

Status: Point in time view as at 03/12/2012.

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SCHEDULES

SCHEDULE 1

Section 13

DIRECT PAYMENTS: MINOR AND CONSEQUENTIAL AMENDMENTS

National Assistance Act 1948 (c. 29)

1 In section 24 of the National Assistance Act 1948 (authority liable for provision of accommodation), after subsection (6A) insert—

“(6B) The reference in subsection (6A)(b) to accommodation provided by a Primary Care Trust includes a reference to accommodation—

- (a) in respect of which direct payments are made under regulations under section 12A(4) of the National Health Service Act 2006, and
- (b) which would be provided under section 117 of the Mental Health Act 1983 apart from the regulations.”

Commencement Information

II Sch. 1 para. 1 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

Health Services and Public Health Act 1968 (c. 46)

2 In section 63(2)(bb) of the Health Services and Public Health Act 1968 (provision of instruction for certain persons), after “pilot scheme” insert “ established under section 134(1) of the National Health Service Act 2006 or under section 92(1) of the National Health Service (Wales) Act 2006 ”.

Commencement Information

I2 Sch. 1 para. 2 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

Mental Health Act 1983 (c. 20)

3 In section 117 of the Mental Health Act 1983 (after-care), after subsection (2B) insert—

“(2C) References in this Act to after-care services provided for a patient under this section include references to services provided for the patient—

- (a) in respect of which direct payments are made under regulations under section 57 of the Health and Social Care Act 2001 or section 12A(4) of the National Health Service Act 2006, and
- (b) which would be provided under this section apart from the regulations.”

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Commencement Information

I3 Sch. 1 para. 3 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)

- 4 In section 2 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (rights of authorised representatives of disabled persons), in subsection (5), after paragraph (a) insert—
- “(aa) in hospital accommodation in respect of the provision of which direct payments are made under section 12A(1) of the National Health Service Act 2006, or”.

Commencement Information

I4 Sch. 1 para. 4 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

Health and Social Care (Community Health and Standards) Act 2003 (c. 43)

- 5 (1) In section 45 of the Health and Social Care (Community Health and Standards) Act 2003 (quality in health care), after subsection (3) insert—
- “(4) In this Chapter references to the provision of health care for a body include in the case of an English NHS body references to the provision of health care in respect of which direct payments are made by that body under section 12A(1), or under regulations under section 12A(4), of the National Health Service Act 2006.”
- (2) This paragraph has effect until the amendments made by paragraphs 37 and 38 of Schedule 5 to the Health and Social Care Act 2008 (c. 14) come fully into force.

Commencement Information

I5 Sch. 1 para. 5 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

National Health Service Act 2006 (c. 41)

- 6 The National Health Service Act 2006 is amended as follows.

Commencement Information

I6 Sch. 1 para. 6 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

- 7 In the following provisions, after “pilot scheme” insert “ established under section 134(1) of this Act ”
- (a) section 80(5)(d);
 - (b) section 80(7)(d);
 - (c) section 173(1)(b);
 - (d) section 234(1)(b).

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Commencement Information

I7 Sch. 1 para. 7 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

- 8 In section 134 (pilot schemes for local pharmaceutical services), in subsection (2) for “Act” substitute “ Part ”.

Commencement Information

I8 Sch. 1 para. 8 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

- 9 In section 246(3) (power to amend in relation to exempt information for purposes of overview and scrutiny committees), before “or” at the end of paragraph (a) insert “ or services in respect of which direct payments under section 12A(1), or under regulations under section 12A(4), are made by a relevant body, ”.

Commencement Information

I9 Sch. 1 para. 9 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

- 10 In section 272(6) (instruments not to be made unless laid in draft and approved by resolution of each House), before paragraph (a) insert—
“(za) an order under section 12C(8) or (10),”.

Commencement Information

I10 Sch. 1 para. 10 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

- 11 In section 276 (index of defined expressions) omit the entry for “pilot scheme”.

Commencement Information

I11 Sch. 1 para. 11 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

Safeguarding Vulnerable Groups Act 2006 (c. 47)

- 12 The Safeguarding Vulnerable Groups Act 2006 is amended as follows.

Commencement Information

I12 Sch. 1 para. 12 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

- 13 In section 6 (regulated activity providers), after subsection (8B) insert—
“(8C) The Secretary of State does not make arrangements for another to engage in a regulated activity by virtue of anything the Secretary of State does under section 12A or 12D, or regulations under section 12B, of the National Health Service Act 2006 (direct payments for health services).

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(8D) A Primary Care Trust does not make arrangements for another to engage in a regulated activity by virtue of anything the Primary Care Trust does under regulations under section 12A(4) or 12B of the National Health Service Act 2006 (direct payments for after-care services).”

Commencement Information

I13 Sch. 1 para. 13 in force at 19.1.2010 by S.I. 2010/30, art. 2(b)

^{F1}14

Textual Amendments

F1 Sch. 1 paras. 14, 15 repealed (10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157)) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 10 Pt. 5 (with s. 97); S.I. 2012/2234, art. 2(bb)

^{F1}15

Textual Amendments

F1 Sch. 1 paras. 14, 15 repealed (10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157)) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 10 Pt. 5 (with s. 97); S.I. 2012/2234, art. 2(bb)

SCHEDULE 2

Section 15(2)

DE-AUTHORISED NHS FOUNDATION TRUSTS

Commencement Information

I14 Sch. 2 in force at 15.2.2010 for specified purposes by S.I. 2010/30, art. 3(c)

PROSPECTIVE

After Schedule 8 to the National Health Service Act 2006 (c. 41) insert—

“SCHEDULE 8A

Sections 52D and 65E

DE-AUTHORISED NHS FOUNDATION TRUSTS

Introductory

1 (1) This Schedule applies to a body which is an NHS trust by virtue of an order made under section 52D(1) or 65E(1) (a “de-authorisation order”).

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- (2) In this Schedule “the NHS foundation trust” means the body as it was constituted immediately before the order was made.

Replacement of constitution

- 2 (1) The constitution of the body pursuant to paragraph 1(1) of Schedule 7 ceases to have effect.
- (2) The body ceases to have members and a board of governors.
- (3) Subject to the following provisions of this Schedule, this Act applies in relation to the body as it applies in relation to an NHS trust established by an order made under section 25.
- 3 Nothing in this Chapter affects the continuity of the body or of its property or liabilities (including its criminal liabilities).

Board of directors

- 4 (1) This paragraph is subject to any provision made under section 52D(4) or (7) or 65L(4) or (5).
- (2) The number of executive directors and non-executive directors of the NHS trust is the number of executive directors and non-executive directors provided for in the constitution of the NHS foundation trust.
- (3) On the de-authorisation order taking effect, the persons who were the chairman and executive and non-executive directors of the NHS foundation trust become, for the unexpired terms of their appointments, the chairman and executive and non-executive directors of the NHS trust.

Name and functions

- 5 (1) This paragraph applies only to a body which is an NHS trust by virtue of an order made under section 65E(1), and is subject to any provision made under section 65L(4).
- (2) “NHS trust” is substituted for “NHS foundation trust” in the name of the body.
- (3) The functions of the NHS trust (to be undertaken from the day on which the de-authorisation order takes effect) are to provide goods and services for the purposes of the health service.

Trustees

- 6 Any order appointing trustees for the NHS foundation trust has effect as an order under paragraph 10 of Schedule 4 appointing trustees for the NHS trust.

Public dividend capital

- 7 (1) The amount which was the public dividend capital of the NHS foundation trust continues as public dividend capital of the NHS trust held on the same conditions.
- (2) That is subject to any determination under paragraph 1(6) of Schedule 5.
- (3) Paragraph 1(1) of that Schedule does not apply.

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Accounts

- 8 (1) The accounting date of the NHS trust is 31 March.
- (2) The first accounting period of the NHS trust begins with the first day of the financial year in which the de-authorisation order takes effect (and for that purpose the body is to be treated as having been an NHS trust with effect from that day).
- (3) But the Secretary of State may direct that the trust's first accounting period begins with the first day of the following financial year.
- (4) Paragraphs 24 and 25 of Schedule 7 apply to the body, as if it continued to be a public benefit corporation, in respect of any financial year before the NHS trust's first accounting period.

Contracts

- 9 (1) Nothing in this Act—
- (a) prevents the NHS trust continuing to be a party to a contract to which the NHS foundation trust was a party, or
 - (b) affects the rights or liabilities of any person under such a contract.
- (2) A contract to which the NHS foundation trust was a party and to which the NHS trust becomes a party is not an NHS contract by virtue of section 9(1).

Other property

- 10 Nothing in this Act—
- (a) prevents the NHS trust continuing to hold property which the NHS foundation trust held, or
 - (b) affects the rights or liabilities of any person in respect of that property.

Membership of bodies corporate

- 11 Nothing in this Act—
- (a) prevents the NHS trust remaining a member of a body corporate of which the NHS foundation trust was a member, or
 - (b) affects the rights or liabilities of any person in respect of that membership.

Directions

- 12 Paragraphs 9 to 11 do not affect the Secretary of State's powers to give directions under this Act.”

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SCHEDULE 3

Section 19

NHS AND OTHER HEALTH APPOINTMENTS: SUSPENSION

PART 1

AMENDMENTS OF ENACTMENTS

Medicines Act 1968 (c. 67)

- 1 (1) In Schedule 1A to the Medicines Act 1968 (provisions relating to Commission on Human Medicine and Committees), paragraph 6 is amended as follows.
- (2) At the beginning, insert “ (1) ”.
- (3) At the end insert—
- “(2) Regulations made under sub-paragraph (1) may include such incidental, supplemental, consequential or transitional provision as appears to the Ministers to be expedient.”

Commencement Information

I15 Sch. 3 para. 1 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

Licensing (Alcohol Education and Research) Act 1981 (c. 28)

F2

Textual Amendments

F2 Sch. 3 para. 2 omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 20 para. 3\(b\)](#) (with [Sch. 20 para. 4](#)); S.I. 2012/1319, art. 2(3)

Human Fertilisation and Embryology Act 1990 (c. 37)

- 3 (1) Schedule 1 to the Human Fertilisation and Embryology Act 1990 (the Human Fertilisation and Embryology Authority: supplementary provision) is amended as follows.
- (2) In paragraph 5(1), after “this paragraph” insert “ and paragraphs 5A and 5B ”.
- (3) After paragraph 5 insert—
- “5A The Secretary of State may suspend a member from office as chairman, deputy chairman or other member of the Authority if it appears to him that one of the conditions in paragraph 5(5) is or may be satisfied in relation to the member.
- 5B (1) This paragraph applies where the Secretary of State decides to suspend a member under paragraph 5A.

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- (2) The Secretary of State must give notice to the member of the decision and the suspension takes effect on receipt by the member of the notice.
- (3) A notice under subsection (2) is treated as being received by the member—
 - (a) in a case where it is delivered in person or left at the member's proper address, at the time at which it is delivered or left;
 - (b) in a case where it is sent by post to the member at that address, on the third day after the day on which it was posted.
- (4) The initial period of suspension must not exceed 6 months.
- (5) The Secretary of State may review the member's suspension at any time.
- (6) The Secretary of State must review the member's suspension if requested in writing by the member to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.
- (7) Following a review the Secretary of State may—
 - (a) revoke the suspension, or
 - (b) suspend the member for another period of not more than 6 months from the expiry of the current period.
- (8) The Secretary of State must revoke the suspension if at any time—
 - (a) he decides that neither of the conditions mentioned in paragraph 5(5) is satisfied, or
 - (b) he decides that either of those conditions is satisfied but does not remove the member from office as chairman, deputy chairman or other member of the Authority.”

Commencement Information

I16 Sch. 3 para. 3 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

Health Protection Agency Act 2004 (c. 17)

- 4 Schedule 1 to the Health Protection Agency Act 2004 (the Health Protection Agency) is amended as follows.

Commencement Information

I17 Sch. 3 para. 4 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

- 5 (1) Paragraph 1 is amended as follows.
- (2) After sub-paragraph (3) insert—
- “(3A) Where the membership of a non-executive member is suspended in accordance with any regulations made under paragraph 8(2)(d), that member's appointment is to be disregarded at any time during the suspension for the purpose of determining the appointments to be made under sub-paragraph (3).”
- (3) After sub-paragraph (5) insert—

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“(5A) But the Secretary of State may by regulations—

- (a) provide that if the chairman's membership is suspended the Secretary of State may direct that the appointment of the deputy chairman under sub-paragraph (5) is to cease to have effect; and
- (b) make provision about the appointment by the Secretary of State in those circumstances of another non-executive member to be deputy chairman.”

(4) In sub-paragraph (7), after “sub-paragraph” insert “ (5A) or ”.

Commencement Information

I18 Sch. 3 para. 5 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

6 In paragraph 29, after sub-paragraph (2) insert—

“(3) Regulations may include such incidental, supplemental, consequential or transitional provision as appears to the Secretary of State to be expedient.”

Commencement Information

I19 Sch. 3 para. 6 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

Human Tissue Act 2004 (c. 30)

7 In Schedule 2 to the Human Tissue Act 2004 (the Human Tissue Authority) after paragraph 9 insert—

“9A The appointing authority may suspend a person from office as chairman or other member of the Authority if it appears to the appointing authority that one of the conditions in paragraph 9 is or may be satisfied in relation to the person.

9B (1) This paragraph applies where the appointing authority decides to suspend a person under paragraph 9A.

(2) The appointing authority must give notice to the person of the decision and the suspension takes effect on receipt by the person of the notice.

(3) A notice under subsection (2) may be—

- (a) delivered in person, in which case the person is treated as receiving 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 treated as receiving it on the third day after the day on which it was posted.

(4) The initial period of suspension must not exceed 6 months.

(5) The appointing authority may review the person's suspension at any time.

(6) The appointing authority must review the person's suspension if requested in writing by the person to do so, but need not carry out a

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review less than 3 months after the beginning of the initial period of suspension.

- (7) Following a review the appointing authority may—
- (a) revoke the suspension, or
 - (b) suspend the person for another period of not more than 6 months from the expiry of the current period.
- (8) The appointing authority must revoke the suspension if at any time—
- (a) it decides that neither of the conditions mentioned in paragraph 9 is satisfied, or
 - (b) it decides that either of those conditions is satisfied but does not remove the person from office as chairman or other member of the Authority.
- (9) A person who is suspended under paragraph 9A is to be disregarded at any time during the suspension for the purposes of paragraph 1(1)(c) or (d).
- (10) In this paragraph “the appointing authority”, in relation to a person appointed as chairman or other member of the Authority, means the person who appointed him.
- 9C (1) This paragraph applies where a person is suspended from office as chairman under paragraph 9A.
- (2) The Secretary of State may appoint a member of the Authority as the interim chairman to exercise the chairman's functions.
- (3) The Secretary of State may only appoint a member as the interim chairman if the member is not disqualified for being appointed as chairman by virtue of paragraph 2.
- (4) Subject to the following provisions of this paragraph, the interim chairman shall hold and vacate office in accordance with the terms of his appointment.
- (5) Appointment as interim chairman shall be for a term not exceeding the shorter of—
- (a) the period ending with either—
 - (i) the appointment of a new chairman, or
 - (ii) the revocation or expiry of the existing chairman's suspension; and
 - (b) the remainder of the interim chairman's term as a member of the Authority.
- (6) Previous service as chairman or interim chairman of the Authority does not affect a person's eligibility for appointment as interim chairman.
- (7) A person holding office as interim chairman of the Authority may resign that office by giving notice in writing to the Secretary of State.
- (8) The Secretary of State may remove a person from office as interim chairman if he is satisfied that it would be in the best interests of the Authority for another member to be the interim chairman.”

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Commencement Information

I20 Sch. 3 para. 7 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

Health Act 2006 (c. 28)

^{F3}8

Textual Amendments

F3 Sch. 3 para. 8 omitted (31.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 20 para. 7(d); S.I. 2012/1831, art. 2(3)

National Health Service Act 2006 (c. 41)

9 The National Health Service Act 2006 is amended as follows.

Commencement Information

I21 Sch. 3 para. 9 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

10 In Schedule 2 (Strategic Health Authorities), for paragraph 9(d) substitute—
“(d) the circumstances in which the chairman or vice-chairman or any member of a Strategic Health Authority may be suspended from office.”.

Commencement Information

I22 Sch. 3 para. 10 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

11 In Schedule 6 (Special Health Authorities), for paragraph 5(d) substitute—
“(d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office.”.

Commencement Information

I23 Sch. 3 para. 11 in force at 19.1.2010 by S.I. 2010/30, art. 2(d)

^{F4}12

Textual Amendments

F4 Sch. 3 para. 12 omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 13 para. 9(2); S.I. 2012/2657, art. 2(2)

^{F5}13

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Textual Amendments

- F5** Sch. 3 para. 13 omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 283\(2\), 306\(4\)](#); [S.I. 2012/1319](#), [art. 2\(3\)](#)

National Health Service (Wales) Act 2006 (c. 42)

- 14 The National Health Service (Wales) Act 2006 is amended as follows.

Commencement Information

- I24** Sch. 3 para. 14 in force at 1.4.2010 by [S.I. 2010/930](#), [art. 2\(a\)](#)

- 15 In Schedule 5 (Special Health Authorities established under section 22), for paragraph 5(d) substitute—

“(d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office.”.

Commencement Information

- I25** Sch. 3 para. 15 in force at 1.4.2010 by [S.I. 2010/930](#), [art. 2\(a\)](#)

- 16 (1) Schedule 10 (further provision about community health councils) is amended as follows.

(2) In paragraph 2(a), omit the words from “(including” to the end.

(3) After paragraph 2 insert—

“2A Regulations made under paragraph 2(a) may make provision about—

- (a) the election by members of a Council of a member to chair the Council, and
 (b) the appointment by the Welsh Ministers of a member to chair the Council on an interim basis in cases where the member so elected is removed or suspended from office.”

Commencement Information

- I26** Sch. 3 para. 16 in force at 1.4.2010 by [S.I. 2010/930](#), [art. 2\(a\)](#)

- 17 (1) Schedule 13 (further provision about standing advisory committees) is amended as follows.

(2) In paragraph 1(b), after “office” insert “ (including removal or suspension from office) ”.

(3) After paragraph 5 insert—

“5A But regulations under paragraph 1(b) may make provision about the appointment by the Welsh Ministers of an interim chairman of a standing

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advisory committee in cases where the chairman elected under paragraph 5 is removed or suspended from office.”

Commencement Information

I27 Sch. 3 para. 17 in force at 1.4.2010 by S.I. 2010/930, art. 2(a)

PART 2

SUPPLEMENTARY

Cross-border bodies

- 18 (1) In relation to a cross-border body—
- (a) functions exercisable by the Secretary of State under the National Health Service Act 2006 (c. 41) by virtue of paragraph 11 or 13 are exercisable by the Welsh Ministers concurrently with the Secretary of State, and
 - (b) functions exercisable by the Welsh Ministers under the National Health Service (Wales) Act 2006 (c. 42) by virtue of paragraph 15 or 17 are exercisable by the Secretary of State concurrently with the Welsh Ministers.
- (2) In sub-paragraph (1) “cross-border body” has the same meaning as in the Government of Wales Act 2006 (c. 32).

Commencement Information

I28 Sch. 3 para. 18 in force at 19.1.2010 for specified purposes by S.I. 2010/30, art. 2(e)

I29 Sch. 3 para. 18 in force at 1.4.2010 for specified purposes by S.I. 2010/930, art. 2(b)

Transitional provision

- 19 The amendments made by this Schedule apply in relation to a person appointed at any time (including a time before the coming into force of those amendments).

Commencement Information

I30 Sch. 3 para. 19 in force at 19.1.2010 for specified purposes by S.I. 2010/30, art. 2(e)

I31 Sch. 3 para. 19 in force at 1.4.2010 for specified purposes by S.I. 2010/930, art. 2(b)

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SCHEDULE 4

Section 24

TOBACCO: MINOR AND CONSEQUENTIAL AMENDMENTS

Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23)

- 1 In section 5(3)(a) of the Children and Young Persons (Protection from Tobacco) Act 1991 (enforcement action by local authorities in England and Wales), after “district” insert “, county borough”.

Tobacco Advertising and Promotion Act 2002 (c. 36)

- 2 The Tobacco Advertising and Promotion Act 2002 is amended as follows.

Commencement Information

- I32** Sch. 4 para. 2 in force at 6.4.2012 for specified purposes for E. by S.I. 2010/1068, art. 2(1A)(b)(v)
I33 Sch. 4 para. 2 in force at 1.6.2012 for specified purposes for W. by S.I. 2012/1288, art. 2(1)(c)
I34 Sch. 4 para. 2 in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, art. 2(1)(b)(vi)
I35 Sch. 4 para. 2 in force at 3.12.2012 for specified purposes for W. by S.I. 2012/1288, art. 2(2)(b)(iv)

VALID FROM 06/04/2015

- 3 (1) Section 6 (exclusion from advertising offence for specialist tobacconists) is amended as follows.
- (2) In subsection (1), at the end of paragraph (a), insert “ in Scotland ”.
- (3) In subsection (4), after “ “premises” in subsections” insert “ (A1), ”.
- 4 (1) Section 8 (displays) is amended as follows.
- (2) In subsection (1), after “causes to be displayed” insert “ in Scotland ”.
- (3) After subsection (1) insert—
- “(1A) A service provider established in Scotland 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 Scotland, would constitute an offence under subsection (1).”
- (4) For subsection (2) substitute—
- “(2) Nothing in subsection (1) 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) In the heading, at the end insert “ : Scotland ”.
- (6) In relation to a time before section 21 of this Act comes fully into force the references to Scotland in subsection (1A) inserted into section 8 of the 2002 Act by subparagraph (3) are to be read as references to the United Kingdom.

Status: Point in time view as at 03/12/2012.

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Commencement Information

I36 Sch. 4 para. 4 partly in force; Sch. 4 para.4(3)(4)(6) in force at 12.1.2010 see s. 40(7)(b)

5 (1) Section 9 (prohibition of free distributions) is amended as follows.

(2) After subsection (1) insert—

“(1A) A service provider established in the United Kingdom 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 the United Kingdom, would constitute an offence under subsection (1).”

(3) After subsection (5) insert—

“(5A) Nothing in subsection (1) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”

6 (1) Section 11 (brandsharing) is amended as follows.

(2) In subsection (3), after “3,” insert “ 3A, 7A, 7C, 7D, ”.

(3) After subsection (4) insert—

“(5) A service provider established in the United Kingdom 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 the United Kingdom, would constitute an offence under subsection (4).

(6) Nothing in subsection (4) makes it an offence for a service provider established outside the United Kingdom to do anything in the course of providing information society services.”

Commencement Information

I37 Sch. 4 para. 6 partly in force; Sch. 4 para. 6(3) in force at 12.1.2010 see s. 40(7)(b)

I38 Sch. 4 para. 6(1) in force at 6.4.2012 for specified purposes for E. by S.I. 2010/1068, art. 2(1A)(b)(i)

I39 Sch. 4 para. 6(1) in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, art. 2(1)(b)(i)

I40 Sch. 4 para. 6(1) in force at 3.12.2012 for specified purposes for W. by S.I. 2012/1288, art. 2(2)(b)(i)

I41 Sch. 4 para. 6(2) in force at 6.4.2012 for E. by S.I. 2010/1068, art. 2(1A)(b)(i)

I42 Sch. 4 para. 6(2) in force at 31.10.2012 for N.I. by S.R. 2012/389, art. 2(1)(b)(i)

I43 Sch. 4 para. 6(2) in force at 3.12.2012 for W. by S.I. 2012/1288, art. 2(2)(b)(i)

7 (1) Section 13 (enforcement) is amended as follows.

(2) In subsection (1)(a), after “Wales, a” insert “ local ”.

(3) In subsection (3), after “Wales” insert “ , Northern Ireland ”.

(4) Omit subsection (4).

(5) In subsection (5), after “proceedings” insert “which are—

- (a) in respect of an offence committed in England, and
- (b)”.

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(6) After subsection (5) insert—

- “(5A) The Welsh Ministers may take over the conduct of any proceedings which are—
- (a) in respect of an offence committed in Wales, and
 - (b) instituted in England and Wales by another person under any provision of this Act or regulations made under it.”

Commencement Information

- I44** Sch. 4 para. 7 partly in force; Sch. 4 para. 7(2) in force at 12.1.2010 see s. 40(7)(b)
I45 Sch. 4 para. 7(1) in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, art. 2(1)(b)(ii)
I46 Sch. 4 para. 7(3)(4) in force at 31.10.2012 for N.I. by S.R. 2012/389, art. 2(1)(b)(ii)
I47 Sch. 4 para. 7(5)(6) in force at 6.4.2012 for E. by S.I. 2010/1068, art. 2(1A)(b)(ii)
I48 Sch. 4 para. 7(6) in force at 1.6.2012 for W. by S.I. 2012/1288, art. 2(1)(a)

- 8 (1) Section 14 (powers of entry etc.) is amended as follows.
- (2) Omit subsection (11).
- (3) In subsection (12)—
- (a) omit “or” at the end of paragraph (a),
 - (b) after paragraph (a) insert—

“(aa) the Welsh Ministers take over any proceedings by virtue of section 13(5A), or”, and
 - (c) after “(as the case may be)” insert “ the Welsh Ministers or ”.

Commencement Information

- I49** Sch. 4 para. 8(1)(3) in force at 1.6.2012 for W. by S.I. 2012/1288, art. 2(1)(b)
I50 Sch. 4 para. 8(1) in force at 31.10.2012 for specified purposes for N.I. by S.R. 2012/389, art. 2(1)(b)(iii)
I51 Sch. 4 para. 8(2) in force at 31.10.2012 for N.I. by S.R. 2012/389, art. 2(1)(b)(iii)

- 9 (1) Section 16 (penalties) is amended as follows.
- (2) Subsection (1A) (limitation of penalty for certain offences relating to information society services) ceases to have effect.
- (3) In subsection (2)(a), for “level 5 on the standard scale” substitute “ the statutory maximum ”.
- (4) Sub-paragraph (2) does not apply to offences committed before the coming into force of that sub-paragraph.

Commencement Information

- I52** Sch. 4 para. 9 partly in force; Sch. 4 para. 9(2)(4) in force at Royal Assent and Sch. 4 para. 9(3) in force at 12.1.2010 see s. 40(5)(a)(7)(b)

- 10 In section 17(1) (defences: burden of proof) after “6(1),” insert “ 7B(5) and (7), ”.

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Commencement Information

- I53** Sch. 4 para. 10 in force at 6.4.2012 for E. by S.I. 2010/1068, art. 2(1A)(b)(iii)
I54 Sch. 4 para. 10 in force at 31.10.2012 for N.I. by S.R. 2012/389, art. 2(1)(b)(iv)
I55 Sch. 4 para. 10 in force at 3.12.2012 for W. by S.I. 2012/1288, art. 2(2)(b)(ii)

- 11 (1) Section 19 (regulations) is amended as follows.
- (2) In subsection (1), after “Powers” insert “ of the Secretary of State, the Welsh Ministers and the Scottish Ministers ”.
- (3) After subsection (1) insert—
- “(1A) Powers of the Department of Health, Social Services and Public Safety to make regulations under this Act are exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.”
- (4) For subsections (3) to (5) substitute—
- “(3) No statutory instrument containing an order under section 7 or regulations under sections 7C, 7D, 8, 9 or 11 is to 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;
- (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;
- (c) by the Scottish Ministers unless a draft of the instrument has been laid before and approved by a resolution of the Scottish Parliament.
- (4) In any other case, a statutory instrument containing regulations made under this Act—
- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
- (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales;
- (c) by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) The Department of Health, Social Services and Public Safety may not make regulations under section 7C unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (6) In any other case, regulations made by the Department of Health, Social Services and Public Safety under this Act are to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.”

Commencement Information

- I56** Sch. 4 para. 11 partly in force; Sch. 4 para. 11 in force for specified purposes at Royal Assent see s. 40(6)(c)

Status: Point in time view as at 03/12/2012.

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- I57** Sch. 4 para. 11 in force at 6.4.2012 for E. in so far as not already in force by S.I. 2010/1068, **art. 2(1A)(b)(iv)**
- I58** Sch. 4 para. 11 in force at 31.10.2012 for N.I. in so far as not already in force by S.R. 2012/389, **art. 2(1)(b)(v)**
- I59** Sch. 4 para. 11 in force at 3.12.2012 for W. in so far as not already in force by S.I. 2012/1288, **art. 2(2)(b)(iii)**

12 In section 21(1) (interpretation), for the definition of “appropriate Minister” substitute—

“appropriate Minister”—

- (a) in relation to England, means the Secretary of State,
- (b) in relation to Wales, means the Welsh Ministers,
- (c) in relation to Northern Ireland, means the Department of Health, Social Services and Public Safety, and
- (d) in relation to Scotland, means the Scottish Ministers,”.

Commencement Information

- I60** Sch. 4 para. 12 partly in force; Sch. 4 para. 12 in force for specified purposes at Royal Assent see s. 40(6)(c)
- I61** Sch. 4 para. 12 in force at 6.4.2012 for E. in so far as not already in force by S.I. 2010/1068, **art. 2(1A)(b)(iv)**
- I62** Sch. 4 para. 12 in force at 31.10.2012 for N.I. in so far as not already in force by S.R. 2012/389, **art. 2(1)(b)(v)**
- I63** Sch. 4 para. 12 in force at 3.12.2012 for W. in so far as not already in force by S.I. 2012/1288, **art. 2(2)(b)(iii)**

13 In the Schedule (information society service providers), in paragraph 1, in the definition of “relevant offence”, for “or 9” substitute “, 7D, 8, 9 or 11 ”.

Commencement Information

- I64** Sch. 4 para. 13 partly in force; Sch. 4 para. 13 in force for specified purposes on 12.1.2010 see s. 40(7)(c)

SCHEDULE 5

Section 35

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED ADULT SOCIAL CARE

PART 1

NEW PART 3A FOR THE LOCAL GOVERNMENT ACT 1974

1 The Local Government Act 1974 (c. 7) is amended as follows.

Status: Point in time view as at 03/12/2012.

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Commencement Information

I65 Sch. 5 para. 1 in force at 1.10.2010 by S.I. 2010/1863, art. 2

2 After Part 3 (local government administration) insert—

“PART 3A

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED ADULT SOCIAL CARE

Private adult social care: matters subject to investigation

Interpretation: “adult social care provider” and “adult social care”

- 34A(1) This section applies for the purposes of this Part.
- (2) “Adult social care” means social care within the meaning of Part 1 of the Health and Social Care Act 2008 which is provided to persons aged 18 or over.
 - (3) “Adult social care provider” means a person who carries on an activity which—
 - (a) involves, or is connected with, the provision of adult social care, and
 - (b) is a regulated activity within the meaning of Part 1 of the 2008 Act.
 - (4) Action is to be treated as action taken by an adult social care provider if it is taken by—
 - (a) a person employed by that provider,
 - (b) a person acting on behalf of that provider, or
 - (c) a person to whom that provider has delegated any functions.
 - (5) Action is also to be treated as action taken by an adult social care provider if—
 - (a) that provider provides adult social care by means of an arrangement with another person, and
 - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

Power to investigate

- 34B(1) Under this Part, a Local Commissioner may investigate a matter—
- (a) which relates to action taken by an adult social care provider in connection with the provision of adult social care, and
 - (b) in relation to which Condition 1 or 2 is met.
- (2) But a Local Commissioner may not conduct an investigation under this Part in respect of any action or matter described in Schedule 5A.
- (3) Condition 1 is met if a complaint about the matter which satisfies sections 34C and 34D has been made to a Local Commissioner.

Status: Point in time view as at 03/12/2012.

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- (4) Any question whether Condition 1 is met in relation to a matter is to be determined by a Local Commissioner.
- (5) Condition 2 is met if—
 - (a) the matter has come to the attention of a Local Commissioner, and
 - (b) section 34E applies to the matter.
- (6) Before investigating a matter under this Part a Local Commissioner must be satisfied that—
 - (a) the matter has been brought, by or on behalf of the person affected, to the notice of the adult social care provider to which it relates and that that provider has been afforded a reasonable opportunity to investigate the matter and to respond, or
 - (b) in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of that provider or for that provider to be afforded a reasonable opportunity to investigate the matter and to respond.
- (7) In subsection (6) the reference to a person affected includes a reference to that person's personal representatives.
- (8) In deciding whether to initiate, continue or discontinue an investigation, a Local Commissioner must, subject to the provisions of this section and sections 34C to 34E, act in accordance with the Local Commissioner's own discretion.
- (9) Without prejudice to the discretion conferred by subsection (8), a Local Commissioner who is satisfied with action which the adult social care provider concerned has taken or proposes to take may in particular decide—
 - (a) not to investigate a matter, or
 - (b) to discontinue an investigation of a matter.
- (10) Her Majesty may by Order in Council amend Schedule 5A by adding, omitting or changing a description of an action or matter.
- (11) A statutory instrument containing an Order in Council made under subsection (10) is subject to annulment in pursuance of a resolution of either House of Parliament.

Who can complain

- 34C (1) A complaint about a matter under this Part may only be made—
- (a) by a member of the public who claims to have sustained injustice in consequence of the matter (“P”),
 - (b) by a person authorised in writing by P to act on P's behalf, or
 - (c) in accordance with subsection (2).
- (2) Where a member of the public by whom a complaint about a matter might have been made under this Part (“D”) has died or is otherwise unable to authorise a person to act on D's behalf, the complaint may be made—
- (a) by D's personal representatives (if any), or
 - (b) by a person who appears to a Local Commissioner to be suitable to represent D.

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Procedure for making complaints

- 34D (1) Subject to subsection (3), a complaint about a matter under this Part must be made—
- (a) in writing, and
 - (b) before the end of the permitted period.
- (2) In subsection (1)(b), the “permitted period” means the period of 12 months beginning with—
- (a) the day on which the person affected first had notice of the matter, or
 - (b) if the person affected has died without having notice of the matter—
 - (i) the day on which the personal representatives of the person affected first had notice of the matter, or
 - (ii) if earlier, the day on which the complainant first had notice of the matter.
- (3) A Local Commissioner may disapply either or both of the requirements in subsection (1)(a) and (b) in relation to a particular complaint.

Matters coming to attention of Local Commissioner

- 34E (1) This section applies to a matter which has come to the attention of a Local Commissioner if—
- (a) the matter came to the Local Commissioner's attention during the course of an investigation under Part 3 or this Part,
 - (b) (subject to subsection (3)) the matter came to the Local Commissioner's attention—
 - (i) before the person affected or that person's personal representatives had notice of the matter, or
 - (ii) in any other case, before the end of the permitted period, and
 - (c) it appears to the Local Commissioner that a member of the public has, or may have, suffered injustice in consequence of the matter.
- (2) In subsection (1)(b)(ii), “the permitted period” means the period of 12 months beginning with—
- (a) the day on which the person affected first had notice of the matter, or
 - (b) if the person affected has died without having notice of the matter, the day on which the personal representatives of the person affected first had notice of the matter.
- (3) A Local Commissioner may disapply the requirement in subsection (1)(b) in relation to a particular matter.

Investigations by a Local Commissioner

Procedure in respect of investigations

- 34F (1) A Local Commissioner who proposes to investigate a matter under this Part must give the following persons an opportunity to comment on the matter—
- (a) the adult social care provider concerned;

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- (b) any person who is alleged in the complaint (if any) to have taken or authorised the action which would be the subject of the investigation;
 - (c) any person who otherwise appears to the Local Commissioner to have taken or authorised that action.
- (2) Every investigation under this Part is to be conducted in private.
- (3) Subject to subsection (2), the procedure for conducting an investigation is to be such as the Local Commissioner considers appropriate in the circumstances of the case.
- (4) The Local Commissioner may, in particular—
- (a) obtain information from such persons and in such manner as the Local Commissioner thinks fit,
 - (b) make such inquiries as the Local Commissioner thinks fit, and
 - (c) determine whether any person may be represented (by counsel, solicitor or otherwise) in the investigation.
- (5) The Local Commissioner may, if the Local Commissioner thinks fit, pay to the person by whom the complaint (if any) was made, and to any other person who attends or furnishes information for the purposes of an investigation under this Part—
- (a) sums in respect of the expenses properly incurred by them;
 - (b) allowances by way of compensation for the loss of their time.

Investigations: further provisions

- 34G(1) For the purposes of an investigation under this Part a Local Commissioner may require the following persons to furnish information or produce documents relevant to the investigation—
- (a) the adult social care provider concerned;
 - (b) any other person who in the Local Commissioner's opinion is able to furnish any such information or produce any such documents.
- (2) Nothing in subsection (1) affects the restriction imposed by section 26 of the PSOWA 2005.
- (3) For the purposes of an investigation under this Part a Local Commissioner has the same powers as the High Court in respect of—
- (a) the attendance and examination of witnesses, and
 - (b) the production of documents.
- (4) To assist in any investigation, a Local Commissioner may obtain advice from any person who in the Local Commissioner's opinion is qualified to give it.
- (5) A Local Commissioner may pay to any such person giving advice such fees or allowances as the Local Commissioner may determine.
- (6) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist in the conduct of an investigation under this Part.
- (7) Any person appointed under subsection (6) is to be deemed to be an officer of the Commission in carrying out functions under that appointment.

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- (8) No person may be compelled for the purposes of an investigation under this Part to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (9) If any person without lawful excuse—
- (a) obstructs a Local Commissioner in the performance of the Local Commissioner's functions under this Part,
 - (b) obstructs any person discharging or assisting in the discharge of those functions, or
 - (c) is guilty of an act or omission in relation to an investigation under this Part which, if that investigation were a proceeding in the High Court, would constitute contempt of court,
- the Local Commissioner may certify the offence to the High Court.
- (10) Where an offence is so certified, the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged (“D”), and after hearing any statement that may be offered in defence, deal with D in any manner in which the High Court could deal with D if D had committed the like offence in relation to the High Court.

Statements etc. about investigations

Statements about investigations

- 34H(1) A Local Commissioner must prepare a written statement in accordance with subsections (2) to (4) if the Local Commissioner—
- (a) decides not to investigate a matter under this Part,
 - (b) decides to discontinue such an investigation, or
 - (c) completes such an investigation.
- (2) In a case falling within subsection (1)(a) or (b), the statement must set out the Local Commissioner's reasons for the decision.
- (3) In a case falling within subsection (1)(c), the statement must—
- (a) set out the Local Commissioner's conclusions on the investigation, and
 - (b) include any recommendations the Local Commissioner considers it appropriate to make.
- (4) The recommendations the Local Commissioner may make are recommendations with respect to action which, in the Local Commissioner's opinion, the adult social care provider concerned should take—
- (a) to remedy any injustice sustained by the person affected in consequence of the action of the provider which was the subject of the investigation, and
 - (b) to prevent injustice being caused in the future in consequence of similar action of the provider.
- (5) The Local Commissioner must send a copy of a statement prepared under this section to each of the persons concerned.

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- (6) The persons concerned are—
 - (a) the complainant (if any);
 - (b) the adult social care provider concerned;
 - (c) any person who is alleged in the complaint (if any) to have taken or authorised the action which was the subject of the investigation;
 - (d) any person who otherwise appears to the Local Commissioner to have taken or authorised such action.

- (7) The Local Commissioner may send a copy of a statement prepared under this section to—
 - (a) the Care Quality Commission, and
 - (b) any local authority which appears to the Commissioner to have an interest in the subject matter of the statement.

- (8) The statement must identify the adult social care provider concerned unless—
 - (a) the provider is an individual, or a particular individual would, in the opinion of the Local Commissioner, be likely to be identified as a result of identifying the provider, and
 - (b) the Local Commissioner considers that it is not appropriate for the individual to be identified.

- (9) The statement must not—
 - (a) mention the name of any person other than the provider, or
 - (b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any other person and can be omitted without impairing the effectiveness of the statement,
 unless, after taking into account the public interest as well as the interests of that person, the complainant (if any) and of other persons, the Local Commissioner considers it necessary to mention the name of that person or to include in the statement any such particulars.

Adverse findings notices

- 34I (1) This section applies where an adult social care provider receives a statement prepared under section 34H which contains recommendations.
- (2) The adult social care provider concerned must—
 - (a) consider the statement, and
 - (b) notify the Local Commissioner within the required period of the action which the provider has taken or proposes to take.

 - (3) The Local Commissioner may by notice require the provider to arrange for an adverse findings notice to be published in accordance with subsections (4) and (5) if the Local Commissioner—
 - (a) does not receive the notification mentioned in subsection (2)(b) within the required period or is satisfied before the end of that period that the adult social care provider concerned has decided to take no action,
 - (b) is not satisfied with the action which the provider concerned has taken or proposes to take, or

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- (c) does not within a period of one month beginning with the end of the required period, or such longer period as the Local Commissioner may agree in writing, receive confirmation that the provider has taken action, as proposed, to the satisfaction of the Local Commissioner.
- (4) An adverse findings notice is a notice, in such form as the adult social care provider concerned and the Local Commissioner may agree, consisting of—
- (a) details of any action recommended in the statement which the provider has not taken;
 - (b) such supporting material as the Local Commissioner may require;
 - (c) if the provider so requires, an explanation of the provider's reasons for having taken no action on, or not the action recommended in, the statement.
- (5) The adverse findings notice must be published by the adult social care provider in such manner as the Local Commissioner may direct.
- (6) If the adult social care provider—
- (a) fails to arrange for the publication of the adverse findings notice in accordance with subsections (4) and (5), or
 - (b) is unable, within the period of one month beginning with the date on which the provider received the notice under subsection (3), or such longer period as the Local Commissioner may agree in writing, to agree with the Local Commissioner the form of the adverse findings notice to be published,
- the Local Commissioner must arrange for an adverse findings notice to be published in such manner as the Local Commissioner considers appropriate.
- (7) The adult social care provider concerned must reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).
- (8) In this section the “required period” means—
- (a) the period of one month beginning with the date on which the adult social care provider concerned received the statement, or
 - (b) such longer period as the Local Commissioner may agree in writing.

Publication of statements etc. by Local Commissioner

- 34J (1) A Local Commissioner may—
- (a) publish all or part of a statement under section 34H,
 - (b) arrange for further publication of all or part of an adverse findings notice published under section 34I(3) or (6), or
 - (c) publish a summary of a matter which is the subject of a statement or adverse findings notice under section 34H or 34I,
- if, after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, the Local Commissioner considers it appropriate to do so.
- (2) A Local Commissioner may—

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- (a) supply a copy of all or part of a statement, adverse findings notice or summary mentioned in subsection (1) to any person who requests it, and
 - (b) charge a reasonable fee for doing so.
- (3) Subsections (8) and (9) of section 34H apply to any part of a summary of a matter that is published, or a copy of which is supplied, under this section as they apply to a statement prepared under that section.

Disclosure of information

34K(1) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Part must not be disclosed except—

- (a) for the purposes of the investigation and of any statement, adverse findings notice or summary under section 34H, 34I or 34J,
 - (b) for the purposes of an investigation under Part 3 and of any report, statement or summary under section 30, 31 or 31B in relation to such an investigation,
 - (c) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner (or both),
 - (d) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained, by virtue of this Part, by a Local Commissioner or by a person discharging or assisting in the discharge of a function of a Local Commissioner,
 - (e) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Part,
 - (f) for the purposes of an inquiry with a view to the taking of proceedings of a kind mentioned in paragraph (d) or (e), or
 - (g) for the purposes of proceedings under section 34G(10).
- (2) A Local Commissioner or a person discharging or assisting in the discharge of a function of a Local Commissioner may not be called upon to give evidence in any proceedings (other than proceedings within paragraphs (d), (e) or (g) of subsection (1)) of matters coming to his or her knowledge in the course of an investigation under this Part.
- (3) A Local Commissioner must not prepare a statement under section 34H which includes government information unless the Local Commissioner has—
- (a) obtained the written consent of an officer of the government department concerned, or
 - (b) given the department not less than one month's notice in writing of the intention to include the information in a statement.
- (4) In subsection (3) “government information” means information disclosed under section 34G(1) which—

Status: Point in time view as at 03/12/2012.

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- (a) is derived from a communication with a government department, and
 - (b) has not been made public.
- (5) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 is to be treated for the purposes of subsection (1) as obtained for the purposes of an investigation under this Part and, in relation to such information, the reference in paragraph (a) of that subsection to the investigation has effect as a reference to any investigation.

Law of defamation

34L (1) For the purposes of the law of defamation the following are absolutely privileged—

- (a) the publication of any matter in communications between an adult social care provider and a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, for the purposes of this Part;
 - (b) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating for the purposes of this Part with a person mentioned in subsection (2);
 - (c) the publication of any matter in preparing, making and sending a statement in accordance with section 34H;
 - (d) the publication of any matter by inclusion in an adverse findings notice published in accordance with section 34I(3), (4) and (5) or (6);
 - (e) the publication of any matter by inclusion in a statement, adverse findings notice or summary published or supplied under section 34J;
 - (f) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 34S.
- (2) The persons mentioned in subsection (1)(b) are—
- (a) a complainant or the person affected in relation to a matter;
 - (b) the Parliamentary Commissioner, the Health Service Commissioner or any officer of either such Commissioner;
 - (c) the Care Quality Commission or any officer of that Commission;
 - (d) a local authority.

Arrangements with other Commissioners etc.

Consultation with other Commissioners

34M(1) Subsection (2) applies if, at any stage in the course of an investigation under this Part, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation by—

- (a) the Parliamentary Commissioner, in accordance with the PCA 1967;

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- (b) the Health Service Commissioner, in accordance with the HSCA 1993;
 - (c) the Scottish Public Services Ombudsman in accordance with the SPSOA 2002; or
 - (d) the Public Services Ombudsman for Wales, in accordance with the PSOWA 2005.
- (2) The Local Commissioner—
- (a) must consult with the appropriate Commissioner or Ombudsman about the matter, and
 - (b) where a complaint was made about the matter must, if the Local Commissioner considers it necessary, inform the person initiating the complaint under this Part of the steps necessary to initiate a complaint under the PCA 1967, the HSCA 1993, the SPSOA 2002 or the PSOWA 2005, as the case may be.
- (3) Consultation under subsection (2)(a) in relation to a matter under investigation under this Part may be about anything relating to the matter, including—
- (a) the conduct of any investigation into the matter, and
 - (b) the form, content and publication of any report or statement of the results of or conclusions on such an investigation.
- (4) Subsection (5) applies if, at any stage in the course of conducting an investigation under the PCA 1967, the Parliamentary Commissioner forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part.
- (5) The Parliamentary Commissioner—
- (a) must consult with the appropriate Local Commissioner about the complaint, and
 - (b) if the Parliamentary Commissioner considers it necessary, must inform the person initiating the complaint of the steps necessary to initiate a complaint under this Part.
- (6) Where a Local Commissioner is consulted about a complaint under the PCA 1967 by virtue of subsection (5), subsection (3) applies (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (2).
- (7) Nothing in the following provisions applies in relation to the disclosure of information in the course of consultations held in accordance with this section—
- (a) section 11(2) of the PCA 1967;
 - (b) section 15 of the HSCA 1993;
 - (c) section 19 of the SPSOA 2002;
 - (d) section 26 of the PSOWA 2005;
 - (e) section 34K(1) of this Act.

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Collaborative working with other Commissioners

34N(1) If, at any stage in the course of an investigation under this Part, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter within the jurisdiction of—

- (a) the Parliamentary Commissioner,
- (b) the Health Service Commissioner, or
- (c) both,

the Local Commissioner may conduct an investigation under this Part jointly with that Commissioner or those Commissioners.

(2) A Local Commissioner must obtain the consent of the person affected or the complainant (if any) before agreeing to a joint investigation referred to in subsection (1).

(3) If a Local Commissioner forms the opinion that a complaint being investigated by—

- (a) the Parliamentary Commissioner,
- (b) the Health Service Commissioner, or
- (c) both,

relates partly to a matter within the Local Commissioner's jurisdiction by virtue of this Part, the Local Commissioner may conduct an investigation under this Part jointly with that Commissioner or those Commissioners.

(4) If a Local Commissioner conducts an investigation jointly with another person, the requirements of section 34H(1)(c) and (5) (so far as relating to a case where the Local Commissioner conducts an investigation under this Part) may be satisfied by a statement or report made jointly with that person.

Disclosure of information by Local Commissioner to Information Commissioner

34O(1) A Local Commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part if the information appears to the Local Commissioner to relate to—

- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
 - (i) Part 5 of the Data Protection Act 1998 (enforcement),
 - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
 - (iii) Part 4 of that Act (enforcement), or
- (b) the commission of an offence under—
 - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
 - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).

Status: Point in time view as at 03/12/2012.

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- (2) Nothing in section 34K(1) applies in relation to the disclosure of information in accordance with this section.

Disclosure of information by Local Commissioner to Care Quality Commission

- 34P (1) A Local Commissioner may disclose to the Care Quality Commission any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part if the information appears to the Local Commissioner to relate to a matter in respect of which the Care Quality Commission has functions under any enactment.
- (2) Nothing in section 34K(1) applies in relation to the disclosure of information in accordance with this section.

General

Arrangements etc. to be made by Commission

- 34Q(1) The Commission must—
- (a) divide the matters which may be investigated under this Part into such categories as it considers appropriate, and
 - (b) allocate, or make arrangements for allocating, responsibility for each category of matter to one or more of the Local Commissioners.
- (2) The Commission—
- (a) must make arrangements for Local Commissioners to deal with matters for which they do not have responsibility pursuant to subsection (1), and
 - (b) must publish information about the procedures for making complaints under this Part.

Review, recommendations, advice and guidance

- 34R(1) In each financial year in which the Commission conducts a review under section 23(12), it must also review the operation (since the last review was made under this subsection) of the provisions of this Part about the investigation of matters.
- (2) The Commission may convey to government departments and the Care Quality Commission any recommendations or conclusions reached in the course of a review under subsection (1).
- (3) The Commission may—
- (a) provide to adult social care providers or any adult social care provider such advice and guidance about good practice as appears to the Commission to be appropriate, and
 - (b) arrange for the advice and guidance to be published for the information of the public.
- (4) Before providing advice or guidance under subsection (3) the Commission must consult such persons as appear to it to be appropriate.

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Annual reports

- 34S (1) Every Local Commissioner must for each financial year—
- (a) prepare a general report on the discharge of the Local Commissioner's functions under this Part, and
 - (b) submit it to the Commission not later than 2 months after the end of the year to which it relates.
- (2) The Commission must for each financial year prepare a general report on the discharge of its functions under this Part (the “Part 3A annual report”).
- (3) The Part 3A annual report must be prepared as soon as may be after the Commission has received the reports for the year from Local Commissioners under subsection (1).
- (4) The Commission must arrange for the publication of—
- (a) the Part 3A annual report, and
 - (b) the reports which are submitted under subsection (1).
- (5) The Commission must lay a copy of the Part 3A annual report before Parliament.

Interpretation of Part 3A

- 34T (1) In this Part—
- “adult social care” and “adult social care provider” have the meanings given by section 34A;
- “Health Service Commissioner” means the Health Service Commissioner for England;
- “the HSCA 1993” means the Health Service Commissioners Act 1993;
- “the PCA 1967” means the Parliamentary Commissioner Act 1967;
- “person affected”—
- (a) in relation to a matter which is the subject of a complaint made or to be made under this Part, means a member of the public who claims or is alleged to have sustained injustice in consequence of the matter, and
 - (b) in relation to a matter coming to the attention of a Local Commissioner to which section 34E applies, means the member of the public who the Local Commissioner considers has, or may have, sustained injustice in consequence of the matter;
- “the PSOWA 2005” means the Public Services Ombudsman (Wales) Act 2005;
- “the SPSOA 2002” means the Scottish Public Services Ombudsman Act 2002.
- (2) The following terms have the same meaning in this Part as they have in Part 3—
- (a) action (and other expressions connoting action) (see section 34);
 - (b) the Commission (see section 34);
 - (c) local authority (see section 34);

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- (d) Local Commissioner (see section 23(3));
- (e) Parliamentary Commissioner (see section 34).

(3) Section 34(1A) applies for the purposes of this Part as it applies for the purposes of Part 3.”

Commencement Information

I66 Sch. 5 para. 2 in force at 1.10.2010 by S.I. 2010/1863, art. 2

3 After Schedule 5 (matters not subject to investigation) insert—

“SCHEDULE 5A

Section 34B

MATTERS NOT SUBJECT TO INVESTIGATION UNDER PART 3A

- 1 A matter which could be the subject of an investigation by a Local Commissioner under Part 3.
- 2 A matter which could be the subject of an investigation by the Health Service Commissioner under the HSCA 1993.
- 3 The commencement or conduct of civil or criminal proceedings before any court of law.
- 4 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.”

Commencement Information

I67 Sch. 5 para. 3 in force at 1.10.2010 by S.I. 2010/1863, art. 2

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS

Local Government Act 1974 (c. 7)

4 Part 3 of the Local Government Act 1974 is amended as follows.

Commencement Information

I68 Sch. 5 para. 4 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 5 (1) Section 23 (the Commission for Local Administration) is amended as follows.
 - (2) In subsection (1), after “this Part” insert “ and Part 3A ”.
 - (3) In subsection (11), after “functions” insert “ (other than those under Part 3A of this Act) ”.

Status: Point in time view as at 03/12/2012.

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Commencement Information

I69 Sch. 5 para. 5 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 6 In section 23A(1) (annual reports for representatives etc.), after “functions” insert “ (other than those under Part 3A of this Act) ”.

Commencement Information

I70 Sch. 5 para. 6 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 7 In section 26D(1)(a) (matters coming to attention of Local Commissioner), after “this Part” insert “ or Part 3A ”.

Commencement Information

I71 Sch. 5 para. 7 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 8 (1) Section 29 (investigations under Part 3: further provisions) is amended as follows.
(2) For subsection (5) substitute—
“(5) Nothing in subsection (1) or subsection (3) above affects the restriction imposed by section 26 of the Public Services Ombudsman (Wales) Act 2005.”
(3) In subsection (6A), after “under this” insert “ Part of this ”.

Commencement Information

I72 Sch. 5 para. 8 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 9 In section 30(1) (reports on investigations under Part 3), after “matter” insert “ under this Part of this Act ”.

Commencement Information

I73 Sch. 5 para. 9 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 10 In section 32(2) (law of defamation), after paragraph (a) insert—
“(aza) for the purposes of an investigation under Part 3A of this Act and of any statement, adverse findings notice or summary under section 34H, 34I or 34J in relation to such an investigation; or”.

Commencement Information

I74 Sch. 5 para. 10 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 11 (1) Section 33ZA (collaborative working between Local Commissioners and Other Commissioners) is amended as follows.

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- (2) In subsection (1), after “under this” (in both places where it occurs) insert “ Part of this ”.
- (3) In subsection (3)—
- (a) after “his jurisdiction” insert “ by virtue of this Part ”,
 - (b) after “under this” insert “ Part of this ”.
- (4) In subsection (4), after “under this” insert “ Part of this ”.

Commencement Information

I75 Sch. 5 para. 11 in force at 1.10.2010 by S.I. 2010/1863, art. 2

- 12 In Schedule 4 (the Commission), in paragraph 1, after sub-paragraph (2) insert—
- “(2A) A Local Commissioner shall not conduct a case which involves an adult social care provider if the Local Commissioner has a financial or other interest in the provider which is likely to affect prejudicially the exercise of his functions.
- (2B) In sub-paragraph (2A) “adult social care provider” has the same meaning as in Part 3A of this Act.”

Commencement Information

I76 Sch. 5 para. 12 in force at 1.10.2010 by S.I. 2010/1863, art. 2

Health Service Commissioners Act 1993 (c. 46)

- 13 In section 18(1)(c) of the Health Service Commissioners Act 1993 (consultations during investigations), after “Part III” insert “ or 3A ”.

Commencement Information

I77 Sch. 5 para. 13 in force at 1.10.2010 by S.I. 2010/1863, art. 2

Freedom of Information Act 2000 (c. 36)

- 14 In section 76 of the Freedom of Information Act 2000 (disclosure of information between Commissioner and ombudsmen), in the Table, in the second column, after “Part III” insert “ or Part 3A ”.

Commencement Information

I78 Sch. 5 para. 14 in force at 1.10.2010 by S.I. 2010/1863, art. 2

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Scottish Public Services Ombudsman Act 2002 (2002 asp 11)

- 15 In section 21(1)(d) of the Scottish Public Services Ombudsman Act 2002 (consultation and cooperation with other Commissioners and Ombudsmen), after “Part III” insert “ or 3A ”.

Commencement Information

I79 [Sch. 5 para. 15](#) in force at 1.10.2010 by [S.I. 2010/1863](#), [art. 2](#)

SCHEDULE 6

Section 38

REPEALS AND REVOCATIONS

Commencement Information

- I80** [Sch. 6](#) partly in force; [Sch. 6](#) in force for specified purposes at Royal Assent see [s. 40\(5\)\(b\)](#)
I81 [Sch. 6](#) in force at 1.10.2011 for specified purposes by [S.I. 2010/1068](#), [art. 2\(1\)\(b\)](#)
I82 [Sch. 6](#) in force at 6.4.2012 for specified purposes by [S.I. 2010/1068](#), [art. 2\(1A\)\(c\)](#)
I83 [Sch. 6](#) in force at 1.9.2012 for specified purposes by [S.I. 2012/1902](#), [art. 2\(f\)](#)
I84 [Sch. 6](#) in force at 31.10.2012 for specified purposes by [S.I. 2012/2647](#), [art. 2\(b\)](#)

<i>Title</i>	<i>Extent of repeal or revocation</i>
Children and Young Persons Act 1933 (c. 12)	In section 12D(1), the word “or” at the end of paragraph (a).
Health Service Commissioners Act 1993 (c. 46)	In Schedule 2, paragraph 3.
Tobacco Advertising and Promotion Act 2002 (c. 36)	Section 13(4). In section 14— (a) subsection (11); (b) in subsection (12), the word “or” at the end of paragraph (a). Section 16(1A).
Public Services Ombudsman (Wales) Act 2005 (c. 10)	In Schedule 6, paragraph 12(3).
National Health Service Act 2006 (c. 41)	In section 129(4), paragraph (a). In section 129(6)(d), the words “in pursuance of such an application”. Section 180(2)(c). In section 276, the entry for “pilot scheme”. In Schedule 12, paragraph 1(2)(c).
National Health Service (Wales) Act 2006 (c. 42)	In section 83(6)(d), the words “in pursuance of such an application”.

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In Schedule 7, paragraph 1(2)(c).

In Schedule 10, in paragraph 2(a), the words from “(including” to the end.

Safeguarding Vulnerable Groups Act 2006 (c. 47) In section 59(1), the word “or” at the end of paragraph (i).

Tobacco Advertising and Promotion Act 2002 etc (Amendment) Regulations 2006 (S.I. 2006/2369) Regulation 7.

Status:

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