



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 11

#### MISCELLANEOUS

*Information relating to births and deaths etc.*

VALID FROM 01/04/2013

#### **284 Special notices of births and deaths**

- (1) Section 269 of the National Health Service Act 2006 (special notices of births and deaths) is amended as follows.
- (2) For subsection (2) substitute—
  - “(2) Each registrar of births and deaths must furnish to such relevant body or bodies as may be determined in accordance with regulations the particulars of such births or deaths entered in a register of births or deaths kept for the registrar's sub-district as may be prescribed.”
- (3) In subsection (4) for “the Primary Care Trust for the area in which the birth takes place” substitute “such relevant body or bodies as may be determined in accordance with regulations”.
- (4) In subsection (6)—
  - (a) after “under subsection (4)” insert “to a relevant body”, and
  - (b) for “the Primary Care Trust” (in each place where it occurs) substitute “the body”.
- (5) In subsection (7)—
  - (a) for “A Primary Care Trust” substitute “A relevant body to whom notice is required to be given under subsection (4)”, and

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- (b) for “any medical practitioner or midwife residing or practising within its area” substitute “such descriptions of medical practitioners or midwives as may be prescribed”.
- (6) In subsection (9) for “the Primary Care Trust concerned” substitute “the relevant body or bodies to whom the failure relates”.
- (7) In subsection (10), in paragraph (a) for “a Primary Care Trust” substitute “a relevant body”.
- (8) After subsection (10) insert—
  - “(11) For the purposes of this section, the following are relevant bodies—
    - (a) the National Health Service Commissioning Board,
    - (b) clinical commissioning groups,
    - (c) local authorities.
  - (12) Information received by a local authority by virtue of this section may be used by it only for the purposes of functions exercisable by it in relation to the health service.
  - (13) In this section, “local authority” has the same meaning as in section 2B.”
- (9) Until the commencement of section 34, section 269(11) of the National Health Service Act 2006 has effect as if Primary Care Trusts were included in the list of bodies that are relevant bodies for the purposes of that section.

## **285 Provision of information by Registrar General**

- (1) Section 270 of the National Health Service Act 2006 (provision of information by Registrar General) is amended as follows.
- (2) In subsection (1) —
  - (a) for “the Secretary of State” substitute “any of the following persons”, and
  - (b) at the end insert “—
    - (a) the Secretary of State,
    - (b) the Board,
    - (c) a clinical commissioning group,
    - (d) a local authority,
    - (e) the National Institute for Health and Care Excellence,
    - (f) the Health and Social Care Information Centre,
    - (g) a Special Health Authority which has functions that are exercisable in relation to England,
    - (h) the Care Quality Commission, and
    - (i) such other persons as the Secretary of State may specify in a direction.”
- (3) In subsection (2) —
  - (a) for “the Secretary of State” substitute “the person to whom the information is provided”, and
  - (b) for “his functions” substitute “functions exercisable by the person”.
- (4) After subsection (4) insert—

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“(5) In this section, “local authority” has the same meaning as in section 2B.”

#### Commencement Information

**I1** S. 285 partly in force; s. 285 in force for specified purposes at Royal Assent, see s. 306(1)(d)

### 286 Provision of information by Registrar General: Wales

(1) Section 201 of the National Health Service (Wales) Act 2006 (provision of information by Registrar General) is amended as follows.

(2) In subsection (1) —

- (a) for “the Welsh Ministers” substitute “any of the following persons”, and
- (b) at the end insert “—
  - (a) the Welsh Ministers,
  - (b) a Special Health Authority which has functions that are exercisable in relation to Wales,
  - (c) a Local Health Board,
  - (d) an NHS trust established under section 18, and
  - (e) such other persons as the Welsh Ministers may specify in a direction.”

(3) In subsection (2) —

- (a) for “the Welsh Ministers” substitute “the person to whom the information is provided”, and
- (b) for “their functions” substitute “functions exercisable by the person”.

#### Commencement Information

**I2** S. 286 partly in force; s. 286 in force for specified purposes at Royal Assent, see s. 306(1)(d)

### 287 Provision of statistical information by Statistics Board

(1) Section 42 of the Statistics and Registration Service Act 2007 (information relating to births and deaths etc) is amended as follows.

(2) For subsection (4) substitute—

“(4) The Board may disclose to a person mentioned in subsection (4A) any information referred to in subsection (2)(a) to (c) which is received by the Board under this section, or any information which is produced by the Board by analysing any such information, if—

- (a) the information consists of statistics and is disclosed for the purpose of assisting the person in the performance of functions exercisable by it in relation to the health service, or
- (b) the information is disclosed for the purpose of assisting the person to produce or to analyse statistics for the purpose of assisting the person, or any other person mentioned in subsection (4A), in the performance of functions exercisable by it in relation to the health service.

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(4A) Those persons are—

- (a) the Secretary of State,
- (b) the Welsh Ministers,
- (c) the National Health Service Commissioning Board,
- (d) a clinical commissioning group,
- (e) a local authority,
- (f) a Local Health Board,
- (g) an NHS trust established under section 18 of the National Health Service (Wales) Act 2006,
- (h) the National Institute for Health and Care Excellence,
- (i) the Health and Social Care Information Centre,
- (j) a Special Health Authority,
- (k) the Care Quality Commission, and
- (l) such other persons as the appropriate authority may specify in a direction given for the purposes of this section.

(4B) For the purposes of subsection (4A)(l), the appropriate authority is—

- (a) in relation to a direction to be given for purposes relating only to Wales, the Welsh Ministers, and
- (b) in any other case, the Secretary of State.”

(3) After subsection (5) insert—

“(5A) A direction under subsection (4A)(l) must be given by an instrument in writing.

(5B) Sections 272(7) and 273(1) of the National Health Service Act 2006 apply in relation to the power of the Secretary of State to give a direction under subsection (4A)(l) as they apply in relation to powers to give a direction under that Act.

(5C) Sections 203(9) and 204(1) of the National Health Service (Wales) Act 2006 apply in relation to the power of the Welsh Ministers to give a direction under subsection (4A)(l) as they apply in relation to powers to give a direction under that Act.”

(4) After subsection (6) insert—

“(7) In subsection (4A)—

“clinical commissioning group” and “Special Health Authority” have the same meaning as in the National Health Service Act 2006; “local authority” has the same meaning as in section 2B of that Act of 2006.”

#### Commencement Information

**I3** S. 287 partly in force; s. 287 in force for specified purposes at Royal Assent, see s. 306(1)(d)

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### *Duties to co-operate*

#### **288 Monitor: duty to co-operate with Care Quality Commission**

- (1) Monitor must co-operate with the Care Quality Commission in the exercise of their respective functions.
- (2) In particular Monitor must—
  - (a) give the Commission any information Monitor has about the provision of health care services which Monitor or the Commission considers would assist the Commission in the exercise of its functions,
  - (b) make arrangements with the Commission to ensure that—
    - (i) a person applying both for a licence under Chapter 3 of Part 3 and to be registered under the Health and Social Care Act 2008 may do so by way of a single application form,
    - (ii) such a person is granted a licence under that Chapter and registration under that Act by way of a single document, and
  - (c) seek to secure that the conditions included in a licence under that Chapter in a case within paragraph (b) are consistent with any conditions on the person's registration under that Act.
- (3) Without prejudice to subsection (2)(a) Monitor must, on request, provide the Commission with any material relevant to the exercise of Monitor's functions pursuant to section 73(2), so far as the material relates to the provision of health care services.
- (4) In subsection (2), references to registration under the Health and Social Care Act 2008 are references to registration under Chapter 2 of Part 1 of that Act.

#### **Commencement Information**

**I4** S. 288(1)(2)(a) in force at 1.7.2012 by S.I. 2012/1319, art. 2(3)

#### **289 Care Quality Commission: duty to co-operate with Monitor**

- (1) Section 70 of the Health and Social Care Act 2008 (co-operation between the Commission and the Independent Regulator of NHS foundation trusts) is amended as follows.
- (2) For subsection (1) substitute—

“(1) The Commission must co-operate with Monitor in the exercise of their respective functions.”
- (3) For subsection (2) substitute—

“(2) In particular the Commission must—

  - (a) give Monitor any information the Commission has about the provision of health care which the Commission or Monitor considers would assist Monitor in the exercise of its functions,
  - (b) make arrangements with Monitor to ensure that—
    - (i) a person applying to be both registered under Chapter 2 and for a licence under the Health and Social Care Act 2012 may do so by way of a single application form, and

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- (ii) such a person is granted a registration under Chapter 2 and a licence under that Act by way of a single document, and
  - (c) seek to secure that the conditions on a registration under Chapter 2 in a case within paragraph (b) are consistent with the conditions included in the person's licence under that Act.”
- (4) In subsection (3)—
- (a) for “Independent Regulator” substitute “Monitor”, and
  - (b) for “an NHS foundation trust” substitute “a person who holds a licence under the Health and Social Care Act 2012”.
- (5) After that subsection insert—
- “(4) In this section, a reference to a licence under the Health and Social Care Act 2012 is a reference to a licence under Chapter 3 of Part 3 of that Act.”
- (6) In the heading of that section, for “Independent Regulator of NHS Foundation Trusts” substitute “Monitor”.

#### Commencement Information

- I5** S. 289(1) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, art. 2(3)
- I6** S. 289(2) in force at 1.7.2012 by S.I. 2012/1319, art. 2(3)
- I7** S. 289(3) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, art. 2(3)
- I8** S. 289(4)(a)(6) in force at 1.7.2012 by S.I. 2012/1319, art. 2(3)

## 290 Other duties to co-operate

- (1) Monitor and each relevant body must co-operate with each other in the exercise of their respective functions.
- (2) The Care Quality Commission and each relevant body must co-operate with each other in the exercise of their respective functions.
- (3) The relevant bodies are—
  - (a) the National Health Service Commissioning Board,
  - (b) the National Institute for Health and Care Excellence,
  - (c) the Health and Social Care Information Centre, and
  - (d) Special Health Authorities which have functions that are exercisable in relation to England.
- (4) The Secretary of State may by order amend subsection (3) so as to add to the list of relevant bodies a body that has functions relating to health.
- (5) Where Monitor or the Care Quality Commission regulates an activity of a relevant body, the duty imposed by subsection (1) or (as the case may be) subsection (2) does not apply to—
  - (a) the exercise by Monitor or by the Commission of its function of regulating that activity;
  - (b) the exercise by the relevant body of any function in so far as it involves carrying on that activity.
- (6) A reference in this section to regulating an activity includes a reference to—

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- (a) authorising the carrying on of the activity, imposing restrictions on the carrying on of the activity, and exercising functions in relation to such authorisations or restrictions;
  - (b) enforcing the performance of an obligation imposed (whether or not by provision made by or under an enactment) with respect to the carrying on of the activity;
  - (c) issuing guidance on the carrying on of the activity, the authorisation of the activity, restrictions on the activity, or the performance of obligation imposed with respect to the carrying on of the activity.
- (7) For the purposes of this section and section 291, the functions of a Special Health Authority include such functions as it is directed to exercise under section 7 of the National Health Service Act 2006 (directions by Secretary of State).
- (8) References in this section and section 291 to functions are references to functions so far as exercisable in relation to England.

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

- C1** S. 290(1)(2) modified by 2006 c. 41, s. 13Z4(3) (as inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), ss. 23(1), 306(1)(d)(4))

**Commencement Information**

- I9** S. 290 partly in force; s. 290 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I10** S. 290(1)(2)(3)(a)(d)(4)-(8) in force at 1.10.2012 by S.I. 2012/1831, art. 2(2)

## 291 Breaches of duties to co-operate

- (1) If the Secretary of State is of the opinion that bodies subject to a relevant co-operation duty have breached or are breaching the duty, or are at significant risk of breaching the duty, the Secretary of State may give a written notice of the Secretary of State's opinion to each body.
- (2) The relevant co-operation duties are—
- (a) the duty under section 288 (co-operation by Monitor with the Care Quality Commission),
  - (b) the duties under section 290(1) and (2),
  - (c) the duty under section 70 of the Health and Social Care Act 2008 (co-operation by the Care Quality Commission with Monitor),
  - (d) any duties imposed by an enactment on relevant bodies to co-operate with each other in the exercise of their respective functions.
- (3) The Secretary of State must publish each notice given under subsection (1) in such form as the Secretary of State considers appropriate.
- (4) Subsection (5) applies if, having given a notice under subsection (1), the Secretary of State is satisfied that—
- (a) the bodies concerned have breached or are continuing to breach the duty or, the risk of a breach having materialised, are breaching the duty, and
  - (b) the breach is having a detrimental effect on the performance of the health service (or, where the effect of the breach on the performance of the health service is both beneficial and detrimental, its overall effect is detrimental).



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- (5) The Secretary of State may by order prohibit each body from exercising specified functions, or from exercising specified functions in a specified manner, unless the other body concerned agrees in writing that the body may do so.
- (6) The power to make an order under subsection (5)—
- (a) may be exercised so as to specify different functions in relation to each body, but
  - (b) may not be exercised so as to prevent a body from complying with a requirement imposed by or under an enactment or by a court or tribunal.
- (7) In default of agreement as to the exercise of a function specified in an order under subsection (5), a body may exercise the function in accordance with provision determined by arbitration.
- (8) An order under subsection (5) must specify the period for which a prohibition imposed by it has effect; and the period specified for that purpose may not exceed one year beginning with the day on which the order comes into force.
- (9) But if the Secretary of State is satisfied that the breach is continuing to have a detrimental effect (or an effect that overall is detrimental) on the performance of the health service, the Secretary of State may by order extend by one year the period for which the prohibition for the time being has effect.
- (10) In this section, “the health service” means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006.

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

- C2** S. 291(2)(d) modified by 2006 c. 41, s. 14Z24(3) (as inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), ss. 26, 306(1)(d)(4))
- C3** S. 291(2)(d) modified by 2006 c. 41, s. 13Z4(3) (as inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), ss. 23(1), 306(1)(d)(4))

#### Commencement Information

- I11** S. 291 partly in force; s. 291 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I12** S. 291 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, art. 2(2)

### The Care Quality Commission

VALID FROM 01/04/2013

#### 292 Requirement for Secretary of State to approve remuneration policy etc.

In paragraph 5 of Schedule 1 to the Health and Social Care Act 2008 (employees of the Care Quality Commission), at the end insert—

“(5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (3) or (4), the Commission must obtain the approval of the Secretary of State to its policy on that matter.”



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VALID FROM 01/04/2013

### **293 Conduct of reviews etc.**

- (1) Part 1 of the Health and Social Care Act 2008 (the Care Quality Commission) is amended as follows.
- (2) In section 48 (special reviews and investigations)—
  - (a) in subsection (1) after “may” insert “, with the approval of the Secretary of State,”, and
  - (b) after subsection (1) insert—

“(1A) The Commission may conduct an investigation under this section without the approval of the Secretary of State where the Commission considers there to be a risk to the health, safety or welfare of persons receiving health or social care.”
- (3) In section 54 (studies as to economy, efficiency etc.), in each of subsections (1) and (3) after “may” insert “, with the approval of the Secretary of State,”.
- (4) In section 57 (reviews of data, studies and research), in subsection (1) after “may” insert “, with the approval of the Secretary of State,”.

### **294 Failure to discharge functions**

- (1) In section 82 of the Health and Social Care Act 2008 (failure by Commission to discharge functions), in subsection (1), at the end insert “,  
and that the failure is significant.”
- (2) After subsection (2) of that section insert—

“(2A) But the Secretary of State may not give a direction under subsection (1) in relation to the performance of functions in a particular case.”
- (3) After subsection (3) of that section insert—
  - (4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.
  - (5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which it is conferred; and “the health service” has the same meaning as in the National Health Service Act 2006.”
- (4) In section 161 of that Act (orders, regulations and directions: general provisions), in subsection (3), before “any power of the Secretary of State to give directions” insert “(subject to section 82(2A))”.
- (5) In section 165 of that Act (directions), at the beginning of subsection (2) insert “Subject to subsection (3),”.
- (6) After that subsection insert—

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“(3) A direction under section 82 must be given by regulations or by an instrument in writing.”

#### Commencement Information

**I13** S. 294 partly in force; s. 294 in force for specified purposes at Royal Assent, see s. 306(1)(d)

**I14** S. 294 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, art. 2(2)

#### *Arrangements with devolved authorities etc.*

### **295 Arrangements between the Board and Northern Ireland Ministers**

- (1) The National Health Service Commissioning Board may make arrangements with a Northern Ireland Minister for the Board to commission services for the purposes of the Northern Ireland health service.
- (2) Arrangements under this section may be on such terms and conditions as may be agreed between the parties to the arrangements.
- (3) Those terms and conditions may include provision with respect to the making of payments to the National Health Service Commissioning Board in respect of the cost to it of giving effect to the arrangements.

(4) In this section—

“commission” means arrange for the provision of,

“Northern Ireland health service” means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the National Health Service Act 2006 (and, for that purpose, “enactment” includes subordinate legislation within the meaning of the Interpretation Act 1978 and Northern Ireland legislation), and

“Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department.

#### Commencement Information

**I15** S. 295 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, art. 2(2)

### **296 Arrangements between the Board and Scottish Ministers etc.**

- (1) The National Health Service Commissioning Board may make arrangements with the Scottish Ministers or a Scottish health body for the Board to commission services for the purposes of the Scottish health service.
- (2) Arrangements under this section may be on such terms and conditions as may be agreed between the parties to the arrangements.
- (3) Those terms and conditions may include provision with respect to the making of payments to the National Health Service Commissioning Board in respect of the cost to it of giving effect to the arrangements.
- (4) In this section—

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“commission” means arrange for the provision of, and

“Scottish health body” means—

- (a) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978, and
- (b) the Common Services Agency for the Scottish Health Service constituted by section 10 of that Act.

#### Commencement Information

**I16** S. 296 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, art. 2(2)

VALID FROM 01/02/2013

#### 297 Relationships between the health services

Schedule 21 (which amends enactments relating to the relationships between the health services in the United Kingdom) has effect.

#### 298 Advice or assistance to public authorities in the Isle of Man or Channel Islands

- (1) The National Health Service Commissioning Board or a clinical commissioning group may provide advice or assistance to any public authority in the Isle of Man or Channel Islands.
- (2) Advice or assistance under subsection (1) may be provided on such terms, including terms as to payment, as the Board or (as the case may be) the clinical commissioning group considers appropriate.

#### Commencement Information

**I17** S. 298 in force at 1.10.2012 by S.I. 2012/1831, art. 2(2)

#### *Supervised community treatment under the Mental Health Act 1983*

#### 299 Certificate of consent of community patients to treatment

- (1) Part 4A of the Mental Health Act 1983 (treatment of community patients not recalled to hospital) is amended as follows.
- (2) In section 64C (treatment of adult community patients), after subsection (4) insert—
  - “(4A) Where there is authority to give treatment by virtue of subsection (2)(a), the certificate requirement is also met in respect of the treatment if the approved clinician in charge of the treatment has certified in writing that the patient has capacity to consent to the treatment and has consented to it.
  - (4B) But, if the patient has not attained the age of 18, subsection (4A) does not apply to section 58A type treatment.”

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- (3) In section 64E (treatment of child community patients), in subsection (7)—
- (a) for “(3) to (9)” substitute “(3) to (4A) and (5) to (9)”, and
  - (b) at the end insert “; and for the purpose of this subsection, subsection (4A) of section 64C above has effect as if—
    - (a) the references to treatment were references only to section 58 type treatment,
    - (b) the reference to subsection (2)(a) of section 64C were a reference to subsection (6)(a) of this section, and
    - (c) the reference to capacity to consent were a reference to competence to consent.”
- (4) After section 64F insert—

**“64FA Withdrawal of consent**

- (1) Where the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above, the patient may at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.
  - (2) Subsection (3) below applies where—
    - (a) the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above; but
    - (b) before the completion of the treatment, the patient loses capacity or (as the case may be) competence to consent to the treatment.
  - (3) The patient shall be treated as having withdrawn his consent and section 64B or (as the case may be) section 64E above shall then apply as if the remainder of the treatment were a separate form of treatment.
  - (4) Without prejudice to the application of subsections (1) to (3) above to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.
  - (5) This section shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58, 58A, 64B or 64E above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.”
- (5) In section 64H (certificates: supplementary provision)—
- (a) in subsection (2), at the end insert “; and the regulations may make different provision for the different descriptions of Part 4A certificate”, and
  - (b) in subsections (3), (4) and (5), after “Part 4A certificate” insert “that falls within section 64C(4) above”.
- (6) In section 17B of the Mental Health Act 1983 (conditions of community treatment order), in subsection (3)(b), after “Part 4A of this Act” insert “that falls within section 64C(4) below”.

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- (7) In section 61 of that Act (review of treatment), in subsection (1), after “that section)” insert “that falls within section 64C(4) below”.
- (8) In section 62A of that Act (treatment on recall of community patient or revocation of order), in subsection (5), after “applies” insert “and the Part 4A certificate falls within section 64C(4) below”.
- (9) In subsection (6) of that section, after “58 or 58A above” insert “or 64B or 64E below”.
- (10) After that subsection insert—
  - “(6A) In a case where this section applies and the certificate requirement is no longer met for the purposes of section 64C(4A) below, the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above or 64B or 64E below shall not be precluded if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient.”

#### Commencement Information

**I18** S. 299 in force at 1.6.2012 by S.I. 2012/1319, art. 2(2)

### *Transfer schemes*

#### **300** Transfer schemes

- (1) The Secretary of State may make a property transfer scheme or a staff transfer scheme in connection with—
  - (a) the establishment or abolition of a body by this Act, or
  - (b) the modification of the functions of a body or other person by or under this Act.
- (2) A property transfer scheme is a scheme for the transfer from a body or other person mentioned in the first column of the Table in Schedule 22 of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to a body or other person mentioned in the corresponding entry in the second column.
- (3) A staff transfer scheme is a scheme for the transfer from a body or other person mentioned in the first column of the Table in Schedule 23 of any rights or liabilities under or in connection with a contract of employment to a body or other person mentioned in the corresponding entry in the second column.
- (4) The Secretary of State may direct the Board or a qualifying company to exercise the functions of the Secretary of State in relation to the making of a property transfer scheme or a staff transfer scheme in connection with the abolition of—
  - (a) one or more Primary Care Trusts specified in the direction, or
  - (b) one or more Strategic Health Authorities so specified.
- (5) Where the Secretary of State gives a direction under subsection (4), the Secretary of State may give directions to the Board or (as the case may be) the company about its exercise of the functions.

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- (6) For the purposes of this section and section 301—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual's employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- (7) In this section and sections 301 and 302 references to the transfer of property include references to the grant of a lease.
- (8) In this section and Schedules 22 and 23, “qualifying company” means—
- (a) a company which is formed under section 223 of the National Health Service Act 2006 and wholly or partly owned by the Secretary of State or the Board, or
  - (b) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State.
- (9) In section 301 and Schedules 22 and 23—
- “local authority” means—
- (a) a county council in England;
  - (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Council of the Isles of Scilly;
  - (e) the Common Council of the City of London;
- “public authority” means any body or other person which has functions conferred by or under an Act or by royal charter.

#### Commencement Information

**I19** S. 300 partly in force; s. 300 in force for specified purposes at Royal Assent, see s. 306(1)(d)

**I20** S. 300 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, art. 2(3)

**I21** S. 300 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, art. 2(2)

### 301 Transfer schemes: supplemental

- (1) The things that may be transferred under a property transfer scheme or a staff transfer scheme include—
- (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities but only where the transfer is to a person mentioned in subsection (2).
- (2) Those persons are—
- (a) the National Health Service Commissioning Board;
  - (b) a clinical commissioning group;
  - (c) a local authority;
  - (d) the Care Quality Commission;
  - (e) Monitor;
  - (f) the National Institute for Health and Care Excellence;

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- (g) the Health and Social Care Information Centre;
  - (h) the Health and Care Professions Council;
  - (i) a public authority other than a Minister of the Crown.
- (3) A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee.
- (4) A property transfer scheme may make provision for the shared ownership or use of property.
- (5) A staff transfer scheme may make provision which is the same or similar to the TUPE regulations.
- (6) A property transfer scheme or a staff transfer scheme may provide—
- (a) for the scheme to be modified by agreement after it comes into effect, and
  - (b) for any such modifications to have effect from the date when the original scheme comes into effect.
- (7) Where a Primary Care Trust, a Strategic Health Authority or a Special Health Authority is abolished by this Act, the Secretary of State must exercise the powers conferred by section 300 and this section so as to secure that all the body's liabilities (other than criminal liabilities) are dealt with.
- (8) In this section, “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

#### **Commencement Information**

**I22** S. 301 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, art. 2(3)

**I23** S. 301 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, art. 2(2)

### **302 Subsequent property transfer schemes**

- (1) This section applies in relation to any property, rights or liabilities which are transferred under a property transfer scheme under section 300(1) from a Primary Care Trust, a Strategic Health Authority or the Secretary of State to a Special Health Authority or a qualifying company.
- (2) The Secretary of State may make a scheme for the transfer of any such property, rights or liabilities from the Special Health Authority or the qualifying company to any body or other person mentioned in the second column of Schedule 22.



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- (3) Subsections (1) to (4) and (6) of section 301 apply in relation to a scheme under subsection (2) as they apply in relation to a property transfer scheme under section 300(1).

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**Commencement Information**

**I24** S. 302 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, art. 2(3)

**I25** S. 302 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, art. 2(2)

**Status:**

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**Changes to legislation:**

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