

## SCHEDULE 1

Article 4(3)

### Delegated functions under Part 10 of the NHS Act

#### Interpretation

**1.** In this Schedule—

“accredited Counter Fraud Specialist” means a person accredited by the Counter Fraud Professional Accreditation Board<sup>(1)</sup> or similar organisation providing counter fraud prevention, detection and investigation accreditation to government departments;

“authorised officer” means officers authorised under paragraph 4(1);

“the delegated functions” means the functions delegated to the Authority under paragraph 2(1);

“designated officer” means an officer designated pursuant to paragraph 3(1) and, in respect of any given authorisation granted to or being considered in relation to a senior officer or authorised officer, “the designated officer concerned” means the designated officer who is considering or who granted that authorisation.

#### Commencement Information

**I1** Sch. 1 para. 1 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Delegation of functions

**2.—(1)** The Secretary of State directs pursuant to section 7 of the NHS Act that the functions of the Secretary of State under sections 197<sup>(2)</sup> (notice requiring production of documents) and 198 (production of documents) of the NHS Act are to be exercisable by the Authority, subject to the requirements of this Schedule.

(2) The Secretary of State further directs that the delegated functions are to be exercised on behalf of the Authority by its authorised officers, as provided for in this Schedule.

(3) For the purposes of section 199(3) of the NHS Act (which provides for the level of seniority of an officer to be specified in directions), an officer is a senior officer if the officer is of a grade within or above Agenda for Change pay band 7.

#### Commencement Information

**I2** Sch. 1 para. 2 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Designated officers

**3.—(1)** The Authority must designate officers to undertake its functions under paragraph 4, and other functions of designated officers under this Schedule.

(2) A designated officer must be an accredited Counter Fraud Specialist.

(1) The Counter Fraud Professional Accreditation Board is a non-statutory regulatory body financed, and run by representatives from, in particular, the Department of Work and Pensions and its agencies, the Department of Health, certain local government bodies, HM Revenue and Customs, and the UK Passport Agency, and hosted by the University of Portsmouth, with the purposes of ensuring the delivery of professional counter fraud training and academic study and that, once qualified, those who are accredited maintain their professional standards.

(2) Section 197 was amended by section 55(1) of, and paragraph 105 of Part 9 of Schedule 4 to, the Health and Social Care Act 2012.

**Status:** Point in time view as at 17/04/2024.

**Changes to legislation:** There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

(3) A designated officer discharging functions of the Authority under paragraph 4 must be of a grade above Agenda for Change pay band 8b.

(4) A designated officer discharging other functions under this Part must be of a grade within or above Agenda for Change pay band 8b.

**Commencement Information**

**I3** Sch. 1 para. 3 in force at 1.11.2017, see [art. 1\(1\)](#)

**Authorising senior officers**

4.—(1) The Authority is to authorise such of its senior officers meeting the fitness requirement in paragraph 5 as it may require to act on its behalf in the exercise of the delegated functions.

(2) The Authority may revoke such an authorisation if it is satisfied having regard to all relevant circumstances that it is appropriate to do so.

**Commencement Information**

**I4** Sch. 1 para. 4 in force at 1.11.2017, see [art. 1\(1\)](#)

**Fitness requirements for authorised officers**

5. A senior officer meets the fitness requirement if the officer is an officer—

- (a) whom the designated officer concerned considers has the knowledge, skills and experience necessary to exercise the delegated functions; and
- (b) who is an accredited Counter Fraud Specialist.

**Commencement Information**

**I5** Sch. 1 para. 5 in force at 1.11.2017, see [art. 1\(1\)](#)

**Records of authorised officers**

6.—(1) The Authority must establish and maintain a record in respect of all authorised officers.

(2) The record referred to in sub-paragraph (1) must include—

- (a) the name of the authorised officer;
- (b) a statement that the authorised officer is an accredited Counter Fraud Specialist;
- (c) the name of the designated officer concerned;
- (d) the date that the authorisation under paragraph 4 was granted; and
- (e) where appropriate, the date on which the authorisation was revoked.

**Commencement Information**

**I6** Sch. 1 para. 6 in force at 1.11.2017, see [art. 1\(1\)](#)

## Statement of authority

7.—(1) The Authority must issue an authorised officer with a written statement providing evidence of that officer’s authority to act in the exercise of the delegated functions.

(2) The statement issued under sub-paragraph (1) must include—

- (a) the name and business address of the authorised officer;
- (b) a statement that the officer is authorised to act in the exercise of the delegated functions which must include the date on which the officer was authorised to exercise the delegated functions;
- (c) the signature of the designated officer concerned;
- (d) the name and logo of the Authority; and
- (e) a reference to the officer’s authorisation being granted by virtue of Part 10 of the NHS Act.

### Commencement Information

**17** Sch. 1 para. 7 in force at 1.11.2017, see [art. 1\(1\)](#)

## Production of statement

8. An authorised officer exercising the delegated functions must produce the statement issued to that officer in accordance with paragraph 7, or a copy of it—

- (a) at the time of serving a notice under section 197(2) of the NHS Act (notice requiring the production of documents); or
- (b) when requiring a person under section 198(6) of the NHS Act (statement required upon failure to produce documents) to state, to the best of that person’s knowledge and belief, where documents are.

### Commencement Information

**18** Sch. 1 para. 8 in force at 1.11.2017, see [art. 1\(1\)](#)

## Requirement for specific authorisations in relation to personal records

9.—(1) An authorised officer must obtain a specific authorisation from a designated officer (other than that authorised officer) before acting in the exercise of the delegated functions in relation to personal records<sup>(3)</sup>.

(2) A specific authorisation must be applied for in relation to each personal record or group of personal records sought in any one investigation.

(3) A specific authorisation given under sub-paragraph (1) may apply only to the personal record or group of personal records in respect of which the application for that authorisation was made.

(4) An authorised officer must comply with any conditions imposed by a specific authorisation in relation to personal records.

<sup>(3)</sup> “Personal records” for these purposes is defined in section 210(1) of the National Health Service Act 2006.

**Status:** Point in time view as at 17/04/2024.

**Changes to legislation:** There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

**Commencement Information**

**I9** Sch. 1 para. 9 in force at 1.11.2017, see [art. 1\(1\)](#)

**Procedure for specific authorisations**

**10.**—(1) An authorised officer seeking a specific authorisation in relation to personal records must complete a form provided to that authorised officer for that purpose by a designated officer.

(2) A designated officer must consider the application having regard to all relevant matters and in particular—

- (a) the description of the documents sought;
- (b) the reasons for the application;
- (c) whether or not each document sought is necessary for the purposes of the exercise of the delegated functions; and
- (d) the description of the proposed arrangements for the safeguarding of the documents whilst in the possession or under the control of the Authority.

**Commencement Information**

**I10** Sch. 1 para. 10 in force at 1.11.2017, see [art. 1\(1\)](#)

**Records of specific authorisations in relation to personal records**

**11.** The Authority must establish and maintain records of all applications for specific authorisations in relation to personal records, including details of whether or not the specific authorisation was granted.

**Commencement Information**

**I11** Sch. 1 para. 11 in force at 1.11.2017, see [art. 1\(1\)](#)

**Production of evidence of specific authorisation in relation to personal records**

**12.** Where an authorised officer has a specific authorisation to act in the exercise of the delegated functions in relation to personal records, that authorised officer must, in addition to producing the statement issued to that authorised officer in accordance with paragraph 7, or a copy of it, produce evidence of that specific authorisation—

- (a) at the time of serving a notice under section 197(2) of the NHS Act (notice requiring production of documents); or
- (b) when requiring a person under section 198(6) of the NHS Act (statement required upon failure to produce documents) to state, to the best of that person’s knowledge and belief, where documents are.

**Commencement Information**

**I12** Sch. 1 para. 12 in force at 1.11.2017, see [art. 1\(1\)](#)

## Content of notices

**13.**—(1) A notice to be served under section 197 of the NHS Act by the Authority must in addition to meeting the requirements of section 197(4) to (6) and (9) of the NHS Act, include—

- (a) the name and address of the NHS body, health service provider, NHS contractor, public health service contractor, or statutory health body (as the case may be), whom the Authority has reasonable grounds to suspect has possession or control of the documents sought;
- (b) the job title and, if known, the name of the person who the Authority believes is accountable for the documents;
- (c) a reference to the notice’s being served pursuant to Part 10 of the NHS Act;
- (d) details of the arrangements for the production of the documents including the place at which the documents are to be produced;
- (e) notification of the penalties for failing to comply with a notice;
- (f) the name, business address and signature of the authorised officer serving the notice; and
- (g) the name and the logo of the Authority.

(2) For the purposes of this paragraph, the terms “NHS body”, “health service provider”, “NHS contractor”, “public health service contractor”, and “statutory health body” have the meanings given in subsections (2), (4), (5), (5A) and (6) respectively of section 196(4) of the NHS Act (persons and bodies about which provision is made in Part 10 of that Act).

### Commencement Information

**I13** Sch. 1 para. 13 in force at 1.11.2017, see [art. 1\(1\)](#)

## SCHEDULE 2

Article 6

Appointments, tenure, and conduct of business by the Authority

### PART 1

Appointment and tenure of office of chairperson and non-officer members, and provision about interim arrangements

#### Appointment and tenure of chairperson and non-officer members

**1.**—(1) The chairperson and members of the Authority who are not officers of the Authority (in this Schedule, “non-officer members”) are to be appointed by the Secretary of State.

(2) Subject to sub-paragraph (3) of this paragraph and to paragraph 3, the term of office of the chairperson and non-officer members is to be for such period as the Secretary of State specifies on making the appointment.

(3) During the transitional period, the Secretary of State may make appointments under sub-paragraph (1) which—

(4) Subsection (2) was amended, and subsection (5A) was inserted, by section 55(1) of and paragraph 104 of Part 9 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). See also amendment made to the definition “NHS body” in section 275(1) of the NHS Act by section 55(1) of, and paragraph 138 of Part 12 of Schedule 4 to, the 2012 Act.

**Status:** Point in time view as at 17/04/2024.

**Changes to legislation:** There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

- (a) may be terminated upon written notice by the Secretary of State; and
  - (b) in any event terminate at the end of the transitional period if it not previously terminated.
- (4) Subject to paragraph 3, the chairperson and any non-officer member are, on the termination of their respective terms of appointment, to be eligible for re-appointment.

#### Commencement Information

**I14** Sch. 2 para. 1 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Appointment and tenure of chief executive and other officers, including interim arrangements

2.—(1) On commencement of this Order, the chairperson must, in consultation with, and with the consent of, the Secretary of State, appoint on such terms as may be approved by the Secretary of State an officer member to act temporarily as chief executive of the Authority during the transitional period and a second officer member to act temporarily as director of finance during the transitional period (“interim appointments”).

(2) The officer member appointed to act temporarily as chief executive under sub-paragraph (1) must have knowledge of operational aspects of the health service and recent experience of heading a body or division within a body with functions in relation to the prevention, detection and investigation of fraud similar to those to be exercised by the Authority.

(3) During the transitional period, the chairperson, may, with the consent of the Secretary of State—

- (a) give to one or both officer members appointed under sub-paragraph (1) notice of termination of appointment; and
- (b) in any circumstances where an interim appointment has ended, make such further interim appointment, on such terms as may be approved by the Secretary of State, as the chairperson thinks fit to ensure the proper discharge of the Authority’s functions.

(4) An interim appointment made under sub-paragraph (1) or (3)(b) must terminate no later than the end of the transitional period, unless, with the consent of the Secretary of State, it is extended temporarily by agreement between the person holding the appointment and the chairperson.

(5) Except where the chairperson is required or chooses to make an interim appointment under sub-paragraph (1) or (3)(b), the chairperson must appoint, on such terms as may be approved by the Secretary of State, an officer member to act as chief executive of the Authority and a second officer member to act as director of finance of the Authority.

(6) At any time, the chairperson may appoint, on such terms as may be approved by the Secretary of State, an officer member in addition to the chief executive and director of finance.

(7) Before taking any of the actions mentioned in sub-paragraphs (1) and (3) to (6), the chairperson must obtain the written agreement of the non-officer members.

(8) Where for any period the chief executive is suspended from discharging the duties of a chief executive of the Authority—

- (a) the chief executive must also be suspended for that period from performing the functions ordinarily exercised by the chief executive as a member, and
- (b) any person appointed to act in place of the chief executive must also be appointed to perform the functions that the chief executive ordinarily exercised as a member of the Authority for that period.

(9) The chief executive may appoint further officers who are not members of the Authority, subject, in the case of appointments at Agenda for Change grade 8b or above, to the agreement of the chairperson.

(10) A person appointed under sub-paragraph (1), (3)(b), (5) or (6) is, on the termination of the terms of that appointment, eligible for re-appointment.

#### Commencement Information

**I15** Sch. 2 para. 2 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Disqualification of persons for appointment (chairperson and non-officer members)

**3.—(1)** Subject to paragraph 4, a person is disqualified for appointment as the chairperson or as a non-officer member if any of the following apply—

- (a) the person holds a position as chairperson, member, officer, governor or director with, or is employed by, or contracted in any capacity to provide services to—
  - (i) any health service body; or
  - (ii) any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act;
- (b) the person has—
  - (i) within the previous five years been convicted in the United Kingdom of any criminal offence not mentioned in sub-paragraph (c) or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence not mentioned in sub-paragraph (c);
  - (ii) as a consequence of that conviction, been sentenced to a sentence of imprisonment (whether suspended or not); and
  - (iii) neither the conviction has been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment (whether suspended or not) on appeal;
- (c) the person has, on or after attaining the age of 18 years, in respect of acts or omissions occurring on or after the person's attaining the age of 18 years—
  - (i) been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence involving fraud, theft or bribery and the conviction has not been quashed on appeal;
  - (ii) been party to an agreement which is the subject of a decision under section 31 (decisions following an investigation) of the Competition Act 1998<sup>(5)</sup>, or subject to directions under section 32 (directions in relation to agreements) or 33 (directions in relation to conduct) arising from such a decision, including interim directions under section 35 (interim measures), of the Competition and Markets Authority in respect of prohibitions in Chapter 1 (agreements preventing, restricting or distorting competition) or Chapter 2 (abuse of dominant position) of Part 1 of the Competition Act 1998 or under Article 101(1) or 102 of the Treaty on the Functioning of the European Union, unless the decision has been successfully appealed under section 46

(5) 1998 c. 41. Chapters 1, 2 and 3 of Part 1 have been amended by section 70 of, and Schedule 2 to, the Criminal Justice and Police Act 2001 (c. 16); section 40 of, and Sched 9 to, the Constitutional Reform Act 2005 (c. 4); sections 198, 203, 207 and 278 of, and Schedules 25 and 26 to, the Enterprise Act 2002 (c. 40); by SI 2004/1261; by SI 2011/1043; by SI 2012/1809; by sections 26(3), 39 to 42, 44, 45 and 57 of, and Schedules 5, 13 and 15 to, the Enterprise and Regulatory Reform Act 2013 (c. 24).

**Status:** Point in time view as at 17/04/2024.

**Changes to legislation:** There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

- (appealable decisions) or 49 (further appeals) of the Competition Act 1998(6) and appeal proceedings have concluded; or
- (iii) been subject to, or been party to an agreement which was, the subject of a regulatory or judicial finding or decision, other than one which was successfully reviewed or appealed, in respect of matters similar to those mentioned in para (ii) pursuant to the repealed legislation mentioned in sections 1 and 17 of the Competition Act 1998;
- (d) the person is the subject of a bankruptcy order within the meaning of section 381 of the Insolvency Act 1986(7), or of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(8), or of a debt relief restrictions order(9) or an interim debt relief restrictions order under Schedule 4ZB to that Act, or is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 2A to the Insolvency (Northern Ireland) Order 1989(10) or sequestration of the person's estate has been awarded and not recalled, or the person is a debtor who has not been discharged within the meaning of the Bankruptcy (Scotland) Act 2016(11), or is the subject of a bankruptcy restrictions order or interim bankruptcy restrictions order under Part 13 of that Act (bankruptcy restrictions orders etc);
- (e) the person has been dismissed within the previous five years, otherwise than by reason of redundancy, from any paid employment with a health service body or any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act;
- (f) the tenure of office of the person as the chairperson, a member, a director or a governor of a health service body has been terminated on the grounds—
- (i) that it was not in the interests of the health service body or of the health service that the person should continue to hold the office;
  - (ii) of non-attendance at meetings;
  - (iii) of non-disclosure of a pecuniary interest; or
  - (iv) of misbehaviour, misconduct or failure to carry out the duties of the post or position held by the person;
- (g) the tenure of office of the person as the chairperson, a member, a director or a governor of any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act has been terminated on the grounds of—
- (i) non-disclosure of a pecuniary interest; or

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(6) Section 46 was amended by section 21 of, and paragraphs 1 and 2 of Schedule 5 to, the Enterprise Act 2002 (c. 40); by regulation 4 of, and Schedule 1 to, SI 2004/1261; by article 3(1) of, and Part 1 of the Schedule to, SI 2012/1809; by section 26(3) of, and paragraphs 1 and 26 of Part 1 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013 (c. 24). Section 49 was amended by section 21 of, and paragraphs 1 and 4 of Schedule 5 to, the Enterprise Act 2002; by section 81 of, and paragraphs 1 and 9 of Schedule 8 to, the Consumer Rights Act 2015 (c. 15), and by regulation 3 of, and Schedule 2 to, SI 2017/385.

(7) 1986 c. 45.

(8) Schedule 4A to the Insolvency Act 1986 was inserted by section 257(2) of, and Schedule 20 to, the Enterprise Act 2002 (c. 40), and amended by section 71(3) of, and paragraph 63 of Schedule 19 to, the Enterprise and Regulatory Reform Act 2013, and by section 135(2) of the Small Business, Enterprise and Employment Act 2013 (c. 26). By virtue of paragraph 8 of Schedule 4A to the Insolvency Act 1986, the reference to a person subject to a bankruptcy restrictions order includes a reference to a person in respect of whom a bankruptcy restrictions undertaking has effect under that Schedule.

(9) Schedule 4ZB to the Insolvency Act 1986 was inserted by section 108(2) of and Schedule 19 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). By virtue of paragraph 8 of Schedule 4ZB to the Insolvency Act 1986, the reference to a person subject to a debt relief restrictions order includes a reference to a person in respect of whom a debt relief restrictions undertaking has effect under that Schedule.

(10) Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (N.I. 19)) was inserted by article 13(2) of, and Schedule 5 to, the Insolvency (Northern Ireland) Order 2005 (SI 2005/1455 (N.I. 10)).

(11) 2016 asp 21.



- (ii) misbehaviour, misconduct or failure to carry out the duties of the post or position held by the person;
  - (h) the person is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986<sup>(12)</sup>, the Companies (Northern Ireland) Order 1986<sup>(13)</sup>, the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(14)</sup> or to an order made under section 429(2)(b) of the Insolvency Act 1986<sup>(15)</sup> (disabilities on revocation of administration order against an individual);
  - (i) the person has been—
    - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which was contributed to or facilitated by the person’s conduct; or
    - (ii) disqualified from being a charity trustee in Scotland pursuant to section 69 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(16)</sup>;
  - (j) the person—
    - (i) was refused inclusion in a list maintained pursuant to regulations made under sections 91 (persons providing primary medical services), 103 (persons providing primary dental services), 123 (persons performing primary ophthalmic services) or 147A (performers of pharmaceutical services and assistants) of the NHS Act<sup>(17)</sup> by reason of any matter concerning the person’s honesty or probity;
    - (ii) was included in such a list but that inclusion is suspended or subject to conditions by reason of any matter concerning the person’s honesty or probity;
    - (iii) was included in such a list but has been removed or contingently removed from that list by reason of any matter concerning the person’s honesty or probity;
    - (iv) is similarly prevented from providing primary medical, dental ophthalmic or pharmaceutical services elsewhere in the United Kingdom in circumstances corresponding to those set out in paragraphs (i) to (iii) in relation to England, and in relation to whether a matter concerns the person’s honesty or probity, the question, in any case that is disputed by the person concerned, is to be determined by the Secretary of State or, where requested by the Secretary of State in cases not concerning the chairperson’s qualification to hold office, the chairperson.
- (2) Subject to sub-paragraph (3), for the purposes of this paragraph, “health service bodies” means—
- (a) [<sup>F1</sup>NHS England];
  - (b) a clinical commissioning group<sup>(18)</sup>;

<sup>(12)</sup> 1986 (c. 46). See in particular section 1A, inserted by section 6 of the Insolvency Act 2000 (c. 39) and since amended by section 111 of, and paragraphs 1 and 3 of Schedule 7 to, the Small Business, Enterprise and Employment Act 2015 (c. 26).

<sup>(13)</sup> SI 1986/1032 (N.I. 6).

<sup>(14)</sup> SI 2002/3150 (N.I. 4).

<sup>(15)</sup> Schedule 16 to the Tribunal, Courts and Enforcement Act 2007 (c. 15) amends section 429 but the amendment is not yet in force.

<sup>(16)</sup> 2005 asp 10.

<sup>(17)</sup> Section 91 was amended by section 55(1) of, and paragraph 35 of Part 4 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). Section 106 was amended by section 55(1) of, and paragraph 47 of Part 5 of Schedule 4 to, the 2012 Act. Section 123 was amended by section 55(1) of, and paragraph 60 of Part 6 of Schedule 4 to, the 2012 Act. Section 147A was inserted by section 208(2) of the 2012 Act. Subsection 3 of section 147A was amended by paragraphs 120 and 123 of Part 7 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9). See also section 147B which was inserted by the same provision in the 2012 Act and makes further provision about regulations under section 147A.

<sup>(18)</sup> Section 14D of the 2006 Act provides for the establishment of clinical commissioning groups. That section was inserted by section 25(1) of the 2012 Act.

**Status:** Point in time view as at 17/04/2024.

**Changes to legislation:** There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

- (c) an NHS trust<sup>(19)</sup>;
- (d) an NHS foundation trust<sup>(20)</sup>;
- (e) a special health authority;
- (f) Monitor<sup>(21)</sup>;
- (g) a combined authority [<sup>F2</sup>, combined county authority] or local authority in England carrying out functions provided for in the NHS Act, pursuant to regulations under the Local Democracy, Economic Development and Construction Act 2009<sup>(22)</sup>[<sup>F3</sup>or under the Levelling-up and Regeneration Act 2023] or, as the case may be, an order under the Cities and Local Government Devolution Act 2016<sup>(23)</sup>, or to arrangements made under section 13Z, 13ZA, 13ZB, 14Z3A or 75 of the NHS Act<sup>(24)</sup>;
- (h) Care Quality Commission<sup>(25)</sup>;
- (i) Health Education England<sup>(26)</sup>;
- (j) Health Research Authority<sup>(27)</sup>
- (k) Health and Social Care Information Centre<sup>(28)</sup>;
- (l) Human Fertilisation and Embryology Authority<sup>(29)</sup>;
- (m) Human Tissue Authority<sup>(30)</sup>;
- (n) National Institute for Health and Care Excellence<sup>(31)</sup>;
- (o) an executive agency of the Secretary of State for Health [<sup>F4</sup>and Social Care].

(3) For the purposes of sub-paragraph (1)(a), in the case of an appointment of a non-officer member other than the chairperson the first reference in that sub-paragraph to “health service body” does not include reference to an NHS trust or foundation trust.

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- (19) Section 25 of the 2006 Act provides for the establishment by order of NHS Trusts. Repeal of that section is provided for by section 179(2) of the 2012 Act, but no date has been appointed for section 179(2) to come into force.
  - (20) See Chapter 5 of Part 2 of the 2006 Act. NHS foundation trusts are public benefit corporations authorised by Monitor under that Chapter. Relevant amendments to Chapter 5 were made by sections 111(11), 150(5), 151(9), 156(5), 159(1 to (3), (5) to (7), 160(1), (2) and (3), 161(1), 178(5) of and paragraphs 8, 9(1) and 10(1) of Schedule 13 to the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), by section 95 of and paragraph 83 of Part 3 of Schedule 5 to the Health and Social Care Act 2008 (c. 14), and by section 241 of and Part 18 of Schedule 18 to the Local Government and Public Involvement in Health Act 2007 (c. 28). Further amendments to the 2006 Act repealing certain relevant provisions in Chapter 5 of Part 2 thereof were made by sections 159(4), 180(1) to (4) of and Schedule 13, paragraphs 8, 9 and 10 of the 2012 Act but no date has been appointed for their commencement.
  - (21) Monitor is the body corporate previously known as the Independent Regulator of NHS Foundation Trusts, which was first established by section 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43). That body’s name was changed to Monitor, and its existence continued, by section 61 of the 2012 Act.
  - (22) 2009 c. 20. As amended by section 7 of the Cities and Local Government Devolution Act 2016 (c. 1) (“the 2016 Act”), sections 105A and 105B provide, subject to certain tests and limitations, and with certain exceptions, including those set out in section 18 of the 2016 Act in relation to the health service, for orders to be made conferring functions of public authorities upon combined authorities.
  - (23) 2016 c. 1. Sections 16 and 17 provide, subject to certain tests and limitations, and with certain exceptions, including those set out in section 18 of the 2016 Act, for regulations to be made conferring functions of public authorities on local authorities.
  - (24) Section 13Z was inserted by section 23(1) of the 2012 Act, and sections 13ZA and 13ZB were inserted by section 19 of and Schedule 4 to the 2016 Act. These three provisions permit the NHS Commissioning Board to make arrangements for the exercise of its functions with certain bodies which potentially may include local authorities and combined authorities. Section 14Z3A was inserted by section 19 of and Schedule 4 to the 2016 Act and permits clinical commissioning groups to make arrangements for their functions to be exercised jointly by clinical commissioning groups and a combined authority. Section 75 of the NHS Act was also amended by section 19 of and Schedule 4 to the 2016 Act and provides for regulations to be made permitting partnership arrangements to be made between prescribed health service bodies and prescribed local government bodies which in certain circumstances may include combined authorities.
  - (25) The Care Quality Commission was established by section 1 of the Health and Social Care Act 2008 (c. 14).
  - (26) Health Education England was established by section 96 of the Care Act 2014 (c. 23).
  - (27) The Health Research Authority was established by section 109 of the Care Act 2014.
  - (28) The Health and Social Care Information Centre was established by section 252 of the 2012 Act.
  - (29) The Human Fertilisation and Embryology Authority was established by section 5 of the Human Fertilisation and Embryology Act 1990 (c. 37).
  - (30) The Human Tissue Authority was established by section 13 of the Human Tissue Act 2004 (c. 30).
  - (31) The National Institute for Health and Care Excellence was established by section 232 of the 2012 Act.

(4) For the purposes of sub-paragraph (1)(b) and (c), the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted.

(5) In relation to a person who would otherwise be disqualified under sub-paragraph (1)(c), the Secretary of State may in his discretion decide that a conviction for an offence of theft or fraud is not to disqualify a person from office if the offence is one it is appropriate to overlook by reason of the youth of the person at the time of the commission of the offence or the impact of the offence or other mitigating factors.

(6) For the purposes of sub-paragraph (1)(e), a person is not to be treated as having been in paid employment by reason only of having been—

- (a) in the case of an NHS foundation trust, the chairperson, a governor or a non-executive director of the trust;
- (b) in the case of a clinical commissioning group, the chair or a member of the governing body of the group; or
- (c) in the case of any other health service body, the chairperson, a member or a director of the health service body in question.

#### Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F2** Words in [Sch. 2 para. 3\(2\)\(g\)](#) inserted (17.4.2024) by [The Levelling Up and Regeneration Act 2023 \(Consequential Amendments\) \(England\) Regulations 2024 \(S.I. 2024/418\)](#), regs. 1(2), **5(a)**
- F3** Words in [Sch. 2 para. 3\(2\)\(g\)](#) inserted (17.4.2024) by [The Levelling-up and Regeneration Act 2023 \(Consequential Amendments\) \(England\) Regulations 2024 \(S.I. 2024/418\)](#), regs. 1(2), **5(b)**
- F4** Words in [Sch. 2 para. 3\(2\)\(o\)](#) inserted (11.4.2018) by [The Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions \(Commonhold Land\) Order 2018 \(S.I. 2018/378\)](#), art. 1(2), **Sch. para. 21(v)** (with art. 14)

#### Commencement Information

- I16** Sch. 2 para. 3 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Cessation of disqualification

4.—(1) Subject to paragraph (2), where a person is disqualified under paragraph 3(1)(e), (f), (g), (i) or (j) that person may, after the expiry of two years beginning on the date of the dismissal, removal, refusal or suspension (as the case may be), apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification is to cease.

(2) Where the Secretary of State refuses an application to remove a disqualification, no further application may be made by that person until the expiry of the period of two years beginning with the date of the application, and this sub-paragraph is to apply to any subsequent application.

#### Commencement Information

- I17** Sch. 2 para. 4 in force at 1.11.2017, see [art. 1\(1\)](#)

**Status:** Point in time view as at 17/04/2024.

**Changes to legislation:** There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

### Termination of tenure of office of chairperson and non-officer members

5.—(1) The chairperson or a non-officer member may resign from that office at any time during the term of that office by giving notice in writing to the Secretary of State.

(2) Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Authority or of the health service that the chairperson or non-officer member should continue to hold office, the Secretary of State may forthwith terminate the chairperson's or non-officer member's tenure of office by giving the chairperson or that member notice in writing to that effect.

(3) If the chairperson or a non-officer member fails to attend three successive meetings of the Authority the Secretary of State must forthwith terminate that person's tenure of office unless satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the person in question will be able to attend meetings of the Authority within such a period as the Secretary of State considers reasonable.

(4) Where a person has been appointed to be the chairperson or a non-officer member, and becomes disqualified for appointment under paragraph 3, the chairperson or that member, as the case may be, must notify the Secretary of State in writing of such disqualification.

(5) Where it comes to the notice of the Secretary of State (whether under sub-paragraph (4) or otherwise) that at the time of a person's appointment or later that person was so disqualified, the Secretary of State must forthwith declare that the person in question was not duly appointed and notify that person in writing to that effect, and upon receipt of any such notification, the person's tenure of office, if any, must be terminated, and the person must cease to act as chairperson or member, as the case may be.

(6) If it appears to the Secretary of State that the chairperson or a non-officer member has failed to comply with paragraph 14 (disability on account of pecuniary interest) the Secretary of State may forthwith terminate that person's tenure of office by giving the person notice in writing to that effect.

#### Commencement Information

**I18** Sch. 2 para. 5 in force at 1.11.2017, see [art. 1\(1\)](#)

### Suspension of appointee

6.—(1) The Secretary of State may suspend a chairperson or a non-officer member (“an appointee”) from office while the Secretary of State considers whether—

- (a) to remove the appointee from office under paragraph 5(2), (3) or (6); or
- (b) the appointee has become disqualified for appointment under paragraph 3, or was so disqualified at the time of appointment, and if so, in the case of disqualification under paragraph 3(1)(c), whether discretion should be exercised under paragraph 3(5).

(2) The Secretary of State must give notice in writing to the appointee of the decision to suspend and the suspension takes effect on receipt of such notification.

(3) A notice under sub-paragraph (2) may be—

- (a) delivered in person, in which case the appointee is treated as receiving it when it is delivered; or
- (b) sent by first class post to the appointee's last known address, in which case the appointee is treated as receiving it on the third day after the day on which it was posted.

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

- (5) The Secretary of State may review the appointee's suspension at any time.
- (6) The Secretary of State must review the appointee's suspension if requested in writing by the appointee to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.
- (7) A review must take into account any representations made by the appointee.
- (8) Following a review, the Secretary of State may—
  - (a) revoke the suspension; or
  - (b) suspend the appointee for another period of not more than 6 months from the expiry of the current period.
- (9) The Secretary of State must revoke the suspension if at any time the Secretary of State decides that—
  - (a) there are no grounds to remove the chairperson or non-officer member from office under paragraph 5(2), (3) or (6);
  - (b) there are such grounds but the Secretary of State does not remove the appointee from office as chairperson or non-officer member, as the case may be, under these provisions; or
  - (c) the appointee is not disqualified for appointment under paragraph 3.

#### **Commencement Information**

**I19** Sch. 2 para. 6 in force at 1.11.2017, see [art. 1\(1\)](#)

#### **Suspension of chairperson: appointment of vice-chairperson**

- 7.—(1) This paragraph applies where the chairperson is suspended under paragraph 6.
- (2) If a vice-chairperson has been appointed under paragraph 8(1) that appointment is to cease to have effect.
- (3) The Secretary of State may re-appoint the person mentioned in sub-paragraph (2) or appoint another non-officer member to be the vice-chairperson.
- (4) The appointment of a vice-chairperson under sub-paragraph (3) is to be for a period, not exceeding the shorter of—
  - (a) the period for which the chairperson is suspended; and
  - (b) the remainder of the non-officer member's term as a member of the Authority.
- (5) When the period for which a person is appointed as vice-chairperson expires, the Secretary of State may re-appoint that person, or appoint another non-officer member as vice-chairperson.
- (6) Any person appointed under sub-paragraph (3) or (5) may at any time resign from the office of vice-chairperson by giving notice in writing to the Secretary of State.
- (7) A notice given under sub-paragraph (6) is to take effect—
  - (a) where a date is specified in the notice as that on which the resignation is to take effect, on that date; or
  - (b) in any other case, on the date that the notice is received by the Secretary of State.
- (8) The Secretary of State may terminate a person's appointment as vice-chairperson under sub-paragraph (3) or (5) if the Secretary of State is of the opinion that it would be in the best interests of the Authority for another non-officer member of the Authority to be vice-chairperson.
- (9) If—
  - (a) a person resigns from the office of vice-chairperson under sub-paragraph (6); or

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(b) the Secretary of State terminates a person's appointment as vice-chairperson under subparagraph (8),  
the Secretary of State may appoint another non-officer member as vice-chairperson.

**Commencement Information**

**I20** Sch. 2 para. 7 in force at 1.11.2017, see [art. 1\(1\)](#)

**Appointment of vice-chairperson**

**8.**—(1) The chairperson and members may appoint one of the non-officer members to be vice-chairperson for such period, not exceeding the remainder of that non-officer member's term as a member, as they may specify on making the appointment.

(2) Any member so appointed may at any time resign from the office of vice-chairperson by giving notice in writing to the chairperson.

(3) This paragraph does not apply where paragraph 7 applies.

**Commencement Information**

**I21** Sch. 2 para. 8 in force at 1.11.2017, see [art. 1\(1\)](#)

**Powers of vice-chairperson**

**9.**—(1) This paragraph applies where—

- (a) the chairperson of the Authority is suspended under paragraph 6 and a non-officer member of the Authority is appointed to be vice-chairperson under paragraph 7; or
- (b) a non-officer member of the Authority is appointed to be vice-chairperson under paragraph 8, and the chairperson of the Authority—
  - (i) has died or has ceased to hold office; or
  - (ii) is unable to perform the chairperson's duties owing to illness, absence from England or any other cause.

(2) Where this paragraph applies—

- (a) the vice-chairperson is to act as chairperson until a new chairperson is appointed or the existing chairperson resumes the chairperson's duties, as the case may be; and
- (b) the references to the chairperson of the Authority in this Order are, so long as there is no chairperson able to perform the chairperson's duties, to be taken to include references to the vice-chairperson.

**Commencement Information**

**I22** Sch. 2 para. 9 in force at 1.11.2017, see [art. 1\(1\)](#)

## PART 2

### Committees etc and the conduct of business by the Authority

#### Appointment of committees and sub-committees

**10.**—(1) Subject to such directions as may be given by the Secretary of State, the Authority may, and if so directed by the Secretary of State, must, appoint committees of the Authority consisting wholly or partly of members of the Authority or wholly of persons who are not members of the Authority.

(2) A committee appointed under this paragraph may, subject to such directions as may be given by the Secretary of State to the Authority or by the Authority to that committee, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they are members of the Authority) or wholly of persons who are not members of the Authority or the committee.

(3) Subject to such directions as may be given by the Secretary of State, paragraphs 3 and 4 (disqualification and cessation of disqualification) apply to the appointment of members of committees and sub-committees appointed under this paragraph as they apply to the appointment of non-officer members of the Authority.

#### Commencement Information

**I23** Sch. 2 para. 10 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Arrangements for the exercise of functions

**11.** Subject to such directions as may be given by the Secretary of State, the Authority may make arrangements for the exercise, on behalf of the Authority, of any of its functions by a committee or sub-committee appointed by virtue of paragraph 10 or by an officer of the Authority, in each case subject to such restrictions and conditions as the Authority thinks fit.

#### Commencement Information

**I24** Sch. 2 para. 11 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Meetings and proceedings

**12.**—(1) The meetings and proceedings of the Authority must be conducted in accordance with the procedural requirements in paragraph 13 and with standing orders made under sub-paragraph (2).

(2) Subject to the procedural requirements in paragraph 13, to paragraph 14 and to such directions as may be given by the Secretary of State, the Authority must make, and may vary or revoke, standing orders for the regulation of its proceedings and business, including provision for the suspension of all or any of the standing orders, and such standing orders may permit attendance at meetings by video or other televisual link subject to the chairperson being satisfied that the member so attending is clearly identifiable during the meeting.

(3) Subject to such directions as may be given by the Secretary of State, the Authority may make, vary and revoke standing orders relating to the quorum, proceedings and place of meeting of any committee or sub-committee of the Authority, but subject to such standing orders, the quorum, proceedings and place of meeting are to be such as the committee or sub-committee may determine.

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#### Commencement Information

**I25** Sch. 2 para. 12 in force at 1.11.2017, see [art. 1\(1\)](#)

#### Procedural requirements for meetings and proceedings of the Authority

**13.—(1)** The first meeting of the Authority is to be held on such day and at such place as may be fixed by the chairperson, who is to have responsibility for convening the meeting.

(2) The chairperson may call a meeting of the Authority at any time.

(3) If a requisition for a meeting, signed by at least two members or one third of the total number of members, whichever is the greater number, is presented to the chairperson, and the chairperson either—

(a) refuses to call a meeting; or

(b) without so refusing, does not within 21 days after the requisition has been presented call a meeting,

those members may forthwith call a meeting.

(4) Before each meeting of the Authority, a notice of the meeting which—

(a) specifies the principal business proposed to be transacted at it; and

(b) is signed by the chairperson or by an officer of the Authority authorised by the chairperson to sign on the chairperson's behalf,

must be delivered to each member, or sent by post to the member's last known address, at least seven clear days before the day of the meeting.

(5) The proceedings of any meeting are not invalidated by a failure to deliver such notice to any member.

(6) In the case of a meeting called under sub-paragraph (3) by members, the notice must be signed by those members and no business other than that specified in the notice is to be transacted at the meeting.

(7) At any meeting of the Authority the chairperson or, in the chairperson's absence, the vice-chairperson (if there is one and the vice-chairperson is present) is to preside.

(8) If the chairperson and any vice-chairperson are absent, such other non-officer member present as the other members present choose for the purpose is to preside.

(9) Every question at a meeting is to be determined by a majority of votes of the members present and competent to vote on the question and, in the case of an equality of votes, the person presiding at the meeting is to have a second or casting vote.

(10) No business is to be transacted at any meeting unless at least three of the members or one third of the membership, whichever is the greater number (the chairperson being included for this purpose in the reckoning), is present.

(11) Minutes of the proceedings of a meeting must be prepared recording the names of the members present at that meeting, and signed at the next ensuing meeting by the person presiding at that next meeting.

#### Commencement Information

**I26** Sch. 2 para. 13 in force at 1.11.2017, see [art. 1\(1\)](#)



### **Disability of chairperson and members in proceedings on account of pecuniary interest**

14.—(1) Subject to the following provisions of this paragraph, if the chairperson or a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at any meeting of the Authority to which the contract, proposed contract or other matter is the subject of consideration, the chairperson or that member must at the meeting and as soon as practicable after its commencement, disclose that interest and must not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it.

(2) The Secretary of State may, subject to such conditions as the Secretary of State considers appropriate to impose, remove any disability imposed by this paragraph in any case in which it appears to the Secretary of State to be in the interests of the health service that the disability should be removed.

(3) The Authority may, by standing orders made under paragraph 12(2), provide for the exclusion of the chairperson or a member from a meeting of the Authority while any contract, proposed contract or other matter in which the chairperson or that member has a pecuniary interest, direct or indirect, is under consideration.

(4) Any remuneration, compensation or allowances payable to the chairperson or a member by virtue of paragraph 2 to Schedule 6 of the NHS Act (pay and allowances) is not to be treated as a pecuniary interest for the purpose of this paragraph.

(5) Subject to sub-paragraphs (2) and (6), the chairperson or member (in this paragraph, the “appointee”) is to be treated for the purpose of this paragraph as having an indirect pecuniary interest in a contract, proposed contract or other matter if—

- (a) the appointee, or a nominee of the appointee, is a director of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) the appointee is a business partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration,

and in the case of two persons living together as a couple (whether or not they are spouses or civil partners) the interest of one is, if known to the other, to be deemed for the purpose of this paragraph to be an interest of the other.

(6) An appointee is not to be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only—

- (a) of the appointee’s membership of a company or other body if the appointee has no beneficial interest in any securities of that company or other body; or
- (b) of an interest in any company, body or person with which the appointee is connected as mentioned in sub-paragraph (5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the appointee in the consideration or discussion of, or voting on, any question with respect to that contract, proposed contract or other matter.

(7) Where an appointee has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

- (a) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the lesser; and
- (b) if the share capital is of more than one class, the total nominal value of shares of any one class in which the appointee has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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this paragraph does not prohibit the appointee from taking part in the consideration or discussion of the contract, proposed contract or other matter, or from voting on any question with respect to it but in such circumstances the appointee must nonetheless disclose the appointee’s interest.

(8) This paragraph applies to a committee or sub-committee as it applies to the Authority and applies to a member of any such committee or sub-committee (whether or not the member of the committee or sub-committee is also a member of the Authority) as it applies to a member of the Authority.

(9) In this paragraph—

“securities” means—

- (a) shares or debentures, whether or not constituting a charge on the assets of a company or other body, or rights or interests in any share or such debenture; or
- (b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any building society or society, other than a society registered as a credit union, which is—
  - (i) a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014<sup>(32)</sup>; or
  - (ii) a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>(33)</sup>;

“shares” means shares in the share capital of a company or other body or the stock of a company or other body.

#### Commencement Information

**I27** Sch. 2 para. 14 in force at 1.11.2017, see [art. 1\(1\)](#)

### Reports by the Authority

**15.** The Authority must make such reports to the Secretary of State in such manner and at such time as the Secretary of State may direct, and must furnish to the Secretary of State such information as the Secretary of State may from time to time require.

#### Commencement Information

**I28** Sch. 2 para. 15 in force at 1.11.2017, see [art. 1\(1\)](#)

### Public meeting

**16.** Where under paragraph 15 the Authority makes an annual report to the Secretary of State which directions mentioned in that paragraph require to be published, the Authority must present the report at a public meeting held not later than 30 days after the date on which the report was made.

#### Commencement Information

**I29** Sch. 2 para. 16 in force at 1.11.2017, see [art. 1\(1\)](#)

<sup>(32)</sup> 2014 c. 14.

<sup>(33)</sup> 1969 c. 24. The Act is subject to amendments yet to be brought into force in relation to section 1 (societies which may be registered) and as to the title of the Act, pursuant to section 8 of the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16). The prospective amended title of the 1969 Act is the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969.

F5 SCHEDULE 3

Article 13

.....  
**Textual Amendments**

**F5** Sch. 3 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 86(2)(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**Status:**

Point in time view as at 17/04/2024.

**Changes to legislation:**

There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017.