



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 12

#### FINAL PROVISIONS

#### **303 Power to make consequential provision**

- (1) The Secretary of State may by order make provision in consequence of this Act.
- (2) An order under this section may, in particular—
  - (a) amend, repeal, revoke or otherwise modify any enactment;
  - (b) include transitional, transitory or saving provision in connection with the commencement of provision made by the order.
- (3) Transitory provision by virtue of subsection (2)(b) may, in particular, modify the application of provision made by the order pending the commencement of—
  - (a) another provision of the order,
  - (b) a provision of this Act,
  - (c) any other enactment.
- (4) Before making an order under this section that contains provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament, the Secretary of State must consult the Scottish Ministers.
- (5) The power conferred by this section is not restricted by any other provision of this Act.
- (6) In this section, “enactment” includes—
  - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation,

and references to an enactment include a reference to an enactment passed or made after the passing of this Act.

*Status: Point in time view as at 31/10/2012.*

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### **304 Regulations, orders and directions**

- (1) A power to make regulations under this Act is exercisable by the Secretary of State.
- (2) Regulations under this Act, and orders by the Secretary of State, the Welsh Ministers or the Privy Council under this Act, must be made by statutory instrument.
- (3) Subject to subsections (4) to (6), a statutory instrument containing regulations under this Act, or an order by the Secretary of State or the Privy Council under this Act, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply to an order under section 306 (commencement).
- (5) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
  - (a) regulations under section 65 (extension of Monitor's functions to adult social care services);
  - (b) the first regulations under section 83 (licensing requirement: exemption regulations);
  - (c) the first order under section 86 (approval by Secretary of State of licensing criteria);
  - (d) regulations under section 100(7)(b) or (c) (percentage to be prescribed in cases of objections to proposals to modify standard licence conditions);
  - (e) regulations under section 105(4) (manner in which turnover to be calculated for purposes of penalty for breach of licence conditions etc.);
  - (f) regulations under section 106(3)(d) (descriptions of action for specifying in enforcement undertaking for breach of licence conditions etc.);
  - (g) regulations under section 120(2)(a), (b) or (c) (percentage to be prescribed in cases of objections to proposals for national tariff);
  - (h) regulations under section 130 (health special administration regulations);
  - (i) an order under section 140 (maximum amount that may be raised from levy to raise funds for special administration cases);
  - (j) regulations under section 142(2)(b) (percentage to be prescribed in cases of objections to proposals to impose levy);
  - (k) an order under section 290(4) (addition to list of bodies subject to duty co-operate);
  - (l) an order under section 291(5) (order prohibiting bodies subject to duty to co-operate from exercising specified functions etc.);
  - (m) an order under section 303 (consequential provision) which includes provision that amends or repeals a provision of an Act of Parliament;
  - (n) regulations which, by virtue of subsection (10)(a), include provision that amends or repeals a provision of an Act of Parliament.
- (6) An order by the Privy Council under this Act that includes provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament is subject to the negative procedure in that Parliament (in addition to the statutory instrument containing the order being subject to annulment under subsection (3)).
- (7) Sections 28 and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) apply in relation to an order of the description given in subsection (6) as they apply in relation to devolved subordinate legislation (within

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- the meaning of Part 2 of that Act) that is subject to the negative procedure, but as if references to a Scottish statutory instrument were references to a statutory instrument.
- (8) Section 32 of that Act (laying) shall apply in relation to the laying of a statutory instrument containing an order of the description given in subsection (6) before the Scottish Parliament as it applies in relation to the laying of a Scottish statutory instrument (within the meaning of Part 2 of that Act) before that Parliament.
- (9) A power to make regulations under this Act, a power of the Secretary of State, the Welsh Ministers or the Privy Council to make an order under this Act, and (subject to section 71(3)) a power to give directions under or by virtue of this Act—
- (a) may be exercised either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or descriptions of case,
  - (b) may be exercised so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different descriptions of case, or different provision as respects the same case or description of case for different purposes of this Act,
    - (iii) any such provision either unconditionally or subject to any specified condition, and
  - (c) may, in particular, make different provision for different areas.
- (10) Any such power includes—
- (a) power to make incidental, supplementary, consequential, saving, transitional or transitory provision (including, in the case of a power to make regulations, provision amending, repealing or revoking enactments), and
  - (b) power to provide for a person to exercise a discretion in dealing with any matter.
- (11) A power to give directions under or by virtue of this Act includes power to vary or revoke the directions by subsequent directions.
- (12) A direction under this Act by a Minister of the Crown (acting alone)—
- (a) must, in the case of a direction under any of the following provisions, be given by regulations or an instrument in writing—
    - (i) section 71(2) (direction to Monitor to perform functions);
    - (ii) section 234(1) (direction to NICE to prepare quality standards);
    - (iii) section 245(1) (direction to NICE to perform functions);
    - (iv) section 249(8) (direction to Board to be transitional commissioner in relation to pre-commencement statements of quality standards);
    - (v) section 254(1) (direction to Information Centre to establish information systems);
    - (vi) section 255(5) or (6) (direction to Information Centre to comply, or not to comply, with request to establish information systems);
    - (vii) section 260(2)(d) (direction to Information Centre that information of specified description is not subject to duty to publish);
    - (viii) section 272(1) (direction to Information Centre to perform functions);

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- (ix) paragraph 7 of Schedule 6 (direction to Board to exercise functions of Secretary of State relating to Primary Care Trusts), and
  - (b) must, in the case of any other direction, be given by an instrument in writing.
- (13) A direction under or by virtue of this Act by any other person (or persons) must be given by an instrument in writing.

### **305 Financial provision**

There is to be paid out of money provided by Parliament—

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

### **306 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) section 219 (Health and Care Professions Council: power to make arrangements with other health or social care regulators);
  - (b) section 221(3) (power of Secretary of State to make arrangements with Health and Care Professions Council to discharge General Social Care Council's functions during period preceding abolition);
  - (c) the provisions of this Part;
  - (d) any other provision of this Act so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power to make an order or regulations or to give directions that is conferred by the provision or an amendment made by it.
- (2) Sections 35 to 37 come into force on such day as the appropriate authority may by order appoint.
- (3) In subsection (2) “the appropriate authority” means—
- (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers.
- (4) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (5) Different days may be appointed under subsection (2) or (4) for different purposes (including different areas).
- (6) Transitory provision in an order under subsection (2) or (4) may, in particular, modify the application of a provision of this Act pending the commencement of—
- (a) another provision of this Act, or
  - (b) any other enactment (within the meaning of section 303).
- (7) An order under subsection (4) which brings paragraph 17 of Schedule 1A to the National Health Service Act 2006 (inserted by Schedule 2) into force may make provision—
- (a) for the duty of a clinical commissioning group under sub-paragraph (1) or (2) of that paragraph not to apply in relation to the whole or any part of the initial period (within the meaning of Schedule 6), and

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- (b) for the duty of the Board under paragraph 16 of Schedule A1 to that Act (inserted by Schedule 1) to have effect subject to such modifications specified in the order as the Secretary of State considers appropriate in consequence of the provision made under paragraph (a).
- (8) Where a provision of this Act (or an amendment made by it) requires consultation to take place, consultation undertaken before the commencement of the provision is as effective for the purposes of that provision as consultation undertaken after that commencement.

### **307 Commencement: consultation with Scottish Ministers**

- (1) The Secretary of State must consult the Scottish Ministers before making an order under section 306(4) relating to—
- (a) section 58 (radiation protection functions), so far as relating to the Scottish Ministers,
  - (b) section 60 (co-operation in relation to public health functions), so far as relating to the exercise of functions in relation to Scotland by a person to which the provision inserted by subsection (1) of that section applies,
  - (c) section 223(4) (requirement for persons advised etc. by the Professional Standards Authority for Health and Social Care to pay fee), so far as relating to the Scottish Ministers,
  - (d) section 224(1) (funding of the Professional Standards Authority for Health and Social Care), so far as relating to a body that regulates a profession in Scotland which does not fall within Section G2 of Part 2 of Schedule 5 to the Scotland Act 1998 (health professions),
  - (e) section 224(4) and (5) (power of the Professional Standards Authority for Health and Social Care to borrow), so far as relating to functions of the Professional Standards Authority for Health and Social Care which are exercisable in relation to—
    - (i) unregulated health professionals in Scotland, unregulated health care workers in Scotland or relevant students in Scotland,
    - (ii) a body that maintains a register of persons within sub-paragraph (i),
    - (iii) a profession in Scotland which does not fall within Section G2 of Part 2 of Schedule 5 to the Scotland Act 1998, or
    - (iv) a body that regulates a profession within sub-paragraph (iii),
  - (f) section 225(1) (power of the Professional Standards Authority for Health and Social Care to advise regulatory bodies etc.), so far as relating to a body that regulates a profession in Scotland which does not fall within Section G of Part 2 of Schedule 5 to the Scotland Act 1998 (architects, health professions and auditors),
  - (g) section 226(8) (requirement for the Professional Standards Authority for Health and Social Care to lay copy strategic reports before Parliament etc.), so far as relating to the Scottish Parliament,
  - (h) section 227 (appointments to regulatory bodies), so far as relating to—
    - (i) the exercise of the appointment functions under subsection (8)(f) of the provision inserted by that section, or
    - (ii) subsection (4) of that provision,
  - (i) section 228 (establishment of voluntary registers), so far as relating to the establishment and maintenance of relevant registers,

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- (j) section 229 (accreditation of voluntary registers), so far as relating to the functions of the Professional Standards Authority for Health and Social Care in relation to relevant registers,
- (k) Part 2 or 3 of Schedule 15 (amendments relating to the Health and Care Professions Council or the Professional Standards Authority for Health and Social Care) and section 230(1) so far as relating to the Part in question, and
- (l) paragraphs 1 to 4 of Schedule 21 (amendments of the National Health Service (Scotland) Act 1978 relating to the relationships between the health services) and section 297 so far as relating to those paragraphs.

(2) In this section—

“relevant registers” means—

- (a) registers of unregulated health professionals in Scotland,
- (b) registers of unregulated health care workers in Scotland, or
- (c) registers of relevant students in Scotland,

“relevant students in Scotland” means persons participating in studies in Scotland for the purpose of becoming—

- (a) an unregulated health professional,
- (b) an unregulated health care worker, or
- (c) a member of a profession which does not fall within Section G2 of Part 2 of Schedule 5 to the Scotland Act 1998,

“unregulated health professional” means a person who is or has been practising as an unregulated health professional (within the meaning of the provisions inserted by section 228) and “unregulated health professional in Scotland” means a person who is or has been practising as such in Scotland, and

“unregulated health care worker” means a person who is or has been engaged in work as an unregulated health care worker (within the meaning of those provisions) and “unregulated health care worker in Scotland” means a person who is or has been engaged in such work in Scotland.

### **308 Extent**

- (1) Subject to subsections (2) to (5), this Act extends to England and Wales only.
- (2) Any amendment, repeal or revocation made by this Act has the same extent as the enactment amended, repealed or revoked.
- (3) The following provisions extend to England and Wales, Scotland and Northern Ireland—
  - (a) section 46 insofar as it inserts section 252A(8) of the National Health Service Act 2006;
  - (b) sections 56(1) and (3), 57, 58 and 60 (public health functions);
  - (c) section 150(2) and paragraph 1 of Schedule 13 (references to Monitor in instruments etc.);
  - (d) section 214(1) (the Health and Care Professions Council);
  - (e) section 222(1) (the Professional Standards Authority for Health and Social Care);
  - (f) section 230(1) to (4) and (6) and paragraphs 53 and 59 of Schedule 15 (Part 7: consequential provision etc.);

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- (g) section 231(1), (3) and (4) and Part 4 of Schedule 15 (abolition of the Office of the Health Professions Adjudicator);
  - (h) section 279(1) and (3) and Part 2 of Schedule 20 (abolition of the Appointments Commission);
  - (i) sections 300 and 301 (transfer schemes) insofar as they confer powers in connection with the abolition of the Health Protection Agency;
  - (j) this Part.
- (4) Sections 128 to 133 (health special administration) extend to England and Wales and Scotland.
- (5) The Secretary of State may by order provide that specified provisions of this Act, in their application to the Isles of Scilly, have effect with such modifications as may be specified.

### **309 Short title**

This Act may be cited as the Health and Social Care Act 2012.

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