



# Health Act 2009

## 2009 CHAPTER 21

### PART 3

#### MISCELLANEOUS

##### *Tobacco*

#### **20 Prohibition of advertising: exclusion for specialist tobacconists**

In section 6 of the Tobacco Advertising and Promotion Act 2002 (c. 36) (specialist tobacconists), before subsection (1) insert—

“(A1) The appropriate Minister may provide in regulations that no offence is committed under section 2 if the tobacco advertisement—

- (a) is in, or fixed to the outside of premises of, a specialist tobacconist in England and Wales or Northern Ireland,
- (b) is not for cigarettes or hand-rolling tobacco, and
- (c) complies with any requirements specified in the regulations.”

#### **Commencement Information**

**II** S. 20 partly in force; s. 20 in force for specified purposes at Royal Assent see s. 40(6)(b)

#### **21 Prohibition of tobacco displays etc**

After section 7 of the Tobacco Advertising and Promotion Act 2002 (developments in technology) insert—

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### **“7A Prohibition of tobacco displays**

- (1) A person who in the course of a business displays tobacco products, or causes tobacco products to be displayed, in a place in England and Wales or Northern Ireland is guilty of an offence.
- (2) The appropriate Minister may by regulations provide for the meaning of “place” in this section.
- (3) The appropriate Minister may by regulations make provision for a display in a place which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
  - (a) as an advertisement and not as a display, or
  - (b) as a display and not as an advertisement.

### **7B Tobacco displays: exclusions and defence**

- (1) No offence is committed under section 7A if—
  - (a) the tobacco products are displayed in the course of a business which is part of the tobacco trade,
  - (b) they are displayed for the purposes of that trade, and
  - (c) the display is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade.
- (2) No offence is committed under section 7A if the display is a requested display to an individual aged 18 or over.
- (3) The appropriate Minister may provide in regulations that no offence is committed under section 7A if the display complies with requirements specified in the regulations.
- (4) Subsections (5) and (7) apply where a person (“D”) is charged with an offence under section 7A in a case where the display is a requested display to an individual aged under 18.
- (5) Where D is charged by reason of D having displayed the tobacco product it is a defence that—
  - (a) D believed that the individual was aged 18 or over, and
  - (b) either—
    - (i) D had taken all reasonable steps to establish the individual's age, or
    - (ii) from the individual's appearance nobody could reasonably have suspected that the individual was aged under 18.
- (6) For the purposes of subsection (5), a person is treated as having taken all reasonable steps to establish an individual's age if—
  - (a) the person asked the individual for evidence of the individual's age, and
  - (b) the evidence would have convinced a reasonable person.
- (7) Where D is charged by reason of D having caused the display of the tobacco product it is a defence that D exercised all due diligence to avoid committing the offence.

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- (8) In this section “a requested display” means a display to an individual following a particular request by the individual to purchase a tobacco product, or for information about a tobacco product.

### **7C Displays: prices of tobacco products**

- (1) The appropriate Minister may by regulations make provision imposing requirements in relation to the display in a place in England and Wales or Northern Ireland in the course of a business of prices of tobacco products.
- (2) A person who displays or causes to be displayed prices of tobacco products in breach of a requirement contained in the regulations is guilty of an offence.
- (3) The regulations may, in particular, provide for the meaning of “place” in this section.
- (4) The regulations may make provision for a display of prices in a place which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
- as an advertisement and not as a display of prices, or
  - as a display of prices and not as an advertisement.

### **7D Displays on a website**

- (1) The Secretary of State may by regulations make provision imposing requirements in relation to the display in England and Wales or Northern Ireland in the course of a business of tobacco products or their prices on a website where tobacco products are offered for sale.
- (2) A person who displays or causes to be displayed tobacco products or their prices in breach of a requirement contained in the regulations is guilty of an offence.
- (3) A service provider established in England and Wales or Northern Ireland is guilty of an offence if, in the course of providing information society services, the provider does anything in an EEA State other than the United Kingdom which, if done in England and Wales or Northern Ireland, would constitute an offence under subsection (2).
- (4) Nothing in subsection (2) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.
- (5) The regulations may make provision for a relevant display of tobacco products or their prices which also amounts to an advertisement to be treated for the purposes of offences in England and Wales or Northern Ireland under this Act—
- as an advertisement and not as a display, or
  - as a display and not as an advertisement.
- (6) In subsection (5) a “relevant display” means a display on a website where tobacco products are offered for sale.”

#### **Commencement Information**

**I2** S. 21 partly in force; s. 21 in force for specified purposes at Royal Assent see s. 40(6)(b)

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- I3** S. 21 in force at 6.4.2012 for specified purposes for E. by S.I. 2010/1068, **art. 2(1A)(a)**  
**I4** S. 21 in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, **art. 2(1)(a)**

## 22 Power to prohibit sales from vending machines

- (1) After section 3 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23) (sale of unpackaged cigarettes) insert—

### “3A Sales from vending machines in England and Wales

- (1) The appropriate national authority may by regulations make provision prohibiting the sale of tobacco from an automatic machine in England and Wales.
  - (2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.
  - (3) Where a prohibition contained in the regulations is breached, any person liable in accordance with the regulations is guilty of an offence.
  - (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
  - (5) Sections 13, 14 and 15 of the Tobacco Advertising and Promotion Act 2002 (enforcement etc.) apply for the purposes of this section and regulations made under it as they apply for the purposes of provisions of that Act.
  - (6) The power of the appropriate national authority to make regulations under this section—
    - (a) is exercisable by statutory instrument,
    - (b) may be exercised to make different provision for different cases or circumstances, and
    - (c) includes power to make supplementary, incidental, consequential or transitional provision.
  - (7) A statutory instrument containing regulations made under this section may not be made—
    - (a) by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament, and
    - (b) by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
  - (8) In this section—
 

“the appropriate national authority”—

    - (a) in relation to England, means the Secretary of State; and
    - (b) in relation to Wales, means the Welsh Ministers;

“tobacco” has the same meaning as in section 7 of the Children and Young Persons Act 1933.”
- (2) In section 12D(1) of the Children and Young Persons Act 1933 (c. 12) (restricted premises orders and restricted sales orders: interpretation)—

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- (a) omit “or” at the end of paragraph (a);
- (b) after paragraph (b) insert “, or
- (c) an offence committed under section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”).”

#### Commencement Information

- I5** S. 22 partly in force; s. 22 in force for specified purposes at Royal Assent see s. 40(6)(b)
- I6** S. 22 in force at 1.10.2011 for E. in so far as not already in force by S.I. 2010/1068, art. 2(1)(a)
- I7** S. 22 in force at 1.2.2012 for W. in so far as not already in force by S.I. 2011/2362, art. 2

### 23 Power to prohibit sales from vending machines: Northern Ireland

After article 4 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25)) (sale of unpackaged cigarettes) insert—

#### “4A Sales from vending machines

- (1) The Department may by regulations make provision prohibiting the sale of tobacco from an automatic machine.
- (2) The regulations must make provision as to the persons who are liable in the case of any breach of a prohibition.
- (3) Where a prohibition contained in the regulations is breached, any person liable in accordance with the regulations is guilty of an offence.
- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Sections 13, 14 and 15 of the Tobacco Advertising and Promotion Act 2002 (enforcement etc.) apply for the purposes of this Article and regulations made under it as they apply for the purposes of provisions of that Act.
- (6) The power to make regulations under this Article includes power to make supplementary, incidental, consequential or transitional provision.
- (7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (8) In this Article “tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978.”

#### Commencement Information

- I8** S. 23 partly in force; s. 23 in force for specified purposes at Royal Assent see s. 40(6)(b)
- I9** S. 23 in force at 1.3.2012 in so far as not already in force by S.R. 2012/68, art. 2

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## 24 Tobacco: minor and consequential amendments

Schedule 4 (which makes minor and consequential amendments relating to the advertising and promotion of tobacco products) has effect.

### Commencement Information

- I10** S. 24 partly in force; s. 24 in force for specified purposes at Royal Assent and in force for further specified purposes at 12.1.2010 see s. 40(5)(a)(6)(c)(7)(b)(c)(8)
- I11** S. 24 in force at 6.4.2012 for specified purposes for E. by S.I. 2010/1068, art. 2(1A)(b)
- I12** S. 24 in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, art. 2(1)(b)

### *Pharmaceutical services in England*

## 25 Pharmaceutical needs assessments

After section 128 of the National Health Service Act 2006 (c. 41) insert—

### “128A Pharmaceutical needs assessments

- (1) Each Primary Care Trust must in accordance with regulations—
- (a) assess needs for pharmaceutical services in its area, and
  - (b) publish a statement of its first assessment and of any revised assessment.
- (2) The regulations must make provision—
- (a) as to information which must be contained in a statement;
  - (b) as to the extent to which an assessment must take account of likely future needs;
  - (c) specifying the date by which a Primary Care Trust must publish the statement of its first assessment;
  - (d) as to the circumstances in which a Primary Care Trust must make a new assessment.
- (3) The regulations may in particular make provision—
- (a) as to the pharmaceutical services to which an assessment must relate;
  - (b) requiring a Primary Care Trust to consult specified persons about specified matters when making an assessment;
  - (c) as to the manner in which an assessment is to be made;
  - (d) as to matters to which a Primary Care Trust must have regard when making an assessment.”

### Commencement Information

- I13** S. 25 in force at 18.3.2010 for specified purposes by S.I. 2010/779, art. 2
- I14** S. 25 in force at 24.5.2010 in so far as not already in force by S.I. 2010/779, art. 2

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## 26 New arrangements for entry to pharmaceutical list

- (1) Section 129 of the National Health Service Act 2006 (regulations as to pharmaceutical services) is amended as follows.
- (2) In subsection (2)(c), for the words from “may be granted” to “specified in the application,” substitute “ must be granted if the Primary Care Trust is satisfied as mentioned in subsection (2A), and may otherwise be granted only if the Primary Care Trust is satisfied as mentioned in subsection (2B), ”.
- (3) After subsection (2) insert—
  - “(2A) The Primary Care Trust is satisfied as mentioned in this subsection if, having regard to its needs statement and to any matters prescribed by the Secretary of State in the regulations, it is satisfied that it is necessary to grant the application in order to meet a need in its area for the services or some of the services specified in the application.
  - (2B) The Primary Care Trust is satisfied as mentioned in this subsection if, having regard to its needs statement and to any matters prescribed by the Secretary of State in the regulations, it is satisfied that to grant the application would secure improvements, or better access, to pharmaceutical services in its area.
  - (2C) In relation to cases where the Primary Care Trust is satisfied as mentioned in subsection (2B), the regulations may make provision as to—
    - (a) the manner in which the Primary Care Trust is to determine whether to grant the application,
    - (b) matters which the Primary Care Trust must or must not take into account for the purpose of determining whether to grant the application.”
- (4) After subsection (3) insert—
  - “(3A) The regulations may prescribe circumstances in which two or more applications referred to in subsection (2)(c)(i) or (ii) may be considered together by the Primary Care Trust.”
- (5) In subsection (4)—
  - (a) for the words from “include” to “subsection (5) for” substitute “ make provision for the Primary Care Trust to take into account prescribed matters in ”;
  - (b) omit paragraph (a);
  - (c) in paragraph (b), for “they” substitute “ two or more applications referred to in subsection (2)(c)(i) or (ii) ”;
  - (d) in paragraph (c), for “subsection (2)(c)” substitute “ subsection (2A) or (2B) ”.
- (6) After subsection (4) insert—
  - “(4A) Regulations under subsection (4) may in particular make the provision mentioned in subsection (5), with or without modifications.”
- (7) In subsection (6), before paragraph (a) insert—
  - “(za) for the circumstances and manner in which a Primary Care Trust may invite applications for inclusion in a pharmaceutical list.”
- (8) After subsection (10) insert—

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“(10A) Primary Care Trusts must give reasons for decisions made by virtue of this section.

(10B) In this section a “needs statement” means the statement required by section 128A(1)(b) as most recently published by the relevant Primary Care Trust.”

**Commencement Information**

**I15** S. 26 in force at 1.9.2012 by S.I. 2012/1902, art. 2(a)

**27 Pharmaceutical lists: minor amendment**

In section 129(6) of the National Health Service Act 2006 (c. 41) (regulations as to pharmaceutical services), in paragraph (d), for “such an application” substitute “ an application to a Primary Care Trust ”.

**Commencement Information**

**I16** S. 27 in force at 1.9.2012 by S.I. 2012/1902, art. 2(b)

**28 Breach of terms of arrangements: notices and penalties**

In Part 7 of the National Health Service Act 2006, before Chapter 6 (disqualification) insert—

**“CHAPTER 5A**

NOTICES AND PENALTIES

**150A Notices and penalties**

- (1) The Secretary of State may by regulations provide that where a practitioner who provides pharmaceutical services under arrangements with a Primary Care Trust breaches a term of those arrangements, the Primary Care Trust may—
  - (a) by a notice require the practitioner to do, or not do, specified things or things of a specified description within a specified period, or
  - (b) in prescribed circumstances or for a prescribed period, withhold all or part of a payment due to the practitioner under the arrangements.
- (2) Regulations under this section must include provision conferring on such persons as may be prescribed rights of appeal from decisions of Primary Care Trusts made by virtue of this section.
- (3) In this section—
 

“practitioner” means a person included in a pharmaceutical list, and  
“specified” means specified in a notice under paragraph (a) of subsection (1).”



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### Commencement Information

**117** S. 28 in force at 1.9.2012 by S.I. 2012/1902, art. 2(c)

## 29 LPS schemes: powers of Primary Care Trusts and Strategic Health Authorities

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 15 (Strategic Health Authorities' directions), in subsection (2), after “section 107 arrangements” insert “ or LPS schemes ”.
- (3) In section 16 (section 92 arrangements and section 107 arrangements)—
  - (a) in subsection (1), after “section 107 arrangements” insert “ and LPS schemes ”.
  - (b) in the heading, after “section 107 arrangements” insert “ and LPS schemes ”.
- (4) In section 144 (local pharmaceutical services schemes), after “Primary Care Trusts” insert “ or Strategic Health Authorities ”.
- (5) Schedule 12 (LPS schemes) is amended as follows.
- (6) Paragraph 1 is amended as follows.
- (7) In sub-paragraph (1), after “Primary Care Trusts” insert “ or Strategic Health Authorities ”.
- (8) In sub-paragraph (2)—
  - (a) in paragraph (a), after “Primary Care Trust” insert “ or Strategic Health Authority (the “commissioning body”) ”
  - (b) in paragraph (b), for “Primary Care Trust,” substitute “ commissioning body).”
  - (c) omit paragraph (c) and the word “and” immediately before it.
- (9) After sub-paragraph (2) insert—
  - (2A) A Strategic Health Authority may establish an LPS scheme only where the only other parties are Primary Care Trusts.
  - (2B) A Primary Care Trust may provide local pharmaceutical services under an LPS scheme (where it is not the commissioning body), but only in prescribed circumstances.”
- (10) In sub-paragraph (5), for “made by it” substitute “ in its area ”.
- (11) In sub-paragraph (6), for “and an NHS foundation trust” substitute “ , an NHS foundation trust and a Primary Care Trust ”.
- (12) In paragraph 2, in sub-paragraph (1), after “Primary Care Trust” insert “ or Strategic Health Authority ”.
- (13) Paragraph 3 is amended as follows.
- (14) In sub-paragraph (2), for “Primary Care Trusts” substitute “ the commissioning body ”.
- (15) In sub-paragraph (3)(k), after “Primary Care Trusts” insert “ or Strategic Health Authorities ”.

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### Commencement Information

**I18** S. 29 in force at 1.9.2012 by S.I. 2012/1902, art. 2(d)

VALID FROM 26/09/2023

## Pharmaceutical services in Wales

PROSPECTIVE

### 30 Pharmaceutical lists: minor amendment

In section 83(6) of the National Health Service (Wales) Act 2006 (c. 42) (regulations as to pharmaceutical services), in paragraph (d), for “such an application” substitute “an application to a Local Health Board”.

### 31 Breach of terms of arrangements: notices and penalties

(1) In Part 8 of the National Health Service (Wales) Act 2006, before Chapter 2 (disqualification) insert—

#### “CHAPTER 1A

#### NOTICES AND PENALTIES

##### 106A Notices and penalties

(1) The Welsh Ministers may by regulations provide that where a practitioner who provides pharmaceutical services or general ophthalmic services under arrangements with a Local Health Board breaches a term of those arrangements, the Local Health Board may—

- (a) by a notice require the practitioner to do, or not do, specified things or things of a specified description within a specified period, or
- (b) in prescribed circumstances or for a prescribed period, withhold all or part of a payment due to the practitioner under the arrangements.

(2) Regulations under this section must include provision conferring on such persons as may be prescribed rights of appeal from decisions of Local Health Boards made by virtue of this section.

(3) In this section—

“practitioner” means a person included in an ophthalmic list or a pharmaceutical list, and

“specified” means specified in a notice under paragraph (a) of subsection (1).”

(2) In section 107(9) of that Act, after “included in” insert “an ophthalmic list or”.

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PROSPECTIVE

### 32 LPS schemes: powers of Local Health Boards

- (1) Schedule 7 to the National Health Service (Wales) Act 2006 (c. 42) (LPS schemes) is amended as follows.
- (2) In paragraph 1, in sub-paragraph (2)—
  - (a) in paragraph (a), after “Local Health Board” insert “ (the “commissioning body” )
  - (b) in paragraph (b), for “Local Health Board),” substitute “ commissioning body). ”;
  - (c) omit paragraph (c) and the word “and” immediately before it.
- (3) After sub-paragraph (2) insert—

“(2A) A Local Health Board may provide local pharmaceutical services under an LPS scheme (where it is not the commissioning body), but only in prescribed circumstances.”
- (4) In sub-paragraph (6), for “and an NHS foundation trust” substitute “ , an NHS foundation trust and a Local Health Board ”.
- (5) In paragraph 3(2), for “Local Health Boards” substitute “ the commissioning body ”.

#### *Private patient income*

### <sup>F1</sup>33 Private patient income of mental health foundation trusts

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#### **Textual Amendments**

- F1** S. 33 omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(3)**, 306(4); S.I. 2012/1831, art. 2(2)

#### *Optical appliances*

### 34 Payments in respect of costs of optical appliances

Section 180(2)(c) of the National Health Service Act 2006 (payments in respect of costs of optical appliances for persons aged 60 or over) is omitted.

#### *Adult social care*

### 35 Investigation of complaints about privately arranged or funded adult social care

Schedule 5 (which inserts a new Part 3A into the Local Government Act 1974 (c. 7) to give the Commission for Local Administration in England powers to investigate

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complaints about privately arranged or funded adult social care and which makes consequential amendments) has effect.

**Commencement Information**

**I19** S. 35 in force at 1.10.2010 by S.I. 2010/1863, art. 2

*Disclosure of information*

**36 Disclosure of information by Her Majesty's Revenue and Customs**

- (1) This section applies to information held by Her Majesty's Revenue and Customs for the purposes of functions relating to income tax.
- (2) Information to which this section applies may be disclosed by Her Majesty's Revenue and Customs to the persons listed in subsection (3) for use for the purposes of functions in connection with the analysis or dissemination of information relating to the income or expenses of dental practitioners or general medical practitioners.
- (3) The persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Scottish Ministers;
  - (d) the Department of Health, Social Services and Public Safety in Northern Ireland;
  - (e) persons providing services to or exercising functions on behalf of any of those persons.
- (4) Information may be disclosed under this section only in the form of a summary or collection of information so framed as not to enable information relating to a particular person to be ascertained from it.
- (5) In this section—

“dental practitioner” means a person registered in the dentists register under the Dentists Act 1984 (c. 24);

“general medical practitioner” means a person registered in the General Practitioner Register kept by the General Medical Council.

**Commencement Information**

**I20** S. 36 in force at 19.1.2010 by S.I. 2010/30, art. 2(h)

**Status:**

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