by NHS bodies

- 2 (1) Each NHS body must keep proper accounts and proper records in relation to the accounts.
- (2) If the Secretary of State so directs with the approval of the Treasury, the accounts of any such body of a description specified in the direction must be kept in such form as is so specified.
- (3) This paragraph is subject to paragraph 8(2).

Preparation of annual accounts

- 3 (1) Each NHS body must prepare in respect of each financial year annual accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) This paragraph is subject to paragraph 8(3).

Auditing of accounts of certain NHS bodies

- 4 (1) This paragraph applies to any NHS body that is not a Special Health Authority (as to which, see paragraph 6).
- [^{F196}(a) a Special Health Authority (as to which, see paragraph 6).][^{F197}, or
(b) NHS Direct (as to which, see paragraph 6).]
- (2) Any annual accounts prepared by any such body under paragraph 3 must be audited in accordance with the Audit Commission Act 1998 (c. 18) by an auditor or auditors appointed by the Audit Commission (see section 2(1)(b) of that Act).
- (3) The Comptroller and Auditor General may examine—
- (a) any such accounts and any records relating to them, and
- (b) any report on them by the auditor or auditors.
- (4) “The Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England ^{F198}....

Textual Amendments

- F196** Sch. 15 para. 4(1)(a): words in Sch. 15 para. 4(1) renumbered as Sch. 15 para. 4(1)(a) (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, 6(3) (with art. 10)
- F197** Sch. 15 para. 4(1)(b) and word inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, 6(3) (with art. 10)
- F198** Words in Sch. 15 para. 4(4) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), Sch. 9 para. 1(2)(z1), Sch. 18 Pt. 9; S.I. 2008/172, art. 4(a)(n)(i)

Status: Point in time view as at 01/10/2014.

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Transmission of annual accounts

- 5 (1) Each NHS body that is [^{F199}neither] a Special Health Authority [^{F200}nor NHS Direct] must send a copy of any accounts of the body audited as mentioned in paragraph 4(2) to the Secretary of State by the specified date.
- ^{F201}(2)
- (3) Each [^{F202}NHS body that is a Special Health Authority or NHS Direct] must send copies of any annual accounts prepared by it under paragraph 3—
- (a) to the Secretary of State by the specified date, and
 - (b) to the Comptroller and Auditor General as soon as is reasonably practicable following the end of the financial year in question.
- (4) The “specified date”, in relation to a financial year, means such date as the Secretary of State may direct in relation to that year.

Textual Amendments

- F199** Word in Sch. 15 para. 5(1) substituted (26.3.2008) by [Government Resources and Accounts Act 2000 \(Audit of Public Bodies\) Order 2008 \(S.I. 2008/817\)](#), arts. 1, **6(4)(a)** (with art. 10)
- F200** Words in Sch. 15 para. 5(1) inserted (26.3.2008) by [Government Resources and Accounts Act 2000 \(Audit of Public Bodies\) Order 2008 \(S.I. 2008/817\)](#), arts. 1, **6(4)(b)** (with art. 10)
- F201** Sch. 15 para. 5(2) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 4 para. 125(3)**; S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)
- F202** Words in Sch. 15 para. 5(3) substituted (26.3.2008) by [Government Resources and Accounts Act 2000 \(Audit of Public Bodies\) Order 2008 \(S.I. 2008/817\)](#), arts. 1, **6(5)** (with art. 10)

Auditing of certain Special Health Authority accounts by Comptroller and Auditor General

- 6 (1) This paragraph applies where [^{F203}an NHS body that is a Special Health Authority or NHS Direct] sends a copy of its annual accounts to the Comptroller and Auditor General under paragraph 5(3).
- (2) The Comptroller and Auditor General must examine, certify and report on the accounts.
- (3) The [^{F204}body] must lay before both Houses of Parliament—
- (a) a copy of the accounts, and
 - (b) the Comptroller and Auditor General's report on them.

Textual Amendments

- F203** Words in Sch. 15 para. 6(1) substituted (26.3.2008) by [Government Resources and Accounts Act 2000 \(Audit of Public Bodies\) Order 2008 \(S.I. 2008/817\)](#), arts. 1, **6(6)** (with art. 10)
- F204** Word in Sch. 15 para. 6(3) substituted (26.3.2008) by [Government Resources and Accounts Act 2000 \(Audit of Public Bodies\) Order 2008 \(S.I. 2008/817\)](#), arts. 1, **6(7)** (with art. 10)

Summarised accounts of NHS bodies other than Special Health Authorities

- ^{F2057}

Status: Point in time view as at 01/10/2014.

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Textual Amendments

F205 Sch. 15 para. 7 omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 125\(4\)](#); S.I. 2012/1831, art. 2(2) (with art. 11(1))

Exceptions for accounts of charitable trusts

- 8 (1) For the purposes of this paragraph a “relevant charitable trust”, in relation to an NHS body, means a charitable trust whose trustee or trustees is or are that body.
- (2) Nothing in paragraph 2, so far as it applies to an NHS body of any description, has effect in relation to accounts relating to a relevant charitable trust.
- (3) Nothing in paragraph 3 ^{F206} ..., so far as it applies to an NHS body of any description, requires any annual or summarised accounts prepared by or in relation to the body to include matters relating to a relevant charitable trust.

Textual Amendments

F206 Words in Sch. 15 para. 8(3) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 125\(5\)](#); S.I. 2012/1831, art. 2(2) (with art. 11(1))

Exceptions for accounts of non-charitable trusts

^{F207}

Textual Amendments

F207 Sch. 15 para. 9 omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 125\(6\)](#); S.I. 2012/1831, art. 2(2) (with art. 11(1))

Textual Amendments

F208 Sch. 16 repealed (30.6.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), ss. 232(1), 245(5), [Sch. 18 Pt. 18](#); S.I. 2008/461, art. 4(b)(c)

Status: Point in time view as at 01/10/2014.

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SCHEDULE 17

Section 246

EXEMPT INFORMATION RELATING TO HEALTH SERVICES

Modifications etc. (not altering text)

- C10** Sch. 17: power to apply conferred by 2007 c. 28, s. 123(5)(b)(iii) (as substituted (12.1.2010) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 32(1)**, 148(2)(a)(ii))
- C11** Sch. 17 applied (1.4.2013) by [The Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013 \(S.I. 2013/218\)](#), regs. 1(2), **30(3)**

PART 1

DESCRIPTIONS OF EXEMPT INFORMATION

- 1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, a relevant body.
- 2 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of a relevant body.
- 3 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by a relevant body.
- 4 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by a relevant body.
- 5 The amount of any expenditure proposed to be incurred by a relevant body under any particular contract for the acquisition of property or the supply of goods and services.
- 6 Any terms proposed or to be proposed by or to a relevant body in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
- 7 The identity of a relevant body (as well as of any other person, by virtue of paragraph 6) as the person offering any particular tender for a contract for the supply of goods or services.
- 8 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between a relevant body or a Minister of the Crown and employees of, or office-holders under, a relevant body.
- 9 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with—
 - (a) any legal proceedings by or against a relevant body, or
 - (b) the determination of any matter affecting a relevant body,
 (whether, in either case, proceedings have been commenced or are in contemplation).

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- 10 Information relating to a particular person who was included in a list of persons undertaking to provide services under Part 2 of the National Health Service Act 1977 (c. 49).
- 11 Information relating to a particular person who is, or was formerly, included in, or is an applicant for inclusion in—
- (a) a pharmaceutical list, or
 - (b) a pharmaceutical list or ophthalmic list under the National Health Service (Wales) Act 2006 (c. 42).
- 12 Information relating to a particular person who—
- (a) provided primary medical services, primary dental services or primary ophthalmic services under a contract under section 28K, 28Q or 28WA of the National Health Service Act 1977, or
 - (b) was included in a list under section 28X of that Act.
- 13 (1) Information relating to a particular person who—
- (a) is, or was formerly, providing primary medical services, primary dental services or primary ophthalmic services under a contract under section 84, 100 or 117, or
 - (b) is, or was formerly, included in, or is an applicant for inclusion in, a list under section 91, 106, 123 or ^[F209]146^[F209]147A].
- (2) In this paragraph—
- (a) references to primary medical services and primary dental services include such services provided under the National Health Service (Wales) Act 2006, and
 - (b) references to provisions of this Act include references to corresponding provisions of that Act.

Textual Amendments

F209 Word in Sch. 17 para. 13(1)(b) substituted (27.3.2012 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **208(6)**, 306(1)(d)(4)

- 14 Information relating to any particular employee, former employee, or applicant to become an employee, of a person referred to in paragraph 10, 11, 12 or 13.
- 15 Information relating to the physical or mental health of a particular individual.

PART 2

QUALIFICATIONS

- 16 Information relating to a person of a description specified in any of paragraphs 1 to 4 and 10 to 14 of Part 1 is not exempt information by virtue of that paragraph unless it relates to an individual of that description in the capacity indicated by the description.
- 17 Information falling within paragraph 5 of Part 1 is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with

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a relevant body in respect of the property, goods or services, whether the advantage would arise as against that body or as against other such persons.

18 Information falling within paragraph 6 of Part 1 is exempt information if and so long as disclosure to the public of the terms would prejudice a relevant body in those or any other negotiations concerning the property or goods or services.

19 Information falling within paragraph 8 of Part 1 is exempt information if and so long as disclosure to the public of the information would prejudice a relevant body in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.

PART 3

INTERPRETATION

20 In this Schedule—

“disposal”, in relation to property, includes the granting of an interest in or right over it,

“employee” means a person employed under a contract of service,

“labour relations matter” means—

- (a) any of the matters specified in paragraphs (a) to (g) of section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (matters which may be the subject of a collective agreement), or
- (b) any dispute about a matter falling within paragraph (a),

and for the purposes of this definition the enactments mentioned in paragraph (a), with the necessary modifications, apply in relation to office-holders under a relevant body as they apply in relation to employees of a relevant body,

“office-holder”, in relation to a relevant body, means the holder of any paid office appointments to which are or may be made or confirmed by the body or by any person who holds any such office or is an employee of the body.

SCHEDULE 18

Section 75

SECTION 75 ARRANGEMENTS: TRANSFER OF STAFF

Application of Schedule

1 This Schedule applies where, under any arrangements under regulations under section 75, any functions of a body (“the transferor”) will be exercised by another body (“the transferee”).

Orders transferring staff

2 (1) The Secretary of State may by order transfer to the transferee any specified description of employees of the transferor.

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- (2) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.

Effect of order on contracts of employment

- 3 (1) The contract of employment of an employee transferred by an order under paragraph 2—
- (a) is not terminated by the transfer, and
 - (b) has effect from the date of the transfer as if originally made between the employee and the transferee.
- (2) In particular—
- (a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee's contract of employment are by virtue of this sub-paragraph transferred to the transferee, and
 - (b) anything done before the date of the transfer by or in relation to the transferor in respect of the employee or his contract of employment is deemed from that date to have been done by or in relation to the transferee.
- (3) Sub-paragraphs (1) and (2) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the transferor or the transferee that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph does not affect any right of an employee transferred by an order under paragraph 2 to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

Effect of order on pension rights

- 4 (1) An order under paragraph 2 may provide that, in the case of an employee of any specified description who is transferred by the order, paragraph 3 does not apply in relation to—
- (a) so much of the employee's contract of employment as relates to relevant pension provisions, or
 - (b) any rights, powers, duties or liabilities under or in connection with that contract, or otherwise arising in connection with the employee's employment, and relating to such provisions.
- (2) If an order under paragraph 2 provides as mentioned in sub-paragraph (1), the order may in relation to any such employee make such provision (if any) as the Secretary of State considers appropriate with respect to all or any of the matters mentioned in paragraphs (a) and (b) of that sub-paragraph.

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- (3) The provision which may be made by virtue of sub-paragraph (2) includes provision—
- (a) for any such employee's contract of employment with the transferee to have effect with any specified modifications,
 - (b) for relevant pension provisions of any specified description to have effect in the case of any such employee with any such modifications.
- (4) In this paragraph “relevant pension provisions” means the provisions of an occupational pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48), with the exception (if the order under paragraph 2 so provides) of any provisions of such a scheme falling within a description specified in the order.

Divided employments

- 5 (1) Where an employee will be transferred by an order under paragraph 2 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, divided so as to constitute two separate contracts of employment between the employee and the transferor and between the employee and the transferee.
- (2) Where an employee's contract of employment is divided as provided under sub-paragraph (1)—
- (a) the order must provide for paragraph 3 to have effect in the case of the employee and his contract of employment subject to appropriate modifications, and
 - (b) paragraph 4 similarly applies only so far as appropriate in connection with the employee's employment by the transferee.

F210 SCHEDULE 19

Section 250

Textual Amendments

F210 Sch. 19 omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 283(1), 306(4)** (with [s. 283\(3\)](#)); [S.I. 2012/1319](#), art. 2(3)

SCHEDULE 20

Section 254

FURTHER PROVISION ABOUT LOCAL SOCIAL SERVICES AUTHORITIES

Modifications etc. (not altering text)

C12 Sch. 20 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 3 para. 9** (with [Sch. 3 Pt. 1](#))

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Care of mothers and young children

- 1 A local social services authority may, with the Secretary of State's approval, and to such extent as he may direct must, make arrangements for the care of pregnant women and women who are breast feeding (other than for the provision of residential accommodation for them).

Prevention, care and after-care

- 2 (1) A local social services authority may, with the Secretary of State's approval, and to such extent as he may direct must, make the arrangements mentioned in sub-paragraph (2).
- (2) The arrangements are for the purpose of the prevention of illness, for the care of persons suffering from illness and for the after-care of persons who have been suffering from illness and in particular for—
- (a) the provision, for persons whose care is undertaken with a view to preventing them from becoming ill, persons suffering from illness and persons who have been suffering from illness, of centres or other facilities for training them or keeping them suitably occupied and the equipment and maintenance of such centres,
 - (b) the provision, for the benefit of such persons as are mentioned in paragraph (a), of ancillary or supplemental services, and
 - (c) the exercise of the functions of the local social services authority in respect of persons suffering from mental disorder who are received into guardianship under Part 2 or 3 of the Mental Health Act 1983 (c. 20) (whether the guardianship of the authority or of other persons).
- (3) A local social services authority may not, and is not under a duty to, make under this paragraph arrangements to provide facilities for any of the purposes mentioned in section 15(1) of the Disabled Persons (Employment) Act 1944 (c. 10).
- (4) No arrangements under this paragraph may provide for the payment of money to persons for whose benefit they are made, except in so far as they fall within sub-paragraph (5).
- (5) Arrangements fall within this sub-paragraph if—
- (a) they provide for the remuneration of such persons engaged in suitable work in accordance with the arrangements of such amounts as the local social services authority considers appropriate in respect of their occasional personal expenses, and
 - (b) it appears to the authority that no such payment would otherwise be made.
- (6) No arrangements under this paragraph may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (c. 33) (exclusion from benefits) applies solely—
- (a) because he is destitute, or
 - (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- (7) Section 95(2) to (7) of that Act apply for the purposes of sub-paragraph (6); and for that purpose a reference to the Secretary of State in section 95(4) or (5) is a reference to a local social services authority.

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- (8) The Secretary of State may make regulations as to the conduct of premises in which facilities are provided in pursuance of arrangements made under this paragraph for persons—
- (a) who are or have been suffering from mental disorder within the meaning of the Mental Health Act 1983, or
 - (b) whose care is undertaken with a view to preventing them from becoming sufferers from mental disorder.
- (9) “Facilities” means facilities for training such persons or keeping them suitably occupied.
- (10) This paragraph does not apply in relation to persons under the age of 18.
- (11) No authority is authorised or may be required under this paragraph to provide residential accommodation for any person.

Home help and laundry facilities

- 3 (1) Each local social services authority—
- (a) must provide or arrange for the provision of, on such a scale as is adequate for the needs of its area, of home help for households where such help is required owing to the presence of a person to whom sub-paragraph (2) applies, and
 - (b) may provide or arrange for the provision of laundry facilities for households for which home help is being, or can be, provided under paragraph (a).
- (2) This sub-paragraph applies to any person who—
- (a) is suffering from illness,
 - (b) is pregnant or has recently given birth,
 - (c) is aged, or
 - (d) handicapped as a result of having suffered from illness or by congenital deformity.

Research

- 4 (1) A local social services authority may conduct or assist other persons in conducting research into matters relating to the functions of local social services authorities under this Schedule.
- (2) Sub-paragraph (1) does not affect any powers conferred by any other Act.

SCHEDULE 21

Section 259

PROHIBITION OF SALE OF MEDICAL PRACTICES

Modifications etc. (not altering text)

C13 Sch. 21 transfer of functions (10.7.2008) by [Welsh Ministers \(Transfer of Functions\) Order 2008 \(S.I. 2008/1786\)](#), **art. 2(b)**

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Prohibition, and certificate of the Secretary of State

- 1
- (1) Any person who sells or buys the goodwill of a medical practice which it is unlawful to sell by virtue of section 259 is guilty of an offence and liable on conviction on indictment to a fine not exceeding—
 - (a) such amount as will in the court's opinion secure that he derives no benefit from the offence, and
 - (b) the further amount of £500,or to imprisonment for a term not exceeding three months, or both.
 - (2) Any person proposing to be a party to a transaction or series of transactions which he considers might amount to a sale of the goodwill of a medical practice in contravention of section 259 may ask the Secretary of State for a certificate under this paragraph.
 - (3) The Secretary of State must—
 - (a) consider any such application, and
 - (b) if he is satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of such a medical practice, issue to the applicant a certificate to that effect.
 - (4) The certificate must—
 - (a) be in the prescribed form, and
 - (b) set out all material circumstances disclosed to the Secretary of State.
 - (5) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it is a defence to prove that the transaction or series of transactions was certified by the Secretary of State under sub-paragraph (3).
 - (6) Any document purporting to be such a certificate is admissible in evidence and is deemed to be such a certificate unless the contrary is proved.
 - (7) The court may disregard such a certificate if it appears to the court that the applicant for the certificate—
 - (a) failed to disclose to the Secretary of State all the material circumstances, or
 - (b) made any misrepresentation with respect to the material circumstances.
 - (8) A prosecution for an offence under this paragraph may be instituted only by or with the consent of the Director of Public Prosecutions, and the Secretary of State must, at the request of the Director, furnish him with—
 - (a) a copy of any certificate issued by the Secretary of State under sub-paragraph (3), and
 - (b) copies of any documents produced to him in connection with the application for that certificate.

Certain transactions deemed sale of goodwill

- 2
- (1) For the purposes of section 259 and paragraph 1, a disposal of premises previously used for the purposes of a medical practice is deemed to be a sale of the goodwill of a medical practice if—
 - (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A's medical practice, and

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- (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- (2) If a person disposes of any premises together with any other property, the court must, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it considers just.
- (3) For the purposes of sub-paragraphs (1) and (2)—
 - (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and “disposes” and “disposing” must be read accordingly, and
 - (b) a person who procures the disposal of any premises must be treated as having disposed of them.
- (4) Where in pursuance of any partnership agreement—
 - (a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership,
 - (b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or
 - (c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,
 there is deemed for the purposes of section 259 and paragraph 1 to have been a sale of goodwill as specified in sub-paragraph (5).
- (5) The sale of goodwill is the sale of the goodwill of the practice—
 - (a) of any partner to whom, or to whose personal representative, the consideration (or any part of it) is given or for whose benefit the services are performed,
 - (b) to the partner or each of the partners by or on whose behalf the consideration (or any part of it) was given or to the partner who performed the services.
- (6) The sale is deemed for the purposes of section 259 and paragraph 1 to have been effected—
 - (a) in a case to which sub-paragraph (4)(a) or (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part was given, or
 - (b) in a case to which sub-paragraph (4)(c) applies, at the time when the agreement was made.
- (7) Sub-paragraph (8) applies if a person (“the assistant”)—
 - (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice),

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- (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed, and
 - (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.
- (8) For the purposes of section 259 and paragraph 1, a sale of the goodwill of the practice is deemed to have taken place (at the time when the remuneration was fixed) unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.
- (9) For the purposes of section 259 and paragraph 1, the goodwill of a medical practice is deemed to have been sold if sub-paragraph (10) or (11) applies.
- (10) This sub-paragraph applies where a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—
 - (a) to do or refrain from doing any act for the purpose of facilitating the succession of another to the practice, or
 - (b) to allow any act to be done for that purpose.
- (11) This sub-paragraph applies where a person—
 - (a) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice), and
 - (b) succeeds, or has previously succeeded, to the practice.
- (12) Sub-paragraph (9) does not apply if it is proved that no part of the consideration was given in respect of the goodwill.
- (13) Sub-paragraph (9) does not apply to anything done—
 - (a) in relation to the acquisition of premises for the purposes of a medical practice,
 - (b) in pursuance of a partnership agreement, or
 - (c) in the performance of medical services by one person as an assistant to another.

Consideration

- 3 (1) In determining for the purposes of section 259 and this Schedule the consideration given in respect of any transaction, the court must—
 - (a) have regard to any other transaction appearing to the court to be associated with the first transaction,
 - (b) estimate the total consideration given in respect of both or all the transactions, and
 - (c) apportion the total between the transactions in such manner as the court considers just.
- (2) For the purposes of section 259 and this Schedule consideration is deemed to be given to a person (“B”) if—
 - (a) it is given to another person but with B's knowledge and consent, and
 - (b) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration.

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Carried-over goodwill

- 4 The fact that a person's medical practice was previously carried on by another person who at any time provided or performed services as specified in section 259 does not, by itself, make it unlawful under section 259 for the goodwill of his practice to be sold.

Interpretation

- 5 In section 259 and this Schedule, unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.

SCHEDULE 22

Section 260

CONTROL OF MAXIMUM PRICES FOR MEDICAL SUPPLIES

Orders and directions

- 1 (1) An order under section 260 may make such provision (including provision for requiring any person to furnish any information) as the Secretary of State considers necessary or expedient for facilitating the introduction or operation of a scheme of control—
- (a) for which provision has been made under that section, or
 - (b) for which, in his opinion, it will or may be necessary or expedient that provision should be made.
- (2) An order under section 260—
- (a) may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as may be specified in the order, and
 - (b) may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and so as to have effect either generally or in any particular area.

Notices, authorisations and proof of documents

- 2 (1) A notice to be served on any person for the purposes of section 260, or of any order or direction made or given under that section, is deemed to have been duly served on the person to whom it is directed if—
- (a) it is delivered to him personally, or
 - (b) it is sent by registered post or the recorded delivery service addressed to him at his last or usual place of abode or place of business.
- (2) Where under section 260 or this Schedule a person has power to authorise other persons to act under those provisions, the power may be exercised so as to confer the authority either on particular persons or on a specified class of persons.
- (3) Any permit, licence, permission or authorisation granted for the purposes of section 260 or this Schedule may be revoked at any time by the authority or person empowered to grant it.

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- (4) A document purporting to be duly executed under or by virtue of section 260 or this Schedule and signed by or on behalf of the person making it must be received in evidence and, unless the contrary is proved, taken to be so executed and signed.

Territorial extent

- 3 (1) Provisions in or having effect under section 260 or this Schedule which impose prohibitions, restrictions or obligations apply to—
- (a) persons in the United Kingdom,
 - (b) persons on board any British ship or aircraft (other than an excepted ship or aircraft within the meaning of sub-paragraph (2)), and
 - (c) persons (wherever they are) who are ordinarily resident in the United Kingdom and are—
 - (i) British citizens,
 - (ii) British overseas territories citizens,
 - (iii) British Overseas citizens,
 - (iv) British subjects under the British Nationality Act 1981 (c. 61),
 - (v) British Nationals (Overseas) (within the meaning of that Act), or
 - (vi) British protected persons (within the meaning of that Act).
- (2) In sub-paragraph (1)—
- “British aircraft” means an aircraft registered in—
- (a) any part of Her Majesty's dominions,
 - (b) any country outside Her Majesty's dominions in which Her Majesty has jurisdiction,
 - (c) any country consisting partly of one or more colonies and partly of one or more countries mentioned in paragraph (b),
- “excepted ship or aircraft” means a ship or aircraft registered in any country listed in Schedule 3 to the British Nationality Act 1981 or in any territory administered by the government of any such country, other than a ship or aircraft at the disposal of, or chartered by or on behalf of, Her Majesty's Government in the United Kingdom.

False documents and false statements

- 4 (1) A person must not, with intent to deceive—
- (a) use any document issued for the purposes of section 260 or this Schedule or of any order made under that section,
 - (b) have in his possession any document so closely resembling a document mentioned in paragraph (a) as to be calculated to deceive, or
 - (c) produce, furnish, send or otherwise make use of for purposes connected with that section or this Schedule or any order or direction made or given under that section, any book, account, estimate, return, declaration or other document which is false in a material particular.
- (2) A person must not, in furnishing any information for the purposes of section 260 or this Schedule or of any order made under that section—
- (a) make a statement which he knows to be false in a material particular, or
 - (b) recklessly make a statement which is false in a material particular.

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Restrictions on disclosing information

- 5 No person who obtains any information by virtue of section 260 or this Schedule may, otherwise than in connection with the execution of that section or this Schedule or of an order made under that section, disclose that information except—
- (a) for the purposes of any criminal proceedings, or of a report of any criminal proceedings, or
 - (b) with permission granted by or on behalf of a Minister of the Crown.
- 6 Paragraph 5 does not apply if—
- (a) the person who has obtained any such information as is referred to in that paragraph is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 (c. 36), and
 - (b) the information is not held by the public authority on behalf of another person.

Offences by corporations

- 7 (1) Where an offence under section 260 or this Schedule committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, or
 - (b) to be attributable to any neglect on the part of such a person,
- that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) “Director”, in relation to a body corporate—
- (a) established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, and
 - (b) whose affairs are managed by its members,
- means a member of that body corporate.

Penalties

- 8 (1) A person who contravenes or fails to comply with—
- (a) an order made under section 260,
 - (b) a direction given or requirement imposed under that section, or
 - (c) a provision of this Schedule,
- is guilty of an offence.
- (2) Sub-paragraph (1) does not apply if the contravention or failure is an offence under paragraph 9(3) or 10(5).
- (3) A person guilty of an offence under sub-paragraph (1) is—
- (a) on summary conviction, liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding the prescribed sum, or to both, or
 - (b) on conviction on indictment, liable to imprisonment for a term not exceeding two years or to a fine, or to both.
- (4) Sub-paragraph (3) is subject to paragraph 11.

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Production of documents

- 9 (1) For the purposes of—
- (a) securing compliance with any order made or direction given under section 260 by or on behalf of the Secretary of State, or
 - (b) verifying any estimates, returns or information furnished to the Secretary of State in connection with section 260 or any order made or direction given under that section,
- an officer of the Secretary of State duly authorised in that behalf has power, on producing (if required to do so) evidence of his authority, to require any person carrying on an undertaking or employed in connection with an undertaking to produce to that officer forthwith any documents relating to the undertaking which that officer may reasonably require for the purposes set out above.
- (2) The power conferred by this paragraph to require any person to produce documents includes power—
- (a) if the documents are produced, to take copies of them or extracts from them and to require that person, or where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them,
 - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (3) If any requirement to produce documents or provide an explanation or make a statement which is imposed by virtue of this paragraph is not complied with, the person on whom the requirement was so imposed is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Sub-paragraph (3) is subject to paragraph 11.
- (5) Where a person is charged with such an offence in respect of a requirement to produce any document, it is a defence to prove that it was not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.
- 10 (1) A justice of the peace may issue a warrant under this paragraph if he is satisfied, on information on oath laid on the Secretary of State's behalf, that there are any reasonable grounds for suspecting that there are on any premises any documents—
- (a) of which production has been required by virtue of paragraph 9, and
 - (b) which have not been produced in compliance with that requirement.
- (2) A warrant so issued may authorise any constable, together with any other persons named in the warrant and any other constables to—
- (a) enter the premises specified in the information (using such force as is reasonably necessary for the purpose), and
 - (b) search the premises and take possession of any documents appearing to be such documents as are mentioned above, or to take in relation to any documents so appearing any other steps which may appear necessary for preserving them and preventing interference with them.
- (3) Each warrant issued under this paragraph continues in force until the end of the period of one month after the date on which it is issued.
- (4) Any documents of which possession is taken under this paragraph may be retained—

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- (a) for a period of three months, or
 - (b) if within that period proceedings to which they are relevant are commenced for an offence under section 260 or this Schedule, until the conclusion of those proceedings.
- (5) A person is guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale, if he obstructs the exercise of—
- (a) any right of entry or search conferred by virtue of a warrant under this paragraph, or
 - (b) any rights so conferred to take possession of any documents.
- (6) Sub-paragraph (5) is subject to paragraph 11.

Penalties for offences: transitional modification for England and Wales

- 11 (1) In relation to an offence committed in England and Wales before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' courts power to impose imprisonment) paragraph 8(3) has effect as if for “twelve months” there were substituted “three months”.
- (2) In relation to an offence committed in England and Wales before the commencement of section 280 of the Criminal Justice Act 2003 (alteration of penalties for specified summary offences) paragraphs 9(3) and 10(5) have effect as if “to imprisonment for a term not exceeding three months or ” were inserted after “conviction”.

Status:

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