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STATUTORY INSTRUMENTS

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**2002 No. 2375**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002**

*Made* - - - - *17th September 2002*  
*Laid before Parliament* *17th September 2002*  
*Coming into force* - - *1st October 2002*

The Secretary of State for Health, in exercise of the powers conferred on him by section 63(5A) of the Health Services and Public Health Act 1968(1), and sections 16, 16B, 16D, 17, 17A(4), 18, 51(2) and 126 of the National Health Service Act 1977(2), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

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- (1) 1968 c. 46. Section 63 was amended by the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 124 and Schedule 5, the National Health Service Act 1977 (c. 49) (“the 1977 Act”), Schedule 15, paragraph 45, the National Health Service (Scotland) Act 1978 (c. 29), Schedule 16, paragraph 26(2), the Health Services Act 1980 (c. 53) (“the 1980 Act”), Schedule 1, paragraph 19(3), the Local Government Act 1985 (c. 51), Schedule 17, S.I. 1985/89, article 6(1), the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”), section 20 and Schedule 3, and the Health Authorities Act 1995 (c. 17) (“the 1995 Act”), Schedule 1, paragraph 95 (which also added subsection (5A)), the National Health Service (Primary Care) Act 1997 (c. 46) (“the 1997 Act”), Schedule 2, paragraph 1(4), the Health Act 1999 (c. 8) (“the 1999 Act”), Schedule 4, paragraph 3. The functions of the Secretary of State under section 63(5A) are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of and the entry for the 1968 Act in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672. See also the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), section 68(1).
- (2) 1977 c. 49. Section 16 was substituted by the 1999 Act, Schedule 4, paragraph 9 and amended by the 2002 Act, Schedule 1, paragraph 3; section 16B was inserted by the 1999 Act, section 2(1) and amended by the 2002 Act, Schedule 1, paragraph 4; section 16D was substituted by the 1999 Act, section 12(1) and amended by the 2002 Act, section 3(2) and Schedule 1, paragraph 6; section 17 was substituted by the 1999 Act, section 12(1) and amended by the 2002 Act, Schedule 1, paragraph 7; section 17A was substituted by the 2002 Act, section 3(3); section 18, subsections (1) to (1B) were substituted by the 1999 Act, section 12(3) and amended by the 2002 Act, Schedule 1, paragraph 9; section 51 was amended by the 1995 Act, Schedule 1, paragraph 35 (which also added subsection (2)), by the 1999 Act, Schedule 4, paragraph 23 and by the 2002 Act, Schedule 1, paragraph 19; section 126(3) and (4) was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 65(2), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 27, the 1999 Act, Schedule 4, paragraph 37 and the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), Schedule 5, paragraph 5(13)(b); see section 128(1), as amended by section 26(2)(i) and (g) of the 1990 Act, for the definitions of “prescribed” and “regulations”. The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of, and the entry for the 1977 Act in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, as amended by section 66(5) of the 1999 Act. See also the 2001 Act, section 68 and the 2002 Act, section 40.

### Citation, commencement and application

1.—(1) These Regulations may be cited as the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 and shall come into force on 1st October 2002.

(2) These Regulations apply only in relation to Strategic Health Authorities and Primary Care Trusts established for areas in England.

### Interpretation

2.—(1) In these Regulations—

“the Act” means the National Health Service Act 1977;

“the 1990 Act” means the National Health Service and Community Care Act 1990<sup>(3)</sup>;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997<sup>(4)</sup>;

“the 2002 Act” means the National Health Service Reform and Health Care Professions Act 2002<sup>(5)</sup>;

“AIDS” means Acquired Immune Deficiency Syndrome;

“appropriate Strategic Health Authority” means—

- (a) in relation to a Primary Care Trust, the Strategic Health Authority whose area includes any part of the area of that Primary Care Trust;
- (b) in relation to an NHS trust (other than a trust responsible for providing ambulance services), the Strategic Health Authority in whose area all or most of the hospitals, establishments or facilities of the trust are situated; and
- (c) in relation to an NHS trust responsible for providing ambulance services, the Strategic Health Authority in whose area the Headquarters establishment responsible for control of those services is situated;

“financial year” means the period of 12 months ending with 31st March;

“the Health Act” means the Health Act 1999<sup>(6)</sup>;

“the Health and Social Care Act” means the Health and Social Care Act 2001<sup>(7)</sup>;

“HIV” means Human Immunodeficiency Virus;

“LIFT” means a Local Improvement Finance Trust approved by the Secretary of State for the purposes of improving primary care facilities and services in a particular area and “LIFT company” means a Local Improvement Finance Trust company established to deliver the improvements in that area;

“practice patient” means—

- (a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner’s list of patients (or, if that practitioner and one or more other medical practitioners together have a single list of patients in connection with a pilot scheme under the 1997 Act<sup>(8)</sup>, an individual who is on that single list);
- (b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of those practitioners together have a single list of patients in

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<sup>(3)</sup> 1990 c. 19.

<sup>(4)</sup> 1997 c. 46.

<sup>(5)</sup> 2002 c. 17.

<sup>(6)</sup> 1999 c. 8.

<sup>(7)</sup> 2001 c. 15.

<sup>(8)</sup> See section 1 of the 1997 Act for the definition of “pilot scheme”.

connection with a pilot scheme under the 1997 Act, an individual who is on that single list),

other than an individual who is resident in Scotland;

“population screening programme” means a programme for testing a particular class of persons for the purpose of detecting whether those persons have a particular illness or are at risk of contracting such an illness;

“the relevant date” means—

- (a) 1st April in the financial year preceding the financial year in which the relevant Primary Care Trust falls to be determined;
- (b) in the case of a practitioner providing general medical services and who practises otherwise than in partnership, the date on which he first entered the Primary Care Trust’s medical list;
- (c) in the case of a practitioner providing general medical services who is one of two or more practitioners who practise in partnership with each other, the earliest date on which any one of those practitioners entered the Primary Care Trust’s medical list;
- (d) in the case of a practitioner performing personal medical services in connection with a pilot scheme under the 1997 Act, the date on which services were first performed under that scheme,

whichever is the latest;

“the relevant Primary Care Trust” means—

- (a) in relation to a medical practitioner—
  - (i) who provides general medical services under Part 2 of the Act and does not perform personal medical services in connection with a pilot scheme,
  - (ii) whose name is included in the medical list of only one Primary Care Trust, and
  - (iii) who practises on his own or in partnership with others all of whom are medical practitioners who provide general medical services under Part 2 of the Act and do not perform personal medical services in connection with a pilot scheme and whose names are included only in that trust’s medical list,

that trust;

- (b) in relation to any other medical practitioner, the Primary Care Trust in whose area, on the relevant date, most of the practice patients at that date were living;

“research ethics committee” means a committee established to advise on the ethics of research investigations on human beings and recognised for that purpose by or on behalf of the Secretary of State;

“specialised services” means services which are, or are to be, planned, and the provision of which is, or is to be, arranged, by Primary Care Trusts acting jointly or by a joint committee of Primary Care Trusts on behalf of a population of 1 million or more but does not include high security psychiatric services provided under section 4 of the Act;

“walk-in centre” means a centre at which information and treatment for minor conditions is provided to the public under arrangements made by or on behalf of the Secretary of State.

(2) In these Regulations—

- (a) any reference to a Special Health Authority is to be construed as a reference to a Special Health Authority exercising functions in respect of England;
- (b) subject to sub-paragraph (c), any reference to an NHS trust is to be construed as a reference to an NHS trust, all or most of whose hospitals, establishments or facilities are situated in England; and

- (c) in regulations 9(4) and (5) and 10(5) and (6), any reference to an NHS trust is to be construed as a reference to an NHS trust whose hospitals, establishments and facilities are situated in either or both of England and Wales.

### **Functions of the Secretary of State exercisable by Strategic Health Authorities and Primary Care Trusts**

3.—(1) Subject to regulations 6 and 8, the Secretary of State's functions relating to the health service under the enactments specified in column (1) of Part 1 of Schedule 1 (the subject matter of the relevant functions being indicated in column (2) of that Schedule) are to be exercisable by both Strategic Health Authorities and Primary Care Trusts.

(2) Subject to regulations 6 and 8, the Secretary of State's functions relating to the health service under the enactments specified in column (1) of Part 2 of Schedule 1 (the subject matter of the relevant functions being indicated in column (2) of that Schedule) are to be exercisable by—

- (a) Primary Care Trusts; and
- (b) Strategic Health Authorities but only to the extent necessary to support and manage the performance of Primary Care Trusts in the exercise of those functions.

(3) Subject to regulations 6 and 7, the Secretary of State's functions relating to the health service under the enactments specified in column (1) of Schedule 2 (the subject matter of the relevant functions being indicated in column (2) of that Schedule) are to be exercisable by Strategic Health Authorities.

(4) In exercising the functions referred to in paragraphs (1) to (3), Strategic Health Authorities and Primary Care Trusts shall have regard to the NHS Plan published in July 2000<sup>(9)</sup>.

(5) Every Strategic Health Authority shall exercise the functions referred to in paragraphs (1) to (3) for the benefit of its area or to secure the effective provision of services by Primary Care Trusts and NHS trusts for which they are the appropriate Strategic Health Authority.

(6) Nothing in paragraph (5) limits the area in relation to which an approval of a medical practitioner for the purposes of section 12(2) of the Mental Health Act 1983<sup>(10)</sup> (approval of medical specialists) given by a Strategic Health Authority shall have effect.

(7) Every Primary Care Trust shall exercise the functions referred to in paragraphs (1) and (2)—

- (a) in so far as those functions consist of providing or securing the provision of services to patients, other than the services referred to in sub-paragraph (b) of this paragraph, for the benefit of—
  - (i) the practice patients of medical practitioners providing general medical services under the Act, or performing personal medical services in connection with a pilot scheme under the 1997 Act, in respect of whom the Primary Care Trust is the relevant Primary Care Trust; and
  - (ii) persons usually resident in its area, or resident outside the United Kingdom who are present in its area, and who are not practice patients of any medical practitioner providing general medical services under the Act or performing personal medical services in connection with a pilot scheme under the 1997 Act;
- (b) in so far as those functions consist of providing or securing the provision of—
  - (i) accident and emergency services and ambulance services,
  - (ii) services provided at walk-in centres,

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<sup>(9)</sup> The NHS Plan is published by the Stationery Office as Command Paper 4818-1.

<sup>(10)</sup> 1983 c. 20.

- (iii) facilities and services for testing for, and preventing the spread of, genito-urinary infections and diseases and for treating and caring for persons with such infections or diseases,
  - (iv) services which the Secretary of State has a duty to provide under section 5(1)(a) of the Act or which he may provide under Schedule 1 to the Act (medical inspection and treatment of pupils),
  - (v) services which the Secretary of State has a duty to provide under section 5(1)(b) of the Act (services relating to contraception),
  - (vi) health promotion services,
  - (vii) services in connection with drug and alcohol misuse,
  - (viii) any other services which the Secretary of State may direct, for the benefit of all persons present in their area;
- (c) in so far as those functions relate to pilot schemes under the 1997 Act, for the benefit of persons within the area of the appropriate Strategic Health Authority and for which the trust is the relevant Primary Care Trust;
- (d) in so far as those functions consist of any other functions, generally as respects their area.
- (8) Subject to any directions which the Secretary of State may give as to any particular case or class of case, if there is doubt as to where a person is usually resident for the purposes of this regulation—
- (a) he shall be treated as usually resident at the address which he gives to the person or body providing him with services, as being that at which he usually resides;
  - (b) where he gives no such address, he shall be treated as usually resident at the address which he gives, to the person or body providing him with services, as being his most recent address;
  - (c) where his usual residence cannot be determined under sub-paragraphs (a) and (b) above, he shall be treated as usually resident in the area in which he is present.
- (9) Subject to any directions which the Secretary of State may give as to any particular case or class of case, if there is doubt as to whether a person is a practice patient of any medical practitioner, or as to the identity of the medical practitioner of which a person is a practice patient, he shall be treated as a person who is not the practice patient of any medical practitioner.
- (10) In this regulation, references to accident and emergency services are references to those services provided at the accident and emergency department, or a minor injuries unit, of a health service hospital, and do not include any subsequent treatment connected with the provision of those services.

#### **Functions relating to pilot schemes**

4.—(1) Subject to regulation 6, the functions relating to pilot schemes under Part 1 of the 1997 Act (pilot schemes for primary care) specified in paragraphs (2) to (6) are to be exercisable by Strategic Health Authorities and Primary Care Trusts in accordance with those paragraphs.

(2) The functions of the Secretary of State under sections 5 (approval of pilot schemes), 6(3) (making of pilot schemes), except in so far as it relates to the giving of directions under sub-paragraph (a) of that section, and 8(1), (2) and (4) (variation and termination of pilot schemes) are to be exercisable by Strategic Health Authorities except where the Primary Care Trust in whose area the pilot scheme or proposed pilot scheme is situated is itself the provider or proposed provider of services under that pilot scheme.

(3) The functions of the Secretary of State under section 13 and Schedule 1 (preferential treatment on transferring to medical lists) and section 16 (NHS contracts) are to be exercisable by Primary Care Trusts except where the Primary Care Trust in whose area the pilot scheme or proposed pilot scheme is situated is itself the provider or proposed provider of services under that pilot scheme, when they are to be exercisable by the appropriate Strategic Health Authority.

(4) Subject to paragraph (6), the functions of Strategic Health Authorities specified in paragraph (5) are to be exercisable by Primary Care Trusts and each Strategic Health Authority must direct each Primary Care Trust in relation to which it is the appropriate Strategic Health Authority to exercise those functions to that extent.

(5) The functions referred to in paragraph (4) are—

- (a) the functions conferred on Strategic Health Authorities by sections 4(1) to (3) (proposals for pilot schemes), 6(1) and (4) (making of pilot schemes) and 18(1) (funding of preparatory work); and
- (b) the functions in relation to pilot schemes conferred on Strategic Health Authorities under—
  - (i) the National Health Service (Pilot Schemes: Miscellaneous Provisions and Consequential Amendments) Regulations 1998<sup>(11)</sup>, regulation 3 (prescribed functions of Health Authorities and Health Boards), and
  - (ii) the National Health Service (Functions of Health Authorities) (England) (Support of Provision of Services and Appraisal) Regulations 2002<sup>(12)</sup>, regulation 2 (prescribed functions of health authorities).

(6) Paragraph (4) does not apply to the functions specified in paragraph (5)(a) where the Primary Care Trust in whose area the pilot scheme or proposed pilot scheme is situated is itself the provider or proposed provider of services under that pilot scheme.

### **Functions not to be exercisable by Primary Care Trusts**

5.—(1) The functions exercisable by a Strategic Health Authority under the enactments specified in column (1) of Schedule 3 to these Regulations (the subject matter of the relevant functions being indicated in column (2) of that Schedule) are not to be exercisable by Primary Care Trusts.

(2) Any function conferred on a Strategic Health Authority concerning the giving of any directions is not to be exercisable by a Primary Care Trust.

### **Limitations and restrictions on the exercise of functions relevant to both Strategic Health Authorities and Primary Care Trusts**

6.—(1) The exercise by a Strategic Health Authority or Primary Care Trust of the functions referred to in regulations 3 and 4 is subject to such limitations as the Secretary of State may direct, and shall be in accordance with any directions which are given by the Secretary of State or, subject to any such directions, by the appropriate Strategic Health Authority.

(2) Nothing in these Regulations is to be taken as giving directions under section 16D of the Act for the exercise of any functions conferred on or vested in the Secretary of State with respect to—

- (a) the making of any order or any regulations;
- (b) the giving of any directions other than under section 17(2)(d) of the Act (Secretary of State's directions: exercise of functions) and section 8(1), (2) or (4) of the 1997 Act (variation and termination of pilot schemes); or

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<sup>(11)</sup> S.I. 1998/646, amended by S.I. 2002/2469.

<sup>(12)</sup> S.I. 2002/545, amended by S.I. 2002/2469.

- (c) the determination of the amount of the remuneration, or of any allowance, which is, by virtue of these Regulations, to be paid by a Strategic Health Authority to their chairman and members.

(3) The power under section 2 of the Act (Secretary of State's general power as to services) is exercisable by a Strategic Health Authority or Primary Care Trust only to such extent as is necessary for the proper exercise of one or more other functions exercisable by them.

(4) Except where the Secretary of State otherwise directs, a Strategic Health Authority and Primary Care Trust shall not exercise the functions of the Secretary of State under section 51(1) of the Act (university clinical teaching and research) in so far as those functions are concerned with securing the availability of facilities for clinical teaching.

(5) Where, in the exercise of the functions referred to in regulation 3, arrangements are made by a Strategic Health Authority or Primary Care Trust with medical practitioners for the vaccination or immunisation of persons against disease, every medical practitioner providing general medical services, or performing personal medical services in connection with a pilot scheme under the 1997 Act, in the area of that Authority or trust shall, so far as is reasonably practicable, be given an opportunity to participate in the arrangements.

#### **Limitations and restrictions on the exercise of functions relevant to Strategic Health Authorities only**

7.—(1) The function under section 17(2)(d) of the Act is to be exercisable by a Strategic Health Authority only in relation to NHS trusts for which they are the appropriate Strategic Health Authority.

(2) Approval by a Strategic Health Authority of a medical practitioner for the purposes of section 12(2) of the Mental Health Act 1983 (approval of medical specialists) as having special experience in the diagnosis and treatment of mental disorder shall be given only—

- (a) after carrying out such consultations, and the obtaining of such advice, as the Secretary of State may direct; and
- (b) for such periods as the Secretary of State may direct.

#### **Limitations and restrictions on the exercise of functions relevant to Primary Care Trusts only**

8.—(1) In exercising the functions of the Secretary of State under section 4 of the Act(13), a Primary Care Trust—

- (a) may only enter into an NHS contract for the provision of high security psychiatric services—
  - (i) with an NHS trust approved by the Secretary of State under paragraph 10(2) and (3) of Schedule 2 to the 1990 Act as a provider of such services in relation to England, or
  - (ii) with the consent of the Secretary of State, with an NHS trust approved by the National Assembly for Wales under paragraph 10(2) and (3) of Schedule 2 to the 1990 Act as a provider of such services in relation to Wales;
- (b) may not arrange with any other person or body (including voluntary organisations) for that person or body to provide such services; and
- (c) must have the approval of the Secretary of State to the arrangements for providing or securing the provision of such services.

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(13) Section 4 of the 1977 Act was substituted by the 1999 Act, section 41(1).

(2) The function under section 5(2)(d) of the Act (other services) is to be exercisable by a Primary Care Trust only to the extent that it does not consist of establishing or recognising research ethics committees.

(3) Except where the Secretary of State otherwise directs, the functions under section 96C(1) and (2) of the Act (public-private partnerships)(14) are only to be exercisable—

- (a) by a Primary Care Trust all or part of whose area is situated within the area of a local LIFT approved by the Secretary of State; and
- (b) for the purpose of forming and investing in a local LIFT company operating in the area of that trust.

(4) In exercising the functions specified in Schedule 1 to the extent that they consist of—

- (a) providing or securing the provision of any specialised services; and
- (b) preparing and implementing population screening programmes,

a Primary Care Trust must have the approval of the appropriate Strategic Health Authority to the arrangements for providing or securing the provision of such services.

(5) In exercising the functions specified in Schedule 1 to the extent that they consist of—

- (a) providing or securing the provision of facilities and services for—
  - (i) testing for, and preventing the spread of, AIDS, HIV and genito-urinary infections and diseases, and
  - (ii) treating and caring for persons with genito-urinary infections or diseases; and
- (b) the functions under section 5(1)(b) of the Act (services relating to contraception);

a Primary Care Trust must ensure that it complies with the conditions in paragraph (6).

(6) The conditions referred to in paragraph (5) are that—

- (a) arrangements are in place for the application to those facilities or services of quality standards which are in accordance with any relevant guidance given by the Secretary of State;
- (b) arrangements are in place for co-ordinating the planning of those facilities and services with the planning of the facilities and services for the treating and caring for persons with AIDS or infected with HIV; and
- (c) the planning of the facilities and services for testing for, and preventing the spread of, AIDS and HIV takes account of the epidemiology of HIV infection in the area of the trust and targets those persons or classes of persons most vulnerable to infection.

#### **Arrangements by Strategic Health Authorities for exercise of functions**

9.—(1) Subject to paragraphs (2), (4), (5) and (6) and to any directions which may be given by the Secretary of State with respect to its exercise, any function exercisable by a Strategic Health Authority under any provision of the Act, the 1990 Act, Part 1 of the 1997 Act, the Health Act, the Health and Social Care Act or the 2002 Act, may, by arrangement with that Authority, and subject to such restrictions and conditions as that Authority may think fit, be exercised—

- (a) by another Strategic Health Authority;
- (b) by another Health Authority;
- (c) by a Special Health Authority;
- (d) jointly with any one or more of the following—
  - (i) Primary Care Trusts,

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(14) Section 96C was inserted by the 2001 Act, section 4.



- (ii) other Strategic Health Authorities,
  - (iii) other Health Authorities; or
  - (e) on behalf of the Authority by a committee, sub-committee or officer of the Authority.
- (2) A Strategic Health Authority may not exercise jointly with a Primary Care Trust the functions referred to in regulation 5.
- (3) Subject to paragraphs (4) and (5) and to any directions which may be given by the Secretary of State with respect to its exercise, any function exercisable by a Strategic Health Authority jointly with Primary Care Trusts or other Strategic Health Authorities or Health Authorities under paragraph (1) (d) may by arrangement with the health service bodies in question, and subject to such restrictions and conditions as the Authority may think fit, be exercised on behalf of those bodies by a joint committee or joint sub-committee.
- (4) Any function exercisable by a Strategic Health Authority under or in relation to arrangements made under section 63(1) of the Health Services and Public Health Act 1968 (provision of instruction for officers of hospital authorities and other persons employed or contemplating employment, in certain activities connected with health or welfare) may by arrangement with that Authority be exercised jointly with one or more other Strategic Health Authorities, Special Health Authorities, Health Authorities, Primary Care Trusts or NHS trusts.
- (5) Any functions which a Strategic Health Authority may be directed to exercise by virtue of section 51(1) of the Act in relation to the provision of facilities which are reasonably required by a university which has a medical or dental school in connection with clinical teaching may by arrangement with that Authority be exercised jointly with one or more other Strategic Health Authorities, Health Authorities, Special Health Authorities, Primary Care Trusts or NHS trusts.
- (6) Any function exercisable by a Strategic Health Authority under article 18 of the Nursing and Midwifery Order 2001(15) may, by arrangement with that Authority, be exercised—
- (a) by another Strategic Health Authority or Health Authority;
  - (b) jointly with any one or more other Strategic Health Authorities or Health Authorities;
  - (c) on behalf of the Authority by—
    - (i) a committee, sub-committee or officer of the Authority, or
    - (ii) a joint committee, or joint sub-committee, of that Authority and one or more other Strategic Health Authorities or Health Authorities.
- (7) Where, in relation to a single Primary Care Trust, more than one Strategic Health Authority satisfies the definition of the appropriate Strategic Health Authority, the Authorities concerned shall enter into arrangements for the purpose of ensuring that, in any particular case, only one such Authority exercises functions in relation to that Primary Care Trust.

#### **Arrangements by Primary Care Trusts for exercise of functions**

- 10.**—(1) Subject to paragraphs (5) and (6) and to any directions given by the Secretary of State or, subject to any such directions, any directions given by the appropriate Strategic Health Authority with respect to its exercise, any function exercisable by a Primary Care Trust under or by virtue of the Act, the 1990 Act, Part 1 of the 1997 Act, the Health Act, the Health and Social Care Act or the 2002 Act may, by arrangement with that trust, and subject to such restrictions and conditions as that trust may think fit, be exercised—
- (a) by another Primary Care Trust;
  - (b) by a Special Health Authority;

(c) jointly with any one or more of the following—

- (i) Strategic Health Authorities,
- (ii) Health Authorities,
- (iii) NHS trusts,
- (iv) other Primary Care Trusts; or

(d) on behalf of the trust by a committee, sub-committee or officer of the trust.

(2) Subject to paragraph (3) and to any directions given by the Secretary of State or, subject to any such directions, the appropriate Strategic Health Authority with respect to its exercise, any functions which, under paragraph (1)(b), are exercisable by a Special Health Authority may be exercised on behalf of that authority by a committee, sub-committee or officer of that authority.

(3) Paragraph (2) does not apply in the case of the Mental Health Act Commission<sup>(16)</sup>, the Prescription Pricing Authority or the Dental Vocational Training Authority<sup>(17)</sup>.

(4) Subject to any directions given by the Secretary of State or, subject to any such directions, the appropriate Strategic Health Authority with respect to their exercise, any functions which, under paragraph (1)(c), are exercisable by a Primary Care Trust jointly with one or more Strategic Health Authorities, Health Authorities or other Primary Care Trusts (but not with any NHS trusts) may by arrangement with those health service bodies be exercised on behalf of those bodies by a joint committee or a joint sub-committee.

(5) Any function exercisable by a Primary Care Trust under or in relation to arrangements made under section 63(1) of the Health Services and Public Health Act 1968 may by arrangement with that Trust be exercised jointly with one or more Strategic Health Authorities, Health Authorities, Special Health Authorities, NHS trusts or other Primary Care Trusts.

(6) Any function which a Primary Care Trust may be directed to exercise by virtue of section 51(1) of the Act in relation to the provision of facilities which are reasonably required by a university which has a medical or dental school in connection with clinical teaching may by arrangement with that trust be exercised jointly with one or more Strategic Health Authorities, Health Authorities, Special Health Authorities, NHS trusts or other Primary Care Trusts.

(7) Where it becomes apparent to two adjacent Primary Care Trusts that on 1st April of the next financial year, as a result of a change in the numbers of practice patients, or the address or addresses of one or more practice patients of any medical practitioner, the trust which is the relevant Primary Care Trust will no longer be the relevant Primary Care Trust and the other trust will be the relevant Primary Care Trust, paragraph (8) shall apply.

(8) The two adjacent Primary Care Trusts shall consult the medical practitioner as to whether the trusts in question should enter into arrangements under this regulation, or any other appropriate arrangements, for the purpose of ensuring that the Primary Care Trust which is the relevant Primary Care Trust will continue to exercise functions in relation to that practice and those practice patients.

### **Arrangements with health service bodies in Wales**

**11.**—(1) Subject to any directions which may be given by the Secretary of State, a Strategic Health Authority may enter into arrangements with a Health Authority or Health Authorities for the functions specified in paragraph (3) which are exercisable by that Health Authority or Health Authorities, to be exercised—

- (a) by the Strategic Health Authority;
- (b) jointly between the Strategic Health Authority and the Health Authority or Health Authorities; or

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<sup>(16)</sup> See S.I. 1983/894, regulation 7.

<sup>(17)</sup> See S.I. 1993/2210, regulation 6.

(c) on behalf of the Strategic Health Authority and Health Authority by a joint committee or joint sub-committee.

(2) Subject to any directions which may be given by the Secretary of State, a Primary Care Trust may enter into arrangements with a Health Authority or Health Authorities for the functions specified in paragraph (3) which are exercisable by that Health Authority or Health Authorities, to be exercised—

(a) jointly between the Primary Care Trust and the Health Authority or Health Authorities; or

(b) on behalf of the Primary Care Trust and Health Authority by a joint committee or joint sub-committee.

(3) The functions referred to in paragraphs (2) and (3) are any functions exercisable by a Health Authority under or by virtue of the Act, the 1990 Act, Part 1 of the 1997 Act, the Health Act, the Health and Social Care Act, the 2002 Act or the Nursing and Midwifery Order 2001.

### **Revocations**

**12.** The regulations specified in column (1) of Schedule 4 are revoked to the extent specified in column (3) of that Schedule.

Signed by authority of the Secretary of State for Health

17th September 2002

*John Hutton*  
Minister of State,  
Department of Health

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 1

Regulation 3(1) and (2)

## PART 1

SECRETARY OF STATE FUNCTIONS EXERCISABLE BY STRATEGIC  
HEALTH AUTHORITIES AND BY PRIMARY CARE TRUSTS

Column (1) <i>Enactment</i>	Column (2) <i>Subject matter</i>
Health Services and Public Health Act 1968—	
section 63(1), (5) and (6)	Providing for instruction of officers of health bodies and other persons employed or contemplating employment in activities connected with health or welfare
The Act—	
section 2	Providing services considered appropriate for discharging duties imposed on the Secretary of State and doing other things calculated to facilitate the discharge of such duties
section 5(2)(d)	Conducting or assisting, by grants or otherwise, persons to conduct research into matters relating to illness or other matters connected with a service under the Act
section 23(1)	Arranging with any person or body (including a voluntary organisation) for that person or body to provide or assist in providing any service under the Act
section 23(2)(18)	Making available to certain persons or bodies (including voluntary organisations) facilities and services of persons employed in connection with such facilities
section 23(3)	Agreeing terms and payments in connection with arrangements made under section 23 of the Act
section 26(1)(19)	Supplying goods, services and other facilities to local authorities and other public bodies and carrying out maintenance work in connection with any land or building, the maintenance of which is a local authority responsibility
section 26(2)(20)	Supplying prescribed goods, materials or other facilities to persons providing general medical services, general dental services, general ophthalmic services or pharmaceutical

(18) Section 23(2) was amended by the 2002 Act, Schedule 1, paragraph 11.

(19) Sections 26(1) and (3) were amended by the 2002 Act, Schedule 1, paragraph 12(a) and (b).

(20) Section 26(2) was substituted by the 1997 Act, Schedule 2, paragraph 5(2).

Column (1) <i>Enactment</i>	Column (2) <i>Subject matter</i>
section 26(3)	services or providing personal medical services or personal dental services in connection with a pilot scheme under the 1997 Act Making available to local authorities any services or other facilities and the services of employed persons to enable local authorities to discharge their functions relating to social services, education and public health
section 26(4)(21)	Making available to local authorities the services of practitioners to enable such authorities to discharge their functions relating to social services, education and public health
section 27(1) and (2)(22)	Providing for consultation before the services of any officer of certain health bodies are made available to a local authority
section 27(4)	Agreeing terms and charging for services and facilities provided under section 26 of the Act
section 51(1)	Securing the availability of facilities for research connected with clinical medicine or dentistry

## PART 2

### SECRETARY OF STATE FUNCTIONS EXERCISABLE BY (A) PRIMARY CARE TRUSTS AND (B) STRATEGIC HEALTH AUTHORITIES FOR THE PURPOSE OF PERFORMANCE MANAGEMENT ONLY

Column (1) <i>Enactment</i>	Column (2) <i>Subject matter</i>
Ministry of Health Act 1919(23)— section 2	Securing preparation, carrying out and co-ordination of measures conducive to public health
Health Services and Public Health Act 1968— section 64(1)	Giving financial assistance to voluntary organisations

(21) Section 26(4) was inserted by the 1980 Act, section 3(1) and amended by the 1995 Act, Schedule 1, paragraph 14(b), the 1997 Act, Schedule 2, paragraph 5(3), the 1999 Act, Schedule 4, paragraph 11(c), and the 2002 Act, Schedule 1, paragraph 12(c).

(22) Section 27(1) was amended by the 2002 Act, Schedule 1, paragraph 13(a).

(23) 1919 c. 21; section 2 was amended by S.I. 1968/1699, article 5(3) and Schedule.

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Column (1) <i>Enactment</i>	Column (2) <i>Subject matter</i>
Chronically Sick and Disabled Persons Act 1970(24)—	
section 17	Provisions with respect to separation of younger from older patients in hospital
The Act—	
section 3(1)(a) and (b)	Providing hospital and other accommodation
section 3(1)(c)	Providing medical, dental, nursing and ambulance services
section 3(1)(d)	Providing facilities for the care of expectant and nursing mothers and young children
section 3(1)(e)	Providing facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered illness
section 3(1)(f)	Providing other services required for the diagnosis or treatment of illness
section 4	Providing high security psychiatric services
section 5(1)(a) and (1A), and paragraph 1 of Schedule 1(25)	Providing for the medical inspection and treatment of pupils, their dental inspection and treatment and their education in dental health
section 5(1)(b)	Arranging for the giving of advice on contraception, for the medical examination of persons seeking such advice, for the treatment of such persons and for the supply of contraceptive substances and appliances
section 5(2)(a), and paragraphs 1 and 2 of Schedule 2	Providing vehicles for people with physical disabilities
section 5(2)(b)	Providing accommodation and treatment outside Great Britain for persons suffering from respiratory tuberculosis
section 5(2)(c) and (2A)	Provision of a microbiological service
section 52	Making accommodation available in connection with the provision of services under Part 2 of the Act
section 63	Authorising use of hospital accommodation, determining the extent to which it is to be made available and determining and

(24) 1970 c. 44; section 17 was amended by the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 132.

(25) Section 5(1) was amended by the 1988 Act, Schedule 3; section 5(1A) and (1B) was inserted by the 1988 Act, section 10(1); Schedule 1 was amended by the 1988 Act, Schedule 2, paragraph 7 and the Education Act 1996 (c. 56), Schedule 37, paragraph 46.

Column (1) <i>Enactment</i>	Column (2) <i>Subject matter</i>
section 72(1), (3) and (4)	recovering charges in respect of the use of such accommodation Making available health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients
section 96C(1) and (2)	Forming and investing in companies
section 121	Determining charges for prescribed services provided in respect of prescribed non-residents

SCHEDULE 2

Regulation 3(3)

SECRETARY OF STATE FUNCTIONS TO BE  
EXERCISABLE BY STRATEGIC HEALTH AUTHORITIES

Column (1) <i>Enactment</i>	Column (2) <i>Subject matter</i>
The Act—	
section 1	Duty to promote a comprehensive health service
section 17(2)(d)	Giving directions to NHS trusts about their exercise of any functions
section 87(1) and (2)	Acquiring land or other property required for the purposes of the Act and the use or maintenance of any property belonging to the Secretary of State by virtue of the Act.
Schedule 5, paragraph 9(1) and (4)(26)	Payment of remuneration and allowances to chairman and members of the Strategic Health Authority
Mental Health Act 1983—	
section 12(2)	Approving medical practitioners as having special experience in the diagnosis or treatment of mental disorder

(26) Paragraph 9(1) was amended by the Health and Social Security Act 1984 (c. 48), Schedule 3, paragraph 13 and Schedule 8, the 1990 Act, Schedule 1, paragraph 7(1) and by the 1995 Act, Schedule 1, paragraph 60(b)(i) and Schedule 3; paragraph 9(4) was amended by the 1999 Act, Schedule 4, paragraph 39(2).

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## SCHEDULE 3

Regulation 5

FUNCTIONS OF STRATEGIC HEALTH AUTHORITIES  
NOT TO BE EXERCISABLE BY PRIMARY CARE TRUSTS

Column (1) <i>Enactment</i>	Column (2) <i>Subject matter</i>
The Act—	
section 17(2)(d)	Giving directions to NHS trusts about their exercise of any functions
Schedule 5, paragraph 9(1) and (4)	Payment of remuneration and allowances to chairman and members of a Strategic Health Authority
Mental Health Act 1983—	
section 12(2)	Approving medical practitioners as having special experience in the diagnosis or treatment of mental disorder
Water Industry Act 1991(27)—	
section 87	Requesting fluoridation of water supplies
The 1997 Act—	
section 5	Approval of pilot schemes
section 6(3)	Agreement of variation to approved schemes
section 8(1), (2) and (4)	Variation and termination of pilot schemes
Health Act 1999—	
section 18(1)	Putting and keeping in place arrangements for monitoring and improving the quality of health care provided to individuals in their area
Nursing and Midwifery Order 2001	
Schedule 2, paragraph 18	Transitional provisions for local supervising authorities

## SCHEDULE 4

Regulation 9

## REGULATIONS REVOKED BY THESE REGULATIONS

Column (1) <i>Title of Regulations</i>	Column (2) <i>Serial Number</i>	Column (3) <i>Extent of revocation</i>
National Health Service (Functions of Health)	<a href="#">S.I.1996/654</a>	The whole regulations

(27) [1991 c. 56](#). Section 87(1) was amended by the 1995 Act, Schedule 1, paragraph 120(2) and by [S.I. 2002/2469](#).



Column (1) <i>Title of Regulations</i>	Column (2) <i>Serial Number</i>	Column (3) <i>Extent of revocation</i>
Authorities in London) Regulations 1996		
Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000	<a href="#">S.I. 2000/89</a>	Regulation 12
Primary Care Trusts (Functions) (England) Regulations 2000	<a href="#">S.I. 2000/695</a>	The whole Regulations
The National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 2001	<a href="#">S.I. 2001/747</a>	The whole Regulations

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace the existing Regulations relating to the functions of Health Authorities and Primary Care Trusts in England in the light of the provisions of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) which rename Health Authorities in England as Strategic Health Authorities and allow for direct delegation of the Secretary of State's functions to Primary Care Trusts.

The Regulations provide for the functions of the Secretary of State relating to the health service to be exercisable in England by Strategic Health Authorities and Primary Care Trusts (regulation 3 and Schedules 1 and 2). Regulation 3 further provides that:

- (a) Strategic Health Authorities must exercise their delegated functions for the benefit of their area; and
- (b) Primary Care Trusts must, subject to the exceptions in regulation 3(7), exercise functions which consist of providing or securing the provision of services to patients mainly for the benefit of the patients of medical practices whose patients are drawn from the area of the trust.

Regulation 4 provides for the Secretary of State's functions relating to pilot schemes for personal medical and dental services under Part 1 of the National Health Service (Primary Care) Act 1997 ("the 1997 Act") to be exercisable by Strategic Health Authorities and Primary Care Trusts. The Regulations include restrictions on delegation to ensure that a Primary Care Trust does not exercise functions under the 1997 Act in relation to pilot schemes which it is itself providing. Regulations 4(4) to 4(6) provide that Strategic Health Authorities must direct Primary Care Trusts to exercise certain of their functions under the 1997 Act and in specified regulations relating to pilot schemes.

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Regulation 5 bars Strategic Health Authorities from delegating to Primary Care Trusts certain of their functions specified in Schedule 3.

Regulations 6–8 set out limitations and restrictions on the exercise of the functions specified in Schedules 1 to 3 by both Strategic Health Authorities and Primary Care Trusts.

Regulation 9 enables Strategic Health Authorities to make arrangements for their functions to be exercised on their behalf by other Strategic Health Authorities, Health Authorities (in Wales) or Special Health Authorities or to be exercised jointly with those bodies or with Primary Care Trusts.

Regulation 10 enables Primary Care Trusts to make arrangements for their functions to be exercised on their behalf by other Primary Care Trusts or Special Health Authorities or to be exercised jointly with Strategic Health Authorities, Health Authorities, NHS trusts and other Primary Care Trusts.

Regulation 11 enables Strategic Health Authorities and Primary Care Trusts to enter into arrangements with Health Authorities for the exercise of Health Authority functions.

The NHS Plan referred to in regulation 3(4) can be obtained from The Stationery Office (mail, telephone and fax orders only), PO Box 29, Norwich, NR3 1GN. Telephone orders: 0870 600 5522. Fax orders: 0870 600 5533. It can also be accessed on the Department of Health's web site: [www.doh.gov.uk/nhsplan](http://www.doh.gov.uk/nhsplan).