Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

National Health Service Act 2006

2006 CHAPTER 41

An Act to consolidate certain enactments relating to the health service. [8th November 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), Sch. 2 para. 1, **3** (with Sch. 3 Pt. 1)

C2 Act applied (with modifications) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 6 para. 8(6)**; S.I. 2012/1831, art. 2(2)

C3 Act modified by 1983 c. 20, s. 12ZB(7) (as inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 38(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

C4 Act modified (2.12.2019) by Children and Social Work Act 2017 (c. 16), **ss. 47(2)**, 70(2); S.I. 2019/1436, reg. 2(g)

Commencement Information

I1 Act in force at 1.3.2007 subject to provisions of s. 277

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PART 1

PROMOTION AND PROVISION OF THE HEALTH SERVICE IN ENGLAND

The Secretary of State and the health service in England

[F1 1 Secretary of State's duty to promote comprehensive health service

(1) The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement—

(a) in the physical and mental health of the people of England, and

(b) in the prevention, diagnosis and treatment of physical and mental illness.

(2) For that purpose, the Secretary of State must exercise the functions conferred by this Act so as to secure that services are provided in accordance with this Act.

(3) The Secretary of State retains ministerial responsibility to Parliament for the provision of the health service in England.

(4) The services provided as part of the health service in England must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.**]**

Textual Amendments

F1 S. 1 substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 1**, 306(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F2 1A Duty as to improvement in quality of services

(1) The Secretary of State must exercise the functions of the Secretary of State in relation to the health service with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—

(a) the prevention, diagnosis or treatment of illness, or

(b) the protection or improvement of public health.

(2) In discharging the duty under subsection (1) the Secretary of State must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—

(a) the effectiveness of the services,

(b) the safety of the services, and

(c) the quality of the experience undergone by patients.

(4) In discharging the duty under subsection (1), the Secretary of State must have regard to the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.**]**

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Textual Amendments

F2 S. 1A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 2**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F3 1B Duty as to the NHS Constitution

(1) In exercising functions in relation to the health service, the Secretary of State must have regard to the NHS Constitution.

(2) In this Act, "NHS Constitution" has the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 1 of that Act).**]**

Textual Amendments

F3 S. 1B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 3**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F4 1C Duty as to reducing inequalities

In exercising functions in relation to the health service, the Secretary of State must have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the health service.**]**

Textual Amendments

F4 S. 1C inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 4**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F5 1D Duty as to promoting autonomy

(1) In exercising functions in relation to the health service, the Secretary of State must have regard to the desirability of securing, so far as consistent with the interests of the health service—

(a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner that it considers most appropriate, and

(b) that unnecessary burdens are not imposed on any such person.

(2) If, in the case of any exercise of functions, the Secretary of State considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Secretary of State of the duties under section 1, the Secretary of State must give priority to the duties under that section.**]**

Textual Amendments

F5 S. 1D inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 5**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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[F6 1E Duty as to research

In exercising functions in relation to the health service, the Secretary of State must promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research.]

Textual Amendments

F6 S. 1E inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 6**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F7 1F Duty as to education and training

(1) The Secretary of State must exercise the functions of the Secretary of State under any relevant enactment so as to secure that there is an effective system for the planning and delivery of education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England.

(2) Any arrangements made with a person under this Act for the provision of services as part of that health service must include arrangements for securing that the person co-operates with the Secretary of State in the discharge of the duty under subsection (1) (or, where a Special Health Authority is discharging that duty by virtue of a direction under section 7, with the Special Health Authority).

(3) In subsection (1), "relevant enactment" means—

(a) section 63 of the Health Services and Public Health Act 1968,

(b) this Act,

(c) the Health and Social Care Act 2008,

(d) the Health Act 2009, and

(e) the Health and Social Care Act 2012.]

Textual Amendments

F7 S. 1F inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 7**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F8 1G Secretary of State's duty as to reporting on and reviewing treatment of providers

(1) The Secretary of State must, within one year of the passing of the Health and Social Care Act 2012, lay a report before Parliament on the treatment of NHS health care providers as respects any matter, including taxation, which might affect their ability to provide health care services for the purposes of the NHS or the reward available to them for doing so.

(2) The report must include recommendations as to how any differences in the treatment of NHS health care providers identified in the report could be addressed.

(3) The Secretary of State must keep under review the treatment of NHS health care providers as respects any such matter as is mentioned in subsection (1).

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(4) In this section—

(a) "NHS health care providers" means persons providing or intending to provide health care services for the purposes of the NHS, and

(b) "health care services for the purposes of the NHS" has the same meaning as in Part 3 of the Health and Social Care Act 2012.**]**

Textual Amendments

F8 S. 1G inserted (1.6.2012) by Health and Social Care Act 2012 (c. 7), **ss. 8**, 306(4); S.I. 2012/1319, art. 2(2)

***[F9**Role of the Board in the health service in England*

Textual Amendments

F9 S. 1H and cross-heading inserted (1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 9(1)**, 306(4) (with Sch. 6 para. 2); S.I. 2012/1831, art. 2(2) (with art. 3(1)); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

1H The National Health Service Commissioning Board and its general functions

(1) There is to be a body corporate known as the National Health Service Commissioning Board ("the Board").

(2) The Board is subject to the duty under section 1(1) concurrently with the Secretary of State except in relation to the part of the health service that is provided in pursuance of the public health functions of the Secretary of State or local authorities.

(3) For the purpose of discharging that duty, the Board—

(a) has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act, and

(b) must exercise the functions conferred on it by this Act in relation to clinical commissioning groups so as to secure that services are provided for those purposes in accordance with this Act.

(4) Schedule A1 makes further provision about the Board.

(5) In this Act—

(a) any reference to the public health functions of the Secretary of State is a reference to the functions of the Secretary of State under sections 2A and 2B and paragraphs 7C, 8 and 12 of Schedule 1, and

(b) any reference to the public health functions of local authorities is a reference to the functions of local authorities under sections 2B and 111 and paragraphs 1 to 7B and 13 of Schedule 1.**]**

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[F10 Role of clinical commissioning groups in the health service in England

Textual Amendments

F10 S. 1I and cross-heading inserted (1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 10**, 306(4); S.I. 2012/1831, art. 2(2); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

1I Clinical commissioning groups and their general functions

(1) There are to be bodies corporate known as clinical commissioning groups established in accordance with Chapter A2 of Part 2.

(2) Each clinical commissioning group has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act.**]**

[F11 General power]

Textual Amendments

F11 S. 2 cross-heading substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 1(2)**; S.I. 2012/1831, art. 2(2) (with art. 10) (as amended (22.10.2012) by S.I. 2012/2657, art. 15); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F12 2 General power

The Secretary of State, the Board or a clinical commissioning group may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on that person by this Act.**]**

Textual Amendments

F12 S. 2 substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 1(1)**; S.I. 2012/1831, art. 2(2) (with art. 10) (as amended (22.10.2012) by S.I. 2012/2657, art. 15); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F13 Provision for protection or improvement of public health

Textual Amendments

F13 S. 2A and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 11**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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2A Secretary of State's duty as to protection of public health

(1) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of protecting the public in England from disease or other dangers to health.

(2) The steps that may be taken under subsection (1) include—

(a) the conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding;

(b) providing microbiological or other technical services (whether in laboratories or otherwise);

(c) providing vaccination, immunisation or screening services;

(d) providing other services or facilities for the prevention, diagnosis or treatment of illness;

(e) providing training;

(f) providing information and advice;

(g) making available the services of any person or any facilities.

(3) Subsection (4) applies in relation to any function under this section which relates to—

(a) the protection of the public from ionising or non-ionising radiation, and

(b) a matter in respect of which **[**F14a relevant body**]** has a function.

(4) In exercising the function, the Secretary of State must—

(a) consult the **[**F15relevant body**]**, and

(b) have regard to its policies.**]**

[F16(5) For the purposes of subsections (3) and (4), each of the following is a relevant body—

(a) the Health and Safety Executive;

(b) the Office for Nuclear Regulation.**]**

Textual Amendments

F14 Words in s. 2A(3)(b) substituted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 91(a)**; S.I. 2014/251, art. 4

F15 Words in s. 2A(4)(a) substituted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 91(b)**; S.I. 2014/251, art. 4

F16 S. 2A(5) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 91(c)**; S.I. 2014/251, art. 4

[F17**2B Functions of local authorities and Secretary of State as to improvement of public health**

(1) Each local authority must take such steps as it considers appropriate for improving the health of the people in its area.

(2) The Secretary of State may take such steps as the Secretary of State considers appropriate for improving the health of the people of England.

(3) The steps that may be taken under subsection (1) or (2) include—

(a) providing information and advice;

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(b) providing services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);

(c) providing services or facilities for the prevention, diagnosis or treatment of illness;

(d) providing financial incentives to encourage individuals to adopt healthier lifestyles;

(e) providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;

(f) providing or participating in the provision of training for persons working or seeking to work in the field of health improvement;

(g) making available the services of any person or any facilities.

(4) The steps that may be taken under subsection (1) also include providing grants or loans (on such terms as the local authority considers appropriate).

(5) In this section, "local authority" means—

(a) a county council in England;

(b) a district council in England, other than a council for a district in a county for which there is a county council;

(c) a London borough council;

(d) the Council of the Isles of Scilly;

(e) the Common Council of the City of London.**]**

Textual Amendments

F17 S. 2B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 12**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C5 S. 2B(1) functions made exercisable concurrently (30.11.2017) by The Greater Manchester Combined Authority (Public Health Functions) Order 2017 (S.I. 2017/1180), arts. 1, **3**

[F18** Arrangements for the provision of certain health services**]

Textual Amendments

F18 S. 3 cross-heading substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 13(7)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

3 [F19 Duties of clinical commissioning groups as to commissioning certain health services]

(1) **[**F20 A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility**]** —

(a) hospital accommodation,

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(b) other accommodation for the purpose of any service provided under this Act,

(c) medical, dental, ophthalmic, nursing and ambulance services,

(d) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children **[**F21as the group considers**]** are appropriate as part of the health service,

(e) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness **[**F21as the group considers**]** are appropriate as part of the health service,

(f) such other services or facilities as are required for the diagnosis and treatment of illness.

[F22(1A) For the purposes of this section, a clinical commissioning group has responsibility for—

(a) persons who are provided with primary medical services by a member of the group, and

(b) persons who usually reside in the group's area and are not provided with primary medical services by a member of any clinical commissioning group.

(1B) Regulations may provide that for the purposes of this section a clinical commissioning group also has responsibility (whether generally or in relation to a prescribed service or facility) for persons who—

(a) were provided with primary medical services by a person who is or was a member of the group, or

(b) have a prescribed connection with the group's area.

(1C) The power conferred by subsection (1B)(b) must be exercised so as to provide that, in relation to the provision of services or facilities for emergency care, a clinical commissioning group has responsibility for every person present in its area.

(1D) Regulations may provide that subsection (1A) does not apply—

(a) in relation to persons of a prescribed description (which may include a description framed by reference to the primary medical services with which the persons are provided);

(b) in prescribed circumstances.

(1E) The duty in subsection (1) does not apply in relation to a service or facility if the Board has a duty to arrange for its provision.**]**

[F23(1F) In exercising its functions under this section and section 3A, a clinical commissioning group must act consistently with—

(a) the discharge by the Secretary of State and the Board of their duty under section 1(1) (duty to promote a comprehensive health service), and

(b) the objectives and requirements for the time being specified in the mandate published under section 13A.**]**

F24(2) . . . . . .

F24(3) . . . . . .

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Textual Amendments

F19 S. 3 heading substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 13(6)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F20 Words in s. 3(1) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 13(2)(a)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F21 Words in s. 3(1)(d)(e) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 13(2)(b)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F22 S. 3(1A)-(1E) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 13(3)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F23 S. 3(1F) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 13(4)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F24 S. 3(2)(3) omitted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 13(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C6 S. 3(1A) excluded (1.4.2013) by The National Health Service (Clinical Commissioning Groups Disapplication of Responsibility) Regulations 2013 (S.I. 2013/350), regs. 1(1), **2(1)(a)**

[F25 3A Power of clinical commissioning groups to commission certain health services

(1) Each clinical commissioning group may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement—

(a) in the physical and mental health of the persons for whom it has responsibility, or

(b) in the prevention, diagnosis and treatment of illness in those persons.

(2) A clinical commissioning group may not arrange for the provision of a service or facility under subsection (1) if the Board has a duty to arrange for its provision by virtue of section 3B or 4.

(3) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of this section as they apply for the purposes of that section.**]**

Textual Amendments

F25 S. 3A inserted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 14**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F26 3B Secretary of State's power to require Board to commission services

(1) Regulations may require the Board to arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of—

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(a) dental services of a prescribed description;
(b) services or facilities for members of the armed forces or their families;
(c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;
(d) such other services or facilities as may be prescribed.

(2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for the Board (rather than clinical commissioning groups) to arrange for its provision as part of the health service.

(3) In deciding whether it would be so appropriate, the Secretary of State must have regard to—
(a) the number of individuals who require the provision of the service or facility;
(b) the cost of providing the service or facility;
(c) the number of persons able to provide the service or facility;
(d) the financial implications for clinical commissioning groups if they were required to arrange for the provision of the service or facility.

(4) Before deciding whether to make regulations under this section, the Secretary of State must—
(a) obtain advice appropriate for that purpose, and
(b) consult the Board.

(5) The reference in subsection (1)(b) to members of the armed forces is a reference to persons who are members of—
(a) the regular forces within the meaning of the Armed Forces Act 2006, or
(b) the reserve forces within the meaning of that Act.**]**

Textual Amendments

F26 S. 3B inserted (27.3.2012 for specified purposes, 1.2.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 15**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4)

4 High security psychiatric services

(1) **[**F27The Board must arrange for the provision of**]** hospital accommodation and services for persons who—
(a) are liable to be detained under the Mental Health Act 1983 (c. 20), and
(b) in the opinion of the Secretary of State require treatment under conditions of high security on account of their dangerous, violent or criminal propensities.

(2) The hospital accommodation and services mentioned in subsection (1) are referred to in this section and paragraph 15 of Schedule 4 (NHS trusts) as "high security psychiatric services".

(3) High security psychiatric services may be provided **[**F28—
(a)**]** only at hospital premises at which services are provided only for the persons mentioned in subsection (1)**[**F29, and
(b) only by a person approved by the Secretary of State for the purposes of this subsection.**]**

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[F30(3A) The Secretary of State may—

(a) give directions to a person who provides high security psychiatric services about the provision by that person of those services;

(b) give directions to the Board about the exercise of its functions in relation to high security psychiatric services.**]**

(4) "Hospital premises" means—

(a) a hospital, or

(b) any part of a hospital which is treated as a separate unit.

Textual Amendments

F27 Words in s. 4(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 16(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F28 Words in s. 4(3) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 16(3)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F29 S. 4(3)(b) and word inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 16(3)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F30 S. 4(3A) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 16(4)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

5 Other services

Schedule 1 makes further provision **[**F31about the provision of services for the purposes of the health service in England**]**.

Textual Amendments

F31 Words in s. 5 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Provision of services otherwise than in England

6 Performance of functions outside England

[F32(1) Where the Secretary of State has a duty or power to provide anything under section 2A or 2B or Schedule 1, that thing may be provided outside England.**]**

[F33(1A) Where a clinical commissioning group or the Board has a duty or power to arrange for the provision of anything under section 3, 3A, 3B or 4 or Schedule 1, it may arrange for that thing to be provided outside England.**]**

(2) **[**F34The functions of the Secretary of State, the Board and clinical commissioning groups**]** may be performed outside England and Wales, in so far as they relate to—

(a) holidays for patients,

(b) the transfer of patients to or from Scotland, Northern Ireland, the Isle of Man or the Channel Islands, or

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(c) the return of patients who have received treatment in England and Wales, to countries or territories outside the British Islands (including for this purpose the Republic of Ireland).

Textual Amendments

F32 S. 6(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 2(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F33 S. 6(1A) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 2(3)**; S.I. 2012/2657, art. 2(4)

F34 Words in s. 6(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 2(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F35 6A. Reimbursement of cost of services provided in another EEA state

(1) The Secretary of State must, on an application made by any person, reimburse to that person the amount of any qualifying EEA expenditure incurred by that person on or after 23 August 2010, but this is subject to subsections (5) and (6), to any limit applicable under subsection (8) and to any deduction applicable under subsection (9).

F36 (1A) **[** But the duty in subsection (1) does not apply where section 6BA applies.**]**

(2) For the purpose of this section, "qualifying EEA expenditure" is expenditure incurred on the provision by an authorised provider, in an EEA state other than the United Kingdom, to a person ordinarily resident in England ("the patient") of a service as respects which condition A or condition B is met.

(3) Condition A is that the service—

(a) was necessary to treat or diagnose a medical condition of the patient,

(b) is the same as or equivalent to a service that the Secretary of State **[**F37, the Board**]** or a responsible authority would make or have made available to the patient under this Act in the circumstances of the patient's case, and

(c) is not a special service.

(4) Condition B is that before the service was provided the Secretary of State had given authorisation under section 6B for the provision of the service to the patient.

(5) The duty in subsection (1) does not apply where the applicant incurred the qualifying expenditure in connection with an arrangement which was entered into by the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.

(6) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 apply.

(7) Subsections (8) and (9) apply where the service is the same as or equivalent to a service that the Secretary of State**[**F38, the Board **]** or a responsible authority would have made available to the patient under this Act in the circumstances of the patient's case.

(8) The Secretary of State may limit the amount of any reimbursement under this section—

(a) in relation to a service other than a dental service, to the cost that the Secretary of State **[**F39, the Board**]** or a responsible authority would have incurred if the

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same or an equivalent service had been made available by **[**F40any of them**]**, and

(b) in relation to a dental service, to the average cost that the Secretary of State **[**F39, the Board**]** or a responsible authority would have incurred if the same or an equivalent service had been made available by **[**F40any of them**]**.

(9) The Secretary of State may deduct from any reimbursement under this section the amount of any NHS charge which would have been payable for the same service or an equivalent service if the service had been made available by the Secretary of State **[**F41, the Board**]** or a responsible authority; and in determining for this purpose the amount of any NHS charge regard shall be had to any entitlement the patient would have had—

(a) to any payment or contribution by virtue of regulations made under section 180(1) or (3), or

(b) to any remission or repayment by virtue of regulations made under section 182.

(10) The Secretary of State may determine—

(a) the form in which an application under this section must be made, and

(b) the information to be provided in support of the application.

(11) In this section and section 6B—

"authorised provider", in relation to any service provided in an EEA state other than the United Kingdom, means a person who is lawfully providing that service;

"NHS charge" means a charge payable under regulations made under section 172(1), 176(1) or 179(1);

"responsible authority" means, in relation to a patient, a F42... F43... **[**F44a local authority or clinical commissioning group**]** responsible under or by virtue of this Act for providing or **[**F45arranging for**]** the provision of services for the benefit of the patient;

"special service" means—

(a) a service that involves a stay in hospital accommodation for at least one night,

(b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation,

(c) dental treatment that involves general anaesthesia or intravenously administered sedation, or

(d) a service whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment;

"service" includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.

Textual Amendments

F35 Ss. 6A, 6B inserted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **2**

F36 S. 6A(1A) inserted (25.10.2013) by The National Health Service (Cross-Border Healthcare) Regulations 2013 (S.I. 2013/2269), regs. 1(1), **7(1)**

F37 Words in s. 6A(3)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F38 Words in s. 6A(7) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F39 Words in s. 6A(8)(a)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F40 Words in s. 6A(8)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F41 Words in s. 6A(9) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F42 Words in s. 6A(11) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(6)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F43 Words in s. 6A(11) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F44 Words in s. 6A(11) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(6)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F45 Words in s. 6A(11) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 3(6)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

6B. Prior authorisation for the purposes of section 6A

(1) A person may apply to the Secretary of State under this section for prior authorisation for the purposes of section 6A in relation to the provision of a service ("the requested service") to a person ordinarily resident in England ("the patient").

(2) The requested service must be—

(a) a special service, or

(b) a service that is neither the same as nor equivalent to a service that the Secretary of State **[**F46, the Board**]** or a responsible authority would make available to the patient under this Act in the circumstances of the patient's case.

(3) The Secretary of State may determine—

(a) the form in which an application under this section must be made, and

(b) the information to be provided in support of the application.

(4) The Secretary of State—

(a) must authorise the provision of the requested service if it is a special service and the conditions in subsection (5) are met, and

(b) may authorise the provision of the requested service in any other case where the requested service is necessary to treat or diagnose a medical condition of the patient.

(5) The conditions referred to in subsection (4)(a) are—

(a) that the requested service is necessary to treat or diagnose a medical condition of the patient,

(b) that the requested service is the same as or equivalent to a service that the Secretary of State **[**F47, the Board**]** or a responsible authority would make available to the patient in the circumstances of the patient's case, and

(c) that the Secretary or State **[**F47, the Board**]** or a responsible authority cannot provide to the patient a service that is the same as or equivalent to the requested service within a period of time that is acceptable on the basis of medical evidence as to the patient's clinical needs, taking into account the patient's

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state of health at the time the decision under this section is made and the probable course of the medical condition to which the service relates.

(6) The matters to which the Secretary of State is to have regard in determining for the purpose of subsection (5)(c) whether the length of any delay is acceptable include—

(a) the patient's medical history,

(b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate,

(c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks, and

(d) the extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.

(7) Any authorisation under this section must be in writing.**]**

Textual Amendments

F35 Ss. 6A, 6B inserted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **2**

F46 Words in s. 6B(2)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 4(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F47 Words in s. 6B(5)(b)(c) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 4(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F48 6BA Reimbursement of cost of services provided in another EEA state where expenditure incurred on or after 25 October 2013.

(1) This section applies where expenditure is incurred by a person on or after 25October 2013 (but see subsections (9) and (14)).

(2) The Secretary of State must, on an application made by the person, reimburse to that person the amount of the qualifying EEA expenditure incurred by that person, but this is subject to subsections (8) and (9), to any limit applicable under subsection (11) and to any deduction applicable under subsection (12).

(3) For the purpose of this section, "qualifying EEA expenditure" is expenditure incurred on the provision by an authorised provider, in an EEA state other than the United Kingdom, to a person ordinarily resident in England ("the patient") of a service as respects which condition A or condition B is met.

(4) Condition A is that the service—

(a) was necessary to treat or diagnose a medical condition of the patient, and

(b) is the same as or equivalent to a service that the Secretary of State, the Board or a responsible authority would make or have made available to the patient under this Act in the circumstances of the patient's case.

(5) But in the case of a service which, although meeting the requirements in paragraphs (a) and (b) of subsection (4), falls within subsection (6), condition A is only met if, before the service was provided, the Secretary of State had given authorisation under section 6BB for the provision of the service to the patient.

(6) A service falls within this subsection if—

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(a) it is subject to planning requirements relating to the objective of ensuring sufficient and permanent access to a balanced range of high quality treatment or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources, and—

(i) it involves a stay in hospital accommodation for at least one night, or

(ii) it requires the use of highly specialised and cost-intensive medical infrastructure or medical equipment;

(b) it involves treatments presenting a particular risk for the patient or the population; or

(c) it is provided by a healthcare provider that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of a service which is subject to European Union legislation ensuring a minimum level of safety and quality throughout the European Union.

(7) Condition B is that, before the service was provided, the Secretary of State had given authorisation under section 6BB(4)(b) for the provision of the service to the patient.

(8) The duty in subsection (2) does not apply where the applicant incurred the qualifying EEA expenditure in connection with an arrangement which was entered into by the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.

(9) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No 883/2004 applies.

(10) Subsections (11) and (12) apply where the service is the same as or equivalent to a service that the Secretary of State, the Board or a responsible authority would have made available to the patient under this Act in the circumstances of the patient's case.

(11) The Secretary of State may limit the amount of any reimbursement under this section to the cost that the Secretary of State, the Board or a responsible authority would have incurred if the same or an equivalent service had been made available by any of them.

(12) The Secretary of State may deduct from any reimbursement under this section the amount of any NHS charge which would have been payable for the same service or an equivalent service if the service had been made available by the Secretary of State, the Board or a responsible authority; and in determining for this purpose the amount of any NHS charge regard shall be had to any entitlement the patient would have had—

(a) to any payment or contribution by virtue of regulations made under section 180(1) or (3), or

(b) to any remission or repayment by virtue of regulations made under section 182.

(13) The Secretary of State may determine—

(a) the form in which an application under this section must be made, and

(b) the information to be provided in support of the application.

(14) This section does not apply where expenditure is incurred in Iceland, Liechtenstein or Norway before Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare applies to those states in accordance with the EEA Agreement.

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(15) In this section and section 6BB, "authorised provider", "NHS charge", "responsible authority" and "service" each have the meaning given in section 6A.

Textual Amendments

F48 Ss. 6BA, 6BB inserted (25.10.2013) by The National Health Service (Cross-Border Healthcare) Regulations 2013 (S.I. 2013/2269), regs. 1(1), **7(2)**

6BB Prior authorisation for the purposes of section 6BA

(1) A person may apply to the Secretary of State under this section for prior authorisation for the purposes of section 6BA in relation to the provision of a service ("the requested service") to a person ordinarily resident in England ("the patient").

(2) The requested service must be—

(a) a service which falls within section 6BA(6) and meets the requirements in paragraphs (a) and (b) of section 6BA(4), or

(b) a service that is neither the same as nor equivalent to a service that the Secretary of State, the Board or a responsible authority would make available to the patient under this Act in the circumstances of the patient's case.

(3) The Secretary of State may determine—

(a) the form in which an application under this section must be made, and

(b) the information to be provided in support of the application.

(4) The Secretary of State—

(a) must authorise the provision of the requested service if it is a service mentioned in subsection (2)(a) (but see subsection (5)), and

(b) may authorise the provision of the requested service in any case where—

(i) the requested service is necessary to treat or diagnose a medical condition of the patient, and

(ii) the duty in paragraph (a) does not apply.

(5) The duty in subsection (4)(a) does not apply if at least one of the following conditions is met—

(a) the patient will, according to a clinical evaluation, be exposed with reasonable certainty to a patient-safety risk that cannot be regarded as acceptable, taking into account the potential benefit for the patient of the requested service;

(b) the general public will be exposed with reasonable certainty to a substantial safety hazard as a result of the requested service;

(c) the requested service is to be provided by a healthcare provider that raises serious and specific concerns relating to the respect of standards and guidelines on quality of care and patient safety, including provisions on supervision, whether these standards and guidelines are laid down by laws or regulations or through accreditation systems established by the state in which the service will be provided;

(d) the Secretary of State, the Board or a responsible authority can provide to the patient a service that is the same as or equivalent to the requested service within a period of time that is medically justifiable, taking into account the

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patient's state of health at the time the decision under this section is made and the probable course of the medical condition to which the service relates.

(6) The matters to which the Secretary of State is to have regard in determining for the purpose of subsection (5)(d) whether the length of any delay is medically justifiable include—

(a) the patient's medical history,

(b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate,

(c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks, and

(d) the extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.

(7) Any authorisation under this section must be in writing.**]**

Textual Amendments

F48 Ss. 6BA, 6BB inserted (25.10.2013) by The National Health Service (Cross-Border Healthcare) Regulations 2013 (S.I. 2013/2269), regs. 1(1), **7(2)**

[F49 Regulations as to the exercise of functions

Textual Amendments

F49 S. 6C and cross-heading inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 18(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

6C Regulations as to the exercise by local authorities of certain public health functions

(1) Regulations may require a local authority to exercise any of the public health functions of the Secretary of State (so far as relating to the health of the public in the authority's area) by taking such steps as may be prescribed.

(2) Regulations may require a local authority to exercise its public health functions by taking such steps as may be prescribed.

(3) Where regulations under subsection (1) require a local authority to exercise any of the public health functions of the Secretary of State, the regulations may also authorise or require the local authority to exercise any prescribed functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).

(4) The making of regulations under subsection (1) does not prevent the Secretary of State from taking any step that a local authority is required to take under the regulations.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a local authority of any of its functions under regulations under subsection (1) are enforceable by or against the local authority (and no other person).

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(6) In this section, "local authority" has the same meaning as in section 2B.**]**

Modifications etc. (not altering text)

C7 S. 6C(2) applied (with modifications) (30.11.2017) by The Greater Manchester Combined Authority (Public Health Functions) Order 2017 (S.I. 2017/1180), arts. 1, **4**

[F50 6D Regulations relating to EU obligations

(1) Regulations may require the Board or a clinical commissioning group to exercise a specified EU health function.

(2) In subsection (1)—

(a) "EU health function" means any function exercisable by the Secretary of State for the purpose of implementing EU obligations that concern, or are connected to, the health service, other than a function of making subordinate legislation (within the meaning of the Interpretation Act 1978), and

(b) "specified" means specified in the regulations.

(3) The Secretary of State may give directions to the Board or a clinical commissioning group about its exercise of any of its functions under regulations under subsection (1).

(4) The making of regulations under subsection (1) does not prevent the Secretary of State from exercising the specified EU health function.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board or a clinical commissioning group of any of its functions under regulations under subsection (1) are enforceable by or against the Board or (as the case may be) the group (and no other person).

(6) The Secretary of State may, for the purpose of securing compliance by the United Kingdom with EU obligations, give directions to the Board or a clinical commissioning group about the exercise of any of its functions.**]**

Textual Amendments

F50 S. 6D inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 19**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F51 6E Regulations as to the exercise of functions by the Board or clinical commissioning groups

(1) Regulations may impose requirements (to be known as "standing rules") in accordance with this section on the Board or on clinical commissioning groups.

(2) The regulations may, in relation to the commissioning functions of the Board or clinical commissioning groups, make provision—

(a) requiring the Board or clinical commissioning groups to arrange for specified treatments or other specified services to be provided or to be provided in a specified manner or within a specified period;

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(b) as to the arrangements that the Board or clinical commissioning groups must make for the purpose of making decisions as to—

(i) the treatments or other services that are to be provided;

(ii) the manner in which or period within which specified treatments or other specified services are to be provided;

(iii) the persons to whom specified treatments or other specified services are to be provided;

(c) as to the arrangements that the Board or clinical commissioning groups must make for enabling persons to whom specified treatments or other specified services are to be provided to make choices with respect to specified aspects of them.

(3) Regulations by virtue of paragraph (b) of subsection (2) may, in particular, make provision—

(a) requiring the Board or a clinical commissioning group to take specified steps before making decisions as to the matters mentioned in that paragraph;

(b) as to reviews of, or appeals from, such decisions.

(4) The regulations may—

(a) specify matters for which provision must be made in commissioning contracts entered into by the Board or clinical commissioning groups;

(b) require the Board to draft terms and conditions making provision for those matters;

(c) require the Board or clinical commissioning groups to incorporate the terms and conditions drafted by virtue of paragraph (b) in commissioning contracts entered into by the Board or (as the case may be) clinical commissioning groups.

(5) The regulations must—

(a) require the Board to draft such terms and conditions as the Board considers are, or might be, appropriate for inclusion in commissioning contracts entered into by the Board or clinical commissioning groups (other than terms and conditions that the Board is required to draft by virtue of subsection (4)(a));

(b) authorise the Board to require clinical commissioning groups to incorporate terms and conditions prepared by virtue of paragraph (a) in their commissioning contracts;

(c) authorise the Board to draft model commissioning contracts.

(6) The regulations may require the Board to consult prescribed persons before exercising any of its functions by virtue of subsection (4)(b) or (5).

(7) The regulations may require the Board or clinical commissioning groups in the exercise of any of its or their functions—

(a) to provide information of a specified description to specified persons in a specified manner;

(b) to act in a specified manner for the purpose of securing compliance with EU obligations;

(c) to do such other things as the Secretary of State considers necessary for the purposes of the health service.

(8) The regulations may not impose a requirement on only one clinical commissioning group.

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(9) If regulations under this section are made so as to come into force on a day other than 1 April, the Secretary of State must—

(a) publish a statement explaining the reasons for making the regulations so as to come into force on such a day, and

(b) lay the statement before Parliament.

(10) In this section—

(a) "commissioning contracts", in relation to the Board or clinical commissioning groups, means contracts entered into by the Board or (as the case may be) clinical commissioning groups in the exercise of its or their commissioning functions;

(b) "commissioning functions", in relation to the Board or clinical commissioning groups, means the functions of the Board or (as the case may be) clinical commissioning groups in arranging for the provision of services as part of the health service;

(c) "specified" means specified in the regulations.**]**

Textual Amendments

F51 S. 6E inserted (27.3.2012 for specified purposes, 1.2.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 20(1)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4)

[F52Functions of Special Health Authorities]

Textual Amendments

F52 S. 7 cross-heading and heading substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(4)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

7 [F52Functions of Special Health Authorities]

[F53(1) The Secretary of State may direct a Special Health Authority to exercise any functions of the Secretary of State or any other person which relate to the health service in England and are specified in the direction.

(1A) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(1B) Before exercising the power in subsection (1) in relation to a function of a person other than the Secretary of State, the Secretary of State must consult that person.

(1C) Regulations may provide that a Special Health Authority specified in the regulations is to have such additional functions in relation to the health service in England as may be so specified.**]**

F54(2) . . . . . .

F54(3) . . . . . .

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Textual Amendments

F53 S. 7(1)-(1C) substituted for s. 7(1) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F54 S. 7(2)(3) omitted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 21(3)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

Modifications etc. (not altering text)

C8 S. 7(1) modified (temp.) (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 paras. 3-6**; S.I. 2012/1831, art. 2(2)

[F55 Exercise of Secretary of State's public health functions

Textual Amendments

F55 S. 7A and cross-heading inserted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 22**, 306(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

7A Exercise of Secretary of State's public health functions

(1) The Secretary of State may arrange for a body mentioned in subsection (2) to exercise any of the public health functions of the Secretary of State.

(2) Those bodies are—

(a) the Board;

(b) a clinical commissioning group;

(c) a local authority (within the meaning of section 2B),

[a combined authority.**]**

F56(d)

(3) The power conferred by subsection (1) includes power to arrange for such a body to exercise any functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).

(4) Where the Secretary of State arranges (under subsection (1)) for the Board to exercise a function, the Board may arrange for a clinical commissioning group **[**F57or a combined authority**]** to exercise that function.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a body mentioned in subsection (2) of any function exercisable by it by virtue of this section are enforceable by or against that body (and no other person).

(6) Powers under this section may be exercised on such terms as may be agreed, including terms as to payment.**]**

Textual Amendments

F56 S. 7A(2)(d) inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 2(2)**

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F57 Words in s. 7A(4) inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 2(3)**

[F58Directions to certain NHS bodies]

Textual Amendments

F58 S. 8 cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 5(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

8 Secretary of State's directions to [F59certain] health service bodies

(1) The Secretary of State may give directions to any of the bodies mentioned in subsection (2) about its exercise of any functions.

(2) The bodies are—

F60(a) . . . . . .

F61(b) . . . . . .

(c) NHS trusts, and

(d) Special Health Authorities.

(3) Nothing in provision made by or under this or any other Act affects the generality of subsection (1).

Textual Amendments

F59 Word in s. 8 heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 5(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F60 S. 8(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 5(1)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F61 S. 8(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 5(1)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

NHS contracts

9 NHS contracts

(1) In this Act, an NHS contract is an arrangement under which one health service body ("the commissioner") arranges for the provision to it by another health service body ("the provider") of goods or services which it reasonably requires for the purposes of its functions.

(2) Section 139(6) (NHS contracts and the provision of local pharmaceutical services under pilot schemes) makes further provision about acting as commissioner for the purposes of subsection (1).

(3) Paragraph 15 of Schedule 4 (NHS trusts and NHS contracts) makes further provision about an NHS trust acting as provider for the purposes of subsection (1).

(4) "Health service body" means any of the following—

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[F62(za) the Board,

(zb) a clinical commissioning group,**]**

F63(a) . . . . . .

F64(b) . . . . . .

(c) an NHS trust,

(d) a Special Health Authority,

(e) a Local Health Board,

(f) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),

[F65(fa) a Special Health Board constituted under that section,**]**

(g) a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

(h) the Common Services Agency for the Scottish Health Service,

(i) the Wales Centre for Health,

F66(j) . . . . . .

[F67(k) the Care Quality Commission,**]**

[F68(ka) NICE,**]**

[F69(kb) the Health and Social Care Information Centre,**]**

[F70(kc) Health Education England,**]**

(l) the Scottish Dental Practice Board,

(m) the Secretary of State,

(n) the Welsh Ministers,

[F71(na) the Scottish Ministers,

(nb) Healthcare Improvement Scotland,**]**

(o) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972,

(p) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),

(q) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),

(r) the Department of Health, Social Services and Public Safety.

(5) Whether or not an arrangement which constitutes an NHS contract would apart from this subsection be a contract in law, it must not be regarded for any purpose as giving rise to contractual rights or liabilities.

(6) But if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under this section.

(7) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—

(a) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement, or

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(b) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,

that health service body may refer the terms of the proposed arrangement to the Secretary of State for determination under this section.

(8) Where a reference is made to the Secretary of State under subsection (6) or (7), he may determine the matter himself or appoint a person to consider and determine it in accordance with regulations.

(9) "The appropriate person" means the Secretary of State or the person appointed under subsection (8).

(10) By the determination of a reference under subsection (7) the appropriate person may specify terms to be included in the proposed arrangement and may direct that it be proceeded with.

(11) A determination of a reference under subsection (6) may contain such directions (including directions as to payment) as the appropriate person considers appropriate to resolve the matter in dispute.

(12) The appropriate person may by the determination in relation to an NHS contract vary the terms of the arrangement or bring it to an end (but this does not affect the generality of the power of determination under subsection (6)).

(13) Where an arrangement is so varied or brought to an end—

(a) subject to paragraph (b), the variation or termination must be treated as being effected by agreement between the parties, and

(b) the directions included in the determination by virtue of subsection (11) may contain such provisions as the appropriate person considers appropriate in order to give effect to the variation or to bring the arrangement to an end.

Textual Amendments

F62 S. 9(4)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(a)**; S.I. 2012/1831, art. 2(2)

F63 S. 9(4)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F64 S. 9(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 6(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F65 S. 9(4)(fa) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 6(a)**; S.I. 2012/2657, art. 2(4)

F66 S. 9(4)(j) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 18**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F67 S. 9(4)(k) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 82**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

F68 S. 9(4)(ka) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F69 S. 9(4)(kb) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 19 para. 9(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F70 S. 9(4)(kc) inserted (1.4.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 5 para. 16**; S.I. 2014/3186, art. 2(f)

F71 S. 9(4)(na)(nb) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 6(b)**; S.I. 2012/2657, art. 2(4)

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Modifications etc. (not altering text)

C9 S. 9 modified (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **103(1)**

C10 S. 9 modified (E.) (7.12.2015) by The National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862), regs. 1(2), **10-12** (with reg. 2)

C11 S. 9 modified (E.) (7.12.2015) by The National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879), regs. 1(2), **9** (with regs. 2, 88)

C12 S. 9(4) modified (temp.) (1.10.2008) by Health and Social Care Act 2008 (Consequential Amendments and Transitory Provisions) Order 2008 (S.I. 2008/2250), arts. 1(1), **3(14)**

C13 S. 9(5) applied (E.) (7.12.2015) by The National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862), regs. 1(2), **84(2)(b)** (with reg. 2)

C14 S. 9(5) applied (E.) (7.12.2015) by The National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879), regs. 1(2), **77(3)(b)** (with regs. 2, 88)

C15 S. 9(12)(13) applied (E.) (7.12.2015) by The National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862), regs. 1(2), **84(2)(a)** (with reg. 2)

C16 S. 9(12)(13) applied (E.) (7.12.2015) by The National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879), regs. 1(2), **77(3)(a)** (with regs. 2, 88)

10 Provision for bodies in Northern Ireland

(1) Subsection (2) applies where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) or a body mentioned in paragraph (o), (p), (q) or (r) of section 9(4) is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in section 9(1), and

(b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)).

(2) Subsections (5) to (13) of section 9 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health, Social Services and Public Safety acting jointly.

[F72 10A Provision for bodies in Scotland

(1) Subsection (2) applies where the Scottish Ministers are, or a body mentioned in paragraph (f), (fa), (h), (l) or (nb) of section 9(4) is, a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in section 9(1), and

(b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978.

(2) Subsections (5) to (13) of section 9 apply in relation to the arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State of references to the Secretary of State and the Scottish Ministers acting jointly.

(3) Subsection (4) applies (and subsection (2) does not apply) where a cross-border Special Health authority is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in section 9(1), and

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(b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978 and the definition of NHS contract in section 7(1) of the National Health Service (Wales) Act 2006.

(4) Subsections (5) to (13) of section 9 apply in relation to that arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State—

(a) where the cross-border Special Health Authority is exercising functions in relation to England only, of references to the Secretary of State and the Scottish Ministers acting jointly; and

(b) where the Authority is exercising functions in relation to England and Wales, of references to the Secretary of State and the Welsh Ministers acting concurrently with each other and jointly with the Scottish Ministers.

(5) In subsections (3) and (4), "cross-border Special Health Authority" means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—

(a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or

(b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together.**]**

Textual Amendments

F72 S. 10A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 7**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

11 Arrangements to be treated as NHS contracts

(1) This section applies to any arrangement under which **[**F73the Board,**]**F74... F75... or such other health service body as may be prescribed arrange for the provision to it—

(a) by a contractor under a general ophthalmic services contract,

(b) by a person on an ophthalmic list,

(c) by a person on a pharmaceutical list, or

(d) by a person who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978 (c. 29),

of the goods or services mentioned in subsection (2).

(2) The goods or services are those that the body reasonably requires for the purposes of its functions, other than functions under—

(a) section 115 (primary ophthalmic services),

(b) Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes), or

(c) Part 6 of, or Chapter 1 or 2 of Part 7 of, the National Health Service (Wales) Act 2006 (c. 42) (general ophthalmic services and pharmaceutical services and local pharmaceutical services under pilot schemes).

(3) Any such arrangement must be treated as an NHS contract for the purposes of section 9 (other than subsections (7) and (10)).

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(4) "Health service body" means a body which is a health service body for the purposes of section 9.

(5) "Ophthalmic list" means a list published in accordance with regulations made under—

(a) section 72(1)(a) of the National Health Service (Wales) Act 2006,

(b) section 26(2)(a) of the National Health Service (Scotland) Act 1978, or

(c) Article 62(2)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

(6) The reference to a list published in accordance with regulations made under paragraph (a) of section 26(2) of the National Health Service (Scotland) Act 1978 is a reference to the first part of the list (referred to in sub-paragraph (i) of that paragraph) which is published in accordance with regulations under that paragraph.

(7) "Pharmaceutical list" includes a list published in accordance with regulations made under—

(a) section 83(2)(a) of the National Health Service (Wales) Act 2006, or

(b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

Textual Amendments

F73 Words in s. 11(1) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 7(a)**; S.I. 2012/1831, art. 2(2)

F74 Words in s. 11(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 7(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F75 Words in s. 11(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 7(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C17 S. 11 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), Sch. 3 paras. 2, **3** (with Sch. 3 Pt. 1)

[F76 Arrangements with other bodies]

Textual Amendments

F76 S. 12 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(7)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

12 Secretary of State's arrangements with other bodies

(1) The Secretary of State may arrange with any person or body to provide, or assist in providing, **[**F77anything which the Secretary of State has a duty or power to provide, or arrange for the provision of, under section 2A or 2B or Schedule 1**]**.

[F78(2) The bodies with whom arrangements may be made under subsection (1) include—

(a) the Board,

(b) clinical commissioning groups,

(c) any other public authorities, and

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(d) voluntary organisations.**]**

[F79(3) The Secretary of State may make available any facilities provided by the Secretary of State under section 2A or 2B or Schedule 1 to any service provider or to any eligible voluntary organisation.

(3A) In subsection (3)—

"eligible voluntary organisation" means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;

"service provider" means a person or body with whom the Secretary of State has made an arrangement under subsection (1).**]**

(4) Where facilities are made available under subsection (3), the Secretary of State may make available the services of any person employed in connection with the facilities by—

(a) the Secretary of State,

[F80(aa) the Board,

(ab) a clinical commissioning group,

(ac) a local authority,**]**

F81(b) . . . . . .

F82(c) . . . . . .

(d) a Special Health Authority, or

(e) a Local Health Board.

[F83(4A) In subsection (4), "local authority" has the same meaning as in section 2B.**]**

(5) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Secretary of State.

(6) Goods or materials may be made available either temporarily or permanently.

(7) Any power to supply goods or materials under this section includes—

(a) a power to purchase and store them, and

(b) a power to arrange with third parties for the supply of goods or materials by those third parties.

Textual Amendments

F77 Words in s. 12(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F78 S. 12(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F79 S. 12(3)(3A) substituted for s. 12(3) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F80 S. 12(4)(aa)-(ac) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(5)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F81 S. 12(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(5)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F82 S. 12(4)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(5)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F83 S. 12(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 8(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F84 12ZA Commissioning arrangements by the Board or clinical commissioning groups

(1) This section applies in relation to arrangements made by the Board or a clinical commissioning group in the exercise of functions under section 3, 3A, 3B or 4 or Schedule 1.

(2) The arrangements may be made with any person or body (including public authorities and voluntary organisations).

(3) If the Board or a clinical commissioning group arranges for the provision of facilities by a service provider, it may also make arrangements for those facilities to be made available to another service provider or to an eligible voluntary organisation.

(4) The Board or a clinical commissioning group may make available any of its facilities to—

(a) a service provider, or

(b) an eligible voluntary organisation.

(5) Where facilities are made available under subsection (4) any of the following persons may make available the services of any employee of that person who is employed in connection with the facilities—

(a) the Secretary of State,

(b) the Board,

(c) a clinical commissioning group,

(d) a Special Health Authority, or

(e) a Local Health Board.

(6) Goods or materials may be made available under this section either temporarily or permanently.

(7) Any power to supply goods or materials under this section includes—

(a) a power to purchase or store them, and

(b) a power to arrange with third parties for the supply of goods or materials by those third parties.

(8) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments.

(9) In this section—

"eligible voluntary organisation" means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;

"service provider" means a person or body with whom the Board or a clinical commissioning group has made arrangements in the exercise of the functions mentioned in subsection (1).**]**

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Textual Amendments

F84 S. 12ZA inserted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 9**; S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F85 Direct payments for health care

Textual Amendments

F85 Ss. 12A-12D and cross-heading inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 11**, 40(1); S.I. 2010/30, art. 2(b)

12A Direct payments for health care

(1) The Secretary of State **[**F86, the Board, a clinical commissioning group or a local authority**]** may, for the purpose of securing the provision to a patient of anything to which this subsection applies, make payments, with the patient's consent, to the patient or to a person nominated by the patient.

(2) Subsection (1) applies to—

[F87(a) anything that the Secretary of State or a local authority has a duty or power to provide or arrange under section 2A or 2B or Schedule 1;**]**

[F88(aa) anything that the Board or a clinical commissioning group may or must arrange for the provision of under this Act or any other enactment.**]**

F89(b) . . . . . .

F89(c) . . . . . .

(3) Subsection (1) is subject to any provision made by regulations under section 12B.

(4) If regulations so provide, **[**F90a clinical commissioning group**]** may, for the purpose of securing the provision for a patient of services that **[**F91the group**]** must provide under section 117 of the Mental Health Act 1983 (after-care), make payments, with the patient's consent, to the patient or to a person nominated by the patient **[**F92; and the references in this subsection to a clinical commissioning group are, so far as necessary for the purposes of regulations under subsection (2E) of that section, to be read as references to the Board.**]**

(5) A payment under subsection (1) F93... is referred to in this Part as a "direct payment".

F94(6) . . . . . .

[In this section and sections 12B to 12D, "local authority" has the same meaning as F95(7) in section 2B.**]**

Textual Amendments

F86 Words in s. 12A(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F87 S. 12A(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F88 S. 12A(2)(aa) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F89 S. 12A(2)(b)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F90 Words in s. 12A(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F91 Words in s. 12A(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F92 Words in s. 12A(4) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(4)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F93 Words in s. 12A(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F94 S. 12A(6) repealed (E.) (1.8.2013) by The National Health Service (Direct Payments) (Repeal of Pilot Schemes Limitation) Order 2013 (S.I. 2013/1563), arts. 1, **2**

F95 S. 12A(7) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 10(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

12B Regulations about direct payments

(1) The Secretary of State may make regulations about direct payments.

(2) The regulations may in particular make provision—

(a) as to circumstances in which, and descriptions of persons and services in respect of which, direct payments may or must be made;

(b) as to circumstances in which direct payments may or must be made to a person nominated by the patient;

(c) as to the making of direct payments (and, in particular, as to persons to whom payments may or must be made) where the patient lacks capacity to consent to the making of the payments;

(d) as to conditions that the Secretary of State **[**F96, the Board, a clinical commissioning group or a local authority**]** must comply with before, after or at the time of making a direct payment;

(e) as to conditions that the patient or (if different) the payee may or must be required to comply with before, after, or at the time when a direct payment is made;

(f) as to the amount of any direct payment or how it is to be calculated;

(g) as to circumstances in which the Secretary of State **[**F97, the Board, a clinical commissioning group or a local authority**]** may or must stop making direct payments;

(h) as to circumstances in which the Secretary of State **[**F98, the Board, a clinical commissioning group or a local authority**]** may or must require all or part of a direct payment to be repaid, by the payee or otherwise;

(i) as to monitoring of the making of direct payments, of their use by the payee, or of services which they are used to secure;

(j) as to arrangements to be made by the Secretary of State **[**F99, the Board, a clinical commissioning group or a local authority**]** for providing patients, payees or their representatives with information, advice or other support in connection with direct payments;

(k) for such support to be treated to any prescribed extent as a service in respect of which direct payments may be made.

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(3) If the regulations make provision in the case of a person who lacks capacity to consent to direct payments being made, they may apply that provision, or make corresponding provision, with or without modifications, in the case of a person who has lacked that capacity but no longer does so (whether because of fluctuating capacity, or regaining or gaining capacity).

(4) The regulations may provide for a sum which must be repaid to the Secretary of State **[**F100, the Board, a clinical commissioning group or a local authority**]** by virtue of a condition or other requirement imposed by or under the regulations to be recoverable as a debt due to the Secretary of State **[**F101the Board, a clinical commissioning group or a local authority (as the case may be)**]**.

(5) The regulations may make provision—

(a) for a service in respect of which a direct payment has been made under section 12A(1) to be regarded, only to such extent and subject to such conditions as may be prescribed, as provided or arranged for by the Secretary of State **[**F102or a local authority or as arranged for by the Board or a clinical commissioning group (as the case may be)**]** under an enactment mentioned in section 12A(2);

(b) displacing functions or obligations of **[**F103the Board, a clinical commissioning group or a local authority with respect to the arrangement for the provision of**]** after-care services under section 117 of the Mental Health Act 1983, only to such extent and subject to such conditions as may be prescribed.

(6) In this section—

(a) "service" includes anything in respect of which direct payments may be made;

(b) references to a person lacking capacity are references to a person lacking capacity within the meaning of the Mental Capacity Act 2005.

Textual Amendments

F96 Words in s. 12B(2)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F97 Words in s. 12B(2)(g) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F98 Words in s. 12B(2)(h) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F99 Words in s. 12B(2)(j) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F100 Words in s. 12B(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F101 Words in s. 12B(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F102 Words in s. 12B(5)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F103 Words in s. 12B(5)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 11(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

12C Direct payments pilot schemes

F104(1) . . . . . .

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F104(2) . . . . . .

F104(3) . . . . . .

F104(4) . . . . . .

(5) Provision as to the review of a pilot scheme may in particular include provision—

(a) for a review to be carried out by an independent person;

(b) for publication of the findings of a review;

(c) as to matters to be considered on a review.

(6) Those matters may in particular include any of the following—

(a) the administration of the scheme;

(b) the effect of direct payments on the cost or quality of care received by patients;

(c) the effect of direct payments on the behaviour of patients, carers or persons providing services in respect of which direct payments are made.

(7) After any review of one or more pilot schemes, the Secretary of State may make an order under subsection (8) or (10).

(8) An order under this subsection is an order making provision for either or both of the following—

(a) repealing section 12A(6) and subsections (1) to (4) of this section;

(b) amending, repealing, or otherwise modifying any other provision of this Act.

(9) An order may make provision within subsection (8)(b) only if it appears to the Secretary of State to be necessary or expedient for the purpose of facilitating the exercise of the powers conferred by section 12A(1) or by regulations under section 12A(4).

(10) An order under this subsection is an order repealing sections 12A, 12B, 12D and this section.

Textual Amendments

F104 Ss. 12C(1)-(4) repealed (E.) (1.8.2013) by The National Health Service (Direct Payments) (Repeal of Pilot Schemes Limitation) Order 2013 (S.I. 2013/1563), arts. 1, **2**

12D Arrangements with other bodies relating to direct payments

(1) The Secretary of State **[**F105, the Board, a clinical commissioning group or a local authority**]** may arrange with any person or body to give assistance in connection with direct payments.

(2) Arrangements may be made under subsection (1) with voluntary organisations.

(3) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by the Secretary of State **[**F106, the Board, a clinical commissioning group or a local authority**].]**

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Textual Amendments

F105 Words in s. 12D(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 12(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F106 Words in s. 12D(3) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 12(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F107 Miscellaneous

Textual Amendments

F107 S. 12E and cross-heading inserted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 147**, 306(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

12E Secretary of State's duty as respects variation in provision of health services

(1) The Secretary of State must not exercise the functions mentioned in subsection (2) for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

(a) whether the persons in question are in the public or (as the case may be) private sector, or

(b) some other aspect of their status.

(2) The functions mentioned in this subsection are the functions of the Secretary of State under—

(a) sections 6E and 13A, and

(b) section 75 of the Health and Social Care Act 2012 (requirements as to procurement, patient choice and competition).**]**

PART 2

HEALTH SERVICE BODIES

[F108 CHAPTER A1

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Textual Amendments

F108 Pt. 2 Ch. A1 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 23(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Secretary of State's mandate to the Board

13A Mandate to Board

(1) Before the start of each financial year, the Secretary of State must publish and lay before Parliament a document to be known as "the mandate".

(2) The Secretary of State must specify in the mandate—

(a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Secretary of State considers appropriate, and

(b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives.

(3) The Secretary of State must also specify in the mandate the amounts that the Secretary of State has decided to specify in relation to the financial year for the purposes of section 223D(2) and (3) (limits on capital and revenue resource use).

(4) The Secretary of State may specify in the mandate any proposals that the Secretary of State has as to the amounts that the Secretary of State will specify in relation to subsequent financial years for the purposes of section 223D(2) and (3).

(5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board's performance in relation to the first financial year to which the mandate relates.

(6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board's functions in relation to only one clinical commissioning group.

(7) The Board must—

(a) seek to achieve the objectives specified in the mandate, and

(b) comply with any requirements so specified.

(8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—

(a) the Board,

(b) the Healthwatch England committee of the Care Quality Commission, and

(c) such other persons as the Secretary of State considers appropriate.

(9) Requirements included in the mandate have effect only if regulations so provide.

13B The mandate: supplemental provision

(1) The Secretary of State must keep the Board's performance in achieving any objectives or requirements specified in the mandate under review.

(2) If the Secretary of State varies the amount specified for the purposes of section 223D(2) or (3), the Secretary of State must revise the mandate accordingly.

(3) The Secretary of State may make any other revision to the mandate only if—

(a) the Board agrees to the revision,

(b) a parliamentary general election takes place, or

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(c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.

(4) Revisions to the mandate which consist of adding, omitting or modifying requirements have effect only if regulations so provide.

(5) If the Secretary of State revises the mandate, the Secretary of State must—
(a) publish the mandate (as so revised), and
(b) lay it before Parliament, together with an explanation of the reasons for making the revision.

General duties of the Board

13C Duty to promote NHS Constitution

(1) The Board must, in the exercise of its functions—
(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, "patients" and "staff" have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

13D Duty as to effectiveness, efficiency etc.

The Board must exercise its functions effectively, efficiently and economically.

13E Duty as to improvement in quality of services

(1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
(a) the prevention, diagnosis or treatment of illness, or
(b) the protection or improvement of public health.

(2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
(a) the effectiveness of the services,
(b) the safety of the services, and
(c) the quality of the experience undergone by patients.

(4) In discharging its duty under subsection (1), the Board must have regard to—
(a) any document published by the Secretary of State for the purposes of this section, and
(b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

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13F Duty as to promoting autonomy

(1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service—

(a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and

(b) that unnecessary burdens are not imposed on any such person.

(2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

13G Duty as to reducing inequalities

The Board must, in the exercise of its functions, have regard to the need to—

(a) reduce inequalities between patients with respect to their ability to access health services, and

(b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

13H Duty to promote involvement of each patient

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

(a) the prevention or diagnosis of illness in the patients, or

(b) their care or treatment.

13I Duty as to patient choice

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

13J Duty to obtain appropriate advice

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness, and

(b) the protection or improvement of public health.

13K Duty to promote innovation

(1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

(2) The Board may make payments as prizes to promote innovation in the provision of health services.

(3) A prize may relate to—

(a) work at any stage of innovation (including research);

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(b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

13L Duty in respect of research

The Board must, in the exercise of its functions, promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research.

13M Duty as to promoting education and training

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

13N Duty as to promoting integration

(1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes that are achieved from their provision),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—

(a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or

(b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).

(4) In this section—

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the

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Local Authority Social Services Act 1970 **[**F109or for the purposes of the Social Services and Well-being (Wales) Act 2014**]**).

[For the purposes of this section, the provision of housing accommodation is a health-
F110(5) related service.**]**

Textual Amendments

F109 Words in s. 13N(4) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **238**

F110 S. 13N(5) inserted (1.4.2015) by Care Act 2014 (c. 23), **ss. 3(6)**, 127(1); S.I. 2015/993, art. 2(a) (with transitional provisions in S.I. 2015/995)

13O Duty to have regard to impact on services in certain areas

(1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.

(2) In this section, "commissioning decisions", in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

13P Duty as respects variation in provision of health services

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

(a) whether the persons in question are in the public or (as the case may be) private sector, or

(b) some other aspect of their status.

Public involvement

13Q Public involvement and consultation by the Board

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions ("commissioning arrangements").

(2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the Board,

(b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

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(3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

F111 **[** (4) This section does not require the Board to make arrangements in relation to matters to which a trust special administrator's report or draft report under section 65F or 65I relates before the Secretary of State makes a decision under section 65K(1), is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9) (as the case may be).**]**

Textual Amendments

F111 S. 13Q(4) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(15)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

Functions in relation to information

13R Information on safety of services provided by the health service

(1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.

(2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.

(3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).

(4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.

(5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4).

(6) A clinical commissioning group must have regard to any advice or guidance given to it under subsection (4).

(7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board's functions under this section.

(8) Arrangements made under subsection (7) do not affect the liability of the Board for the exercise of any of its functions.

13S Guidance in relation to processing of information

(1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—

(a) patient information, and

(b) any other information obtained or generated in the course of the provision of the health service.

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(2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.

(3) In this section, "patient information", "processing" and "registered person" have the same meaning as in section 20A of the Health and Social Care Act 2008.

Business plan and report

13T Business plan

(1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.

(2) The business plan must, in particular, explain how the Board proposes to discharge its duties under—

(a) sections 13E, 13G and 13Q, and

(b) sections 223C to 223E.

(3) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates.

(4) The Board may revise the plan.

(5) The Board must publish any revised plan.

13U Annual report

(1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.

(2) The annual report must, in particular, contain an assessment of—

(a) the extent to which it met any objectives or requirements specified in the mandate for that year,

(b) the extent to which it gave effect to the proposals for that year in its business plan, and

(c) how effectively it discharged its duties under sections 13E, 13G and 13Q.

(3) The Board must—

(a) lay the annual report before Parliament, and

(b) once it has done so, send a copy of it to the Secretary of State.

(4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State's assessment of the Board's performance of its functions in the financial year in question.

(5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).

(6) The Secretary of State must—

(a) publish the letter to the Board, and

(b) lay it before Parliament.

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Additional powers

13V Establishment of pooled funds

(1) The Board and one or more clinical commissioning groups may establish and maintain a pooled fund.

(2) A pooled fund is a fund—

(a) which is made up of contributions by the bodies which established it, and

(b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.

(3) In this section, "commissioning functions" means functions in arranging for the provision of services as part of the health service.

13W Board's power to generate income, etc.

(1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.

(2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions.

13X Power to make grants etc.

(1) The Board may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the Board has functions.

(2) The payments may be made subject to such terms and conditions as the Board considers appropriate.

13Y Board's incidental powers: further provision

The power conferred on the Board by section 2 includes, in particular, power to—

(a) enter into agreements,

(b) acquire and dispose of property, and

(c) accept gifts (including property to be held on trust for the purposes of the Board).

Exercise of functions of Board

13Z Exercise of functions

(1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act.

(2) The Board may arrange for any such function to be exercised by or jointly with—

(a) a Special Health Authority,

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(b) a clinical commissioning group, or

(c) such other body as may be prescribed.

(3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.

(4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body.

(5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.

(6) Arrangements made under this section do not affect the liability of the Board for the exercise of any of its functions.

[F112(7) This section is subject to sections 13ZA and 13ZB in the case of arrangements that are devolved arrangements (within the meaning of section 13ZA).**]**

Textual Amendments

F112 S. 13Z(7) inserted (28.1.2016 for specified purposes) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 3**

[F113 13ZA Section 13Z: further provision in relation to devolved arrangements

(1) This section applies to arrangements under section 13Z(2) for one or more functions of the Board to be exercised in relation to a particular area by or jointly with a relevant prescribed body ("devolved arrangements").

(2) "Relevant prescribed body" means a body prescribed under section 13Z(2)(c) that is either—

(a) a combined authority whose area includes the whole or part of the area to which the arrangements relate, or

(b) a local authority (within the meaning of section 2B) whose area includes the whole or part of that area.

(3) The power of the Board under section 13Z(2) to enter into devolved arrangements in relation to any functions includes power to arrange for such functions to be exercised in relation to the area to which the arrangements relate—

(a) by the relevant prescribed body jointly with one or more other eligible bodies;

(b) jointly with the Board, the relevant prescribed body and one or more other eligible bodies.

(4) A body is an "eligible body" if it—

(a) falls within paragraph (a), (b) or (c) of section 13Z(2), and

(b) exercises functions in relation to the area to which the arrangements relate.

(5) Where, by virtue of subsection (3), the Board enters into devolved arrangements with a relevant prescribed body and one or more eligible bodies, at least one of those eligible bodies must be a clinical commissioning group.

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(6) Where, by virtue of subsection (3), one or more eligible bodies are a party to devolved arrangements, the power under section 13Z(4) to establish a joint committee includes a power to establish a joint committee of which one or more of the eligible bodies are members.

(7) But the members of a joint committee established under section 13Z(4) by virtue of subsection (6) must include—

(a) the relevant prescribed body;

(b) at least one clinical commissioning group with whom a function is exercised jointly under the devolved arrangements;

(c) if under the devolved arrangements a function is exercisable jointly with the Board, the Board.

(8) The terms and conditions on which devolved arrangements are made may include terms authorising a joint committee established by virtue of subsection (6) to establish and maintain a pooled fund.

(9) A pooled fund is a fund—

(a) which is made up of payments received from the Board under the devolved arrangements in accordance with terms of payment agreed under section 13Z(5), and

(b) out of which payments may be made towards expenditure incurred in the discharge of any of the functions in relation to which the devolved arrangements are made.

Textual Amendments

F113 Ss. 13ZA, 13ZB inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 4**

13ZB Section 13Z: arrangements in relation to the function under section 3B(1)(d)

(1) This section applies to arrangements under section 13Z(2) that are or include arrangements in relation to the exercise of a relevant commissioning function.

(2) "Relevant commissioning function" means a function of the Board under section 3B(1)(d) of arranging for the provision of services or facilities in respect of a particular area ("the commissioning area").

(3) The power to enter into the arrangements under section 13Z is subject to the following provisions of this section.

(4) The arrangements must provide for the relevant commissioning function to be exercisable by at least one relevant prescribed body jointly with—

(a) one or more eligible bodies, or

(b) the Board and one or more eligible bodies,

(and the arrangements are, accordingly, devolved arrangements to which section 13ZA applies).

(5) At least one of the eligible bodies mentioned in subsection (4) must be a clinical commissioning group.

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(6) The Board may enter into the arrangements in relation to the provision of a service or facility in the commissioning area only if it considers it appropriate to do so having regard to—

(a) the impact on the provision of the service or facility in the commissioning area;

(b) the impact on the provision of the service or facility in other areas;

(c) the number of persons in the commissioning area to whom the service or facility is provided;

(d) the number of persons who are able to provide the service or facility;

(e) the cost of providing the service or facility;

(f) the financial implications for the relevant prescribed body, and for other bodies, with whom the arrangements are made.

(7) Regulations may provide for this section not to apply to arrangements so far as relating to a relevant commissioning function of a prescribed description.

(8) In this section, "eligible body" and "relevant prescribed body" have the same meaning as in section 13ZA.**]**

Textual Amendments

F113 Ss. 13ZA, 13ZB inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 4**

Power to confer additional functions

13Z1 Power to confer additional functions on the Board

(1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.

(2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board.

Intervention powers

13Z2 Failure by the Board to discharge any of its functions

(1) The Secretary of State may give a direction to the Board if the Secretary of State considers that—

(a) the Board—

(i) is failing or has failed to discharge any of its functions, or

(ii) is failing or has failed properly to discharge any of its functions, and

(b) the failure is significant.

(2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

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(3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may—

(a) discharge the functions to which it relates, or

(b) make arrangements for any other person to discharge them on the Secretary of State's behalf.

(4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.

(5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

Disclosure of information

13Z3 Permitted disclosures of information

(1) The Board may disclose information obtained by it in the exercise of its functions if—

(a) the information has previously been lawfully disclosed to the public,

(b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),

(c) the disclosure is made in accordance with any enactment or court order,

(d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,

(e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,

(f) the disclosure is made for the purpose of facilitating the exercise of any of the Board's functions,

(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

13Z4 Interpretation

(1) In this Chapter—

"the health service" means the health service in England;

"health services" means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.

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(2) Any reference (however expressed) in the following provisions of this Act to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),
section 13A(2),
section 13C(1),
section 13D,
section 13E(1),
section 13F,
section 13G,
section 13H,
section 13I,
section 13J,
section 13K(1),
section 13L,
section 13M,
section 13N(1) and (2),
section 13O(2),
section 13Q(1),
section 13T(1),
section 13U(1) and (4),
section 13W(2),
section 13X(1),
section 13Z2(1),
section 13Z3(1),
section 72(1),
section 75(1)(a) and (2),
section 82,
section 223C(2)(a),
in Schedule A1, paragraph 13.

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),

section 197(6) of the Health and Social Care Act 2012 (participation of the Board in work of Health and Wellbeing Boards),

section 199(4) of that Act (supply of information to Health and Wellbeing Boards),

section 290(1) and (2) of that Act (duties to co-operate),

section 291(2)(d) of that Act (breaches of duties to co-operate).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).**]**

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[F114CHAPTER A2

CLINICAL COMMISSIONING GROUPS

Textual Amendments

F114 Pt. 2 Ch. A2 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 25(1)**, 306(1)(d)(4) (with Sch. 6 paras. 7-13); S.I. 2012/1831, art. 2(2) (with art. 5); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Establishment of clinical commissioning groups

14A General duties of Board in relation to clinical commissioning groups

(1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the purposes of this section each provider of primary medical services is a member of a clinical commissioning group.

(2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—

(a) together cover the whole of England, and

(b) do not coincide or overlap.

(3) For the purposes of this Chapter, "provider of primary medical services" means a person who is a party to an arrangement mentioned in subsection (4).

(4) The arrangements mentioned in this subsection are—

(a) a general medical services contract to provide primary medical services of a prescribed description,

(b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,

(c) section 92 arrangements for the provision of primary medical services of a prescribed description.

(5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.

(6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

(7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

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14B Applications for the establishment of clinical commissioning groups

(1) An application for the establishment of a clinical commissioning group may be made to the Board.

(2) The application may be made by any two or more persons each of whom—

(a) is or wishes to be a provider of primary medical services, and

(b) wishes to be a member of the clinical commissioning group.

(3) The application must be accompanied by—

(a) a copy of the proposed constitution of the clinical commissioning group,

(b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and

(c) such other information as the Board may specify in a document published for the purposes of this section.

(4) At any time before the Board determines the application—

(a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;

(b) any of the applicants may withdraw.

(5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.

(6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

14C Determination of applications

(1) The Board must grant an application under section 14B if it is satisfied as to the following matters.

(2) Those matters are—

(a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,

(b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,

(c) that the area specified in the constitution is appropriate,

(d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),

(e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,

(f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and

(g) such other matters as may be prescribed.

(3) Regulations may make provision—

(a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);

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(b) as to the procedure for the making and determination of applications under section 14B.

14D Effect of grant of application

(1) If the Board grants an application under section 14B—

(a) a clinical commissioning group is established, and

(b) the proposed constitution has effect as the clinical commissioning group's constitution.

(2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

Variation of constitution

14E Applications for variation of constitution

(1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).

(2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.

(3) Regulations may make provision—

(a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;

(b) as to factors which the Board must or may take into account in determining whether to grant such applications;

(c) as to the procedure for the making and determination of such applications.

14F Variation of constitution otherwise than on application

(1) The Board may vary the area specified in the constitution of a clinical commissioning group.

(2) The Board may—

(a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;

(b) remove any person from such a list.

(3) The power conferred by subsection (1) or (2) is exercisable if—

(a) the clinical commissioning group consents to the variation, or

(b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.

(4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—

(a) that group, and

(b) any other clinical commissioning group that the Board thinks might be affected by the variation.

(5) Regulations may—

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(a) confer powers on the Board to vary the constitution of a clinical commissioning group;
(b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

Mergers, dissolution etc.

14G Mergers

(1) Two or more clinical commissioning groups may apply to the Board for—
(a) those groups to be dissolved, and
(b) another clinical commissioning group to be established under this section.

(2) An application under this section must be accompanied by—
(a) a copy of the proposed constitution of the clinical commissioning group,
(b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and
(c) such other information as the Board may specify in a document published for the purposes of this section.

(3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.

(4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

14H Dissolution

(1) A clinical commissioning group may apply to the Board for the group to be dissolved.

(2) Regulations may make provision—
(a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
(b) as to factors which the Board must or may take into account in determining whether to grant such applications;
(c) as to the procedure for the making and determination of such applications.

Supplemental provision about applications, variation, mergers etc.

14I Transfers in connection with variation, merger, dissolution etc.

(1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—
(a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or
(b) the dissolution of a clinical commissioning group under section 14G or 14H.

(2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.

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(3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.

(4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

14J Publication of constitution of clinical commissioning groups

(1) A clinical commissioning group must publish its constitution.

(2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

14K Guidance about the establishment of clinical commissioning groups etc.

The Board may publish guidance as to—

(a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;

(b) the making of applications under section 14E, 14G or 14H;

(c) the publication of the constitutions of clinical commissioning groups under section 14J.

Governing bodies of clinical commissioning groups

14L Governing bodies of clinical commissioning groups

(1) A clinical commissioning group must have a governing body.

(2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—

(a) its obligations under section 14Q, and

(b) such generally accepted principles of good governance as are relevant to it.

(3) The governing body also has—

(a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,

(b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and

(c) such other functions connected with the exercise of its main function as may be specified in the group's constitution or by regulations.

(4) Only the following may be members of the governing body—

(a) a member of the group who is an individual;

(b) an individual appointed by virtue of regulations under section 14N(2);

(c) an individual of a description specified in the constitution of the group.

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(5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.

(6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3)(a) or (b).

(7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

14M Audit and remuneration committees of governing bodies

(1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.

(2) The audit committee has—

(a) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

(3) The remuneration committee has—

(a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

14N Regulations as to governing bodies of clinical commissioning groups

(1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.

(2) Regulations may—

(a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;

(b) provide that the members of governing bodies, or their audit or remuneration committees, must include—

(i) individuals who are health care professionals of a prescribed description;

(ii) individuals who are lay persons;

(iii) individuals of any other description which is prescribed;

(c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—

(i) the minimum number of individuals of that description who must be appointed;

(ii) the maximum number of such individuals who may be appointed;

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(d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.

(3) Regulations may make provision as to—

(a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;

(b) how members are to be appointed;

(c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);

(d) eligibility for re-appointment.

(4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—

(a) qualification and disqualification for appointment;

(b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);

(c) eligibility for re-appointment.

(5) Regulations may—

(a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;

(b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.

(6) In this section—

"health care professional" means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;

"lay person" means an individual who is not—

(a) a member of the clinical commissioning group,

(b) a health care professional, or

(c) an individual of a prescribed description.

Conflicts of interest

14O Registers of interests and management of conflicts of interest

(1) Each clinical commissioning group must maintain one or more registers of the interests of—

(a) the members of the group,

(b) the members of its governing body,

(c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and

(d) its employees.

(2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.

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(3) Each clinical commissioning group must make arrangements to ensure—

(a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,

(b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and

(c) that any such declaration is included in the registers maintained under subsection (1).

(4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.

(5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(6) Each clinical commissioning group must have regard to guidance published under subsection (5).

(7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service.

[F115 General duties of clinical commissioning groups

Textual Amendments

F115 Ss. 14P-14Z24 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 26**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 6); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

14P Duty to promote NHS Constitution

(1) Each clinical commissioning group must, in the exercise of its functions—

(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and

(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, "patients" and "staff" have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

Modifications etc. (not altering text)

C18 S. 14P(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(a)**; S.I. 2012/1831, art. 2(2)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

14Q Duty as to effectiveness, efficiency etc.

Each clinical commissioning group must exercise its functions effectively, efficiently and economically.

Modifications etc. (not altering text)

C19 S. 14Q modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(b)**; S.I. 2012/1831, art. 2(2)

14R Duty as to improvement in quality of services

(1) Each clinical commissioning group must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.

(2) In discharging its duty under subsection (1), a clinical commissioning group must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—

(a) the effectiveness of the services,

(b) the safety of the services, and

(c) the quality of the experience undergone by patients.

(4) In discharging its duty under subsection (1), a clinical commissioning group must have regard to any guidance published under section 14Z8.

Modifications etc. (not altering text)

C20 S. 14R(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(c)**; S.I. 2012/1831, art. 2(2)

14S Duty in relation to quality of primary medical services

Each clinical commissioning group must assist and support the Board in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services.

14T Duties as to reducing inequalities

Each clinical commissioning group must, in the exercise of its functions, have regard to the need to—

(a) reduce inequalities between patients with respect to their ability to access health services, and

(b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

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Modifications etc. (not altering text)

C21 S. 14T modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(d)**; S.I. 2012/1831, art. 2(2)

14U Duty to promote involvement of each patient

(1) Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

(a) the prevention or diagnosis of illness in the patients, or

(b) their care or treatment.

(2) The Board must publish guidance for clinical commissioning groups on the discharge of their duties under this section.

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

Modifications etc. (not altering text)

C22 S. 14U(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(e)**; S.I. 2012/1831, art. 2(2)

14V Duty as to patient choice

Each clinical commissioning group must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

Modifications etc. (not altering text)

C23 S. 14V modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(f)**; S.I. 2012/1831, art. 2(2)

14W Duty to obtain appropriate advice

(1) Each clinical commissioning group must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness, and

(b) the protection or improvement of public health.

(2) The Board may publish guidance for clinical commissioning groups on the discharge of their duties under subsection (1).

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

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Modifications etc. (not altering text)

C24 S. 14W(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(g)**; S.I. 2012/1831, art. 2(2)

14X Duty to promote innovation

Each clinical commissioning group must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

14Y Duty in respect of research

Each clinical commissioning group must, in the exercise of its functions, promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research.

Modifications etc. (not altering text)

C25 S. 14Y modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(i)**; S.I. 2012/1831, art. 2(2)

14Z Duty as to promoting education and training

Each clinical commissioning group must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

14Z1 Duty as to promoting integration

(1) Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes that are achieved from their provision),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(2) Each clinical commissioning group must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

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(3) In this section—

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970 **[**F116or for the purposes of the Social Services and Well-being (Wales) Act 2014**]**).

F117(4) **[** For the purposes of this section, the provision of housing accommodation is a health-related service.**]**

Textual Amendments

F116 Words in s. 14Z1(3) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **239**

F117 S. 14Z1(4) inserted (1.4.2015) by Care Act 2014 (c. 23), **ss. 3(7)**, 127(1); S.I. 2015/993, art. 2(a) (with transitional provisions in S.I. 2015/995)

Modifications etc. (not altering text)

C26 S. 14Z1(1)(2) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(j)**; S.I. 2012/1831, art. 2(2)

Public involvement

14Z2 Public involvement and consultation by clinical commissioning groups

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions ("commissioning arrangements").

(2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the group,

(b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The clinical commissioning group must include in its constitution—

(a) a description of the arrangements made by it under subsection (2), and

(b) a statement of the principles which it will follow in implementing those arrangements.

(4) The Board may publish guidance for clinical commissioning groups on the discharge of their functions under this section.

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(5) A clinical commissioning group must have regard to any guidance published by the Board under subsection (4).

(6) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

F118 **[** (7) This section does not require a clinical commissioning group to make arrangements in relation to matters to which a trust special administrator's report or draft report under section 65F or 65I relates before the Secretary of State makes a decision under section 65K(1), is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9) (as the case may be).**]**

Textual Amendments

F118 S. 14Z2(7) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(16)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

Arrangements with others

14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions

(1) Any two or more clinical commissioning groups may make arrangements under this section.

(2) The arrangements may provide for—

(a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or

(b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.

F119 **[** (2A) Where any functions are, by virtue of subsection (2)(b), exercisable jointly by two or more clinical commissioning groups, they may be exercised by a joint committee of the groups.**]**

(3) For the purposes of the arrangements a clinical commissioning group may—

(a) make payments to another clinical commissioning group, or

(b) make the services of its employees or any other resources available to another clinical commissioning group.

(4) For the purposes of the arrangements, all the clinical commissioning groups may establish and maintain a pooled fund.

(5) A pooled fund is a fund—

(a) which is made up of contributions by all the groups, and

(b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

(6) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

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(7) In this section, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9).

Textual Amendments

F119 S. 14Z3(2A) inserted (1.10.2014) by The Legislative Reform (Clinical Commissioning Groups) Order 2014 (S.I. 2014/2436), arts. 1(2), **2**

Modifications etc. (not altering text)

C27 S. 14Z3(7) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(k)**; S.I. 2012/1831, art. 2(2)

[F120 14Z3A Joint exercise of functions with combined authorities

(1) A clinical commissioning group may arrange for—

(a) any commissioning function of the group to be exercised jointly with a combined authority;

(b) any commissioning function that the group exercises on behalf of another clinical commissioning group under section 14Z3(2)(a) to be exercised jointly with a combined authority.

(2) Two or more clinical commissioning groups may arrange for any commissioning functions of those groups that are exercised jointly with each other under section 14Z3(2)(b) to be exercised jointly also with a combined authority.

(3) Regulations may provide that the powers in subsections (1) and (2) do not apply in relation to a commissioning function of a prescribed description.

(4) Where any commissioning functions of a clinical commissioning group (or groups) are exercised jointly with a combined authority under subsection (1) or (2), they may be exercised by a joint committee of the group (or groups) and the authority.

(5) Arrangements under subsection (1) or (2) may be on such terms and conditions (including terms as to payment) as may be agreed between the clinical commissioning group (or groups) and the combined authority.

(6) Where two or more clinical commissioning groups enter into arrangements with the same combined authority under subsection (1) or (2), the terms as to payment mentioned in subsection (5) may include terms authorising a joint committee established under subsection (4) to establish and maintain a pooled fund.

(7) A pooled fund is a fund—

(a) which is made up of payments received under the arrangements from all the groups that are parties to the arrangements, and

(b) out of which payments may be made towards expenditure incurred in the exercise of any of the commissioning functions in respect of which the arrangements are made.

(8) Arrangements under subsection (1) or (2) do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

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(9) In this section "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (but does not include the function of making a request to the Board for the purposes of section 14Z9).**]**

Textual Amendments

F120 S. 14Z3A inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 5**

14Z4 Joint exercise of functions with Local Health Boards

(1) Regulations may provide for any prescribed functions of a clinical commissioning group to be exercised jointly with a Local Health Board.

(2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a clinical commissioning group and a Local Health Board to be exercised by a joint committee of the group and the Local Health Board.

(3) Arrangements made by virtue of this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

Modifications etc. (not altering text)

C28 S. 14Z4(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(l)**; S.I. 2012/1831, art. 2(2)

Additional powers of clinical commissioning groups

14Z5 Raising additional income

(1) A clinical commissioning group has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.

(2) A clinical commissioning group may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the group of its functions.

Modifications etc. (not altering text)

C29 S. 14Z5(2) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(m)**; S.I. 2012/1831, art. 2(2)

14Z6 Power to make grants

(1) A clinical commissioning group may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the group has functions.

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(2) The payments may be made subject to such terms and conditions as the group considers appropriate.

Board's functions in relation to clinical commissioning groups

14Z7 Responsibility for payments to providers

(1) The Board may publish a document specifying—

(a) circumstances in which a clinical commissioning group is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another clinical commissioning group in the discharge of its commissioning functions, and

(b) how the amount of any such payment is to be determined.

(2) A clinical commissioning group is required to make payments in accordance with any document published under subsection (1).

(3) Where a clinical commissioning group is required to make a payment by virtue of subsection (2), no other clinical commissioning group is liable to make it.

(4) Accordingly, any obligation of another clinical commissioning group to make the payment ceases to have effect.

(5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

(6) The Board may publish guidance for clinical commissioning groups for the purpose of assisting them in understanding and applying any document published under subsection (1).

(7) In this section and section 14Z8, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service.

Modifications etc. (not altering text)

C30 S. 14Z7(7) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(n)**; S.I. 2012/1831, art. 2(2)

14Z8 Guidance on commissioning by the Board

(1) The Board must publish guidance for clinical commissioning groups on the discharge of their commissioning functions.

(2) Each clinical commissioning group must have regard to guidance under this section.

(3) The Board must consult the Healthwatch England committee of the Care Quality Commission—

(a) before it first publishes guidance under this section, and

(b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.

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14Z9 [F121Exercise of functions by, or jointly with, the Board]

(1) The Board may, at the request of a clinical commissioning group, exercise on behalf of the group—

(a) any of its functions under section 3 or 3A which are specified in the request, and

(b) any other functions of the group which are related to the exercise of those functions.

[F122(1A) The Board and one or more clinical commissioning groups may make arrangements for any functions of the group or groups under section 3 or 3A, and any other functions of the group or groups which are related to the exercise of those functions, to be exercised jointly by the Board and the group or groups.

(1B) Where any functions are, by virtue of subsection (1A), exercisable jointly by the Board and a clinical commissioning group or groups, they may be exercised by a joint committee of the Board and the group or groups.**]**

(2) Regulations may provide that the power in subsection (1) **[**F123or (1A)**]** does not apply in relation to functions of a prescribed description.

(3) Arrangements under **[**F124subsection (1) or (1A)**]** may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the clinical commissioning group **[**F125or groups**]**.

(4) Arrangements made under **[**F126subsection (1) or (1A)**]** do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

Textual Amendments

F121 S. 14Z9 heading substituted (1.10.2014) by The Legislative Reform (Clinical Commissioning Groups) Order 2014 (S.I. 2014/2436), arts. 1(2), **3(2)**

F122 S. 14Z9(1A)(1B) inserted (1.10.2014) by The Legislative Reform (Clinical Commissioning Groups) Order 2014 (S.I. 2014/2436), arts. 1(2), **3(3)**

F123 Words in s. 14Z9(2) inserted (1.10.2014) by The Legislative Reform (Clinical Commissioning Groups) Order 2014 (S.I. 2014/2436), arts. 1(2), **3(4)**

F124 Words in s. 14Z9(3) substituted (1.10.2014) by The Legislative Reform (Clinical Commissioning Groups) Order 2014 (S.I. 2014/2436), arts. 1(2), **3(5)(a)**

F125 Words in s. 14Z9(3) inserted (1.10.2014) by The Legislative Reform (Clinical Commissioning Groups) Order 2014 (S.I. 2014/2436), arts. 1(2), **3(5)(b)**

F126 Words in s. 14Z9(4) substituted (1.10.2014) by The Legislative Reform (Clinical Commissioning Groups) Order 2014 (S.I. 2014/2436), arts. 1(2), **3(6)**

14Z10 Power of Board to provide assistance or support

(1) The Board may provide assistance or support to a clinical commissioning group.

(2) The assistance that may be provided includes—

(a) financial assistance, and

(b) making the services of the Board's employees or any other resources of the Board available to the clinical commissioning group.

(3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate.

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(4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.

(5) A clinical commissioning group must comply with any restrictions imposed under subsection (4).

Commissioning plans and reports

14Z11 Commissioning plan

(1) Before the start of each relevant period, a clinical commissioning group must prepare a plan setting out how it proposes to exercise its functions in that period.

(2) In subsection (1), "relevant period", in relation to a clinical commissioning group, means—

(a) the period which —

(i) begins on such day during the first financial year of the group as the Board may direct, and

(ii) ends at the end of that financial year, and

(b) each subsequent financial year.

(3) The plan must, in particular, explain how the group proposes to discharge its duties under—

(a) sections 14R, 14T and 14Z2, and

(b) sections 223H to 223J.

(4) The clinical commissioning group must publish the plan.

(5) The clinical commissioning group must give a copy of the plan to the Board before the date specified by the Board in a direction.

(6) The clinical commissioning group must give a copy of the plan to each relevant Health and Wellbeing Board.

(7) The Board may publish guidance for clinical commissioning groups on the discharge of their functions by virtue of this section and sections 14Z12 and 14Z13.

(8) A clinical commissioning group must have regard to any guidance published by the Board under subsection (7).

(9) In this Chapter, "relevant Health and Wellbeing Board", in relation to a clinical commissioning group, means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the group.

14Z12 Revision of commissioning plans

(1) A clinical commissioning group may revise a plan published by it under section 14Z11.

(2) If the clinical commissioning group revises the plan in a way which it considers to be significant—

(a) the group must publish the revised plan, and

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(b) subsections (5) and (6) of section 14Z11 apply in relation to the revised plan as they apply in relation to the original plan.

(3) If the clinical commissioning group revises the plan in any other way, the group must—
(a) publish a document setting out the changes it has made to the plan, and
(b) give a copy of the document to the Board and each relevant Health and Wellbeing Board.

14Z13 Consultation about commissioning plans

(1) This section applies where a clinical commissioning group is—
(a) preparing a plan under section 14Z11, or
(b) revising a plan under section 14Z12 in a way which it considers to be significant.

(2) The clinical commissioning group must consult individuals for whom it has responsibility for the purposes of section 3.

(3) The clinical commissioning group must involve each relevant Health and Wellbeing Board in preparing or revising the plan.

(4) The clinical commissioning group must, in particular—
(a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and
(b) consult each such Board on whether the draft takes proper account of each joint health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.

(5) Where a Health and Wellbeing Board is consulted under subsection (4)(b), the Health and Wellbeing Board must give the clinical commissioning group its opinion on the matter mentioned in that subsection.

(6) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—
(a) it may also give the Board its opinion on the matter mentioned in that subsection, and
(b) if it does so, it must give the clinical commissioning group a copy of its opinion.

(7) If a clinical commissioning group revises or further revises a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) to (6) apply in relation to the revised draft as they apply in relation to the original draft.

(8) A clinical commissioning group must include in a plan published under section 14Z11(4) or 14Z12(2)—
(a) a summary of the views expressed by individuals consulted under subsection (2),
(b) an explanation of how the group took account of those views, and
(c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).

(9) In this section, "joint health and wellbeing strategy" means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007

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which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the Health and Social Care Act 2012.

14Z14 Opinion of Health and Wellbeing Boards on commissioning plans

(1) A relevant Health and Wellbeing Board—

(a) may give the Board its opinion on whether a plan published by a clinical commissioning group under section 14Z11(4) or 14Z12(2) takes proper account of each joint health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and

(b) if it does so, must give the clinical commissioning group a copy of its opinion.

(2) In this section, "joint health and wellbeing strategy" has the same meaning as in section 14Z13.

14Z15 Reports by clinical commissioning groups

(1) In each financial year other than its first financial year, a clinical commissioning group must prepare a report (an "annual report") on how it has discharged its functions in the previous financial year.

(2) An annual report must, in particular—

(a) explain how the clinical commissioning group has discharged its duties under sections 14R, 14T and 14Z2, and

(b) review the extent to which the group has contributed to the delivery of any joint health and wellbeing strategy to which it was required to have regard under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007.

(3) In preparing the review required by subsection (2)(b), the clinical commissioning group must consult each relevant Health and Wellbeing Board.

(4) The Board may give directions to clinical commissioning groups as to the form and content of an annual report.

(5) A clinical commissioning group must give a copy of its annual report to the Board before the date specified by the Board in a direction.

(6) A clinical commissioning group must—

(a) publish its annual report, and

(b) hold a meeting for the purpose of presenting the report to members of the public.

Performance assessment of clinical commissioning groups

14Z16 Performance assessment of clinical commissioning groups

(1) The Board must conduct a performance assessment of each clinical commissioning group in respect of each financial year.

(2) A performance assessment is an assessment of how well the clinical commissioning group has discharged its functions during that year.

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(3) The assessment must, in particular, include an assessment of how well the group has discharged its duties under—

(a) sections 14R, 14T, 14W and 14Z2,

(b) sections 223H to 223J, and

(c) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).

(4) In conducting a performance assessment, the Board must consult each relevant Health and Wellbeing Board as to its views on the clinical commissioning group's contribution to the delivery of any joint health and wellbeing strategy to which the group was required to have regard under section 116B(1)(b) of that Act of 2007.

(5) The Board must, in particular, have regard to—

(a) any document published by the Secretary of State for the purposes of this section, and

(b) any guidance published under section 14Z8.

(6) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year.

Powers to require information etc.

14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply

(1) Sections 14Z18 and 14Z19 apply where the Board has reason to believe—

(a) that the area of a clinical commissioning group is no longer appropriate, or

(b) that a clinical commissioning group might have failed, might be failing or might fail to discharge any of its functions.

(2) For the purposes of this section—

(a) a failure to discharge a function includes a failure to discharge it properly, and

(b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

Modifications etc. (not altering text)

C31 S. 14Z17(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(o)**; S.I. 2012/1831, art. 2(2)

14Z18 Power to require documents and information etc.

(1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or expedient to have for the purposes of any of its functions in relation to the clinical commissioning group.

(2) The persons mentioned in this subsection are—

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(a) the clinical commissioning group if it has possession or control of the item in question;

(b) any member or employee of the group who has possession or control of the item in question.

(3) A person must comply with a requirement imposed under subsection (1).

(4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form.

(5) The power conferred by subsection (1) does not include power to require the provision of personal records.

(6) In subsection (5), "personal records" has the meaning given by section 12 of the Police and Criminal Evidence Act 1984.

14Z19 Power to require explanation

(1) Where this section applies, the Board may require the clinical commissioning group to provide it with an explanation of any matter which relates to the exercise by the group of any of its functions, including an explanation of how the group is proposing to exercise any of its functions.

(2) The Board may require the explanation to be given—

(a) orally at such time and place as the Board may specify, or

(b) in writing.

(3) The clinical commissioning group must comply with a requirement imposed under subsection (1).

Modifications etc. (not altering text)

C32 S. 14Z19(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(o)**; S.I. 2012/1831, art. 2(2)

14Z20 Use of information

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z18 or 14Z19 may be used by the Board in connection with any of its functions in relation to clinical commissioning groups.

Intervention powers

14Z21 Power to give directions, dissolve clinical commissioning groups etc.

(1) This section applies if the Board is satisfied that—

(a) a clinical commissioning group is failing or has failed to discharge any of its functions, or

(b) there is a significant risk that a clinical commissioning group will fail to do so.

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(2) The Board may direct the clinical commissioning group to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) The Board may direct—

(a) the clinical commissioning group, or

(b) the accountable officer of the group,

to cease to perform any functions for such period or periods as may be specified in the direction.

(4) The Board may—

(a) terminate the appointment of the clinical commissioning group's accountable officer, and

(b) appoint another person to be its accountable officer.

(5) Paragraph 12(4) of Schedule 1A does not apply to an appointment under subsection (4)(b).

(6) The Board may vary the constitution of the clinical commissioning group, including doing so by—

(a) varying its area,

(b) adding any person who is a provider of primary medical services to the list of members, or

(c) removing any person from that list.

(7) The Board may dissolve the clinical commissioning group.

(8) Where a direction is given under subsection (3) the Board may—

(a) exercise any of the functions that are the subject of the direction on behalf of the clinical commissioning group or (as the case may be) the accountable officer;

(b) direct another clinical commissioning group or (as the case may be) the accountable officer of another clinical commissioning group to perform any of those functions on behalf of the group or (as the case may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions.

(9) A clinical commissioning group to which a direction is given under subsection (3) must—

(a) where the Board exercises a function of the group under subsection (8)(a), co-operate with the Board, and

(b) where a direction is given under subsection (8)(b) to another clinical commissioning group or to the accountable officer of another clinical commissioning group, co-operate with the other group or (as the case may be) the accountable officer.

(10) Before exercising the power conferred by subsection (8)(b) the Board must consult the clinical commissioning group to which it is proposing to give the direction.

(11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme.

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(12) In subsection (11), "property transfer scheme" and "staff transfer scheme" have the same meaning as in section 14I.

(13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1).

(14) For the purposes of this section—

(a) a failure to discharge a function includes a failure to discharge it properly, and

(b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

Modifications etc. (not altering text)

C33 S. 14Z21(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(o)**; S.I. 2012/1831, art. 2(2)

C34 S. 14Z21(3) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(o)**; S.I. 2012/1831, art. 2(2)

Procedural requirements in connection with certain powers

14Z22 Procedural requirements in connection with certain powers

(1) Before exercising the power to dissolve a clinical commissioning group under section 14Z21(7) the Board must consult the following persons—

(a) the clinical commissioning group,

(b) relevant local authorities, and

(c) any other persons the Board considers it appropriate to consult.

(2) For that purpose, the Board must provide those persons with a statement—

(a) explaining that it is proposing to exercise the power, and

(b) giving its reasons for doing so.

(3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation.

(4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.

(5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z18, 14Z19 and 14Z21.

(6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.

(7) For the purposes of subsection (1) a local authority is a relevant local authority if its area coincides with, or includes the whole or any part of, the area of the clinical commissioning group.

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Disclosure of information

14Z23 Permitted disclosures of information

(1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if—

(a) the information has previously been lawfully disclosed to the public,

(b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),

(c) the disclosure is made in accordance with any enactment or court order,

(d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,

(e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,

(f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,

(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

14Z24 Interpretation

(1) In this Chapter—

"financial year", in relation to a clinical commissioning group, includes the period which begins on the day the group is established and ends on the following 31 March;

"the health service" means the health service in England;

"health services" means services provided as part of the health service and, in section 14Z2, also includes services that are to be provided as part of the health service;

"relevant Health and Wellbeing Board", in relation to a clinical commissioning group, has the meaning given by section 14Z11(9).

(2) Any reference (however expressed) in the following provisions of this Act to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),

section 14C(2)(e),

section 14P,

section 14Q,

section 14T,

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section 14U(1),
section 14V,
section 14W(1),
section 14X,
section 14Y,
section 14Z,
section 14Z1(1) and (2),
section 14Z2(1),
section 14Z4(1),
section 14Z5(2),
section 14Z6(1),
section 14Z7(7),
section 14Z11(1),
section 14Z15(1),
section 14Z16(2),
sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),
section 14Z23(1),
section 72(1),
section 75(1)(a) and (2),
section 77(1)(b),
section 82,
section 89(1A)(d),
section 94(3A)(d),
section 223C(2)(b),
section 223H(1),
in Schedule 1A, paragraphs 3(1) and (3), 6, 12(9)(b) and 16(3).

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),

section 199(4) of the Health and Social Care Act 2012 (supply of information to Health and Wellbeing Boards),

section 291(2)(d) of that Act (breaches of duties to co-operate),

in Schedule 6 to that Act, paragraph 8(4).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).**]]**

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F127 CHAPTER 1

STRATEGIC HEALTH AUTHORITIES

Textual Amendments

F127 Pt. 2 Ch. 1 repealed (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 33(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

13 Strategic Health Authorities

. . . . . .

14 Exercise of Strategic Health Authority functions

. . . . . .

15 Strategic Health Authorities' directions

. . . . . .

16 Section 92 arrangements and section 107 arrangements and LPS schemes

. . . . . .

17 Advice for Strategic Health Authorities

. . . . . .

17A Reports on consultation

. . . . . .

F128 CHAPTER 2

PRIMARY CARE TRUSTS

Textual Amendments

F128 Pt. 2 Ch. 2 repealed (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 34(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

18 Primary Care Trusts

. . . . . .

19 Exercise of Primary Care Trust functions

. . . . . .

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

20 Strategic Health Authority directions to Primary Care Trusts

. . . . . .

21 Provision of services etc

. . . . . .

22 Administration and management of services

. . . . . .

23 Advice for Primary Care Trusts

. . . . . .

23A Arrangements for improving quality of health care

. . . . . .

24 Plans for improving health etc

. . . . . .

24A Report on consultation

. . . . . .

CHAPTER 3

NHS TRUSTS

25 NHS trusts

(1) The Secretary of State may by order establish bodies, called National Health Service trusts ("NHS trusts"), to provide goods and services for the purposes of the health service.

(2) An order under subsection (1) is referred to in this Act as "an NHS trust order".

(3) No NHS trust order may be made until after the completion of such consultation as may be prescribed.

(4) Schedule 4 makes further provision about NHS trusts.

26 General duty of NHS trusts

An NHS trust must exercise its functions effectively, efficiently and economically.

27 Financial provisions relating to NHS trusts

Schedule 5 makes provision about the financing of NHS trusts.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

CHAPTER 4

SPECIAL HEALTH AUTHORITIES

28 Special Health Authorities

(1) The Secretary of State may by order establish special bodies for the purpose of exercising any functions which may be conferred on them by or under this Act.

(2) The Secretary of State may make such further provision relating to a body established under subsection (1) as he considers appropriate.

(3) A body established under this section is called a Special Health Authority.

(4) An order may, in particular, contain provisions as to—

(a) the membership of the body established by the order,

(b) the transfer to the body of officers, property and liabilities, and

(c) the name of the body.

(5) The liabilities which may be transferred by virtue of this section, section 272(8) and section 273(1) to an NHS body on the abolition of a Special Health Authority include criminal liabilities.

F129(6) . . . . . .

(7) The Secretary of State must, before he makes an order under this section, consult with respect to the order such bodies as he may recognise as representing officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the order.

(8) Schedule 6 makes further provision about Special Health Authorities.

Textual Amendments

F129 S. 28(6) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 13**; S.I. 2012/1831, art. 2(2)

[F130 28A Special Health Authorities: further provision

(1) This section applies in relation to an order under section 28 which is made after the coming into force of section 48 of the Health and Social Care Act 2012.

(2) The order must include—

(a) provision for the abolition of the Special Health Authority on a day specified in the order, and

(b) provision as to the transfer of officers, property and liabilities of the Authority on its abolition.

(3) The day specified in accordance with subsection (2)(a) must be within the period of 3 years beginning with the day on which the Special Health Authority is established.

(4) The power (by virtue of section 273(1)) to vary an order under section 28 includes power to vary the provision mentioned in subsection (2) by—

(a) providing for the abolition of the Special Health Authority on a day which is earlier or later than the day for the time being specified in the order;

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(b) making different provision as to the matters mentioned in subsection (2)(b).

(5) If an order is varied to provide for the abolition of the Special Health Authority on a later day, that day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished.**]**

Textual Amendments

F130 S. 28A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 48(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

29 Exercise of Special Health Authority functions

(1) Regulations may provide for any functions which are exercisable by a Special Health Authority under section 7 to be exercised—

(a) by another Special Health Authority, or

(b) jointly with one or more other Special Health Authorities.

(2) Regulations may provide—

(a) for any functions which are exercisable by a Special Health Authority under section 7 **F131**... **F132**... or this section to be exercised on behalf of that Special Health Authority by a committee, sub-committee or officer of the Special Health Authority,

(b) for any functions exercisable jointly under subsection (1)(b) to be exercised, on behalf of the Special Health Authorities in question, by a joint committee or joint sub-committee.

Textual Amendments

F131 Words in s. 29(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 14(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F132 Words in s. 29(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 14(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

CHAPTER 5

NHS FOUNDATION TRUSTS

Introductory

30 NHS foundation trusts

(1) An NHS foundation trust is a public benefit corporation **[**F133the function of which is to provide in accordance with this Chapter**]** goods and services for the purposes of the health service in England.

(2) A public benefit corporation is a body corporate which, in pursuance of an application under this Chapter, is constituted in accordance with Schedule 7.

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Textual Amendments

F133 Words in s. 30(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 159(1)**, 306(4); S.I. 2013/671, art. 2(3)

F134 31 Independent Regulator of NHS Foundation Trusts

. . . . . .

Textual Amendments

F134 S. 31 omitted (1.7.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 9(1)**; S.I. 2012/1319, art. 2(3); S.I. 2012/2657, art. 2(2)

F135 32 General duty of regulator

. . . . . .

Textual Amendments

F135 S. 32 omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 10(1)** (with Sch. 13 para. 10(2)); S.I. 2012/2657, art. 2(2) (with art. 12)

Authorisation

33 Applications by NHS trusts

(1) An NHS trust may make an application to the regulator for authorisation to become an NHS foundation trust, if the application is supported by the Secretary of State.

(2) The application must—

F136(a) . . . . . .

(b) be accompanied by a copy of the proposed constitution of the NHS foundation trust,

and must give any further information which the regulator requires the applicant to give.

(3) The applicant may modify the application with the agreement of the regulator at any time before authorisation is given under section 35.

(4) Once an NHS trust has made the application—

(a) the provisions of the proposed constitution which give effect to paragraphs 3 to 19 of Schedule 7 have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust and of the **[**F137council of governors**]** , and the initial directors, and enabling the **[**F137council of governors**]** and board of directors to make preparations for the performance of their functions,

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(b) the NHS trust may do anything (including the things mentioned in paragraph 14 of Schedule 4) which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status.

Textual Amendments

F136 S. 33(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(2)**, 306(4); S.I. 2013/671, art. 2(3)

F137 Words in s. 33(4)(a) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F138 34 Other applications

. . . . . .

Textual Amendments

F138 S. 34 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 160(1)**, 306(4) (with s. 160(4)(7)); S.I. 2012/1319, art. 2(3)

35 Authorisation of NHS foundation trusts

(1) The regulator may give an authorisation under this section—

(a) to an NHS trust which has applied under section 33, F139...

F139(b) . . . . . .

if the regulator is satisfied as to the following matters.

(2) The matters are that—

(a) the applicant's constitution will be in accordance with Schedule 7 and will otherwise be appropriate,

(b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,

(c) there will be a **[**F140council of governors**]**, and a board of directors, constituted in accordance with the constitution,

(d) the steps necessary to prepare for NHS foundation trust status have been taken,

[F141(e) the applicant will be able to provide goods and services for the purposes of the health service in England,**]**

(f) any other requirements which the regulator considers appropriate are met.

(3) In deciding whether it is satisfied as to the matters referred to in subsection (2)(e), the regulator must consider (among other things)—

(a) any report or recommendation in respect of the applicant made by **[**F142the Care Quality Commission**]**,

(b) the financial position of the applicant.

F143(4) . . . . . .

(5) The regulator must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following—

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F144(a) . . . . . .

(b) individuals who live in any area specified in the proposed constitution as the area for a public constituency,

(c) any local authority that would be authorised by the proposed constitution to appoint a member of the **[**F145council of governors**]**,

(d) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,

(e) any prescribed persons.

(6) If regulations make provision about consultation, the regulator may not give an authorisation unless it is satisfied that the applicant has complied with the regulations.

F146(7) . . . . . .

Textual Amendments

F139 S. 35(1)(b) and word omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 160(2)**, 306(4) (with s. 160(5)); S.I. 2012/1319, art. 2(3)

F140 Words in s. 35(2)(c) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F141 S. 35(2)(e) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 159(3)**, 306(4); S.I. 2013/671, art. 2(3)

F142 Words in s. 35(3)(a) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 83**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

F143 S. 35(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(5)**, 306(4); S.I. 2013/671, art. 2(3)

F144 S. 35(5)(a) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F145 Words in s. 35(5)(c) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F146 S. 35(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(5)**, 306(4); S.I. 2013/671, art. 2(3)

36 Effect of authorisation

(1) On an authorisation being given to a body corporate which is an NHS trust—

(a) it ceases to be an NHS trust and becomes an NHS foundation trust,

(b) the proposed constitution has effect, and

(c) any order under section 25(1) is revoked.

F147(2) . . . . . .

(3) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.

(4) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities (including its criminal liabilities).

(5) The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

(6) An NHS foundation trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and an NHS foundation

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trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Textual Amendments

F147 S. 36(2) omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 160(3)**, 306(4) (with s. 160(6)(7)); S.I. 2012/1319, art. 2(3)

37 Amendments of constitution

[F148(1)**]** An NHS foundation trust may make amendments of its constitution **[**F149only if—

(a) more than half of the members of the council of governors of the trust voting approve the amendments, and

(b) more than half of the members of the board of directors of the trust voting approve the amendments.**]**

[F150(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.

(3) But an amendment is of no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7.

(4) The trust must inform the regulator of amendments made under this section; but the regulator's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7.**]**

Textual Amendments

F148 S. 37(1): s. 37 renumbered as s. 37(1) (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 161(1)**, 306(4) (with s. 161(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F149 Words in s. 37(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 161(1)**, 306(4) (with s. 161(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F150 S. 37(2)-(4) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 161(2)**, 306(4) (with s. 161(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F151 38 Variation of authorisation

. . . . . .

Textual Amendments

F151 S. 38 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(6)**, 306(4); S.I. 2013/671, art. 2(3)

39 Register of NHS foundation trusts

(1) The regulator must continue to maintain a register of NHS foundation trusts.

(2) The register must contain in relation to each NHS foundation trust—

(a) a copy of the current constitution,

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F152(b) . . . . . .

(c) a copy of the latest annual accounts and of any report of the auditor on them,

(d) a copy of the latest annual report,

F153(e) . . . . . .

F154(f) . . . . . .

[F155(g) a copy of any order made under section 65D, 65J, 65KC, 65L or 65LA,

(h) a copy of any report laid under section 65D,

(i) a copy of any information published under section 65D,

(j) a copy of any draft report published under section 65F,

(k) a copy of any statement provided under section 65F,

(l) a copy of any notice published under section 65F, 65G, 65H, 65J, 65KA, 65KB, 65KC or 65KD,

(m) a copy of any statement published or provided under section 65G,

(n) a copy of any final report published under section 65I,

(o) a copy of any statement published under section 65J or 65KC,

(p) a copy of any information published under section 65M.**]**

(3) In relation to any time before an NHS foundation trust is first required to send an annual report to the regulator, the register must contain a list of the persons who were first elected or appointed as—

(a) the members of the **[**F156council of governors**]**,

(b) the directors.

(4) Members of the public may inspect the register at any reasonable time.

(5) Any person who requests it must be provided with a copy of, or extract from, any document contained in the register on payment of a reasonable charge.

Textual Amendments

F152 S. 39(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(7)**, 306(4); S.I. 2013/671, art. 2(3)

F153 S. 39(2)(e) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 156(5)**, 306(1)(d)(4); S.I. 2013/671, art. 2(3)

F154 S. 39(2)(f) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 111(11)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F155 S. 39(2)(g)-(p) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(5)**, 306(4); S.I. 2012/2657, art. 2(2)

F156 Words in s. 39(3)(a) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

[F157**39A Panel for advising governors**

(1) The regulator may appoint a panel of persons to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—

(a) to act in accordance with its constitution, or

(b) to act in accordance with provision made by or under this Chapter.

(2) A governor may refer a question to the panel only if more than half of the members of the council of governors voting approve the referral.

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(3) The panel—

(a) may regulate its own procedure, and

(b) may establish such procedures, and make such other arrangements, as it considers appropriate for the purpose of determining questions referred to it under this section.

(4) The panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.

(5) The panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice.

(6) Where the panel has carried out such an investigation, it must publish a report of its determination of the question referred to it.

(7) If a person refuses to comply with a request made under subsection (5), the report under subsection (6) may refer to the refusal.

(8) On any proceedings before a court or tribunal relating to a question referred to the panel under this section, the court may take the panel's report of its determination of the question into account.

(9) The regulator—

(a) must pay expenses properly incurred by the panel, and

(b) must make administrative support available to the panel.

(10) Regulations may make provision as to—

(a) eligibility for membership of the panel;

(b) the number of persons that may be appointed as members;

(c) the terms of appointment of members;

(d) circumstances in which a person ceases to be a member or may be suspended.**]**

Textual Amendments

F157 S. 39A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 162**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Financial matters

40 Power of Secretary of State to give financial assistance

(1) The Secretary of State may give financial assistance to any NHS foundation trust.

(2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.

(3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.

(4) "Externally financed development agreement" has the same meaning as in paragraph 23 of Schedule 4, reading references in sub-paragraphs (3) and (5) of that paragraph to the NHS trust as references to the NHS foundation trust.

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[F158(5) As soon as is practicable after the end of each financial year, the Secretary of State must prepare a report on the exercise of the power under subsection (1).

(6) In relation to each exercise of the power under that subsection during the year to which the report relates, the report must specify the amount of the loan, issue of public dividend capital, grant or other payment and—

(a) in the case of a loan, the amount (if any) outstanding at the end of the year and the other terms on which the loan was made,

(b) in the case of an issue of public dividend capital, the terms on which it was issued (or, where a decision under section 42(3) is made in relation to it during that year, the terms so decided as those on which it is treated as having been issued), and

(c) in the case of a grant or other payment, the terms on which it was made.

(7) In relation to each loan made under that subsection during a previous financial year but not repaid by the beginning of the year to which the report relates, the report must specify—

(a) the amount outstanding at the beginning of the year,

(b) the amount (if any) outstanding at the end of the year, and

(c) the other terms on which the loan was made.

(8) A report under subsection (5) must, in relation to each NHS foundation trust, specify—

(a) the amount of the public dividend capital of that trust at the end of the year to which the report relates, and

(b) the conditions on which it is held.

(9) The Secretary of State must publish a report under subsection (5).**]**

Textual Amendments

F158 S. 40(5)-(9) inserted (1.4.2013 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 163(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F159 41 Prudential borrowing code

. . . . . .

Textual Amendments

F159 S. 41 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 163(2)**, 306(4); S.I. 2013/671, art. 2(3)

42 Public dividend capital

(1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the NHS trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions ("initial public dividend capital"), but subject to this section.

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(2) Any amount issued to an NHS foundation trust as public dividend capital under section 40 is (like initial public dividend capital) an asset of the Consolidated Fund.

(3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust must be treated as having been issued.

F160(4) . . . . . .

F161(5) . . . . . .

(6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital must be paid into the Consolidated Fund.

[F162(7) The terms which may be decided under subsection (3) include terms to which the exercise of any power of an NHS foundation trust to do any of the following will be subject as a consequence—

(a) providing goods or services,

(b) borrowing or investing money,

(c) providing financial assistance,

(d) acquiring or disposing of property,

(e) entering into contracts, or making other arrangements, to do anything referred to in paragraphs (a) to (d),

(f) applying for dissolution (whether or not when also applying for the establishment of one or more other trusts),

(g) applying to acquire another body.**]**

Textual Amendments

F160 S. 42(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 163(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F161 S. 42(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 163(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F162 S. 42(7) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 163(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F163**42A Criteria for making loans etc.**

(1) The Secretary of State must publish guidance on the powers conferred by sections 40 and 42.

(2) The guidance on the power to make a loan under section 40(1) must in particular—

(a) explain that, in exercising the power, the Secretary of State will apply the principle that a loan should be made only where there is a reasonable expectation that it will be repaid in accordance with the terms on which it is made;

(b) include other criteria that the Secretary of State will apply when determining whether to exercise the power and, if so, the terms on which to make the loan.

(3) The guidance on that power must also explain—

(a) the process for applying for a loan under section 40(1);

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(b) the consequences of failing to comply with terms on which a loan is made under that provision.

(4) The guidance on the power to decide terms under section 42(3) must, in particular, include the criteria that the Secretary of State will apply when deciding the terms.

(5) The guidance on that power must also explain the consequences of failing to comply with the terms decided.

(6) In preparing guidance under this section, the Secretary of State must have regard (among other things) to any generally accepted principles used by financial institutions to determine whether to make loans to bodies corporate and the terms on which to make loans to them.

(7) Before publishing the guidance, the Secretary of State must consult—

(a) the Treasury,

(b) the regulator, and

(c) such other persons as the Secretary of State considers appropriate.**]**

Textual Amendments

F163 S. 42A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 163(6)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Functions

43 [F164Provision of goods and services]

[F165(1) The principal purpose of an NHS foundation trust is the provision of goods and services for the purposes of the health service in England.**]**

[F165(2) An NHS foundation trust may provide goods and services for any purposes related to—

(a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

(b) the promotion and protection of public health.**]**

[F165(2A) An NHS foundation trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.**]**

(3) **[**F166An**]** NHS foundation trust may also carry on activities other than those mentioned in **[**F167subsection (2)**]**F168... for the purpose of making additional income available in order better to carry on its principal purpose.

[F169(3A) Each annual report prepared by an NHS foundation trust must give information on the impact that income received by the trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the trust of goods and services for those purposes.

(3B) Each document prepared by an NHS foundation trust under paragraph 27 of Schedule 7 (forward plan) must include information about—

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(a) the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and

(b) the income it expects to receive from doing so.

(3C) Where a document which is being prepared under paragraph 27 of Schedule 7 contains a proposal that an NHS foundation trust carry on an activity of a kind mentioned in subsection (3B)(a), the council of governors of the trust must—

(a) determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and

(b) notify the directors of the trust of its determination.

(3D) An NHS foundation trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.**]**

F170(4) . . . . . .

F170(5) . . . . . .

F170(6) . . . . . .

F170(7) . . . . . .

Textual Amendments

F164 S. 43 title substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 164(5)**, 306(4); S.I. 2013/671, art. 2(3)

F165 S. 43(1)-(2A) substituted for s. 43(1)(2) (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 164(1)**, 306(4); S.I. 2012/1831, art. 2(2)

F166 Word in s. 43(3) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 164(2)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F167 Words in s. 43(3) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 164(2)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F168 Words in s. 43(3) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 164(2)(c)**, 306(4); S.I. 2012/1831, art. 2(2)

F169 S. 43(3A)-(3D) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 164(3)**, 306(4); S.I. 2012/1831, art. 2(2)

F170 S. 43(4)-(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 164(4)**, 306(4); S.I. 2013/671, art. 2(3)

44 [F171Power to charge for accommodation etc.]

F172(1) . . . . . .

F173(2) . . . . . .

F174(2A) . . . . . .

F175(3) . . . . . .

F175(4) . . . . . .

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F175(5) . . . . . .

(6) According to the nature of its functions, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services.

(7) An NHS foundation trust may exercise the power conferred by subsection (6) only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS foundation trust of its functions.

Textual Amendments

F171 S. 44 title substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 165(2)**, 306(4); S.I. 2012/1831, art. 2(2)

F172 S. 44(1) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 165(1)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F173 S. 44(2) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 165(1)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F174 S. 44(2A) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 165(1)(c)**, 306(4); S.I. 2012/1831, art. 2(2)

F175 S. 44(3)-(5) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 165(1)(d)**, 306(4); S.I. 2012/1831, art. 2(2)

F176 45 Protection of property

. . . . . .

Textual Amendments

F176 S. 45 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 163(7)**, 306(4); S.I. 2013/671, art. 2(3)

46 Financial powers

(1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.

F177(2) . . . . . .

F177(3) . . . . . .

(4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.

(5) The investment may include investment by—

(a) forming, or participating in forming, bodies corporate,

(b) otherwise acquiring membership of bodies corporate.

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(6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

Textual Amendments

F177 S. 46(2)(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 163(8)**, 306(4); S.I. 2013/671, art. 2(3)

47 General powers

(1) An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions.

(2) In particular it may—

(a) acquire and dispose of property,

(b) enter into contracts,

(c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),

(d) employ staff.

(3) Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

(4) "The purposes of the NHS foundation trust" means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

[F178 48 Information

(1) The Secretary of State may require an NHS foundation trust to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.**]**

Textual Amendments

F178 S. 48 substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 166**, 306(4); S.I. 2012/2657, art. 2(2) (with art. 10)

F179 49 Entry and inspection of premises

. . . . . .

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F179 S. 49 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(8)**, 306(4); S.I. 2013/671, art. 2(3)

[F180 50 Fees

An NHS foundation trust must pay to the regulator such fee as the regulator may determine in respect of its exercise of functions under—

(a) section 39;

(b) section 39A.]

Textual Amendments

F180 S. 50 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 163(9)**, 306(4); S.I. 2013/671, art. 2(3)

51 Trust funds and trustees

(1) The Secretary of State may by order provide for the appointment of trustees for an NHS foundation trust to hold property on trust—

(a) for the purposes of the NHS foundation trust, or

(b) for any purposes relating to the health service.

(2) The order may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate,

(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where trustees have been appointed for an NHS foundation trust under this section, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees.

(4) Where an NHS trust for which trustees have been appointed under paragraph 10 of Schedule 4 is given an authorisation, the order appointing the trustees has effect as an order under this section.

(5) "The purposes of the NHS foundation trust" means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F181 51A Significant transactions

(1) An NHS foundation trust may enter into a significant transaction only if more than half of the members of the council of governors of the trust voting approve entering into the transaction.

(2) "Significant transaction" means a transaction or arrangement of such description as may be specified in the trust's constitution.

(3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions.**]**

Textual Amendments

F181 S. 51A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 167**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Failure

F182 52 Failing NHS foundation trusts

. . . . . .

Textual Amendments

F182 S. 52 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 111(11)**, 306(4); S.I. 2013/671, art. 2(3)

F183 52A Application of sections 52B to 52E

. . . . . .

Textual Amendments

F183 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, **s. 15(1)** falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(5)**, 306(4); S.I. 2012/2657, **art. 2(2)**

F184 52B De-authorisation: regulator's notice

. . . . . .

Textual Amendments

F184 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, **s. 15(1)** falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(5)**, 306(4); S.I. 2012/2657, **art. 2(2)**

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[F185]52C Grounds for de-authorisation notice

. . . . . .

Textual Amendments

F185 S. 52C omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(1)**, 306(4); S.I. 2012/2657, art. 2(2)

[F186]52D De-authorisation

. . . . . .

Textual Amendments

F186 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, **s. 15(1)** falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(5)**, 306(4); S.I. 2012/2657, **art. 2(2)**

[F187]52E Secretary of State's request

. . . . . .

Textual Amendments

F187 Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, **s. 15(1)** falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(5)**, 306(4); S.I. 2012/2657, **art. 2(2)**

[F188]53 Voluntary arrangements

. . . . . .

Textual Amendments

F188 Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)

[F188]54 Dissolution etc

. . . . . .

Textual Amendments

F188 Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F188 55 Sections 53 and 54: supplementary

. . . . . .

Textual Amendments

F188 Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)

[F189 Mergers, acquisitions and separations]

Textual Amendments

F189 S. 56 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(9)**, 306(4); S.I. 2013/671, art. 2(3)

56 Mergers

(1) An application may be made jointly by—

(a) an NHS foundation trust, and

(b) another NHS foundation trust or an NHS trust **[**F190established under section 25**]**,

to the regulator for **[**F191the dissolution of the trusts and the establishment of a new NHS foundation trust.**]**

[F192(1A) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).**]**

(2) The application must—

(a) be supported by the Secretary of State if one of the parties to it is an NHS trust,

(b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,

(c) F193...and

(d) be accompanied by a copy of the proposed constitution of the new trust,

F194...

F195(3) . . . . . .

[F196(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the proposed new trust have been taken.**]**

F197(5) . . . . . .

F197(6) . . . . . .

F197(7) . . . . . .

F197(8) . . . . . .

F197(9) . . . . . .

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F197(10) . . . . . .

(11) **[**F198On the grant of the application**]**, the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

Textual Amendments

F190 Words in s. 56(1)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 168(1)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F191 Words in s. 56(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 168(1)(b)**, 306(4); S.I. 2013/671, art. 2(3)

F192 S. 56(1A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 168(2)**, 306(4); S.I. 2013/671, art. 2(3)

F193 S. 56(2)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 168(3)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F194 Words in s. 56(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 168(3)(b)**, 306(4); S.I. 2013/671, art. 2(3)

F195 S. 56(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 168(4)**, 306(4); S.I. 2013/671, art. 2(3)

F196 S. 56(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 168(5)**, 306(4); S.I. 2013/671, art. 2(3)

F197 S. 56(5)-(10) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 168(6)**, 306(4); S.I. 2013/671, art. 2(3)

F198 Words in s. 56(11) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 168(7)**, 306(4); S.I. 2013/671, art. 2(3)

[F199**56A Acquisitions**

(1) An application may be made jointly by—

(a) an NHS foundation trust (A), and

(b) another NHS foundation trust or an NHS trust established under section 25 (B),

to the regulator for the acquisition by A of B.

(2) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).

(3) The application must—

(a) be supported by the Secretary of State if B is an NHS trust, and

(b) be accompanied by a copy of the proposed constitution of A, amended on the assumption that A acquires B.

(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the acquisition have been taken.

[F200(4A) Where the regulator proposes to grant the application, it may by order make provision for the transfer of employees of B to A on the grant of the application.**]**

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(5) On the grant of the application, the proposed constitution has effect, but where a person who is specified as a director of A in the constitution has yet to be appointed as such, the directors of A may exercise that person's functions under the constitution.**]**

Textual Amendments

F199 S. 56A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 169**, 306(4); S.I. 2013/671, art. 2(3)

F200 S. 56A(4A) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(2)**, 115(7); S.I. 2015/994, art. 6(r)

[F201 56AA Acquisitions under section 56A: supplementary

(1) On the grant of an application under section 56A—

(a) any order made by the regulator under section 56A(4A) takes effect,

(b) the property and liabilities of the acquired NHS foundation trust or NHS trust are transferred to the acquiring NHS foundation trust (other than rights and liabilities which may be dealt with by order under section 56A(4A)),

(c) the acquired NHS foundation trust or NHS trust is dissolved, and

(d) where the acquired trust is an NHS trust, the NHS trust order establishing it is revoked.

(2) So far as may be necessary for the purposes of subsection (1)(b)—

(a) anything done before the grant of the application by or in relation to the acquired trust is to be treated (on and after the grant) as having been done by or in relation to the acquiring trust;

(b) any reference in a document to the acquired trust is to be read as a reference to the acquiring trust.

(3) Anything (including legal proceedings) that, immediately before the grant of the application, is in the process of being done by or in relation to the acquired trust may continue to be done afterwards by or in relation to the acquiring trust.

(4) In subsection (1)—

(a) "liabilities" includes criminal liabilities;

(b) "property" includes trust property.**]**

Textual Amendments

F201 S. 56AA inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(3)**, 115(7); S.I. 2015/994, art. 6(r)

[F202 56B Separations

(1) An application may be made to the regulator by an NHS foundation trust for the dissolution of the trust and the establishment of two or more new NHS foundation trusts.

(2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) The application must, by reference to each of the proposed new trusts—

(a) specify the property and liabilities proposed to be transferred to it;

(b) be accompanied by a copy of its proposed constitution.

(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trust and the establishment of each of the proposed new trusts have been taken.

(5) On the grant of the application, the proposed constitution of each of the new trusts has effect but, in the case of each of the new trusts, the proposed directors may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.**]**

Textual Amendments

F202 S. 56B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 170**, 306(4); S.I. 2013/671, art. 2(3)

57 [F203Sections 56 to 56B: supplementary]

(1) Where **[**F204an application is granted under section 56 or 56B**]**, the regulator must specify the property and liabilities to be transferred to the new NHS foundation trust **[**F205or trusts**]**.

(2) Where **[**F206such an application is granted, the regulator**]** must make an order—

(a) dissolving the **[**F207trust or**]** trusts in question, and

(b) transferring, or providing for the transfer of, the property and liabilities specified by the regulator to the new NHS foundation trust **[**F208or trusts**]**.

[F209(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust.**]**

(3) The order may—

(a) transfer, or provide for the transfer of, any of the remaining property or liabilities to **[**F210another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State**]**,

F211(b) . . . . . .

[F212(3A) The order may include provision for the transfer of employees of the trust or trusts dissolved by the order.**]**

(4) In **[**F213sections 56(2) and 56B(3)**]**, and subsections (1) and (2) of this section, "liabilities" includes criminal liabilities; and an order under subsection (3) of this section may transfer any remaining criminal liabilities to **[**F214another NHS foundation trust or an NHS trust established under section 25**]**.

(5) Where one of the parties to an application under section 56 **[**F215or 56A**]** is an NHS trust, the powers conferred on the Secretary of State by Part 3 of Schedule 4 are not exercisable in relation to the trust.

F216(6) . . . . . .

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Textual Amendments

F203 S. 57 title substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(8)**, 306(4); S.I. 2013/671, art. 2(3)

F204 Words in s. 57(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(1)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F205 Words in s. 57(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(1)(b)**, 306(4); S.I. 2013/671, art. 2(3)

F206 Words in s. 57(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(2)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F207 Words in s. 57(2)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(2)(b)**, 306(4); S.I. 2013/671, art. 2(3)

F208 Words in s. 57(2)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(2)(c)**, 306(4); S.I. 2013/671, art. 2(3)

F209 S. 57(2A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(3)**, 306(4); S.I. 2013/671, art. 2(3)

F210 Words in s. 57(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(4), **173(2)(a)(i)**, 306(4); S.I. 2013/671, arts. 2(2)(3)

F211 S. 57(3)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(2)(a)(ii)**, 306(4); S.I. 2013/671, art. 2(3)

F212 S. 57(3A) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(4)**, 115(7); S.I. 2015/994, art. 6(r)

F213 Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(5)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F214 Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(5)(b), **173(2)(a)(iii)**, 306(4); S.I. 2013/671, arts. 2(2)(3)

F215 Words in s. 57(5) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(6)**, 306(4); S.I. 2013/671, art. 2(3)

F216 S. 57(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 172(7)**, 306(4); S.I. 2013/671, art. 2(3)

[F217 57A Dissolution

(1) An application may be made by an NHS foundation trust to the regulator for dissolution.

(2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.

(3) The regulator must grant the application if it is satisfied that—

(a) the trust has no liabilities, and

(b) such steps as are necessary to prepare for the dissolution have been taken.

(4) Where an application under this section is granted, the regulator must make an order—

(a) dissolving the trust in question, and

(b) transferring, or providing for the transfer of, the property of the trust (if any) to the Secretary of State.]

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Textual Amendments

F217 S. 57A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 171**, 306(4); S.I. 2013/671, art. 2(3)

Miscellaneous

[F218]58 Taxation

. . . . . .

Textual Amendments

F218 S. 58 repealed (with effect in accordance with s. 216(3)(4) of the amending Act) by Finance Act 2012 (c. 14), **s. 216(2)(b)**

59 Conduct of elections

(1) Regulations may make provision as to the conduct of elections for membership of the **[**[F219]council of governors**]** of an NHS foundation trust.

(2) The regulations may in particular provide for—

(a) nomination of candidates and obligations to declare their interests,

(b) systems and methods of voting, and the allocation of places on the **[**[F220]council of governors**]**, at contested elections,

(c) filling of vacancies,

(d) supervision of elections,

(e) elections expenses and publicity,

(f) questioning of elections and the consequences of irregularities.

(3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.

(4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.

(5) Pending the coming into force of regulations under this section, elections for membership of the **[**[F221]council of governors**]** of an NHS foundation trust, if contested, must be by secret ballot.

Textual Amendments

F219 Words in s. 59(1) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F220 Words in s. 59(2)(b) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F221 Words in s. 59(5) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

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60 Voting and standing for election

(1) A person may not vote at an election for the **[**F222council of governors**]** of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.

(2) A person may not stand for election to **[**F223the council**]** unless—

(a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and

(b) he is not prevented from being a member of **[**F223the council**]** by paragraph 8 of Schedule 7.

(3) A person elected to **[**F223the council**]** may not vote at a meeting of **[**F223the council**]** unless—

(a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust, and

(b) he is not prevented from being a member of **[**F223the council**]** by paragraph 8 of Schedule 7.

(4) This section does not apply to an election held for the staff constituency.

(5) "Specified" means specified in the trust's constitution.

(6) A person is guilty of an offence if he—

(a) makes a declaration under this section which he knows to be false in a material particular, or

(b) recklessly makes such a declaration which is false in a material particular.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Textual Amendments

F222 Words in s. 60(1) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F223 Words in s. 60(2)(3) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

61 Representative membership

[F224(1)**]** **[**F225An NHS foundation trust must**]** take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.

[F226(2) In deciding which areas are to be areas for public constituencies, or in deciding whether there is to be a patients' constituency, an NHS foundation trust must have regard to the need for those eligible for such membership to be representative of those to whom the trust provides services.**]**

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Textual Amendments

F224 S. 61(1): s. 61 renumbered as s. 61(1) (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 153(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F225 Words in s. 61(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 153(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F226 S. 61(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 153(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

62 Audit

Schedule 10 makes provision in relation to the audit of accounts of NHS foundation trusts.

63 General duty of NHS foundation trusts

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

Supplementary

64 Orders and regulations under this Chapter

(1) Any power under this Chapter to make an order or regulations is exercisable by statutory instrument.

(2) Subject to subsections (3) and (4), a statutory instrument made by virtue of this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A statutory instrument containing—

(a) the first regulations under section 55(4) or 59,

[F227(aa) regulations under paragraph 30(1) of Schedule 7,**]** or

(b) an order or regulations under this Chapter making, by virtue of subsection (5)(b), provision which amends or repeals any part of the text of an Act,

may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(4) Subsection (2) does not apply to a statutory instrument containing an order under—

(a) section 51,

F228(b) . . . . . .

[F229(ba) section 56A(4A),**]**

(c) section 57 **[**F230, or

(d) section 57A.**]**

[F231(4A) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under section **[**F232 56A(4A),**]** 57 or 57A as if the regulator were a Minister of the Crown.**]**

(5) Any order or regulations under this Chapter—

(a) may make different provision for different purposes, and

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(b) may make incidental, supplementary, consequential, transitory or transitional or saving provision.

(6) Any power under this Chapter to make an order or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.

Textual Amendments

F227 S. 64(3)(aa) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 158(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F228 S. 64(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 172(10)(a)**, 173(2)(b), 306(4); S.I. 2013/671, **art. 2(3)**

F229 S. 64(4)(ba) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(5)(a)**, 115(7); S.I. 2015/994, art. 6(r)

F230 S. 64(4)(d) and word inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(10)(b)**, 306(4); S.I. 2013/671, art. 2(3)

F231 S. 64(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(11)**, 306(4); S.I. 2013/671, art. 2(3)

F232 Word in s. 64(4A) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(5)(b)**, 115(7); S.I. 2015/994, art. 6(r)

65 Interpretation of this Chapter

(1) In this Chapter—

"authorisation" means an authorisation under section 35 or 56,

"health service body" means a Strategic Health Authority, a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust.

(2) Any references in this Chapter to goods and services include, in particular, facilities, education and training.

[F233CHAPTER 5A

TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

Textual Amendments

F233 Pt. 2 Ch. 5A inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 16**, 40(1); S.I. 2010/30, art. 3(a)

Application

65A Application

(1) This Chapter applies to—

(a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;

[F234(b) any NHS foundation trust.]

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F235(2) . . . . . .

Textual Amendments

F234 S. 65A(1)(b) substituted for s. 65A(1)(b)(c) (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(1)(a)**, 306(4); S.I. 2012/2657, art. 2(2)

F235 S. 65A(2) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 174(1)(b)**, 306(4); S.I. 2012/2657, art. 2(2)

Appointment

65B [F236NHS trusts: appointment of trust special administrator]

(1) The Secretary of State may make an order authorising the appointment of a trust special administrator to exercise the functions of the chairman and directors of an NHS trust to which this Chapter applies.

(2) An order may be made under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.

(3) The order must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.

(4) Before making the order the Secretary of State must consult—

(a) the trust,

(b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and

(c) any other person to which the trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.

(5) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.

(6) If an order is made under subsection (1), the Secretary of State must—

(a) appoint a person as the trust special administrator with effect from the day specified in the order, and

(b) publish the name of the person appointed.

(7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.

(8) The Secretary of State may pay remuneration and expenses to a trust special administrator.

Textual Amendments

F236 S. 65B title substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(2)**, 306(4); S.I. 2012/2657, art. 2(2)

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65C Suspension of directors

(1) When the appointment of a trust special administrator takes effect, the trust's chairman and executive and non-executive directors are suspended from office.

(2) Subsection (1) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.

F237...

Textual Amendments

F237 S. 65D cross-heading omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 174(7)**, 306(4); S.I. 2012/2657, art. 2(2)

65D [F238NHS foundation trusts: appointment of trust special administrator]

[F239(1) This section applies if the regulator is satisfied that [F240—

(a)] an NHS foundation trust is, or is likely to become, unable to pay its debts][F241, or

(b) there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and it is appropriate to make an order under subsection (2).]

F242[This section also applies if the Care Quality Commission—

(1A) (a) is satisfied that there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and that it is appropriate to make an order under subsection (2),

(b) informs the regulator that it is satisfied as mentioned in paragraph (a) and gives the regulator its reasons for being so satisfied, and

(c) requires the regulator to make an order under subsection (2).]

[F239(2) The regulator may [F243or, where this section applies as a result of subsection (1A), must] make an order authorising the appointment of a trust special administrator to exercise the functions of the governors, chairman and directors of the trust.]

[F239(3) As soon as reasonably practicable after the making of an order under subsection (2), the Care Quality Commission must provide to the regulator a report on the safety and quality of the services that the trust provides under this Act.]

F244[Before imposing a requirement as mentioned in subsection (1A)(c), the Care Quality

(3A) Commission must—

(a) consult the Secretary of State and the regulator, and

(b) having done that, consult—

(i) the trust,

(ii) the Board, and

(iii) any other person to which the trust provides services under this Act and which the Commission considers it appropriate to consult.]

(4) Before [F245making an order] under this section [F246(except where it is required to do so as a result of subsection (1A))], the regulator must consult first the Secretary of State and then—

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(a) the trust,

[the Board,**]**

F247(aa)

F248(b) . . . . . .

(c) any other person to which the trust provides F249... services under this Act and which the regulator considers it appropriate to consult **[**F250, and

(d) the Care Quality Commission.**]**

F251(5) **[** An order under subsection (2) must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.

(6) The regulator must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.

(7) If the regulator makes an order under subsection (2), it must—

(a) appoint a person as the trust special administrator with effect from the day specified in the order, and

(b) publish the name of the person appointed.

(8) A person appointed as a trust special administrator under this section holds and vacates office in accordance with the terms of the appointment.

(9) A person appointed as a trust special administrator under this section must manage the trust's affairs, business and property, and exercise the trust special administrator's functions, so as to achieve the objective set out in section 65DA as quickly and as efficiently as is reasonably practicable.

(10) When the appointment of a trust special administrator under this section takes effect, the trust's governors, chairman and executive and non-executive directors are suspended from office; and Chapter 5 of this Part, in its application to the trust, is to be read accordingly.

(11) But subsection (10) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.

(12) The regulator may indemnify a trust special administrator appointed under this section in respect of such matters as the regulator may determine.**]**

Textual Amendments

F238 S. 65D heading substituted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 174(6), 306(4); S.I. 2012/2657, art. 2(2)

F239 S. 65D(1)-(3) substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(3)**, 306(4); S.I. 2012/2657, art. 2(2)

F240 S. 65D(1)(a): words in s. 65D(1) renumbered as s. 65D(1)(a) (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(1)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

F241 S. 65D(1)(b) and preceding word inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(1)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

F242 S. 65D(1A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(2)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

F243 Words in s. 65D(2) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(3)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

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F244 S. 65D(3A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(4)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

F245 Words in s. 65D(4) substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(4)(a)**, 306(4); S.I. 2012/2657, art. 2(2)

F246 Words in s. 65D(4) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(5)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

F247 S. 65D(4)(aa) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(4)(b)**, 306(4); S.I. 2012/2657, art. 2(2)

F248 S. 65D(4)(b) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 174(4)(c)**, 306(4); S.I. 2012/2657, art. 2(2)

F249 Words in s. 65D(4)(c) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 174(4)(d)**, 306(4); S.I. 2012/2657, art. 2(2)

F250 S. 65D(4)(d) and word inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(4)(e)**, 306(4); S.I. 2012/2657, art. 2(2)

F251 S. 65D(5)-(12) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(5)**, 306(4); S.I. 2012/2657, art. 2(2)

[F252 65DA Objective of trust special administration

(1) The objective of a trust special administration is to secure—

(a) the continued provision of such of the services provided for the purposes of the NHS by the NHS foundation trust that is subject to an order under section 65D(2), at such level, as the commissioners of those services determine, and

[F253(aa) that the services whose continuous provision is secured as mentioned in paragraph (a) are of sufficient safety and quality to be provided under this Act,]

(b) that it becomes unnecessary for the order to remain in force for that purpose.

(2) The commissioners may determine that the objective set out in subsection (1) is to apply to a service only if they are satisfied that the criterion in subsection (3) is met.

(3) The criterion is that ceasing to provide the service under this Act would, in the absence of alternative arrangements for its provision under this Act, be likely to—

(a) have a significant adverse impact on the health of persons in need of the service or significantly increase health inequalities, or

(b) cause a failure to prevent or ameliorate either a significant adverse impact on the health of such persons or a significant increase in health inequalities.

(4) In determining whether that criterion is met, the commissioners must (in so far as they would not otherwise be required to do so) have regard to—

(a) the current and future need for the provision of the service under this Act,

(b) whether ceasing to provide the service under this Act would significantly reduce equality between those for whom the commissioner arranges for the provision of services under this Act with respect to their ability to access services so provided, and

(c) such other matters as may be specified in relation to NHS foundation trusts in guidance published by the regulator.

(5) The regulator may revise guidance under subsection (4)(c) and, if it does so, must publish the guidance as revised.

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[Before publishing guidance under subsection (4)(c), the regulator must consult the [F254](5A) Care Quality Commission.**]**

(6) Before publishing guidance under subsection (4)(c) or (5), the regulator must obtain the approval of—

(a) the Secretary of State;

(b) the Board.

(7) The Board must make arrangements for facilitating agreement between commissioners in determining the services provided by the trust under this Act to which the objective set out in subsection (1) is to apply.

(8) Where commissioners fail to reach agreement in pursuance of arrangements under subsection (7), the Board may make the determination (and the duty imposed by subsection (1)(a), so far as applying to the commissioners concerned, is to be regarded as discharged).

(9) In this section—

"commissioners" means the persons to which the trust provides services under this Act, and

"health inequalities" means the inequalities between persons with respect to the outcomes achieved for them by the provision of services that are provided as part of the health service.**]**

Textual Amendments

F252 S. 65DA inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 175(1)**, 306(4) (with s. 175(2)); S.I. 2012/2657, art. 2(2)

F253 S. 65DA(1)(aa) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(1)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F254 S. 65DA(5A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(2)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

[F255]65E NHS foundation trusts: de-authorisation and appointment of trust special administrator

. . . . . .

Textual Amendments

F255 S. 65E omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(3)**, 306(4); S.I. 2012/2657, art. 2(2)

Consultation and report

65F Draft report

(1) Within the period of **[**[F256]65 working days**]** beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the

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Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the trust.

(2) When preparing the draft report, the administrator must consult—

[the Board,**]**

F257(za)

(a) F258... F259...

(b) any other person to which the trust provides goods or services under this Act and which the Secretary of State directs the administrator to consult **[**F260, and

(c) the Care Quality Commission.**]**

(3) After receiving the draft report, the Secretary of State must lay it before Parliament.

[For the purposes of this section in its application to the case of an NHS foundation F261(4) trust, the references to the Secretary of State are to be read as references to the regulator.

(5) In the case of an NHS foundation trust, the administrator may not provide the draft report to the regulator under subsection (1)—

(a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report **[**F262—

(i) would achieve the objective set out in section 65DA(1)(a), and

(ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust or NHS trust that provides services under this Act to the commissioner,**]** or

(b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

[Nor, in the case of an NHS foundation trust, may the administrator provide the draft F263(5A) report to the regulator under subsection (1) without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).**]**

(6) Where the Board **[**F264or the Care Quality Commission**]** decides not to provide to the administrator a statement **[**F265to the effect mentioned in subsection (5) or (5A)**]**, the Board **[**F266or (as the case may be) the Commission**]** must—

(a) give a notice of the reasons for its decision to the administrator and to the regulator;

(b) publish the notice;

(c) lay a copy of it before Parliament.

(7) In subsection (5), "commissioner" means a person to which the trust provides services under this Act.

[Where the administrator recommends taking action in relation to another NHS F267(8) foundation trust or an NHS trust, the references in subsection (5) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action.

(9) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (5) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

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(10) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.**]]**

Textual Amendments

F256 Words in s. 65F(1) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(2)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F257 S. 65F(2)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(1)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F258 S. 65F(2)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(1)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F259 Words in s. 65F(2) omitted (15.7.2014) by virtue of Care Act 2014 (c. 23), **ss. 85(3)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F260 s. 65F(2)(c) and preceding word inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(3)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F261 S. 65F(4)-(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F262 Words in s. 65F(5)(a) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(3)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F263 S. 65F(5A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(5)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F264 Words in s. 65F(6) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(6)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F265 Words in s. 65F(6) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(6)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F266 Words in s. 65F(6) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(6)(c)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F267 S. 65F(8)-(10) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(4)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

65G Consultation plan

(1) At the same time as publishing a draft report under section 65F, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.

(2) The statement must specify a period of **[**F268 40 working days**]** within which the administrator seeks responses (the "consultation period").

(3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.

F269 **[** In the case of an NHS foundation trust, the administrator may not make a variation to (4) the draft report following the consultation period—

(a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report as so varied **[**F270—

(i) would achieve the objective set out in section 65DA(1)(a), and

(ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust or NHS trust that provides services under this Act to the commissioner,**]** or

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(b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

[F271(4A) Nor may the administrator make a variation to the draft report following the consultation period without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report as so varied would achieve that part of the objective set out in section 65DA(1)(aa).**]**

(5) Where the Board **[**F272or the Care Quality Commission**]** decides not to provide to the administrator a statement **[**F273to the effect mentioned in subsection (4) or (4A)**]**, the Board **[**F274or (as the case may be) the Commission**]** must—

(a) give a notice of the reasons for its decision to the administrator and to the regulator;

(b) publish the notice;

(c) lay a copy of it before Parliament.

(6) In subsection (4), "commissioner" means a person to which the trust provides services under this Act.

[F275(7) Where the administrator recommends taking action in relation to another NHS foundation trust or an NHS trust, the references in subsection (4) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action."

(8) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (4) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(9) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.**]]**

Textual Amendments

F268 Words in s. 65G(2) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(5)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F269 S. 65G(4)-(6) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(3)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F270 Words in s. 65G(4)(a) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(6)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F271 S. 65G(4A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(8)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F272 Words in s. 65G(5) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(9)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F273 Words in s. 65G(5) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(9)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F274 Words in s. 65G(5) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(9)(c)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F275 S. 65G(7)-(9) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(7)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

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65H Consultation requirements

(1) The following duties apply during the consultation period.

(2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.

(3) A notice under subsection (2) must include details of how responses can be given in writing.

(4) The trust special administrator must **[**F276—

(a)**]** hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust **[**F277, and

(b) in the case of each affected trust, hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust.**]**

(5) The trust special administrator must hold at least one other meeting to seek responses from any person who wishes to attend, after publishing notice of the date, time and place of the meeting.

(6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.

(7) The trust special administrator must request a written response from—

[the Board,**]**

F278(za)

F279(a) . . . . . .

(b) any other person to which the trust provides goods or services under this Act F280...;

[any affected trust;

F281(bza)

(bzb) any person to which an affected trust provides goods or services under this Act that would be affected by the action recommended in the draft report;

(bzc) any local authority in whose area the trust provides goods or services under this Act;

(bzd) any local authority in whose area an affected trust provides goods or services under this Act;

(bze) any Local Healthwatch organisation for the area of a local authority mentioned in paragraph (bzc) or (bzd);**]**

[the Care Quality Commission;**]**

F282(ba)

(c) any person within subsection (8), if required by directions given by the Secretary of State **[**F283;

(d) any other person specified in a direction given by the Secretary of State**]**.

(8) The persons within this subsection are—

F284(a) . . . . . .

F284(b) . . . . . .

F284(c) . . . . . .

F284(d) . . . . . .

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F285(e) . . . . . .

(f) the member of Parliament for any constituency.

(9) The trust special administrator must **[**F286—

(a)**]** hold at least one meeting to seek responses from representatives of **[**F287the Board and**]** each of the persons from whom the administrator must request a written response under subsection **[**F288(7)(b), **[**F289(bzb),**][**F290(ba),**]** (c) or (d)**]**,

[F291(b) hold at least one meeting to seek responses from representatives of each of the trusts from which the administrator must request a written response under subsection (7)(bza), and

(c) hold at least one meeting to seek responses from representatives of each of the local authorities and Local Healthwatch organisations from which the administrator must request a written response under subsection (7)(bzc), (bzd) and (bze).**]**

(10) The Secretary of State may direct an administrator to—

(a) request a written response from any person;

(b) hold a meeting to seek a response from any person.

(11) In subsection (4) "staff of the trust" means persons employed by the trust or otherwise working for the trust (whether as or on behalf of a contractor, as a volunteer or otherwise).

[F292(11A) In this section, "affected trust" means—

(a) where the trust in question is an NHS trust, another NHS trust, or an NHS foundation trust, which provides goods or services under this Act that would be affected by the action recommended in the draft report;

(b) where the trust in question is an NHS foundation trust, another NHS foundation trust, or an NHS trust, which provides services under this Act that would be affected by the action recommended in the draft report.

(11B) In this section, a reference to a local authority includes a reference to the council of a district only where the district is comprised in an area for which there is no county council.**]**

[F293(12) For the purposes of this section in its application to the case of an NHS foundation trust—

(a) in subsection (7)(b) **[**F294, (bzb), (bzc) and (bzd)**]**, the words "goods or" are to be ignored, and

(b) in subsections (7)(c) and (d) and (10), the references to the Secretary of State are to be read as references to the regulator.

(13) In the case of an NHS foundation trust, the Secretary of State may direct the regulator as to persons from whom it should direct the administrator under subsection (10) to request or seek a response.**]**

Textual Amendments

F276 S. 65H(4)(a): words in s. 65(4) renumbered as s. 65(4)(a) (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(8)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F277 S. 65H(4)(b) and preceding word inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(8)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

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F278 S. 65H(7)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(4)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F279 S. 65H(7)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(4)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F280 Words in s. 65H(7)(b) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(4)(c)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F281 Ss. 65H(7)(bza)-(bze) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(9)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F282 S. 65H(7)(ba) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(10)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F283 S. 65H(7)(d) and punctuation inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(4)(d)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F284 S. 65H(8)(a)-(d) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F285 S. 65H(8)(e) omitted (15.7.2014) by virtue of Care Act 2014 (c. 23), **ss. 120(10)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F286 S. 65H(9)(a): words in s. 65H(9) renumbered as s. 65H(9)(a) (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(11)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F287 Words in s. 65H(9) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(6)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F288 Words in s. 65H(9) substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(6)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F289 Word in s. 65H(9) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(11)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F290 Word in s. 65H(9) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(10)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F291 S. 65H(9)(b)(c) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(11)(c)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F292 S. 65H(11A)(11B) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(12)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F293 S. 65H(12)(13) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(7)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F294 Words in s. 65H(12)(a) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(13)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

65I Final report

(1) Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the trust.

(2) The administrator must attach to the final report a summary of all responses to the draft report which were received by the administrator in the period beginning with the publication of the draft report and ending with the last day of the consultation period.

(3) After receiving the administrator's final report, the Secretary of State must publish it and lay it before Parliament.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[For the purposes of this section in its application to the case of an NHS foundation F295(4) trust, the references to the Secretary of State are to be read as references to the regulator.**]**

Textual Amendments

F295 S. 65I(4) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(8)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65J Power to extend time

(1) This section applies to—

(a) the duty of a trust special administrator to provide a draft report within the period specified in section 65F(1);

(b) the duty of a trust special administrator to consult in the consultation period specified under section 65G(2);

(c) the duty of a trust special administrator to provide a final report within the period specified in section 65I(1).

(2) If the Secretary of State thinks it is not reasonable in the circumstances for the administrator to be required to carry out the duty within the specified period, the Secretary of State may by order extend the period.

(3) If an order is made extending the period mentioned in subsection (1)(a) or (c) the trust special administrator must publish a notice stating the new date on which the period will expire.

(4) If an order is made extending the period mentioned in subsection (1)(b) the trust special administrator must—

(a) publish a notice stating the new date on which the period will expire, and

(b) publish a statement setting out the means by which the administrator will seek responses to the draft report during the extended consultation period.

[For the purposes of this section in its application to the case of an NHS foundation F296(5) trust, the references to the Secretary of State are to be read as references to the regulator.**]**

Textual Amendments

F296 S. 65J(5) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(9)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

[F297 Action by the Secretary of State and the regulator]

Textual Amendments

F297 S. 65K cross-heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 177(7), 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

65K [F298Secretary of State's decision in case of NHS trust]

(1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I **[**F299relating to an NHS trust**]**, the Secretary of State must decide what action to take in relation to the trust.

(2) The Secretary of State must as soon as reasonably practicable—

(a) publish a notice of the decision and of the reasons for it;

(b) lay a copy of the notice before Parliament.

Textual Amendments

F298 S. 65K heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(1)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F299 Words in s. 65K(1) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(1)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

[F300**65KA** Regulator's decision in case of NHS foundation trust

(1) Within the period of 20 working days beginning with the day on which the regulator receives a final report under section 65I relating to an NHS foundation trust, the regulator must decide whether it is satisfied—

(a) that the action recommended in the final report would achieve the objective set out in section 65DA, and

(b) that the trust special administrator has carried out the administration duties.

(2) In subsection (1)(b), "administration duties" means the duties imposed on the administrator by—

(a) this Chapter,

(b) a direction under this Chapter, or

(c) the administrator's terms of appointment.

(3) If the regulator is satisfied as mentioned in subsection (1), it must as soon as reasonably practicable provide to the Secretary of State—

(a) the final report, and

(b) the report provided to the regulator by the Care Quality Commission under section 65D(3).

(4) If the regulator is not satisfied as mentioned in subsection (1), it must as soon as reasonably practicable give a notice of that decision to the administrator.

(5) Where the regulator gives a notice under subsection (4), sections 65F to 65J apply in relation to the trust to such extent, and with such modifications, as the regulator may specify in the notice.

(6) The regulator must as soon as reasonably practicable after giving a notice under subsection (4)—

(a) publish the notice;

(b) lay a copy of it before Parliament.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F300 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65KB Secretary of State's response to regulator's decision

(1) Within the period of 30 working days beginning with the day on which the Secretary of State receives the reports referred to in section 65KA(3), the Secretary of State must decide whether the Secretary of State is satisfied—

(a) that the persons to which the NHS foundation trust in question provides services under this Act have discharged their functions for the purposes of this Chapter,

(b) that the trust special administrator has carried out the administration duties (within the meaning of section 65KA(1)(b)),

(c) that the regulator has discharged its functions for the purposes of this Chapter,

[F301(ca) that the Care Quality Commission has discharged its functions for the purposes of this Chapter,**]**

(d) that the action recommended in the final report would secure the continued provision of the services provided by the trust to which the objective set out in section 65DA applies,

(e) that the recommended action would secure the provision of services that are of sufficient safety and quality to be provided under this Act, and

(f) that the recommended action would provide good value for money.

(2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—

(a) give the trust special administrator a notice of the decision and of the reasons for it;

(b) give a copy of the notice to the regulator **[**F302and the Care Quality Commission**]**;

(c) publish the notice;

(d) lay a copy of it before Parliament.

Textual Amendments

F300 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F301 S. 65KB(1)(ca) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(11)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F302 Words in s. 65KB(2)(b) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(12)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

65KC Action following Secretary of State's rejection of final report

(1) Within the period of 20 working days beginning with the day on which the trust special administrator receives a notice under section 65KB(2), the administrator must provide to the regulator the final report varied so far as the administrator considers necessary to secure that the Secretary of State is satisfied as mentioned in section 65KB(1).

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) Where the administrator provides to the regulator a final report under subsection (1), section 65KA applies in relation to the report as it applies in relation to a final report under section 65I; and for that purpose, that section has effect as if—

(a) in subsection (1), for "20 working days" there were substituted "10 working days", and

(b) subsection (3)(b) were omitted.

(3) If the Secretary of State thinks that, in the circumstances, it is not reasonable for the administrator to be required to carry out the duty under subsection (1) within the period mentioned in that subsection, the Secretary of State may by order extend the period.

(4) If an order is made under subsection (3), the administrator must—

(a) publish a notice stating the date on which the period will expire, and

(b) where the administrator is proposing to carry out consultation in response to the notice under section 65KB(2), publish a statement setting out the means by which the administrator will consult during the extended period.

Textual Amendments

F300 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65KD Secretary of State's response to re-submitted final report

(1) Within the period of 30 working days beginning with the day on which the Secretary of State receives a final report under section 65KA(3) as applied by section 65KC(2), the Secretary of State must decide whether the Secretary of State is, in relation to the report, satisfied as to the matters in section 65KB(1)(a) to (f).

(2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—

(a) publish a notice of the decision and the reasons for it;

(b) lay a copy of the notice before Parliament.

(3) Where the Secretary of State publishes a notice under subsection (2)(a), subsections (4) to **[**F303(8A)**]** apply.

(4) If the notice states that the Board has failed to discharge a function—

(a) the Board is to be treated for the purposes of this Act as having failed to discharge the function, and

(b) the failure is to be treated for those purposes as significant (and section 13Z2 applies accordingly).

(5) If the notice states that a clinical commissioning group has failed to discharge a function—

(a) the group is to be treated for the purposes of this Act as having failed to discharge the function,

(b) the Secretary of State may exercise the functions of the Board under section 14Z21(2), (3)(a) and (8)(a), and

(c) the Board may not exercise any of its functions under section 14Z21.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of the Board under subsection (3)(a) of section 14Z21, subsection (9)(a) of that section applies but with the substitution for the references to the Board of references to the Secretary of State.

(7) If the notice states that the trust special administrator has failed to discharge the administration duties (within the meaning of section 65KA(1)(b))—

(a) the administration duties are to be treated for the purposes of this Act as functions of the regulator,

(b) the regulator is to be treated for the purposes of this Act as having failed to discharge those functions, and

(c) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).

(8) If the notice states that the regulator has failed to discharge a function—

(a) the regulator is to be treated for the purposes of this Act as having failed to discharge the function, and

(b) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).

[F304(8A) If the notice states that the Care Quality Commission has failed to discharge a function—

(a) the Care Quality Commission is to be treated for the purposes of this Act as having failed to discharge the function, and

(b) the failure is to be treated for those purposes as significant (and section 82 of the Health and Social Care Act 2008 applies accordingly).**]**

(9) Within the period of 60 working days beginning with the day on which the Secretary of State publishes a notice under subsection (2)(a), the Secretary of State must decide what action to take in relation to the trust.

(10) The Secretary of State must as soon as reasonably practicable—

(a) publish a notice of the decision and the reasons for it;

(b) lay a copy of the notice before Parliament.**]**

Textual Amendments

F300 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F303 Word in s. 65KD(3) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(13)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F304 S. 65KD(8A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(14)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

65L Trusts coming out of administration

(1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end.

F305 **[** (2A) For the purposes of subsection (1) in its application to the case of an NHS foundation trust, the reference to section 65K is to be read as a reference to section 65KD(9); and this section also applies in the case of an NHS foundation trust if—

(a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) in relation to the trust, and

(b) the action recommended in the final report is to do something other than dissolve the trust.

(2B) For the purposes of subsection (2) in its application to the case of an NHS foundation trust—

(a) the reference to the Secretary of State is to be read as a reference to the regulator, and

(b) the reference to the chairman and directors of the trust is to be read as including a reference to the governors.**]**

F306(3) . . . . . .

F306(4) . . . . . .

F306(5) . . . . . .

F307 **[** (6) Subsection (7) applies in the case of an NHS foundation trust.

(7) If it appears to the regulator to be necessary in order to comply with Schedule 7, the regulator may by order—

(a) terminate the office of any governor or of any executive or non-executive director of the trust;

(b) appoint a person to be a governor or an executive or non-executive director of the trust.**]**

Textual Amendments

F305 S. 65L(2A)(2B) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(3)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F306 S. 65L(3)-(5) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 177(4)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F307 S. 65L(6)(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F308 **[** 65LA Trusts to be dissolved

(1) This section applies if—

(a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1), and

(b) the action recommended in the final report is to dissolve the NHS foundation trust in question.

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(2) This section also applies if the Secretary of State decides under section 65KD(9) to dissolve the NHS foundation trust in question.

(3) The regulator may make an order—

(a) dissolving the trust, and

(b) transferring, or providing for the transfer of, the property and liabilities of the trust **[**F309—

(i) to an NHS body;

(ii) to the Secretary of State;

(iii) between more than one NHS body or between one or more NHS bodies and the Secretary of State.**]**

(4) An order under subsection (3) may include provision for the transfer of employees of the trust.

(5) The liabilities that may be transferred **[**F310to an NHS body**]** by virtue of subsection (3)(b) include criminal liabilities.**]**

Textual Amendments

F308 S. 65LA inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(6)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F309 Words in s. 65LA(3)(b) substituted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(6)**, 115(7); S.I. 2015/994, art. 6(r)

F310 Words in s. 65LA(5) substituted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(7)**, 115(7); S.I. 2015/994, art. 6(r)

Supplementary

65M Replacement of trust special administrator

(1) If a trust special administrator ceases to hold office for any reason before the Secretary of State has made either an order under section 65L(2) or an order dissolving the trust, the Secretary of State must—

(a) appoint another person as the trust special administrator, and

(b) publish the name of the person appointed.

(2) Where a person is appointed under subsection (1) in relation to a trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

[F311(3) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.**]**

Textual Amendments

F311 S. 65M(3) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(1)**, 306(4); S.I. 2012/2657, art. 2(2)

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65N Guidance

(1) The Secretary of State must publish guidance for trust special administrators.

[It must, in so far as it applies to NHS trusts, include guidance about—
F312(1A) (a) seeking the support of commissioners for an administrator's recommendation;
(b) involving the Board in relation to finalising an administrator's report or draft report.**]**

(2) It must include guidance about the publication of notices under sections 65H and 65J.

[It must include guidance about the publication of—
F313(2A) (a) notices under section 65KC(4)(a);
(b) statements under section 65KC(4)(b).**]**

(3) It must include guidance about the preparation of draft reports, as to—
(a) persons to be consulted;
(b) factors to be taken into account;
(c) relevant publications.

[Before publishing guidance under this section, the Secretary of State must consult the F314(3A) Care Quality Commission.**]**

[For the purposes of this section in its application to cases of NHS foundation trusts, F315(4) **[**F316the references in subsections (1) and (3A) to the Secretary of State are to be read as references**]** to the regulator.**]**

Textual Amendments

F312 S. 65N(1A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(14)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F313 S. 65N(2A) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(2)**, 306(4); S.I. 2012/2657, art. 2(2)

F314 S. 65N(3A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(6)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

F315 S. 65N(4) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(3)**, 306(4); S.I. 2012/2657, art. 2(2)

F316 Words in s. 65N(4) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(7)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

65O Interpretation of this Chapter

[In this Chapter— **F317(1)]**

"trust special administrator" means a person appointed under section 65B(6)(a)**[**F318, section 65D(2)**]** or section 65M(1)(a);

"working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.**]**

[F319(2) The references in this Chapter to taking action in relation to an NHS trust include a reference to taking action, including in relation to another NHS trust or an NHS foundation trust, which is necessary for and consequential on action taken in relation to that NHS trust.

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(3) The references in this Chapter to taking action in relation to an NHS foundation trust include a reference to taking action, including in relation to another NHS foundation trust or an NHS trust, which is necessary for and consequential on action taken in relation to that NHS foundation trust.**]**

Textual Amendments

F317 S. 65O(1): s. 65O renumbered as s. 65O(1) (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(1)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F318 Words in s. 65O inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(4)**, 306(4); S.I. 2012/2657, art. 2(2)

F319 S. 65O(2)(3) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(1)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

[F320]CHAPTER 5B

TRUST SPECIAL ADMINISTRATORS: PRIMARY CARE TRUSTS

Textual Amendments

F320 Pt. 2 Ch. 5B omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 15**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Appointment

65P Appointment of trust special administrator

. . . . . .

65Q Displacement of functions

. . . . . .

CHAPTER 6

MISCELLANEOUS

Intervention orders and default powers

66 Intervention orders

[[F321](1) This section applies to—

(a) NHS trusts, and

(b) Special Health Authorities.**]**

(2) If the Secretary of State—

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) considers that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and

(b) is satisfied that it is appropriate for him to intervene under this section,

he may make an order under this section in respect of the body (an "intervention order").

(3) An intervention order may make any provision authorised by section 67 (including any combination of such provisions).

Textual Amendments

F321 S. 66(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 8(1)** (with Sch. 21 para. 8(2)(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C35 S. 66 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

C36 S. 66(1) modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 8(2)**(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

67 Effect of intervention orders

(1) In this section—

(a) "member" means a member of a [F322]... [F323]... Special Health Authority [F324]...,

(b) "employee member" means a member of a [F325]... [F326]... Special Health Authority [F327]... who is an officer of the body, [F328]....

(2) An intervention order may provide for the removal from office of—

(a) all the members, or

(b) those specified in the order,

and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).

(3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—

(a) all the members, or

(b) those specified in the order,

and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).

(4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.

(5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—

(a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and

(b) is so performed in such a way as to achieve such objectives as are so specified,

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and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.

(6) If the person referred to in subsection (5)(a) is a body to which section 66 applies, the functions of that body include the performance of the functions specified in the directions under subsection (5).

(7) Subsection (8) applies in relation to any provision in this Act, or in any order or regulations made, or directions given, under this Act, relating to—

(a) the membership of the body to which an intervention order relates [F329]..., or

(b) the procedure of the body.

(8) The intervention order may provide in relation to any provision specified in the order—

(a) that it does not apply in relation to the body while the order remains in force, or

(b) that it applies in relation to the body, while the order remains in force, with modifications specified in the order.

(9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.

Textual Amendments

F322 Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 16(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F323 Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 16(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F324 Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 9(2)(a)** (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F325 Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 16(b)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F326 Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 16(b)(i)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F327 Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 9(2)(b)(i)** (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F328 Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 9(2)(b)(ii)** (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F329 Words in s. 67(7)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 9(3)** (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

68 Default powers

[[F330](1) This section applies to—

(a) NHS trusts established under section 25, and

(b) Special Health Authorities.**]**

(2) If the Secretary of State considers that a body to which this section applies—

(a) has failed to carry out any functions conferred or imposed on it by or under this Act, or

(b) has in carrying out those functions failed to comply with any regulations or directions relating to those functions,

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he may after such inquiry as he considers appropriate make an order declaring it to be in default.

(3) The members of the body in default must immediately vacate their office, and the order—

(a) must provide for the appointment, in accordance with the provisions of this Act, of new members of the body, and

(b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body pending the appointment of new members.

(4) An order under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including—

(a) provision for the transfer to the Secretary of State of property and liabilities of the body in default, and

(b) where any such order is varied or revoked by a subsequent order, provision in the subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him.

Textual Amendments

F330 S. 68(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 10(1)** (with Sch. 21 para. 9(2)(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C37 S. 68 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

C38 S. 68(1) modified (temp.) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 10(2)**(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Protection of members and officers of health service bodies

69 Protection from personal liability

(1) Section 265 of the Public Health Act 1875 (c. 55) (which relates to the protection of members and officers of certain authorities) has effect as if there were included in the authorities referred to in that section a reference to an NHS body.

(2) Any reference in that section to the Public Health Act 1875 has effect as if it included a reference to this Act and the National Health Service (Wales) Act 2006 (c. 42).

Transfer of residual liabilities

70 Transfer of residual liabilities [F331of certain health service bodies]

(1) If F332...F333... an NHS trust or a Special Health Authority ceases to exist, the Secretary of State must exercise his functions so as to secure that all of the body's liabilities (other than any criminal liabilities) are dealt with.

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(2) A liability is dealt with by being transferred to an NHS body, the Secretary of State or the Welsh Ministers.

Textual Amendments

F331 Words in s. 70 heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 17(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F332 Words in s. 70(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 17(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F333 Words in s. 70(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 17(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Losses and liabilities of certain health service bodies

71 Schemes for meeting losses and liabilities etc of certain health service bodies

(1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies **[**F334or other persons**]** specified in subsection (2) may make provision to meet—

(a) expenses arising from any loss of or damage to their property, and

(b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies **[**F334or other persons**]** concerned.

(2) The bodies **[**F335 and other persons **]** referred to in subsection (1) are—

[F336(za) the Board,

(zb) clinical commissioning groups,**]**

F337(a) . . . . . .

F338(b) . . . . . .

(c) NHS trusts,

(d) Special Health Authorities,

[F339(da) NICE,**]**

[F340(db) the Health and Social Care Information Centre,**]**

[F341(dc) Health Education England,**]**

(e) NHS foundation trusts,

(f) **[**F342the Care Quality Commission**]** , and

[F343(fa) the Health Research Authority;**]**

F344(g) . . . . . .

[F345(h) the Secretary of State,

[F346(ha) a company formed under section 223 and wholly or partly owned by the Secretary of State or the Board,

(hb) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State,**]** and

(i) a body or other person (other than a body or other person within any of **[**F347paragraphs (za) to (hb)**]**) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of **[**F348paragraphs (za) to (h)**]** ,**]**

but a scheme under this section may limit the class or description of bodies which **[**F349, or other persons who, **]** are eligible to participate in it.

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[F350(2A) In subsection (1)(b) "functions"—

(a) in relation to the Secretary of State, means the Secretary of State's functions in connection with the health service;

[F351(ab) in relation to a company within paragraph (ha) or (hb) of subsection (2), means the company's activities in providing facilities or services to any person or body;**]**

(b) in relation to a body or other person within paragraph (i) of subsection (2), means the body's or person's functions of providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of **[**F352paragraphs (za) to (h)**]** of that subsection.**]**

(3) A scheme under this section may, in particular—

(a) provide for the scheme to be administered by the Secretary of State **[**F353or the Board**]** or by a F354... F355...NHS trust, Special Health Authority or NHS foundation trust specified in the scheme,

(b) require any body which **[**F356, or other person who,**]** participates in the scheme to make payments in accordance with the scheme, and

(c) provide for the making of payments for the purposes of the scheme by the Secretary of State **[**F357 (whether or not a participator in the scheme and, if a participator, whether or not required to make payments as a participator) **]**.

(4) If the Secretary of State so directs, a body which is eligible to participate in a scheme must do so.

[F358(5) The Secretary of State may make a direction under subsection (4) in respect of a body only if the body is within any of paragraphs **[**F359(c), (d)**][**F360and (f)**]** of subsection (2).**]**

(6) Where a scheme provides for the scheme to be administered by the Secretary of State, **[**F361the Board or**]** a F362... F363... NHS trust, Special Health Authority or NHS foundation trust must carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct.

(7) Subsections (4) and (6) do not affect any other power of direction of the Secretary of State.

(8) A person or body administering a scheme under this section does not require permission under any provision of the Financial Services and Markets Act 2000 (c. 8) as respects activities carried out under the scheme.

[F364(9) In subsection (2)(i), the reference to a person providing health services does not include a person providing health services under a contract of employment.

(10) In this section " health services " means services provided as part of the health service. **]**

Textual Amendments

F334 Words in s. 71(1) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(2)**, 170(3)(4); S.I. 2008/2497, art. 5

F335 Words in s. 71(2) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(a)**, 170(3)(4); S.I. 2008/2497, art. 5

F336 S. 71(2)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(a)**; S.I. 2012/1831, art. 2(2)

F337 S. 71(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F338 S. 71(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F339 S. 71(2)(da) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F340 S. 71(2)(db) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 19 para. 9(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F341 S. 71(2)(dc) inserted (1.4.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 5 para. 24(3)**; S.I. 2014/3186, art. 2(f)

F342 Words in s. 71(2)(f) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 85**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

F343 S. 71(2)(fa) inserted (1.1.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 7 para. 18(9)**; S.I. 2014/2473, art. 5(m)

F344 S. 71(2)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 19(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F345 S. 71(2)(h)(i) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(b)**, 170(3)(4); S.I. 2008/2497, art. 5

F346 S. 71(2)(ha)(hb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(d)**; S.I. 2012/1831, art. 2(2)

F347 Words in s. 71(2)(i) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(e)(i)**; S.I. 2012/1831, art. 2(2)

F348 Words in s. 71(2)(i) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(e)(ii)**; S.I. 2012/1831, art. 2(2)

F349 Words in s. 71(2) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(c)**, 170(3)(4); S.I. 2008/2497, art. 5

F350 S. 71(2A) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(4)**, 170(3)(4); S.I. 2008/2497, art. 5

F351 S. 71(2A)(ab) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(3)(a)**; S.I. 2012/1831, art. 2(2)

F352 Words in s. 71(2A)(b) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(3)(b)**; S.I. 2012/1831, art. 2(2)

F353 Words in s. 71(3)(a) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(a)**; S.I. 2012/1831, art. 2(2)

F354 Words in s. 71(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F355 Words in s. 71(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F356 Words in s. 71(3)(b) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(a)**, 170(3)(4); S.I. 2008/2497, art. 5

F357 Words in s. 71(3)(c) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(b)**, 170(3)(4); S.I. 2008/2497, art. 5

F358 S. 71(5) substituted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(6)**, 170(3)(4); S.I. 2008/2497, art. 5

F359 Words in s. 71(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F360 Words in s. 71(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 19(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F361 Words in s. 71(6) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(a)**; S.I. 2012/1831, art. 2(2)

F362 Words in s. 71(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F363 Words in s. 71(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F364 S. 71(9)(10) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(7)**, 170(3)(4); S.I. 2008/2497, art. 5

Modifications etc. (not altering text)

C39 S. 71(2) modified (temp.) (1.10.2008) by Health and Social Care Act 2008 (Consequential Amendments and Transitory Provisions) Order 2008 (S.I. 2008/2250), arts. 1(1), **3(15)**

Co-operation between NHS bodies

72 Co-operation between NHS bodies

[F365(1)**]** It is the duty of NHS bodies to co-operate with each other in exercising their functions.

[F366(2) For the purposes of this section, NICE is an NHS body.**]**

[F367(3) For the purposes of this section, the Health and Social Care Information Centre is an NHS body.**]**

[F368(4) For the purposes of this section, Health Education England is an NHS body.**]**

Textual Amendments

F365 S. 72(1): s. 72 renumbered as s. 72(1) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F366 S. 72(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F367 S. 72(3) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 19 para. 9(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F368 S. 72(4) inserted (1.4.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 5 para. 15(2)**; S.I. 2014/3186, art. 2(f)

Directions and regulations under this Part

73 Directions and regulations under this Part

(1) This section applies to directions and regulations under any of—

(a) section 7,

(b) section 8,

F369(c) . . . . . .

F369(d) . . . . . .

F369(e) . . . . . .

F369(f) . . . . . .

(g) section 29.

(2) Except in prescribed cases, the directions and regulations must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function.

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Textual Amendments

F369 S. 73(1)(c)-(f) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 19**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

PART 3

LOCAL AUTHORITIES AND THE NHS

[F370 73A Appointment of directors of public health

(1) Each local authority must, acting jointly with the Secretary of State, appoint an individual to have responsibility for —

(a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,

(b) the exercise by the authority of its functions by virtue of section 6C(1) or (3),

(c) anything done by the authority in pursuance of arrangements under section 7A,

(d) the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health,

(e) the functions of the authority under section 325 of the Criminal Justice Act 2003, and

(f) such other functions relating to public health as may be prescribed.

(2) The individual so appointed is to be an officer of the local authority and is to be known as its director of public health.

(3) Subsection (4) applies if the Secretary of State—

(a) considers that the director has failed or might have failed to discharge (or to discharge properly) the responsibilities of the director under—

(i) subsection (1)(b), or

(ii) subsection (1)(c) where the arrangements relate to the Secretary of State's functions under section 2A, and

(b) has consulted the local authority.

(4) The Secretary of State may direct the local authority to—

(a) review how the director has discharged the responsibilities mentioned in subsection (3)(a);

(b) investigate whether the director has failed to discharge (or to discharge properly) those responsibilities;

(c) consider taking any steps specified in the direction;

(d) report to the Secretary of State on the action it has taken in pursuance of a direction given under any of the preceding paragraphs.

(5) A local authority may terminate the appointment of its director of public health.

(6) Before terminating the appointment of its director of public health, a local authority must consult the Secretary of State.

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(7) A local authority must have regard to any guidance given by the Secretary of State in relation to its director of public health, including guidance as to appointment and termination of appointment, terms and conditions and management.

(8) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F370 S. 73A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 30**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F371 73B Exercise of public health functions of local authorities: further provision

(1) A local authority must, in the exercise of any functions mentioned in subsection (2), have regard to any document published by the Secretary of State for the purposes of this section.

(2) The functions mentioned in this subsection are—

(a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,

(b) the exercise by the authority of its functions by virtue of section 6C(1) or (3),

(c) anything done by the authority in pursuance of arrangements under section 7A,

(d) the functions of the authority under section 325 of the Criminal Justice Act 2003, and

(e) such other functions relating to public health as may be prescribed.

(3) The Secretary of State may give guidance to local authorities as to the exercise of any functions mentioned in subsection (2).

(4) A document published under subsection (1), and guidance given under subsection (3), may include guidance as to the appointment of officers of the local authority to discharge any functions mentioned in subsection (2), and as to their terms and conditions, management and dismissal.

(5) The director of public health for a local authority must prepare an annual report on the health of the people in the area of the local authority.

(6) The local authority must publish the report.

(7) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F371 S. 73B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 31**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C40 S. 73B(1) applied (30.11.2017) by The Greater Manchester Combined Authority (Public Health Functions) Order 2017 (S.I. 2017/1180), arts. 1, **5(1)**

C41 S. 73B(5)(6) applied (with modifications) (30.11.2017) by The Greater Manchester Combined Authority (Public Health Functions) Order 2017 (S.I. 2017/1180), arts. 1, **5(2)**

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[F372 73C Complaints about exercise of public health functions by local authorities

(1) Regulations may make provision about the handling and consideration of complaints made under the regulations about —

(a) the exercise by a local authority of any of its public health functions;

(b) the exercise by a local authority of its functions by virtue of section 6C(1) or (3);

(c) anything done by a local authority in pursuance of arrangements made under section 7A;

(d) the exercise by a local authority of any of its other functions—

(i) which relate to public health, and

(ii) for which its director of public health has responsibility;

(e) the provision of services by another person in pursuance of arrangements made by a local authority in the exercise of any function mentioned in paragraphs (a) to (d).

(2) The regulations may provide for a complaint to be considered by one or more of the following—

(a) the local authority in respect of whose functions the complaint is made;

(b) an independent panel established under the regulations;

(c) any other person or body.

(3) The regulations may provide for a complaint or any matter raised by a complaint—

(a) to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 for the Commissioner to consider whether to investigate the complaint or matter under that Part;

(b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

(4) Where the regulations make provision under subsection (3)(a) they may also provide for the complaint to be treated as satisfying sections 26A and 26B of the Act of 1974.

(5) Section 115 of the Health and Social Care (Community Health and Standards) Act 2003 (health care and social services complaints regulations: supplementary) applies in relation to regulations under this section as it applies in relation to regulations under subsection (1) of section 113 of that Act.

(6) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F372 S. 73C inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 32**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

74 Supply of goods and services by local authorities

(1) In the Local Authorities (Goods and Services) Act 1970 (c. 39) the expression "public body" includes—

(a) **[**F373the Board and**]** any **[**F374clinical commissioning group or**]**F375... Special Health Authority F376..., and

(b) so far as relates to his functions under this Act, the Secretary of State.

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(2) Subsection (1) has effect as if made by an order under section 1(5) of the Local Authorities (Goods and Services) Act 1970 and may be varied or revoked by such an order.

(3) Each local authority must make services available to each NHS body acting in its area, so far as is reasonably necessary and practicable to enable the NHS body to discharge its functions under this Act.

[F377(4) "services" means—

(a) in relation to a local authority in England, the services of persons employed by the authority for the purposes of its functions under the Local Authority Social Services Act 1970 (c. 42);

(b) in relation to a local authority in Wales, the services of persons employed by the authority for the purposes of its functions which are social services functions for the purposes of the Social Services and Well-being (Wales) Act 2014 (anaw 4).**]**

Textual Amendments

F373 Words in s. 74(1)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 24(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F374 Words in s. 74(1)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 24(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F375 Words in s. 74(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 24(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F376 Words in s. 74(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 24(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F377 S. 74(4) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **240**

75 Arrangements between NHS bodies and local authorities

(1) The Secretary of State may by regulations make provision for or in connection with enabling prescribed NHS bodies (on the one hand) and prescribed local authorities (on the other) to enter into prescribed arrangements in relation to the exercise of—

(a) prescribed functions of the NHS bodies, and

(b) prescribed health-related functions of the local authorities,

if the arrangements are likely to lead to an improvement in the way in which those functions are exercised.

(2) The arrangements which may be prescribed include arrangements—

(a) for or in connection with the establishment and maintenance of a fund—

(i) which is made up of contributions by one or more NHS bodies and one or more local authorities, and

(ii) out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the authority or authorities,

(b) for or in connection with the exercise by an NHS body on behalf of a local authority of prescribed health-related functions of the authority in conjunction with the exercise by the NHS body of prescribed functions of the NHS body,

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(c) for or in connection with the exercise by a local authority on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the local authority of prescribed health-related functions of the local authority,

(d) as to the provision of staff, goods or services in connection with any arrangements mentioned in paragraph (a), (b) or (c),

(e) as to the making of payments by a local authority to an NHS body in connection with any arrangements mentioned in paragraph (b),

(f) as to the making of payments by an NHS body to a local authority in connection with any arrangements mentioned in paragraph (c).

(3) Regulations under this section may make provision—

(a) as to the cases in which NHS bodies and local authorities may enter into prescribed arrangements,

(b) as to the conditions which must be satisfied in relation to prescribed arrangements (including conditions in relation to consultation),

(c) for or in connection with requiring the consent of the Secretary of State to the operation of prescribed arrangements (including provision in relation to applications for consent, the approval or refusal of such applications and the variation or withdrawal of approval),

(d) in relation to the duration of prescribed arrangements,

(e) for or in connection with the variation or termination of prescribed arrangements,

(f) as to the responsibility for, and the operation and management of, prescribed arrangements,

(g) as to the sharing of information between NHS bodies and local authorities.

(4) The provision which may be made by virtue of subsection (3)(f) includes provision in relation to—

(a) the formation and operation of joint committees of NHS bodies and local authorities,

(b) the exercise of functions which are the subject of prescribed arrangements (including provision in relation to the exercise of such functions by joint committees or employees of NHS bodies and local authorities),

(c) the drawing up and implementation of plans in respect of prescribed arrangements,

(d) the monitoring of prescribed arrangements,

(e) the provision of reports on, and information about, prescribed arrangements,

(f) complaints and disputes about prescribed arrangements,

(g) accounts and audit in respect of prescribed arrangements.

(5) Arrangements made by virtue of this section do not affect—

(a) the liability of NHS bodies for the exercise of any of their functions,

(b) the liability of local authorities for the exercise of any of their functions, or

(c) any power or duty to recover charges in respect of services provided in the exercise of any local authority functions.

(6) The Secretary of State may issue guidance to NHS bodies and local authorities in relation to consultation or applications for consent in respect of prescribed arrangements.

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(7) The reference in subsection (1) to an improvement in the way in which functions are exercised includes an improvement in the provision to any individuals of any services to which those functions relate.

[F378(7A) For the purposes of this section, a combined authority that exercises a prescribed function within subsection (1)(a) of an NHS body under voluntary arrangements is to be treated as an NHS body.

(7B) "Voluntary arrangements" means arrangements made with the combined authority under—

(a) section 7A (exercise of Secretary of State's public health functions),

(b) section 13Z (exercise of the Board's functions), or

(c) section 14Z3A (joint exercise of functions with clinical commissioning groups).

(7C) Regulations under this section, so far as made before or in the same Session as that in which the Cities and Local Government Devolution Act 2016 is passed, apply to a combined authority that is treated as an NHS body by virtue of subsection (7A) as if it were a prescribed NHS body for the purposes of those regulations.

(7D) But a combined authority to which regulations under this section apply by virtue of subsection (7C) may enter into prescribed arrangements in relation to the exercise only of functions within subsection (1)(a) that are exercisable by the authority under voluntary arrangements.

(7E) Regulations under this section may provide for the regulations to apply in relation to a combined authority subject to any prescribed limitations or conditions.

(7F) Nothing in subsection (7D) prevents a combined authority from being a party to arrangements made by virtue of this section in relation to any prescribed functions of an NHS body that are exercisable by the authority as a result of an order under section 105A of the Local Democracy, Economic Development and Construction Act 2009 (public authority functions exercisable by combined authorities).**]**

(8) In this section—

"health-related functions", in relation to a local authority, means functions of the authority which, in the opinion of the Secretary of State—

(a) have an effect on the health of any individuals,

(b) have an effect on, or are affected by, any functions of NHS bodies, or

(c) are connected with any functions of NHS bodies,

"NHS body" does not include a Special Health Authority.

(9) Schedule 18 makes provision with respect to the transfer of staff in connection with arrangements made by virtue of this section.

Textual Amendments

F378 S. 75(7A)-(7F) inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 6**

Modifications etc. (not altering text)

C42 S. 75 applied (with modifications) (30.11.2017) by The Greater Manchester Combined Authority (Public Health Functions) Order 2017 (S.I. 2017/1180), arts. 1, **6(1)**

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

C43 S. 75(8) modified by 2004 c. 17, s. 4(5)(c) (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 258(c)** (with Sch. 3 Pt. 1))

76 Power of local authorities to make payments

(1) A local authority may make payments to **[**F379the Board, a clinical commissioning group**]**F380... F381... or a Local Health Board towards expenditure incurred or to be incurred by the body in connection with the performance by it of prescribed functions.

(2) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.

(3) The Secretary of State may by directions prescribe conditions relating to payments under this section.

(4) The power under subsection (3) may in particular be exercised so as to require, in such circumstances as may be specified—

(a) repayment of the whole or part of a payment under this section, or

(b) in respect of property acquired with payments under this section, payment of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.

(5) No payment may be made under this section in respect of any expenditure unless the conditions relating to it conform with the conditions prescribed for payments of that description under subsection (3).

Textual Amendments

F379 Words in s. 76(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 25(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F380 Words in s. 76(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 25(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F381 Words in s. 76(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 25(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C44 S. 76(1) modified by 2004 c. 17, s. 4(5)(b) (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 258(b)** (with Sch. 3 Pt. 1))

77 Care Trusts

(1) Where—

(a) F382... an NHS trust **[**F383or a clinical commissioning group or an NHS foundation trust**]** is, or will be, a party to any existing or proposed LA delegation arrangements, F384...

(b) **[**F385the body and the local authority concerned consider**]** that designation of the body as a Care Trust would be likely to promote the effective exercise by the body of prescribed health-related functions of **[**F386the local authority**]** (in accordance with the arrangements) in conjunction with prescribed NHS functions of the body **[**F387, and

(c) the requirements in subsection (1A) are satisfied,**]**

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[F388the body and the local authority may jointly**]** designate the body as a Care Trust.

[F389(1A) The body and the local authority must, before designating the body as a Care Trust under this section—

(a) publish in the prescribed form and manner—

(i) the reasons why they consider that the proposed designation would be likely to have the result mentioned in subsection (1)(b), and

(ii) information about the proposed governance arrangements of the Care Trust, and

(b) consult on the proposed designation in accordance with regulations.

(1B) Where a body has been designated as a Care Trust under this section, the body and the local authority must notify prescribed persons of the designation.**]**

F390(2) . . . . . .

F390(3) . . . . . .

(4) **[**F391A body designated as a Care Trust under this section**]** may (in addition to exercising health-related functions of the local authority as mentioned in subsection (1)(b)) exercise such prescribed health-related functions of the local authority as are **[**F392agreed**]** in relation to persons in any area **[**F393so agreed**]**, even though it does not exercise any NHS functions in relation to persons in that area**[**F394; and "agreed" means agreed by the body and the local authority**]**.

[F395(5) Where a body is designated as a Care Trust under this section, the body and the local authority may jointly revoke that designation.

(5A) Before revoking a designation as a Care Trust under this section, the body and the local authority must consult on the proposed revocation of the designation in accordance with regulations.

(5B) Where the designation of a body as a Care Trust under this section has been revoked, the body and the local authority must notify prescribed persons of the revocation.**]**

[F396(5C) Regulations under subsection (1A)(b) or (5A) may include provision requiring a body and a local authority to publish prescribed information following a consultation.**]**

[F397(5D) Where a duty is imposed by or by virtue of this section on a body and a local authority, they may make arrangements for the function to be discharged—

(a) by both of them acting jointly,

(b) by each of them acting separately, or

(c) by one of them acting on behalf of both of them.**]**

F398(6) . . . . . .

F399(7) . . . . . .

(8) Regulations may make such incidental, supplementary or consequential provision (including provision amending, repealing or revoking enactments) as the Secretary of State considers expedient in connection with the preceding provisions of this section.

(9) Regulations under subsection (8) may, in particular, make provision—

F400(a) . . . . . .

F401(b) . . . . . .

F402(c) . . . . . .

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(d) for supplementing or modifying, in connection with the operation of **[**F403subsection (4)**]**, any provision made by regulations under section 75.

(10) The designation of a body as a Care Trust under this section does not affect any of the functions, rights or liabilities of that body in its capacity as F404... NHS trust **[**F405or clinical commissioning group or NHS foundation trust**]**.

(11) In connection with the exercise by a body so designated of any relevant social services functions **[**F406of a local authority in England**]** under LA delegation arrangements—

(a) section 7 of the Local Authority Social Services Act 1970 (c. 42) (authorities to exercise social services functions under guidance), and

(b) section 7A of that Act (directions as to exercise of such functions),

apply to the body as if it were a local authority within the meaning of that Act.

[F407(11A) In connection with the exercise by a body so designated of any relevant social services functions under LA delegation arrangements, sections 145 to 149 of the Social Services and Well-being (Wales) Act 2014 (codes on the exercise of social services functions) apply to the body as if it were a local authority within the meaning of that Act.**]**

(12) In this section—

"health-related functions" has the meaning given by section 75(8),

"LA delegation arrangements" means arrangements falling within section 75(2)(b), whether or not made in conjunction with any pooled fund arrangements,

"NHS functions" means functions exercisable by F408... NHS trust **[**F409or clinical commissioning group or NHS foundation trust**]** in its capacity as such,

"pooled fund arrangements" means arrangements falling within section 75(2)(a),

[F410"relevant social services functions" means—

(a) in relation to a local authority in England, health-related functions which are social services functions within the meaning of the Local Authority Social Services Act 1970;

(b) in relation to a local authority in Wales, health-related functions which are social services functions within the meaning of the Social Services and Well-being (Wales) Act 2014.**]**

Textual Amendments

F382 Words in s. 77(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 26**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F383 Words in s. 77(1)(a) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F384 Word in s. 77(1) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **s. 200(1)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F385 Words in s. 77(1)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(c)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F386 Words in s. 77(1)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(d)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F387 S. 77(1)(c) and word inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(e)**, 306(1)(d)(4) (with s. 200(13)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F388 Words in s. 77(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **s. 200(1)(f)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F389 S. 77(1A)(1B) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(2)**, 306(1)(d)(4) (with s. 200(13)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F390 S. 77(2)(3) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F391 Words in s. 77(4) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F392 Word in s. 77(4) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F393 Words in s. 77(4) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(c)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F394 Words in s. 77(4) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(d)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F395 S. 77(5)-(5B) substituted for s. 77(5) (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(5)**, 306(1)(d)(4) (with s. 200(14)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F396 S. 77(5C) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(6)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F397 S. 77(5D) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(7)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F398 S. 77(6) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(8)**, 306(1)(d)(4) (with s. 200(15)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F399 S. 77(7) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(9)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F400 S. 77(9)(a) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(10)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F401 S. 77(9)(b) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(10)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F402 S. 77(9)(c) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(10)(c)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F403 Words in s. 77(9)(d) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(10)(d)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F404 Words in s. 77(10) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 26**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F405 Words in s. 77(10) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(11)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F406 Words in s. 77(11) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **241(a)**

F407 S. 77(11A) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **241(b)**

F408 Words in s. 77(12) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 26**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F409 Words in s. 77(12) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 200(12)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F410 Words in s. 77(12) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **241(c)**

78 Directed partnership arrangements

(1) If the Secretary of State is of the opinion—

(a) that a body to which this section applies ("the failing body") is not exercising any of its functions adequately, and

(b) that it would be likely to lead to an improvement in the way in which that function is exercised if it were to be exercised—

(i) by another body to which this section applies under delegation arrangements, or

(ii) in accordance with pooled fund arrangements made with another such body,

the Secretary of State may direct those bodies to enter into such delegation arrangements or pooled fund arrangements in relation to the exercise of the appropriate function or functions as are specified in the direction.

(2) In subsection (1) "the appropriate function or functions" means—

(a) the function of the failing body mentioned in that subsection, and

(b) such other function of that body (if any) as the Secretary of State considers would, if exercised under or in accordance with the arrangements in question, be likely to contribute to an improvement in the exercise of the function referred to in paragraph (a).

(3) The bodies to which this section applies are—

F411(a) . . . . . .

F412(b) . . . . . .

(c) NHS trusts **[**F413established under section 25**]**,

F414(d) . . . . . .

(e) local authorities,

but in subsections (1) and (2) any reference to functions is, in relation to a local authority, a reference only to relevant social services functions of the authority.

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(4) In this section any reference to an improvement in the way in which any function is exercised includes an improvement in the provision to any individuals of any services to which that function relates.

(5) In this section—

"delegation arrangements" means arrangements falling within section 75(2)(b) or (c), whether or not made in conjunction with any pooled fund arrangements,

"health-related functions" has the meaning given by section 75(8),

"pooled fund arrangements" means arrangements falling within section 75(2)(a),

[[F415]"relevant social services functions" means health-related functions which are social services functions of local authorities in England within the meaning of the Local Authority Social Services Act 1970 (c. 42) or of local authorities in Wales within the meaning of the Social Services and Well-being (Wales) Act 2014 (anaw 4),**]**

Textual Amendments

F411 S. 78(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 27(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F412 S. 78(3)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 27(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F413 Words in s. 78(3)(c) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 11(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F414 S. 78(3)(d) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 11(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F415 Words in s. 78(5) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **242**

79 Further provision about directions and directed partnership arrangements

(1) A direction under section 78(1) (a "principal direction") may make provision with respect to—

(a) any of the matters with respect to which provision is required to be made by the specified arrangements by virtue of regulations under section 75, and

(b) such other matters as the Secretary of State considers appropriate.

(2) The Secretary of State may in particular (either in a principal direction or in any subsequent direction) make provision—

(a) for the determination, whether—

(i) by agreement, or

(ii) (in default of agreement) by the Secretary of State or an arbitrator appointed by him,

of the amount of any payments which need to be made by one body to another for the purposes of the effective operation of the specified arrangements, and for the variation of any such determination,

(b) specifying the manner in which the amount of any such payments must be so determined (or varied),

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(c) requiring a body specified in the direction to supply to the Secretary of State or an arbitrator, for the purpose of enabling any such amount to be so determined (or varied), such information or documents as may be so specified,

(d) requiring any amount so determined (or varied) to be paid by and to such bodies as are specified in the direction,

(e) requiring capital assets specified in the direction to be made available by and to such bodies as are so specified.

(3) The Secretary of State may, when giving a principal direction to any bodies to which section 78 applies, give such directions to any other such body as he considers appropriate for or in connection with securing that full effect is given to the principal direction.

(4) Before giving a principal direction to any bodies to which section 78 applies, the Secretary of State may—

(a) direct either or both of the bodies in question to take such steps specified in the direction, or

(b) give such other directions,

as he considers appropriate with a view to enabling him to determine whether the principal direction should be given.

(5) The revocation of a principal direction does not affect the continued operation of the specified arrangements.

(6) "The specified arrangements", in relation to a principal direction, means the arrangements specified in the direction in pursuance of section 78(1).

80 Supply of goods and services by the Secretary of State [F416, the Board and clinical commissioning groups]

(1) The Secretary of State [F417, the Board or a clinical commissioning group] may supply to—

(a) local authorities, and

(b) such public bodies or classes of public bodies as [F418the Secretary of State] may determine,

any goods or materials of a kind used in the health service.

(2) In subsection (1) "public bodies" includes public bodies in Northern Ireland.

(3) The Secretary of State may make available to persons falling within subsection (1)—

[F419(a) the National Health Service Commissioning Board,]

(b) the services of persons employed by the Secretary of State or by F420... F421... a Special Health Authority or a Local Health Board.

[F422(3A) The Board or a clinical commissioning group may make available to persons falling within subsection (1)—

(a) any facilities the provision of which is arranged by the Board or (as the case may be) the clinical commissioning group under this Act (including by virtue of section 7A),

(b) any facilities of the Board or (as the case may be) the group, and

(c) the services of persons employed by the Board or (as the case may be) the group.]

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(4) The Secretary of State may carry out **[**F423, and the Board or a clinical commissioning group may arrange for the carrying out of,**]** maintenance work (including minor renewals, minor improvements and minor extensions) in connection with any land or building for the maintenance of which a local authority is responsible.

(5) **[**F424The Board**]** may supply or make available to persons—

(a) providing pharmaceutical services,

(b) providing services under a general medical services contract, a general dental services contract or a general ophthalmic services contract,

(c) providing services in accordance with section 92 arrangements or section 107 arrangements, or

(d) providing services under a pilot scheme **[**F425established under section 134(1) of this Act**]** or an LPS scheme,

such goods, materials or other facilities as may be prescribed.

(6) The Secretary of State must make available to local authorities—

(a) any services (other than the services of any person) or other facilities provided **[**F426by the Secretary of State**]** under this Act,

(b) the services provided as part of the health service by any person employed by the Secretary of State, F427... F428... a Special Health Authority or a Local Health Board, and

(c) the services of any medical practitioner, dental practitioner or nurse employed by the Secretary of State, F429... F430... a Special Health Authority or a Local Health Board otherwise than to provide services which are part of the health service,

so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

[F431(6A) The Board and each clinical commissioning group must make available to local authorities—

(a) any services (other than the services of any person) or other facilities the provision of which is arranged by the Board or (as the case may be) the clinical commissioning group under this Act,

(b) the services of persons employed by the Board or (as the case may be) the group, and

(c) any facilities of the Board or (as the case may be) the group,

so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.**]**

(7) **[**F432The Board**]** may arrange to make available to local authorities the services of persons—

(a) providing pharmaceutical services,

(b) performing services under a general medical services contract, a general dental services contract or a general ophthalmic services contract,

(c) providing services in accordance with section 92 arrangements or section 107 arrangements, **[**F433or**]**

(d) performing services under a pilot scheme **[**F434established under section 134(1) of this Act**]** or an LPS scheme, F435...

F435(e) . . . . . .

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so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

[F436(8) The Secretary of State may arrange to make available to local authorities the services of persons providing Special Health Authorities or Local Health Boards with services of a kind provided as part of the health service, so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

(9) The Board or a clinical commissioning group may arrange to make available to local authorities the services of persons providing services pursuant to arrangements made under this Act by the Board or (as the case may be) the clinical commissioning group, so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

(10) The reference in subsection (9) to arrangements made by the Board or (as the case may be) a clinical commissioning group includes a reference to arrangements so made by virtue of section 7A.**]**

Textual Amendments

F416 Words in s. 80 title inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(11)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F417 Words in s. 80(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F418 Words in s. 80(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F419 S. 80(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 280(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F420 Words in s. 80(3)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(3)(b)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F421 Words in s. 80(3)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(3)(b)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F422 S. 80(3A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F423 Words in s. 80(4) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F424 Words in s. 80(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F425 Words in s. 80(5)(d) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(a)**; S.I. 2010/30, art. 2(b)

F426 Words in s. 80(6)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F427 Words in s. 80(6)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(7)(b)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F428 Words in s. 80(6)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(7)(b)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F429 Words in s. 80(6)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(7)(c)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F430 Words in s. 80(6)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(7)(c)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F431 S. 80(6A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(8)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F432 Words in s. 80(7) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(9)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F433 Word in s. 80(7)(c) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(9)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F434 Words in s. 80(7)(d) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(b)**; S.I. 2010/30, art. 2(b)

F435 S. 80(7)(e) and word omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(9)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F436 S. 80(8)-(10) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 28(10)** (with Sch. 4 para. 28(12)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C45 S. 80 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 10** (with Sch. 3 Pt. 1)

81 Conditions of supply under section 80

(1) **[**F437Before a person makes the services of any officer available under section 80(3)(b), (3A)(c), (6)(b) or (c) or (6A)(b), the person must**]** —

(a) consult the officer or a body recognised by **[**F438the person**]** as representing the officer, or

(b) **[**F439where the person is the Secretary of State and is not the officer's employer,**]** satisfy himself that the body who employs the officer has consulted the officer about the matter.

(2) **[**F440The person concerned**]** may disregard the provisions of subsection (1) in a case where **[**F441it**]** —

(a) considers it necessary to make the services of an officer available for the purpose of dealing temporarily with an emergency, and

(b) has previously consulted a body such as is mentioned in subsection (1)(b) about making services available in an emergency.

(3) The Secretary of State may, for the purposes of subsection (3)(b) of section 80, or subsection (6)(b) or (c) of that section, give such directions to F442... F443... Special Health Authorities and Local Health Boards to make the services of their officers available as he considers appropriate.

(4) Powers under this section and section 80 may be exercised on such terms as may be agreed, including terms as to the making of payments to **[**F444the person who makes the services available**]**.

(5) **[**F445A person who makes services or facilities available under section 80(6) or (6A) may make such charges in respect of them**]** as may be agreed between **[**F446the person**]** and the local authority or, in default of agreement, as may be determined by arbitration.

(6) Any power to supply goods or materials under section 80 includes—

(a) a power to purchase and store them, and

(b) a power to arrange with third parties for the supply of goods or materials by those third parties.

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Textual Amendments

F437 Words in s. 81(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F438 Words in s. 81(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F439 Words in s. 81(1)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F440 Words in s. 81(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F441 Word in s. 81(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F442 Words in s. 81(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F443 Words in s. 81(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F444 Words in s. 81(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F445 Words in s. 81(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(6)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F446 Words in s. 81(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 29(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

82 Co-operation between NHS bodies and local authorities

In exercising their respective functions NHS bodies (on the one hand) and local authorities (on the other) must co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

PART 4

MEDICAL SERVICES

[F447 Duty of the Board in relation to primary medical services]

Textual Amendments

F447 S. 83 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 30(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

83 Primary medical services

[F448 (1) The Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to secure the provision of primary medical services throughout England.

(2) The Board may (in addition to any other power conferred on it) make such arrangements for the provision of primary medical services as it considers appropriate; and it may, in particular, make contractual arrangements with any person.

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(2A) Arrangements made for the purposes of subsection (1) or (2) may include arrangements for the performance of a service outside England.**]**

(3) **[**F449The Board**]** must publish information about such matters as may be prescribed in relation to the primary medical services provided under this Act.

F450(4) . . . . . .

(5) Regulations may provide that services of a prescribed description must, or must not, be regarded as primary medical services for the purposes of this Act.

(6) Regulations under this section may in particular describe services by reference to the manner or circumstances in which they are provided.

Textual Amendments

F448 S. 83(1)-(2A) substituted for s. 83(1)(2) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 30(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F449 Words in s. 83(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 30(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F450 S. 83(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 30(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

General medical services contracts

84 General medical services contracts: introductory

(1) **[**F451The Board**]** may enter into a contract under which primary medical services are provided in accordance with the following provisions of this Part.

(2) A contract under this section is called in this Act a "general medical services contract".

(3) A general medical services contract may make such provision as may be agreed between **[**F452the Board**]** and the contractor or contractors in relation to—

(a) the services to be provided under the contract,

(b) remuneration under the contract, and

(c) any other matters.

(4) The services to be provided under a general medical services contract may include—

(a) services which are not primary medical services,

[F453(b) services to be performed outside England.**]**

(5) In this Part, "contractor", in relation to a general medical services contract, means any person entering into the contract with **[**F454the Board**]**.

Textual Amendments

F451 Words in s. 84(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 31(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F452 Words in s. 84(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 31(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F453 S. 84(4)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 31(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F454 Words in s. 84(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 31(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

85 Requirement to provide certain primary medical services

(1) A general medical services contract must require the contractor or contractors to provide, for his or their patients, primary medical services of such descriptions as may be prescribed.

(2) Regulations under subsection (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

86 Persons eligible to enter into GMS contracts

(1) **[**F455The Board**]** may, subject to such conditions as may be prescribed, enter into a general medical services contract with—

(a) a medical practitioner,

(b) two or more individuals practising in partnership where the conditions in subsection (2) are satisfied, or

(c) a company limited by shares where the conditions in subsection (3) are satisfied.

(2) The conditions referred to in subsection (1)(b) are that—

(a) at least one partner is a medical practitioner, and

(b) any partner who is not a medical practitioner is either—

(i) an NHS employee,

(ii) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee,

(iii) a health care professional who is engaged in the provision of services under this Act or the National Health Service (Wales) Act 2006 (c. 42), or

(iv) an individual falling within section 93(1)(d).

(3) The conditions referred to in subsection (1)(c) are that—

(a) at least one share in the company is **[**F456both**]** legally and beneficially owned by a medical practitioner, and

(b) any share which is not so owned is **[**F456both**]** legally and beneficially owned by a person referred to in subsection (2)(b).

(4) Regulations may make provision as to the effect, in relation to a general medical services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

(5) In this section—
"health care professional", "NHS employee", "section 92 employee", "section 107 employee", "section 50 employee", "section 64 employee", "section 17C employee" and "Article 15B employee" have the meaning given by section 93.

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Textual Amendments

F455 Words in s. 86(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 32**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F456 Word in s. 86(3)(a)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 202(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

87 GMS contracts: payments

(1) The Secretary of State may give directions as to payments to be made under general medical services contracts.

(2) A general medical services contract must require payments to be made under the contract in accordance with directions under this section.

(3) Directions under subsection (1) may in particular—

(a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance,

(b) provide for payments to be made by reference to—

(i) any scheme or scale specified in the direction, or

(ii) a determination made by any person in accordance with factors specified in the direction,

(c) provide for the making of payments in respect of individual practitioners,

(d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by **[**F457the Board**]** only if it is satisfied as to certain conditions),

(e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(4) Before giving a direction under subsection (1), the Secretary of State—

(a) must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate, and

(b) may consult such other persons as he considers appropriate.

(5) "Payments" includes fees, allowances, reimbursements, loans and repayments.

Textual Amendments

F457 Words in s. 87(3)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 33**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

88 GMS contracts: prescription of drugs, etc

(1) A general medical services contract must contain provision requiring the contractor or contractors to comply with any directions given by the Secretary of State for the purposes of this section as to the drugs, medicines or other substances which may or may not be ordered for patients in the provision of medical services under the contract.

(2) A direction under this section must, subject to subsection (3), be given by regulations.

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(3) A direction under this section may be given by an instrument in writing where it gives effect to a request made in writing to the Secretary of State by a person who is a holder of a Community marketing authorization or United Kingdom marketing authorisation in respect of the drug, medicine or other substance to which the request relates.

(4) "Community marketing authorization" and "United Kingdom marketing authorisation" have the meaning given by regulation 1 of the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994 (S.I. 1994/3144).

89 GMS contracts: other required terms

(1) A general medical services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).

[[F458](1A) Regulations under subsection (1) may, in particular, make provision—

(a) for requiring a contractor who provides services of a prescribed description (a "relevant contractor") to be a member of a clinical commissioning group;

(b) as to arrangements for securing that a relevant contractor appoints one individual to act on its behalf in the dealings between it and the clinical commissioning group to which it belongs;

(c) for imposing requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) for requiring a relevant contractor, in doing anything pursuant to the contract, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

(1B) Provision by virtue of subsection (1A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(1C) In the case of a contract entered into by two or more individuals practising in partnership—

(a) regulations making provision under subsection (1A)(a) may make provision for requiring each partner to secure that the partnership is a member of the clinical commissioning group;

(b) regulations making provision under subsection (1A)(b) may make provision as to arrangements for securing that the partners make the appointment;

(c) regulations making provision under subsection (1A)(d) may make provision for requiring each partner to act as mentioned there.

(1D) Regulations making provision under subsection (1A) for the case of a contract entered into by two or more individuals practising in partnership may make provision as to the effect of a change in the membership of the partnership.

(1E) The regulations may require an individual appointed for the purposes of subsection (1A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed.**]**

(2) Regulations under subsection (1) may in particular make provision as to—

(a) the manner in which, and standards to which, services must be provided,

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(b) the persons who perform services,
(c) the persons to whom services will be provided,
(d) the variation of contract terms (other than terms required by or under this Part),
(e) rights of entry and inspection (including inspection of clinical records and other documents),
(f) the circumstances in which, and the manner in which, the contract may be terminated,
(g) enforcement,
(h) the adjudication of disputes.

(3) Regulations making provision under subsection (2)(c) **[**F459must make**]** provision as to the circumstances in which a contractor or contractors—
(a) must or may accept a person as a patient to whom services are provided under the contract,
(b) may decline to accept a person as such a patient, or
(c) may terminate his or their responsibility for a patient.

(4) Regulations under subsection (2)(d) may—
(a) make provision as to the circumstances in which **[**F460the Board**]** may impose a variation of contract terms,
(b) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description.

(5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.

(6) Regulations under subsection (1) must make provision as to the right of patients to choose the persons from whom they receive services.

Textual Amendments

F458 S. 89(1A)-(1E) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 28(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F459 Words in s. 89(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 202(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F460 Words in s. 89(4)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 34(1)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C46 S. 89(2)(d) modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 34(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

90 GMS contracts: disputes and enforcement

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract.

(2) Regulations under subsection (1) may make provision—
(a) for the referral of the terms of the proposed contract to the Secretary of State, and

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(b) for the Secretary of State, or a person appointed by him, to determine the terms on which the contract may be entered into.

(3) Regulations may make provision for a person or persons entering into a general medical services contract to be regarded as a health service body for any purposes of section 9, in circumstances where he or they so elect.

(4) Regulations under subsection (3) may include provision as to the application of section 9 in cases where—

(a) persons practising in partnership elect to become a health service body, and

(b) there is a change in the membership of the partnership.

(5) Where—

(a) by virtue of regulations under subsection (3), section 9(11) applies in relation to a general medical services contract, and

(b) a direction as to payments is made under that subsection in relation to the contract,

the direction is enforceable in **[**F461the county court**]** (if the court so orders) as if it were a judgment or order of that court.

Textual Amendments

F461 Words in s. 90(5) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Performance of primary medical services

91 Persons performing primary medical services

(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical service for which **[**F462the Board**]** is responsible unless he is included in a list maintained under the regulations by **[**F462the Board**]**.

(2) For the purposes of this section—

(a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

[F463(b) the Board is responsible for a medical service if it secures its provision by or under any enactment.**]**

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—

(a) the preparation, maintenance and publication of a list,

(b) eligibility for inclusion in a list,

(c) applications for inclusion (including provision F464... for the procedure for applications and the documents to be supplied on application),

(d) the grounds on which an application for inclusion may or must be granted or refused,

(e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),

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(f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),

(g) circumstances in which a person included in a list may not withdraw from it,

(h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),

(i) the criteria to be applied in making decisions under the regulations,

(j) appeals against decisions made by **[**F465the Board**]** under the regulations, and

(k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by **[**F466the Board**]**,

(b) **[**F466the Board**]** to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from a list),

(d) the review by **[**F467the Board**]** of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing fraud.

(6) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by **[**F468the Board**]** to the Secretary of State, and

(b) by the Secretary of State to **[**F468the Board**]**.

Textual Amendments

F462 Words in s. 91(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 35(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F463 S. 91(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 35(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F464 Words in s. 91(3)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 35(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F465 Words in s. 91(3)(j) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 35(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F466 Words in s. 91(4)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 35(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F467 Words in s. 91(4)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 35(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F468 Words in s. 91(6)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 35(2)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Other arrangements for the provision of primary medical services

92 [F469Arrangements by the Board for the provision of primary medical services]

[F470(1) The Board may make agreements, other than arrangements pursuant to section 83(2) or general medical services contracts, under which primary medical services are provided.]

(2) An agreement must be in accordance with regulations under section 94.

(3) An agreement may not combine arrangements for the provision of primary medical services with arrangements for the provision of primary dental services.

(4) An agreement may not combine arrangements for the provision of primary medical services with arrangements for the provision of local pharmaceutical services.

(5) But an agreement may include arrangements for the provision of services which are not primary medical services but which may be provided under this Act, other than under Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes).

F471(6) . . . . . .

F472(7) . . . . . .

(8) In this Act, arrangements for the provision of services made under this section are called "section 92 arrangements".

Textual Amendments

F469 S. 92 title substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F470 S. 92(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F471 S. 92(6) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F472 S. 92(7) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

93 Persons with whom agreements may be made under section 92

(1) [F473The Board] may make an agreement under section 92 only with one or more of the following—

(a) an NHS trust or an NHS foundation trust,

(b) a medical practitioner who meets the prescribed conditions,

(c) a health care professional who meets the prescribed conditions,

(d) an individual who is providing services—

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(i) under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(ii) in accordance with section 92 arrangements, section 107 arrangements, section 50 arrangements, section 64 arrangements, section 17C arrangements or Article 15B arrangements, or

(iii) under section 17J or 25 of the 1978 Act or Article 57 or 61 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

or has so provided them within such period as may be prescribed,

(e) an NHS employee, a section 92 employee, a section 107 employee, a section 50 employee, a section 64 employee, a section 17C employee or an Article 15B employee,

(f) a qualifying body,

F474(g) . . . . . .

(2) The power under subsection (1) to make an agreement with a person falling within paragraph (d) or (e) of that subsection is subject to such conditions as may be prescribed.

(3) In this section—

"the 1978 Act" means the National Health Service (Scotland) Act 1978 (c. 29),

"Article 15B arrangements" means arrangements for the provision of services made under Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

"Article 15B employee" means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing or performing those services,

"health care professional" means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

"NHS employee" means an individual who, in connection with the provision of services in the health service, the Scottish health service or the Northern Ireland health service, is employed by—

(a) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust,

(b) a F475... Local Health Board,

(c) a person who is providing services under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(d) an individual who is providing services as specified in subsection (1)(d)(iii),

"the Northern Ireland health service" means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972,

"qualifying body" means a company which is limited by shares all of which are **[**F476both**]** legally and beneficially owned by persons falling within paragraph (a), (b), (c), (d) **[**F477or (e)**]** of subsection (1),

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"the Scottish health service" means the health service within the meaning of the National Health Service (Scotland) Act 1978,

"section 17C arrangements" means arrangements for the provision of services made under section 17C of the 1978 Act,

"section 17C employee" means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by a person providing or performing those services,

"section 50 arrangements" means arrangements for the provision of services made under section 50 of the National Health Service (Wales) Act 2006 (c. 42),

"section 64 arrangements" means arrangements for the provision of services made under section 64 of that Act,

"section 107 employee" means an individual who, in connection with the provision of services in accordance with section 107 arrangements, is employed by a person providing or performing those services,

"section 92 employee" means an individual who, in connection with the provision of services in accordance with section 92 arrangements, is employed by a person providing or performing those services,

"section 50 employee" means an individual who, in connection with the provision of services in accordance with section 50 arrangements, is employed by a person providing or performing those services,

"section 64 employee" means an individual who, in connection with the provision of services in accordance with section 64 arrangements, is employed by a person providing or performing those services,

"Welsh general medical services contract" means a contract under section 42(2) of the National Health Service (Wales) Act 2006 (c. 42), and

"Welsh general dental services contract" means a contract under section 57(2) of that Act.

Textual Amendments

F473 Words in s. 93(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 37(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F474 S. 93(1)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 37(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F475 Words in s. 93(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 37(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F476 Word in s. 93(3) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 202(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F477 Words in s. 93(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 37(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

94 Regulations about section 92 arrangements

(1) The Secretary of State may make regulations about the provision of services in accordance with section 92 arrangements.

(2) The regulations must include provision for participants other than **[**[F478]the Board**]** to withdraw from section 92 arrangements if they wish to do so.

(3) The regulations may, in particular—

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(a) provide that section 92 arrangements may be made only in prescribed circumstances,

(b) provide that section 92 arrangements may be made only in prescribed areas,

(c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with section 92 arrangements,

[F479(ca) make provision with respect to the performance outside England of services to be provided in accordance with section 92 arrangements,**]**

(d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing services in accordance with section 92 arrangements,

(e) require details of section 92 arrangements to be published,

(f) make provision with respect to the variation and termination of section 92 arrangements,

(g) provide for parties to section 92 arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 9,

(h) provide for directions, as to payments, made under section 9(11) (as it has effect as a result of regulations made by virtue of paragraph (g)) to be enforceable in **[**F480the county court**]** (if the court so orders) as if they were judgments or orders of that court.

[F481(3A) Regulations under subsection (3)(d) may—

(a) require a person who provides services of a prescribed description in accordance with section 92 arrangements (a "relevant provider") to be a member of a clinical commissioning group;

(b) make provision as to arrangements for securing that a relevant provider appoints one individual to act on its behalf in dealings between it and the clinical commissioning group to which it belongs;

(c) impose requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) require a relevant provider, in doing anything pursuant to section 92 arrangements, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

(3B) Provision by virtue of subsection (3A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(3C) In the case of an agreement made with two or more persons—

(a) regulations making provision under subsection (3A)(a) may require each person to secure that the persons collectively are a member of the clinical commissioning group;

(b) regulations making provision under subsection (3A)(b) may make provision as to arrangements for securing that the persons collectively make the appointment;

(c) regulations making provision under subsection (3A)(d) may require each person to act as mentioned there.

(3D) Regulations making provision under subsection (3A) for the case of an agreement made with two or more persons may make provision as to the effect of a change in the composition of the group of persons involved.

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(3E) The regulations may require an individual appointed for the purposes of subsection (3A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed.**]**

(4) The regulations may also require payments to be made under the arrangements in accordance with directions given for the purpose by the Secretary of State.

(5) A direction may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(6) The regulations may also include provision requiring **[**F482the Board**]**, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract on prescribed terms with any person who is providing services under section 92 arrangements and who so requests.

(7) The regulations may also include provision for the resolution of disputes as to to the terms of any proposed section 92 arrangements, and in particular may make provision—

(a) for the referral of the terms of the proposed arrangements to the Secretary of State, and

(b) for the Secretary of State or a person appointed by him to determine the terms on which the arrangements may be entered into.

(8) The regulations must provide for the circumstances in which a person providing primary medical services under section 92 arrangements—

(a) must or may accept a person as a patient to whom such services are so provided,

(b) may decline to accept a person as such a patient,

(c) may terminate his responsibility for a patient.

(9) The regulations must make provision as to the right of patients to choose the persons from whom they receive services under section 92 arrangements.

Textual Amendments

F478 Words in s. 94(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 38(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F479 S. 94(3)(ca) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 38(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F480 Words in s. 94(3)(h) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F481 S. 94(3A)-(3E) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 28(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F482 Words in s. 94(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 38(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Modifications etc. (not altering text)

C47 S. 94(3)(f) modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 38(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F483]95 Transfer of liabilities relating to section 92 arrangements

. . . . . .

Textual Amendments

F483 S. 95 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 39**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Assistance and support

96 Assistance and support: primary medical services

(1) **[**[F484]The Board**]** may provide assistance or support to any person providing or proposing to provide—

[[F485](za) primary medical services pursuant to section 83(2),**]**

(a) primary medical services under a general medical services contract, or

(b) primary medical services in accordance with section 92 arrangements.

(2) Assistance or support provided by **[**[F486]the Board**]** under subsection (1) is provided on such terms, including terms as to payment, as **[**[F487]the Board**]** considers appropriate.

(3) "Assistance" includes financial assistance.

Textual Amendments

F484 Words in s. 96(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 40(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F485 S. 96(1)(za) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 40(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F486 Words in s. 96(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 40(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F487 Words in s. 96(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 40(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Local Medical Committees

97 Local Medical Committees

(1) **[**[F488]The Board may recognise a committee formed for an area**]**, which it is satisfied is representative of—

(a) the persons to whom subsection (2) applies, and

(b) the persons to whom subsection (3) applies.

(2) This subsection applies to—

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(a) each medical practitioner who, under a general medical services contract entered into by him, is providing primary medical services in the area for which the committee is formed, and

(b) each medical practitioner who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in that area.

(3) This subsection applies to each other medical practitioner—

(a) who is performing primary medical services or primary ophthalmic services in the area for which the committee is formed—

F489(i) . . . . . .

(ii) in accordance with section 92 arrangements, or

(iii) under a general medical services contract or a general ophthalmic services contract, and

(b) who has notified **[**F490the Board**]** that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

(4) A committee recognised under this section is called the Local Medical Committee for the area for which it is formed.

(5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(6) Regulations may require **[**F491the Board**]**, in the exercise of its functions relating to primary medical services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed.

F492(7) . . . . . .

(8) A committee recognised under this section has such other functions as may be prescribed.

(9) A committee recognised under this section must in respect of each year determine—

(a) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(a), and

(b) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(b).

(10) **[**F493The Board**]** may—

(a) on the request of a committee recognised by it, allot to that committee such sums for defraying the expenses referred to in subsection (9)(a) as **[**F494the Board**]** may determine, and

(b) deduct the amount of such sums from the remuneration of persons of whom the committee is representative under subsection (1)(a) under the general medical services contracts entered into by those persons with **[**F494the Board**]**.

(11) A committee recognised under this section must apportion the amount determined by it under subsection (9)(b) among the persons of whom it is representative under subsection (1)(b); and each such person must pay in accordance with the committee's directions the amount so apportioned to him.

(12) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

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Textual Amendments

F488 Words in s. 97(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 41(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F489 S. 97(3)(a)(i) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 41(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F490 Words in s. 97(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 41(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F491 Words in s. 97(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 41(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F492 S. 97(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 41(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F493 Words in s. 97(10) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 41(6)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F494 Words in s. 97(10)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 41(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Provision of accommodation by the Secretary of State

98 Use of accommodation: provision of primary medical services

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of primary medical services, he may make the accommodation available on such terms as he considers appropriate to persons providing those services.

I[F495] Directions

Textual Amendments

F495 S. 98A and cross-heading inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 49(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

98A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary medical services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary medical services (including functions which the Board has been directed to exercise under subsection (1)).

(4) The Board may direct a clinical commissioning group to exercise any of the Board's functions relating to the provision of primary medical services.

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(5) The Board may give directions to a clinical commissioning group about the exercise by it of any functions relating to the provision of primary medical services (including functions which the group has been directed to exercise under subsection (4)).

(6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.

(7) Where the Board gives a direction under subsection (4) or (5), it may disclose to the clinical commissioning group information it has about the provision of the primary medical services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the group to exercise the function specified in the direction.

(8) A clinical commissioning group exercising a function specified in a direction under subsection (4) or (5) must report to the Board on matters arising out of the group's exercise of the function.

(9) A report under subsection (8) must be made in such form and manner as the Board may specify.

(10) The Board may, in exercising its functions relating to the provision of the primary medical services in question, have regard to a report under subsection (8).**]**

PART 5

DENTAL SERVICES

[F496 Duty of the Board in relation to primary dental services]

Textual Amendments

F496 S. 99 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 42(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

99 Primary dental services

[F497(1) The Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to secure the provision of primary dental services throughout England.

(1A) Arrangements made for the purposes of subsection (1) may include arrangements for the performance of a service outside England.**]**

F498(2) . . . . . .

(3) **[**F499The Board**]** must publish information about such matters as may be prescribed in relation to the primary dental services **[**F500for which provision is made**]** under this Act.

F501(4) . . . . . .

(5) Regulations may provide that services of a prescribed description must, or must not, be regarded as primary dental services for the purposes of this Act.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) Regulations under subsection (5) may in particular describe services by reference to the manner or circumstances in which they are provided.

Textual Amendments

F497 S. 99(1)(1A) substituted for s. 99(1) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 42(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F498 S. 99(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 42(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F499 Words in s. 99(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 42(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F500 Words in s. 99(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 42(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F501 S. 99(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 42(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

General dental services contracts

100 General dental services contracts: introductory

(1) **[**F502The Board**]** may enter into a contract under which primary dental services are provided in accordance with the following provisions of this Part.

(2) A contract under this section is called in this Act a "general dental services contract".

(3) A general dental services contract may make such provision as may be agreed between **[**F503the Board**]** and the contractor in relation to—

(a) the services to be provided under the contract (which may include services which are not primary dental services **[**F504or services which are to be performed outside England**]**),

(b) remuneration under the contract, and

(c) any other matters.

(4) In this Part, "contractor", in relation to a general dental services contract, means any person entering into the contract with **[**F503the Board**]**.

Textual Amendments

F502 Words in s. 100(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 43(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F503 Words in s. 100(3)(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 43(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F504 Words in s. 100(3)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 43(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

101 Requirement to provide certain primary dental services

(1) A general dental services contract must require the contractor or contractors to provide, for his or their patients, primary dental services of such descriptions as may be prescribed.

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(2) Regulations under subsection (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

102 Persons eligible to enter into GDS contracts

(1) **[**F505The Board**]** may, subject to such conditions as may be prescribed, enter into a general dental services contract with—

(a) a dental practitioner,

(b) a dental corporation,

(c) two or more **[**F506persons**]** practising in partnership where the conditions in subsection (2) are satisfied **[**F507,

(d) a limited liability partnership where the conditions in subsection (2A) are satisfied.**]**

(2) The conditions referred to in subsection (1)(c) are that—

(a) at least one partner is a dental practitioner, and

[F508(b) subsection (3A) or (3B) applies.**]**

[F509(2A) The conditions referred to in subsection (1)(d) are that—

(a) at least one member is a dental practitioner, and

(b) subsection (3A) or (3B) applies.**]**

(3) Regulations may make provision as to the effect, in relation to a general dental services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

[F510(3A) This subsection applies if a partner or member who is a dental practitioner, or who falls within subsection (3C), has the power to secure that the partnership's affairs are conducted in accordance with that partner's or member's wishes.

(3B) This subsection applies if, in any combination of partners or members who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them is a dental practitioner or a person who falls within subsection (3C).**]**

[F511(3C) A person falls within this subsection if the person is—

(a) an NHS employee,

(b) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee,

(c) a health care professional who is engaged in the provision of services under this Act or the National Health Service (Wales) Act 2006, or

(d) an individual falling within section 108(1)(d).**]**

(4) In this section—

"dental corporation" means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984 (c. 24)

"health care professional", "NHS employee", "section 92 employee", "section 107 employee", "section 50 employee", "section 64 employee", "section 17C employee" and "Article 15B employee" have the meaning given by section 108.

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Textual Amendments

F505 Words in s. 102(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 44**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F506 Word in s. 102(1)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 203(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F507 S. 102(1)(d) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 203(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F508 S. 102(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 203(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F509 S. 102(2A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 203(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F510 S. 102(3A)(3B) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 203(6)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F511 S. 102(3C) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 203(7)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

103 GDS contracts: payments

(1) The Secretary of State may give directions as to payments to be made under general dental services contracts.

(2) A general dental services contract must require payments to be made under the contract in accordance with directions under this section.

(3) A direction under subsection (1) may in particular—

(a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance,

(b) provide for payments to be made by reference to—

(i) any scheme or scale specified in the direction, or

(ii) a determination made by any person in accordance with factors specified in the direction,

(c) provide for the making of payments in respect of individual practitioners,

(d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by **[**F512the Board**]** only if it is satisfied as to certain conditions),

(e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(4) Before giving a direction under subsection (1), the Secretary of State—

(a) must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate, and

(b) may consult such other persons as he considers appropriate.

(5) "Payments" includes fees, allowances, reimbursements, loans and repayments.

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Textual Amendments

F512 Words in s. 103(3)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 45**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

104 GDS contracts: other required terms

(1) A general dental services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).

(2) Regulations under subsection (1) may in particular make provision as to—

(a) the manner in which, and standards to which, services must be provided,

(b) the persons who perform services,

(c) the persons to whom services will be provided,

(d) the variation of contract terms (other than terms required by or under this Part),

(e) rights of entry and inspection (including inspection of clinical records and other documents),

(f) the circumstances in which, and the manner in which, the contract may be terminated,

(g) enforcement,

(h) the adjudication of disputes.

(3) Regulations under subsection (2)(d) may make provision as to the circumstances in which **[**F513the Board**]** may impose a variation of contract terms.

(4) Regulations under subsection (1) must make provision as to the right of patients to choose the persons from whom they receive services.

Textual Amendments

F513 Words in s. 104(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 46**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

105 GDS contracts: disputes and enforcement

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general dental services contract.

(2) Regulations under subsection (1) may make provision—

(a) for the referral of the terms of the proposed contract to the Secretary of State, and

(b) for the Secretary of State, or a person appointed by him, to determine the terms on which the contract may be entered into.

(3) Regulations may make provision for a person or persons entering into a general dental services contract to be regarded as a health service body for any purposes of section 9, in circumstances where he or they so elect.

(4) Regulations under subsection (3) may include provision as to the application of section 9 in cases where—

(a) persons practising in partnership elect to become a health service body, and

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(b) there is a change in the membership of the partnership.

(5) Where—

(a) by virtue of regulations under subsection (3), section 9(11) applies in relation to a general dental services contract, and

(b) a direction as to payments is made under that provision in relation to the contract,

the direction is enforceable in **[**F514the county court**]** (if the court so orders) as if it were a judgment or order of that court.

Textual Amendments

F514 Words in s. 105(5) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Performance of primary dental services

106 Persons performing primary dental services

(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary dental service for which **[**F515the Board**]** is responsible unless he is included in a list maintained under the regulations by **[**F515the Board**]**.

(2) For the purposes of this section—

(a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

[F516(b) the Board is responsible for a dental service if it secures its provision by or under any enactment.**]**

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—

(a) the preparation, maintenance and publication of a list,

(b) eligibility for inclusion in a list,

(c) applications for inclusion (including provision F517... for the procedure for applications and the documents to be supplied on application),

(d) the grounds on which an application for inclusion may or must be granted or refused,

(e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),

(f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),

(g) circumstances in which a person included in a list may not withdraw from it,

(h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),

(i) the criteria to be applied in making decisions under the regulations,

(j) appeals against decisions made by **[**F518the Board**]** under the regulations, and

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(k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by **[**F519the Board**]**,

(b) **[**F519the Board**]** to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from a list),

(d) the review by **[**F520the Board**]** of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing fraud.

(6) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by **[**F521the Board**]** to the Secretary of State, and

(b) by the Secretary of State to **[**F521the Board**]**.

Textual Amendments

F515 Words in s. 106(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 47(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F516 S. 106(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 47(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F517 Words in s. 106(3)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 47(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F518 Words in s. 106(3)(j) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 47(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F519 Words in s. 106(4)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 47(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F520 Words in s. 106(4)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 47(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F521 Words in s. 106(6)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 47(2)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Other arrangements for the provision of primary dental services

107 **[**F522**Arrangements by the Board for the provision of primary dental services]**

[F523(1) The Board may make agreements, other than general dental services contracts, under which primary dental services are provided.**]**

(2) An agreement must be in accordance with regulations under section 109.

(3) An agreement may not combine arrangements for the provision of primary dental services with arrangements for the provision of primary medical services.

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(4) An agreement may not combine arrangements for the provision of primary dental services with arrangements for the provision of local pharmaceutical services.

(5) But an agreement may include arrangements for the provision of services which are not primary dental services but which may be provided under this Act, other than under Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes).

(6) This Act has effect, in relation to primary dental services provided under an agreement, as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under section 7).

F524(7) . . . . . .

(8) In this Act, arrangements for the provision of services made under this section are called "section 107 arrangements".

Textual Amendments

F522 S. 107 title substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 48(4)** (with Sch. 4 para. 48(5)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F523 S. 107(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 48(2)** (with Sch. 4 para. 48(5)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F524 S. 107(7) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 48(3)** (with Sch. 4 para. 48(5)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

108 Persons with whom agreements may be made under section 107

(1) **[**F525The Board**][**F526, subject to such conditions as may be prescribed,**]** may make an agreement under section 107 only with one or more of the following—

(a) an NHS trust or an NHS foundation trust,

(b) a dental practitioner F527...,

(c) a health care professional F527...,

(d) an individual who is providing services—

(i) under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(ii) in accordance with section 107 arrangements, section 92 arrangements, section 50 arrangements, section 64 arrangements, section 17C arrangements or Article 15B arrangements, or

(iii) under section 17J or 25 of the 1978 Act or Article 57 or 61 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

or has so provided them within such period as may be prescribed,

(e) an NHS employee, a section 107 employee, a section 92 employee, a section 50 employee, a section 64 employee, a section 17C employee or an Article 15B employee,

[F528(f) a dental corporation,**]**

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[F529(fa) a company limited by shares where the conditions in subsection (1A) are satisfied,

(fb) a limited liability partnership where subsection (1B) or (1C) applies,**]**

F530(g) . . . . . .

[F531(1A) The conditions referred to in subsection (1)(fa) are that—

(a) every person who owns a share in the company owns it both legally and beneficially, and

(b) it is not possible for two or more members of the company who are not persons who fall within subsection (1)(a) to (e) to hold the majority of the voting rights conferred by shares in the company on any matter on which members have such rights.**]**

[F532(1B) This subsection applies if a member of the partnership who falls within subsection (1)(a) to (e) has the power to secure that the partnership's affairs are conducted in accordance with that member's wishes.

(1C) This subsection applies if, in any combination of members of the partnership who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them falls within subsection (1)(a) to (e).**]**

F533(2) . . . . . .

(3) In this section—

"the 1978 Act" means the National Health Service (Scotland) Act 1978 (c. 29),

"Article 15B arrangements" means arrangements for the provision of services made under Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972,

"Article 15B employee" means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing or performing those services,

[F534"dental corporation" means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984,**]**

"health care professional" means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

"NHS employee" means an individual who, in connection with the provision of services in the health service, the Scottish health service or the Northern Ireland health service, is employed by—

(a) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust,

(b) a F535... Local Health Board,

(c) a person who is providing services under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(d) an individual who is providing services as specified in subsection (1)(d)(iii),

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"the Northern Ireland health service" means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972,

F536 …

"the Scottish health service" means the health service within the meaning of the National Health Service (Scotland) Act 1978,

"section 17C arrangements" means arrangements for the provision of services made under section 17C of the 1978 Act,

"section 17C employee" means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by a person providing or performing those services,

"section 50 arrangements" means arrangements for the provision of services made under section 50 of the National Health Service (Wales) Act 2006 (c. 42),

"section 64 arrangements" means arrangements for the provision of services made under section 64 of that Act,

"section 107 employee" means an individual who, in connection with the provision of services in accordance with section 107 arrangements, is employed by a person providing or performing those services,

"section 92 employee" means an individual who, in connection with the provision of services in accordance with section 92 arrangements, is employed by a person providing or performing those services,

"section 50 employee" means an individual who, in connection with the provision of services in accordance with section 50 arrangements, is employed by a person providing or performing those services,

"section 64 employee" means an individual who, in connection with the provision of services in accordance with section 64 arrangements, is employed by a person providing or performing those services,

"Welsh general medical services contract" means a contract under section 42(2) of the National Health Service (Wales) Act 2006, and

"Welsh general dental services contract" means a contract under section 57(2) of that Act.

Textual Amendments

F525 Words in s. 108(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 49(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F526 Words in s. 108(1) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 204(2)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F527 Words in s. 108(1)(b)(c) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 204(2)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F528 S. 108(1)(f) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 204(2)(c)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F529 S. 108(1)(fa)(fb) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 204(2)(d)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F530 S. 108(1)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 49(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F531 S. 108(1A) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 204(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F532 S. 108(1B)(1C) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 204(4)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F533 S. 108(2) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 204(5)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F534 Words in s. 108(3) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 204(6)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F535 Words in s. 108(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 49(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F536 Words in s. 108(3) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 204(6)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

109 Regulations about section 107 arrangements

(1) The Secretary of State may make regulations about the provision of services in accordance with section 107 arrangements.

(2) The regulations must include provision for participants other than **[**F537the Board**]** to withdraw from section 107 arrangements if they wish to do so.

(3) The regulations may, in particular—

(a) provide that section 107 arrangements may be made only in prescribed circumstances,

(b) provide that section 107 arrangements may be made only in prescribed areas,

(c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with section 107 arrangements,

[F538(ca) make provision with respect to the performance outside England of services to be provided in accordance with section 107 arrangements,**]**

(d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing services in accordance with section 107 arrangements,

(e) require details of section 107 arrangements to be published,

(f) make provision with respect to the variation and termination of section 107 arrangements,

(g) provide for parties to section 107 arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 9,

(h) provide for directions, as to payments, made under section 9(11) (as it has effect as a result of regulations made by virtue of paragraph (g)) to be enforceable in **[**F539the county court**]** (if the court so orders) as if they were judgments or orders of that court.

(4) The regulations may also require payments to be made under the arrangements in accordance with directions given for the purpose by the Secretary of State.

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(5) A direction may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(6) The regulations may also include provision requiring **[**[F540]the Board**]**, in prescribed circumstances and subject to prescribed conditions, to enter into a general dental services contract on prescribed terms with any person who is providing services under section 107 arrangements and who so requests.

(7) The regulations may also include provision for the resolution of disputes as to to the terms of any proposed section 107 arrangements, and in particular may make provision—

(a) for the referral of the terms of the proposed arrangements to the Secretary of State, and

(b) for the Secretary of State or a person appointed by him to determine the terms on which the arrangements may be entered into.

(8) The regulations must provide for the circumstances in which a person providing primary dental services under section 107 arrangements—

(a) must or may accept a person as a patient to whom such services are so provided,

(b) may decline to accept a person as such a patient,

(c) may terminate his responsibility for a patient.

(9) The regulations must make provision as to the right of patients to choose the persons from whom they receive services under section 107 arrangements.

Textual Amendments

F537 Words in s. 109(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 50(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F538 S. 109(3)(ca) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 50(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F539 Words in s. 109(3)(h) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F540 Words in s. 109(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 50(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F541]110 Transfer of liabilities relating to section 107 arrangements

. . . . . .

Textual Amendments

F541 S. 110 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 51**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Dental public health

111 Dental public health

(1) **[**F542A local authority**]** has such functions in relation to dental public health in England as may be prescribed.

(2) The functions of a **[**F543local authority**]** under this section may be discharged—

(a) by the **[**F543local authority**]** itself,

(b) by the **[**F543local authority**]** and one or more **[**F544other local authorities**]** acting jointly, or

(c) by any other person or body in accordance with arrangements made by the **[**F543local authority**]**.

[F545(3) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F542 Words in s. 111(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 29(2)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F543 Words in s. 111(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 29(2)(b)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F544 Words in s. 111(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 29(2)(b)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F545 S. 111(3) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 29(2)(c)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Assistance and support

112 Assistance and support: primary dental services

(1) **[**F546The Board**]** may provide assistance or support to any person providing or proposing to provide—

(a) primary dental services under a general dental services contract, or

(b) primary dental services in accordance with section 107 arrangements.

(2) Assistance or support provided by **[**F547the Board**]** under subsection (1) is provided on such terms, including terms as to payment, as **[**F548the Board**]** considers appropriate.

(3) "Assistance" includes financial assistance.

Textual Amendments

F546 Words in s. 112(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 52(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F547 Words in s. 112(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 52(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F548 Words in s. 112(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 52(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Local Dental Committees

113 Local Dental Committees

(1) **[**F549The Board may recognise a committee formed for an area**]**, which it is satisfied is representative of—

(a) the persons to whom subsection (2) applies, and

(b) the persons to whom subsection (3) applies.

(2) This subsection applies to each dental practitioner who, under a general dental services contract entered into by him, is providing primary dental services in the area for which the committee is formed.

(3) This subsection applies to each other dental practitioner—

(a) who is performing primary dental services in the area for which the committee is formed—

(i) pursuant to section 99(2),

(ii) in accordance with section 107 arrangements, or

(iii) under a general dental services contract, and

(b) who has notified **[**F550the Board**]** that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

(4) A committee recognised under this section is called the Local Dental Committee for the area for which it is formed.

(5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(6) Regulations may require **[**F551the Board**]**, in the exercise of its functions relating to primary dental services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed.

F552(7) . . . . . .

(8) A committee recognised under this section has such other functions as may be prescribed.

(9) A committee recognised under this section must in respect of each year determine—

(a) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(a), and

(b) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(b).

(10) **[**F553The Board**]** may—

(a) on the request of a committee recognised by it, allot to that committee such sums for defraying the expenses referred to in subsection (9)(a) as **[**F554the Board**]** may determine, and

(b) deduct the amount of such sums from the remuneration of persons of whom it is representative under subsection (1)(a) under the general dental services contracts entered into by them with **[**F554the Board**]**.

(11) A committee recognised under this section must apportion the amount determined by it under subsection (9)(b) among the persons of whom it is representative under

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subsection (1)(b); and each such person must pay in accordance with the committee's directions the amount so apportioned to him.

(12) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

Textual Amendments

F549 Words in s. 113(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 53(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F550 Words in s. 113(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 53(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F551 Words in s. 113(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 53(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F552 S. 113(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 53(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F553 Words in s. 113(10) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 53(6)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F554 Words in s. 113(10)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 53(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Provision of accommodation by the Secretary of State

114 Use of accommodation: provision of primary dental services

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of primary dental services, he may make the accommodation available on such terms as he considers appropriate to persons providing those services.

[F555 Directions

Textual Amendments

F555 S. 114A and cross-heading inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 49(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

114A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary dental services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary dental services (including functions which the Board has been directed to exercise under subsection (1)).**]**

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PART 6

OPHTHALMIC SERVICES

[F556 Duty of the Board in relation to primary ophthalmic services]

Textual Amendments

F556 S. 115 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 54(8)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

115 Primary ophthalmic services

(1) **[**F557The Board must exercise its powers so as to secure the provision throughout England**]** of the following primary ophthalmic services—

(a) the sight-testing service mentioned in subsection (2),

(b) such other primary ophthalmic services as may be prescribed, and

(c) to the extent that it considers necessary to meet all reasonable requirements, any further primary ophthalmic services.

[F558(1A) Arrangements made for the purposes of subsection (1) may include arrangements for the performance of a service outside England.**]**

(2) The sight-testing service mentioned in subsection (1)(a) is a service for testing the sight of all of the following persons (except any such testing which takes place in prescribed circumstances)—

(a) those aged under 16,

(b) those aged 16, 17 or 18 who are receiving qualifying full-time education,

(c) those whose resources must be treated in accordance with regulations as being less than or equal to their requirements,

(d) those aged 60 or over,

(e) those of such other description as may be prescribed.

(3) Regulations may—

(a) prescribe what "qualifying full-time education" is for the purposes of subsection (2)(b),

(b) make provision for the purposes of subsection (2)(c) about how a person's resources and requirements must be calculated.

[F559(4) The Board may (in addition to any other power conferred on it) make such arrangements for the provision of primary ophthalmic services as it considers appropriate; and it may, in particular, make contractual arrangements with any person.

(4A) Arrangements made for the purposes of subsection (4) may include arrangements for the performance of a service outside England.**]**

(5) **[**F560The Board**]** must publish information about such matters as may be prescribed in relation to the primary ophthalmic services provided under this Act.

F561(6) . . . . . .

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(7) Regulations may provide that services of a prescribed description must, or must not, be regarded as primary ophthalmic services for the purposes of this Act (but these regulations may not affect the duty in subsection (1)(a)).

(8) Regulations under subsection (7) may in particular describe services by reference to the manner or circumstances in which they are provided.

(9) Regulations may provide that a person—

(a) whose sight is tested by a person who is a party to a general ophthalmic services contract, and

(b) who is shown during the testing or within a prescribed time after it to fall within any of paragraphs (a) to **[**F562(e)**]** of subsection (2),

must be taken for the purposes of the testing to have so fallen immediately before his sight was tested.

(10) In the case mentioned in subsection (9), the testing of his sight must (unless it took place in circumstances prescribed under subsection (2)) be treated as a testing under the sight-testing service mentioned in subsection (1)(a)—

(a) for the purposes of remuneration in respect of the testing, and

(b) for any such other purpose as may be prescribed.

Textual Amendments

F557 Words in s. 115(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 54(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F558 S. 115(1A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 54(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F559 S. 115(4)(4A) substituted for s. 115(4) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 54(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F560 Words in s. 115(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 54(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F561 S. 115(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 54(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F562 Word in s. 115(9)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 54(7)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

116 Regulations under section 115: supplementary

(1) Regulations under section 115 which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument—

(a) as it has effect at the time when the regulations are made, or

(b) both as it has effect at that time and as amended subsequently.

(2) Descriptions of persons may be prescribed under section 115(2)(e) by reference to any criterion, including the following—

(a) their age,

(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition,

(c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances,

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(d) their receipt of benefit in money or kind under any enactment or their entitlement to receive any such benefit,

(e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.

(3) Regulations under section 115(3)(b) may direct that a person's resources and requirements be calculated—

(a) by a method set out in the regulations,

(b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications,

(c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament, or

(d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

General ophthalmic services contracts

117 General ophthalmic services contracts: introductory

(1) **[**F563The Board**]** may enter into a contract under which primary ophthalmic services are provided in accordance with the following provisions of this Part.

(2) A contract under this section is called in this Act a "general ophthalmic services contract".

(3) A general ophthalmic services contract may make such provision as may be agreed between **[**F564the Board**]** and the contractor or contractors in relation to—

(a) the services to be provided under the contract,

(b) remuneration under the contract, and

(c) any other matters.

(4) The services to be provided under a general ophthalmic services contract may include—

(a) services which are not primary ophthalmic services,

[F565(b) services which are to be performed outside England.**]**

(5) In this Part, "contractor", in relation to a general ophthalmic services contract, means any person entering into the contract with **[**F566the Board**]**.

Textual Amendments

F563 Words in s. 117(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 55(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F564 Words in s. 117(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 55(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F565 S. 117(4)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 55(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F566 Words in s. 117(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 55(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

118 Persons eligible to enter into GOS contracts

(1) **[**F567The Board**]** may, subject to such conditions and exceptions as may be prescribed, enter into a general ophthalmic services contract with any person.

(2) But it may not enter into such a contract with a person who has been disqualified from doing so by an order of disqualification made by virtue of regulations under section 119.

Textual Amendments

F567 Words in s. 118(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 56**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

119 Exclusion of contractors

(1) The Secretary of State may make regulations conferring on **[**F568the Board**]**, or another prescribed person, a right to apply to the **[**F569First-tier Tribunal**]** in prescribed circumstances for an order that a person ("P") be disqualified from entering into a general ophthalmic services contract.

(2) The regulations may in particular provide for—

(a) the review by the **[**F570First-tier Tribunal**]** of an order of disqualification made by virtue of regulations under this section,

(b) what will happen in relation to general ophthalmic services contracts to which P is a party when the order is made.

Textual Amendments

F568 Words in s. 119 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 57**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F569 Words in s. 119(1) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 110** (with Sch. 5)

F570 Words in s. 119(2)(a) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 110** (with Sch. 5)

120 GOS contracts: payments

(1) The Secretary of State may give directions as to payments to be made under general ophthalmic services contracts.

(2) A general ophthalmic services contract must require payments to be made under the contract in accordance with directions under this section.

(3) A direction under subsection (1) may in particular—

(a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance,

(b) provide for payments to be made by reference to—

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(i) any scheme or scale specified in the direction, or

(ii) a determination made by any person in accordance with factors specified in the direction,

(c) provide for the making of payments in respect of individual practitioners,

(d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by **[**F571the Board**]** only if it is satisfied as to certain conditions),

(e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(4) Before giving a direction under subsection (1), the Secretary of State—

(a) must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate, and

(b) may consult such other persons as he considers appropriate.

(5) "Payments" includes fees, allowances, reimbursements, loans and repayments.

Textual Amendments

F571 Words in s. 120(3)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 58**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

121 GOS contracts: other required terms

(1) A general ophthalmic services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).

(2) Regulations under subsection (1) may in particular make provision as to—

(a) the manner in which, and standards to which, services must be provided,

(b) the persons who perform services,

(c) the persons to whom services will be provided,

(d) the variation of contract terms (other than terms required by or under this Part),

(e) rights of entry and inspection (including inspection of clinical records and other documents),

(f) the circumstances in which, and the manner in which, the contract may be terminated,

(g) enforcement,

(h) the adjudication of disputes.

(3) Regulations under subsection (2)(d) may—

(a) make provision as to the circumstances in which **[**F572the Board**]** may impose a variation of contract terms,

(b) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description.

(4) Regulations making provision of the kind described in subsection (3)(b) may prescribe services by reference to the manner or circumstances in which they are provided.

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(5) Regulations under subsection (1) must make provision as to the right of persons to whom services are provided to choose the persons from whom they receive them.

Textual Amendments

F572 Words in s. 121(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 59**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

122 GOS contracts: disputes and enforcement

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general ophthalmic services contract.

(2) Regulations under subsection (1) may make provision—

(a) for the referral of the terms of the proposed contract to the Secretary of State, and

(b) for the Secretary of State, or a person appointed by him, to determine the terms on which the contract may be entered into.

(3) Regulations may make provision for a person or persons entering into a general ophthalmic services contract to be regarded, in circumstances where he or they so elect, as a health service body for the purposes of section 9, but only so far as concerns the general ophthalmic services contract (and not for any other purpose).

(4) Regulations under subsection (3) may include provision as to the application of section 9 in cases where—

(a) persons practising in partnership elect to become a health service body, and

(b) there is a change in the membership of the partnership.

(5) Where—

(a) by virtue of regulations under subsection (3), subsection section 9(11) applies in relation to a general ophthalmic services contract, and

(b) a direction as to payments is made under that provision in relation to the contract,

the direction is enforceable in **[**F573the county court**]** (if the court so orders) as if it were a judgment or order of that court.

Textual Amendments

F573 Words in s. 122(5) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Performance of primary ophthalmic services

123 Persons performing primary ophthalmic services

(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary ophthalmic service for which **[**F574the Board**]** is

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responsible unless he is included in a list maintained under the regulations by **[**F574the Board**]**.

(2) For the purposes of this section—

(a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

[F575(b) the Board is responsible for an ophthalmic service if it secures its provision by or under any enactment.**]**

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—

(a) the preparation, maintenance and publication of a list,

(b) eligibility for inclusion in a list,

(c) applications for inclusion (including provision F576... for the procedure for applications and the documents to be supplied on application),

(d) the grounds on which an application for inclusion may or must be granted or refused,

(e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),

(f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),

(g) circumstances in which a person included in a list may not withdraw from it,

(h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),

(i) the criteria to be applied in making decisions under the regulations,

(j) appeals against decisions made by **[**F577the Board**]** under the regulations, and

(k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by **[**F578the Board**]**,

(b) **[**F578the Board**]** to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from a list),

(d) the review by **[**F579the Board**]** of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing fraud.

(6) Regulations under this section may, in particular, also prescribe the qualifications and experience which a medical practitioner who applies for inclusion in a list under this section must have, and may—

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(a) provide for the practitioner to show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications and experience,

(b) confer on a person who is dissatisfied with the determination of such a committee a right of appeal to a committee appointed by the Secretary of State, and

(c) provide for anything which appears to the Secretary of State to be appropriate in connection with that right of appeal.

(7) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by **[**F580the Board**]** to the Secretary of State, and

(b) by the Secretary of State to **[**F580the Board**]**.

Textual Amendments

F574 Words in s. 123(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 60(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F575 S. 123(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 60(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F576 Words in s. 123(3)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 60(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F577 Words in s. 123(3)(j) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 60(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F578 Words in s. 123(4)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 60(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F579 Words in s. 123(4)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 60(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F580 Words in s. 123(7)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 60(2)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Assistance and support

124 Assistance and support: primary ophthalmic services

(1) **[**F581The Board**]** may provide assistance or support to any person providing or proposing to provide primary ophthalmic services under a general ophthalmic services contract **[**F582or primary ophthalmic services that fall within section 115(4)**]**.

(2) Assistance or support provided by **[**F583the Board**]** under subsection (1) is provided on such terms, including terms as to payment, as **[**F584the Board**]** considers appropriate.

(3) "Assistance" includes financial assistance.

Textual Amendments

F581 Words in s. 124(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 61(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F582 Words in s. 124(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 61(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F583 Words in s. 124(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 61(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F584 Words in s. 124(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 61(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Local Optical Committees

125 Local Optical Committees

(1) **[**F585The Board may recognise a committee formed for an area**]**, which it is satisfied is representative of—

(a) the persons to whom subsection (2) applies, and

(b) the persons to whom subsection (3) applies.

(2) This subsection applies to each person who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in the area for which the committee is formed.

(3) This subsection applies to each optometrist not falling within subsection (2)—

(a) who is performing primary ophthalmic services in the area for which the committee is formed F586... under a general ophthalmic services contract, and

(b) who has notified **[**F587the Board**]** that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

(4) A committee recognised under this section is called the Local Optical Committee for the area for which it is formed.

(5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(6) Any such committee may co-opt persons not falling within subsection (2) or (3) on such terms as it considers appropriate.

(7) Regulations may require **[**F588the Board**]**, in the exercise of its functions relating to primary ophthalmic services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed.

(8) A committee recognised under this section has such other functions as may be prescribed.

(9) A committee recognised under this section must in respect of each year determine the amount of its administrative expenses for that year.

(10) **[**F589The Board**]** may—

(a) on the request of a committee recognised by it, allot to that committee such sums as **[**F590the Board**]** may determine for defraying the committee's administrative expenses, and

(b) deduct the amount of such sums from the remuneration of persons of whom the committee is representative under subsection (1)(a) under the general ophthalmic services contracts entered into by those persons with **[**F590the Board**]**.

(11) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

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Textual Amendments

F585 Words in s. 125(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 62(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F586 Words in s. 125(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 62(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F587 Words in s. 125(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 62(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F588 Words in s. 125(7) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 62(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F589 Words in s. 125(10) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 62(5)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F590 Words in s. 125(10)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 62(5)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F591 Directions

Textual Amendments

F591 S. 125A and cross-heading inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 49(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

125A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary ophthalmic services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary ophthalmic services (including functions which the Board has been directed to exercise under subsection (1)).

(4) The Board may direct a clinical commissioning group, a Special Health Authority or such other body as may be prescribed to exercise any of the Board's functions relating to the provision of primary ophthalmic services.

(5) The Board may give directions to a clinical commissioning group, a Special Health Authority or such other body as may be prescribed about the exercise by the body of any functions relating to the provision of primary ophthalmic services (including functions which it has been directed to exercise under subsection (4)).

(6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.

(7) Where the Board gives a direction to a body under subsection (4) or (5), it may disclose to the body the information it has about the provision of the primary ophthalmic services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the body to exercise the function specified in the direction.

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(8) A body which is given a direction under subsection (4) or (5) must report to the Board on matters arising out of the exercise of the function to which the direction relates.

(9) A report under subsection (8) must be made in such form and manner as the Board may specify.

(10) The Board may, in exercising its functions relating to the provision of the primary ophthalmic services in question, have regard to a report under subsection (8).**]**

PART 7

PHARMACEUTICAL SERVICES AND LOCAL PHARMACEUTICAL SERVICES

CHAPTER 1

PROVISION OF PHARMACEUTICAL SERVICES

126 Arrangements for pharmaceutical services

(1) **[**F592The Board**]** must, in accordance with regulations, make the arrangements mentioned in subsection (3).

(2) The Secretary of State must make regulations for the purpose of subsection (1).

(3) The arrangements are arrangements **[**F593for the provision to persons who are in England**]** of—

(a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,

(b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—

(i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or

(ii) his functions in the armed forces of the Crown,

(c) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent services in the Scottish health service or the Northern Ireland health service,

(d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and

(e) such other services as may be prescribed.

(4) The descriptions of persons which may be prescribed for the purposes of subsection (3)(d) are the following, or any sub-category of such a description—

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(a) persons who are registered in the register maintained under article 5 of **[**F594the Health Professions Order 2001**]**,

(b) persons who are registered pharmacists,

(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (c. 24),

(d) persons who are optometrists,

(e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21),

(f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17),

(g) persons who are registered nurses or registered midwives,

(h) persons not mentioned above who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8),

(i) any other description of persons which appears to the Secretary of State to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish Parliament or Northern Ireland legislation and which the Secretary of State considers it appropriate to specify.

[F595(4A) Subsection (4)(h) does not apply to persons in so far as they are registered as social care workers in England (within the meaning of section 60 of the Health Act 1999).**]**

(5) A determination under subsection (3)(d) may—

(a) make different provision for different cases,

(b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered,

(c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.

(6) The arrangements which may be made by **[**F596the Board**]** under subsection (1) include arrangements for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided.

F597(7) . . . . . .

(8) The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 127, referred to in this Act as "pharmaceutical services".

(9) In this section—

"armed forces of the Crown" does not include forces of a Commonwealth country or forces raised in a colony,

"listed" means included in a list approved by the Secretary of State for the purposes of this section,

"the Scottish health service" means the health service within the meaning of the National Health Service (Scotland) Act 1978 (c. 29), and

"the Northern Ireland health service" means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

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Textual Amendments

F592 Words in s. 126(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 63(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F593 Words in s. 126(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 63(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F594 Words in s. 126(4)(a) substituted (2.12.2019) by Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 5 para. 47(j)**; S.I. 2019/1436, reg. 2(s)

F595 S. 126(4A) substituted (2.12.2019) by Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 5 para. 30**; S.I. 2019/1436, reg. 2(s)

F596 Words in s. 126(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 63(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F597 S. 126(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 63(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C48 S. 126 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 4** (with Sch. 3 Pt. 1)

C49 S. 126(9) modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 9** (with Sch. 3 Pt. 1)

127 Arrangements for additional pharmaceutical services

(1) The Secretary of State may—

(a) give directions to **[**F598the Board**]** requiring it to arrange for the provision to persons **[**F599in England**]** of additional pharmaceutical services, or

(b) by giving directions to **[**F598the Board**]** authorise it to arrange for such provision if it wishes to do so.

(2) Directions under this section may require or authorise **[**F600the Board**]** to arrange for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided.F601...

(3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he considers appropriate.

(4) In this section—

"additional pharmaceutical services", in relation to directions, means the services (of a kind that do not fall within section 126) which are specified in the directions, and

"Drug Tariff" means the Drug Tariff published under regulation 18 of the National Health Service (Pharmaceutical Services) Regulations 1992 (S.I. 1992/662) or under any corresponding provision replacing, or otherwise derived from, that regulation.

Textual Amendments

F598 Words in s. 127(1)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 64(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F599 Words in s. 127(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 64(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F600 Words in s. 127(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 64(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F601 Words in s. 127(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 64(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

128 Terms and conditions, etc

(1) Directions under section 127 may require **[**F602the Board**]**, when making arrangements—

(a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions,

(b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.

(2) The arrangements must secure that any service to which they apply is provided only by a person—

(a) whose name is included in a pharmaceutical list, or

(b) who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978.

(3) Different arrangements may be made with respect to—

(a) the provision of the same service by the same person but in different circumstances, or

(b) the provision of the same service by different persons.

(4) **[**F603The Board**]** must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.

(5) After making any arrangements, **[**F604the Board**]** must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.

(6) "Pharmaceutical list" includes, subject to any provision of the directions in question, a list published in accordance with regulations made under—

(a) section 83(2)(a) of the National Health Service (Wales) Act 2006 (c. 42), or

(b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

Textual Amendments

F602 Words in s. 128(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 65(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F603 Words in s. 128(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 65(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F604 Words in s. 128(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 65(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F605**128A Pharmaceutical needs assessments**

(1) Each **[**F606Health and Wellbeing Board**]** must in accordance with regulations—

(a) assess needs for pharmaceutical services in its area, and

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(b) publish a statement of its first assessment and of any revised assessment.

(2) The regulations must make provision—

(a) as to information which must be contained in a statement;

(b) as to the extent to which an assessment must take account of likely future needs;

(c) specifying the date by which a **[**F607Health and Wellbeing Board**]** must publish the statement of its first assessment;

(d) as to the circumstances in which a **[**F607Health and Wellbeing Board**]** must make a new assessment.

(3) The regulations may in particular make provision—

(a) as to the pharmaceutical services to which an assessment must relate;

(b) requiring a **[**F608Health and Wellbeing Board**]** to consult specified persons about specified matters when making an assessment;

(c) as to the manner in which an assessment is to be made;

(d) as to matters to which a **[**F609Health and Wellbeing Board**]** must have regard when making an assessment.**]**

Textual Amendments

F605 S. 128A inserted (18.3.2010 for specified purposes, 24.5.2010 in so far as not already in force) by Health Act 2009 (c. 21), **ss. 25**, 40(1); S.I. 2010/779, art. 2(1)(2)

F606 Words in s. 128A(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 206(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F607 Words in s. 128A(2)(c)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 206(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F608 Words in s. 128A(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 206(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F609 Words in s. 128A(3)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 206(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

129 Regulations as to pharmaceutical services

(1) Regulations must provide for securing that arrangements made by **[**F610the Board**]** under section 126 will—

(a) enable persons for whom drugs, medicines or appliances mentioned in that section are ordered as there mentioned to receive them from persons with whom such arrangements have been made, and

(b) ensure the provision of services prescribed under subsection (3)(e) of that section by persons with whom such arrangements have been made.

(2) The regulations must include provision—

(a) for the preparation and publication by **[**F611the Board**]** of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in **[**F612England**]**,

(b) that an application to **[**F613the Board**]** for inclusion in a pharmaceutical list must be made in the prescribed manner and must state—

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(i) the services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply, and

(ii) the premises from which he will undertake to provide those services,

(c) that, except in prescribed cases (which may, in particular, include cases of applications for the provision only of services falling within subsection (7))—

(i) an application for inclusion in a pharmaceutical list by a person not already included, and

(ii) an application by a person already included in a pharmaceutical list for inclusion also in respect of services or premises other than those already listed in relation to him,

[[F614]**[**[F615]may be granted only if**]****[**[F616]the Board**]** is satisfied as mentioned in subsection (2A), [F617]...**]** and

(d) for the removal of an entry in respect of premises from a pharmaceutical list if it has been determined in the prescribed manner that the person to whom the entry relates—

(i) has never provided from those premises, or

(ii) has ceased to provide from them,

the services, or any of the services, which he is listed as undertaking to provide from them.

[[F618](2ZA) The Board may not include the Secretary of State, or such other persons as the regulations may prescribe, in a list prepared for the purposes of provision under subsection (2)(a).**]**

[[F619](2ZB) Regulations under subsection (2)(a) may, in particular, require a list of persons to be prepared by reference to the area in which the premises from which the services are provided are situated (and regulations imposing that requirement must prescribe the description of area by reference to which the list is to be prepared).**]**

[[F620](2A) **[**[F621]The Board**]** is satisfied as mentioned in this subsection if, having regard to **[**[F622]the needs statement for the relevant area**]** and to any matters prescribed by the Secretary of State in the regulations, it is satisfied that **[**[F623]to grant the application would—

(a) meet a need in that area for the services or some of the services specified in the application, or

(b) secure improvements, or better access, to pharmaceutical services in that area.**]**

[[F624](2B) In subsection (2A), "relevant area", in relation to a needs statement, is the area of the Health and Wellbeing Board which includes the premises from which the application states that the applicant will undertake to provide services.**]**

(2C) In relation to cases where **[**[F625]the Board**]** is satisfied as mentioned in subsection **[**[F626](2A)**]**, the regulations may make provision as to—

(a) the manner in which **[**[F625]the Board**]** is to determine whether to grant the application,

(b) matters which **[**[F625]the Board**]** must or must not take into account for the purpose of determining whether to grant the application.**]**

(3) The regulations may prescribe the extent to which the provision of LP services (within the meaning given by paragraph 1 of Schedule 12) must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list.

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[F627(3A) The regulations may prescribe circumstances in which two or more applications referred to in subsection (2)(c)(i) or (ii) may be considered together by **[**F628the Board**].]**

(4) The regulations may **[**F629make provision for **[**F630the Board**]** to take into account prescribed matters in**]** the case where—

F631(a) . . . . . .

(b) **[**F632two or more applications referred to in subsection (2)(c)(i) or (ii)**]** are considered together by **[**F630the Board**]**, and

(c) **[**F630the Board**]** would be satisfied as mentioned in **[**F633subsection (2A) F634...**]** in relation to each application taken on its own, but is not so satisfied in relation to all of them taken together.

[F635(4A) Regulations under subsection (4) may in particular make the provision mentioned in subsection (5), with or without modifications.**]**

(5) The provision mentioned in this subsection is provision for **[**F636the Board**]**, in determining which application (or applications) to grant, to take into account any proposals specified in the applications in relation to the sale or supply at the premises in question, otherwise than by way of pharmaceutical services or in accordance with a private prescription, of—

(a) drugs and medicines, and

(b) other products for, or advice in relation to, the prevention, diagnosis, monitoring or treatment of illness or handicap, or the promotion or protection of health.

(6) The regulations may include provision—

[F637(za) for the circumstances and manner in which **[**F638the Board**]** may invite applications for inclusion in a pharmaceutical list,**]**

(a) that an application to **[**F639the Board**]** may be granted in respect of some only of the services specified in it,

(b) that an application to **[**F640the Board**]** relating to services of a prescribed description may be granted only if it appears to **[**F641the Board**]** that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed,

(c) that an application to **[**F642the Board**]** by a person who qualified to have his name registered **[**F643as a pharmacist in the Register maintained under article 19 of the Pharmacy Order 2010 by virtue of a qualification in pharmacy awarded in an EEA State other than the United Kingdom, or in Switzerland**]**, may not be granted unless the applicant satisfies **[**F644the Board**]** that he has the knowledge of English which, in the interest of himself and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services F645...,

(d) that the inclusion of a person in a pharmaceutical list F646... **[**F647an application to **[**F648the Board**]]** may be for a fixed period,

(e) that, where the premises from which an application states that the applicant will undertake to provide services are in an area of a prescribed description, the applicant may not be included in the pharmaceutical list unless his inclusion is approved by reference to prescribed criteria by **[**F649the Board**]** in whose area those premises are situated,

(f) that **[**F650the Board**]** may give its approval subject to conditions,

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(g) as to other grounds on which **[**F651or circumstances in which**][**F652the Board**][**F653—

(i)**]** may, or must, refuse to grant an application (including grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153)**[**F654,

(ii) may, or must, remove a person or an entry in respect of premises from a pharmaceutical list**]**,

(h) as to information which must be supplied to **[**F655the Board**]** by a person included, or seeking inclusion, in a pharmaceutical list (or by arrangement with him),

(i) for the supply to **[**F656the Board**]** by an individual—

(i) who is included, or seeking inclusion, in a pharmaceutical list, or

(ii) who is a member of the body of persons controlling a body corporate included, or seeking inclusion, in a pharmaceutical list,

of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under **[**F657section 113A of that Act, an enhanced criminal record certificate under section 113B of that Act or up-date information within the meaning given by section 116A of that Act,**]**

(j) for grounds on which **[**F658the Board**]** may defer a decision whether or not to grant an application,

(k) for the disclosure by **[**F659the Board**]**, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a pharmaceutical list, and refusals by **[**F660the Board**]** to grant such applications,

(l) as to criteria to be applied in making decisions under the regulations (other than decisions required by virtue of paragraph (e)),

(m) as to the making of declarations about—

(i) financial interests,

(ii) gifts above a prescribed value, and

(iii) other benefits received.

(7) A service falls within this subsection if the means of providing it is such that the person receiving it does so otherwise than at the premises from which it is provided.

(8) The regulations may, in respect of services falling within subsection (7), include provision—

(a) requiring persons to be approved for the purposes of providing such services, or

(b) requiring **[**F661the Board**]** to make the grant of an application subject to prescribed conditions.

(9) The approval mentioned in subsection (8)(a) is approval by the Secretary of State or such other person as may be specified in the regulations, in accordance with criteria to be specified in or determined under the regulations (whether by the Secretary of State or by another person so specified).

(10) Before making regulations by virtue of subsection (6)(m), the Secretary of State must consult such organisations as he considers appropriate appearing to him to represent persons providing pharmaceutical services.

[F662(10A) **[**F663The Board**]** must give reasons for decisions made by virtue of this section.

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(10B) In this section a "needs statement" means the statement required by section 128A(1)(b) as most recently published by the relevant **[**[F664]Health and Wellbeing Board**].]**

(11) In this Act a "pharmaceutical list" means a list published in accordance with regulations made under subsection (2)(a).

Textual Amendments

F610 Words in s. 129(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F611 Words in s. 129(2)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(3)(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F612 Words in s. 129(2)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(3)(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F613 Words in s. 129(2)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F614 Words in s. 129(2)(c) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(2)**, 40(1); S.I. 2012/1902, art. 2(a)

F615 Words in s. 129(2)(c) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(2)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F616 Words in s. 129(2)(c) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F617 Words in s. 129(2)(c) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 207(2)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F618 S. 129(2ZA) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F619 S. 129(2ZB) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F620 S. 129(2A)-(2C) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(3)**, 40(1); S.I. 2012/1902, art. 2(a)

F621 Words in s. 129(2A) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F622 Words in s. 129(2A) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(4)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F623 Words in s. 129(2A) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(4)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F624 S. 129(2B) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(5)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F625 Words in s. 129(2C) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F626 Word in s. 129(2C) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(6)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F627 S. 129(3A) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(4)**, 40(1); S.I. 2012/1902, art. 2(a)

F628 Words in s. 129(3A) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F629 Words in s. 129(4) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(5)(a)**, 40(1); S.I. 2012/1902, art. 2(a)

F630 Words in s. 129(4) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F631 S. 129(4)(a) repealed (1.9.2012) by Health Act 2009 (c. 21), ss. 26(5)(b), 40(1), **Sch. 6**; S.I. 2012/1902, art. 2(a)

F632 Words in s. 129(4)(b) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(5)(c)**, 40(1); S.I. 2012/1902, art. 2(a)

F633 Words in s. 129(4)(c) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(5)(d)**, 40(1); S.I. 2012/1902, art. 2(a)

F634 Words in s. 129(4)(c) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 207(7)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F635 S. 129(4A) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(6)**, 40(1); S.I. 2012/1902, art. 2(a)

F636 Words in s. 129(5) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F637 S. 129(6)(za) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(7)**, 40(1); S.I. 2012/1902, art. 2(a)

F638 Words in s. 129(6)(za) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F639 Words in s. 129(6)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F640 Words in s. 129(6)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F641 Words in s. 129(6)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F642 Words in s. 129(6)(c) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F643 Words in s. 129(6)(c) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), art. 1(5), **Sch. 4 para. 13(2)**; S.I. 2010/1621, art. 2(1), Sch.

F644 Words in s. 129(6)(c) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(8)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F645 Words in s. 129(6)(c) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(8)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F646 Words in s. 129(6)(d) repealed (1.9.2012) by virtue of Health Act 2009 (c. 21), s. 40(1), **Sch. 6**; S.I. 2012/1902, art. 2(f)

F647 Words in s. 129(6)(d) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 27**, 40(1); S.I. 2012/1902, art. 2(b)

F648 Words in s. 129(6)(d) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F649 Words in s. 129(6)(e) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F650 Words in s. 129(6)(f) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F651 Words in s. 129(6)(g) inserted (27.3.2012 for specified purposes, 1.7.2012 for further purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(8)(a)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F652 Words in s. 129(6)(g) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F653 Words in s. 129(6)(g) inserted (27.3.2012 for specified purposes, 1.7.2012 for further purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(8)(b)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F654 S. 129(6)(g)(ii) inserted (27.3.2012 for specified purposes, 1.7.2012 for further purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(8)(c)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F655 Words in s. 129(6)(h) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F656 Words in s. 129(6)(i) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F657 Words in s. 129(6)(i) substituted (17.6.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 121** (with s. 97); S.I. 2013/1180, art. 2(e)(v)

F658 Words in s. 129(6)(j) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F659 Words in s. 129(6)(k) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F660 Words in s. 129(6)(k) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F661 Words in s. 129(8) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F662 S. 129(10A)(10B) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(8)**, 40(1); S.I. 2012/1902, art. 2(a)

F663 Words in s. 129(10A) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(9)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F664 Words in s. 129(10B) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(9)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Modifications etc. (not altering text)

C50 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **23**

C51 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **24(1)**(2)

C52 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **25(1)**

C53 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **26(1)**(2)

C54 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **27(1)**

C55 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **28(1)**

C56 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **29(1)**

C57 S. 129 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 6** (with Sch. 3 Pt. 1)

C58 S. 129(2A) excluded (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **23** (with Sch. 9)

C59 S. 129(2A) excluded (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **24(1)**(2) (with Sch. 9)

C60 S. 129(2A) excluded (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **27(1)** (with Sch. 9)

C61 S. 129(2A) excluded (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **26(1)**(2) (with Sch. 9)

C62 S. 129(2A) excluded (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **25(1)** (with Sch. 9)

C63 S. 129(2A) excluded (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **28(1)** (with Sch. 9)

C64 S. 129(2A) excluded (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **29(1)** (with Sch. 9)

C65 S. 129(2A) excluded by S.I. 2013/349, reg. 26A(2) (as inserted (5.12.2016) by The National Health Service (Pharmaceutical Services, Charges and Prescribing) (Amendment) Regulations 2016 (S.I. 2016/1077), regs. 1(1), **7**)

130 Regulations under section 129: appeals, etc

(1) Regulations under section 129 must include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of that section.

(2) If regulations made by virtue of section 129(6)(g) provide that **[**F665the Board**]** may refuse to grant an application **[**F666on grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153**]**, they must also provide for an appeal F667... to the **[**F668First-tier Tribunal**]** against the decision of **[**F669the Board**]**.

(3) Regulations under section 129 must be so framed as to preclude—

(a) a person included in a pharmaceutical list, and

(b) an employee of such a person,

from taking part in the decision whether an application such as is mentioned in section 129(2)(c) should be granted or an appeal against such a decision brought by virtue of subsection (1) of this section should be allowed.

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Textual Amendments

F665 Words in s. 130(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 67(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F666 Words in s. 130(2) inserted (27.3.2012 for specified purposes, 1.7.2012 for further purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(10)(a)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F667 Words in s. 130(2) omitted (27.3.2012 for specified purposes, 1.7.2012 for further purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 207(10)(b)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F668 Words in s. 130(2) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 111** (with Sch. 5)

F669 Words in s. 130(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 67(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

131 Power to charge

(1) The Secretary of State may give directions to **[**F670the Board**]** requiring it to charge a fee in cases or descriptions of case specified in the directions to persons who make an application referred to in section 129(2)(c)(i) or (ii).

(2) The Secretary of State may in the directions—

(a) specify the fee himself, or

(b) require **[**F671the Board**]** to determine the amount of the fee in accordance with any requirements set out in the directions.

(3) Before determining the amount of the fee-

(a) in a subsection (2)(a) case, the Secretary of State must consult such organisations as he considers appropriate that appear to him to represent persons providing pharmaceutical services, F672...

(b) in a subsection (2)(b) case, **[**F673the Board**]** must undertake any consultation required by the directions.

(4) The Secretary of State must publish in such manner as he considers appropriate any directions he gives under this section.

(5) In a subsection (2)(b) case, **[**F674the Board**]** must publish in such manner as it considers appropriate the fee which it determines.

Textual Amendments

F670 Words in s. 131(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 68(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F671 Words in s. 131(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 68(3)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F672 Words in s. 131(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 68(4)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F673 Words in s. 131(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 68(3)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F674 Words in s. 131(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 68(3)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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132 Persons authorised to provide pharmaceutical services

(1) Except as may be provided for by or under regulations, no arrangements may be made by **[**F675the Board**]** with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering primary medical services or primary dental services.

(2) Except as may be provided for by or under regulations, no arrangements for the dispensing of medicines may be made under this Chapter with persons other than persons who—

(a) are registered pharmacists or persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968 (c. 67), and

(b) undertake that all medicines supplied by them under the arrangements will be dispensed either by or under the supervision of a registered pharmacist.

(3) Regulations must provide for the preparation and publication by **[**F676the Board**]** of one or more lists of medical practitioners who undertake to provide drugs, medicines or listed appliances (within the meaning given by section 126) under arrangements with **[**F677the Board**]**.

(4) The regulations may, in particular, include provision—

(a) as to grounds on which **[**F678the Board**]** may, or must, refuse to grant an application for inclusion in a list of medical practitioners referred to in subsection (3) (including grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153(2)),

[F679(aa) requiring a list of medical practitioners referred to in subsection (3) to be prepared by reference to an area of a prescribed description,**]**

(b) as to information which must be supplied to **[**F680the Board**]** by a medical practitioner included, or seeking inclusion, in such a list (or by arrangement with him),

(c) for the supply to **[**F681the Board**]** by a medical practitioner who is included, or seeking inclusion, in such a list of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under **[**F682section 113A of that Act, an enhanced criminal record certificate under section 113B of that Act or up-date information within the meaning given by section 116A of that Act,**]**

(d) for grounds on which **[**F683the Board**]** may defer a decision whether or not to grant an application for inclusion in such a list,

(e) for the disclosure by **[**F684the Board**]** to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Primary Care Trust to grant such applications,

(f) as to criteria to be applied in making decisions under the regulations.

(5) If regulations made by virtue of subsection (4)(a) provide that **[**F685the Board**]** may refuse to grant an application for inclusion in such a list, they must also provide for an appeal (by way of redetermination) to the **[**F686First-tier Tribunal**]** against the decision of **[**F687the Board**]**.

(6) The regulations must include provision for the removal of an entry from a list in prescribed circumstances.

(7) No arrangements for the provision of—

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(a) pharmaceutical services falling within section 126(3)(e), or

(b) additional pharmaceutical services provided in accordance with a direction under section 127,

may be made with persons other than those who are registered pharmacists or are of a prescribed description.

(8) Where—

(a) arrangements for the provision of pharmaceutical services have been made with a registered pharmacist, and

[F688(b) his registration is suspended by virtue of any direction or order under the Pharmacy Order 2010,**]**

he may not provide pharmaceutical services in person during the period of suspension.

F689(9) . . . . . .

Textual Amendments

F675 Words in s. 132(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F676 Words in s. 132(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(3)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F677 Words in s. 132(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(3)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F678 Words in s. 132(4)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F679 S. 132(4)(aa) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(4)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F680 Words in s. 132(4)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F681 Words in s. 132(4)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F682 Words in s. 132(4)(c) substituted (17.6.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 122** (with s. 97); S.I. 2013/1180, art. 2(e)(v)

F683 Words in s. 132(4)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F684 Words in s. 132(4)(e) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F685 Words in s. 132(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(5)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F686 Words in s. 132(5) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 112** (with Sch. 5)

F687 Words in s. 132(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 69(5)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F688 S. 132(8)(b) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), art. 1(5), **Sch. 4 para. 13(3)**; S.I. 2010/1621, art. 2(1), Sch.

F689 S. 132(9) omitted (30.3.2007) by virtue of Pharmacists and Pharmacy Technicians Order 2007 (S.I. 2007/289), art. 1(2)(3), **Sch. 1 para. 10(3)(b)**

Modifications etc. (not altering text)

C66 S. 132 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 7** (with Sch. 3 Pt. 1)

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133 Inadequate provision of pharmaceutical services

(1) Subsection (2) applies if the Secretary of State is satisfied, after such inquiry as he considers appropriate, that—

(a) as respects **[**F690any part of England**]**, the persons whose names are included in any pharmaceutical list are not such as to secure the adequate provision of pharmaceutical services in that F691... part, or

(b) for any other reason any considerable number of persons in **[**F692any part of England**]** are not receiving satisfactory services under the arrangements in force under this Chapter.

(2) Where this subsection applies, the Secretary of State—

(a) may authorise **[**F693the Board**]** to make such other arrangements as he may approve, or may himself make such other arrangements, and

(b) may dispense with any of the requirements of regulations made under this Part (other than Chapters 2 to 4) so far as appears to him necessary to meet exceptional circumstances and enable such arrangements to be made.

Textual Amendments

F690 Words in s. 133(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 70(2)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F691 Words in s. 133(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 70(2)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F692 Words in s. 133(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 70(3)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F693 Words in s. 133(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 70(4)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

CHAPTER 2

LOCAL PHARMACEUTICAL SERVICES: PILOT SCHEMES

134 Pilot schemes

(1) **[**F694The Board**]** may establish pilot schemes.

(2) In this **[**F695Part**]**, a "pilot scheme" means one or more agreements—

(a) made by **[**F696the Board**]** in accordance with this Chapter, **[**F697and**]**

(b) under which local pharmaceutical services will be provided F698..., F699...

(c) F699...

(3) A pilot scheme may include arrangements—

(a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Act, other than under Chapter 1 of this Part, and whether or not of the kind usually provided by pharmacies,

(b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).

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(4) A pilot scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services or primary dental services.

(5) In determining the arrangements it needs to make in order to comply with section 126, **[**[F700]the Board**]** may take into account arrangements under a pilot scheme made by it.

(6) The functions of an NHS trust and an NHS foundation trust include power to provide any services to which a pilot scheme applies.

(7) In this Chapter—

"local pharmaceutical services" means such services of a kind which may be provided under section 126, or by virtue of section 127 (other than practitioner dispensing services) as may be prescribed for the purposes of this Chapter, and

"piloted services" means services provided under a pilot scheme (including any services to which the scheme applies as a result of subsection (3)).

(8) "Practitioner dispensing services" means the provision of drugs, medicines or listed appliances (within the meaning given by section 126) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 132(1).

Textual Amendments

F694 Words in s. 134(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 71(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F695 Word in s. 134(2) substituted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 8**; S.I. 2010/30, art. 2(b)

F696 Words in s. 134(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 71(3)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F697 Word in s. 134(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 71(3)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F698 Words in s. 134(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 71(3)(c)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F699 S. 134(2)(c) and word omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 71(3)(d)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F700 Words in s. 134(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 71(4)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

135 Making pilot schemes

Schedule 11 makes provision with respect to making pilot schemes, including provision with respect to the procedure to be followed.

136 Designation of priority neighbourhoods or premises

(1) The Secretary of State may make regulations allowing **[**[F701]the Board**]** to designate—

(a) **[**[F702]relevant areas**]**,

(b) premises, or

(c) descriptions of premises,

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for the purposes of this section.

(2) The regulations may, in particular, make provision—

(a) as to the circumstances in which, and the **[**F703relevant areas**]** or premises in relation to which, designations may be made or maintained,

(b) allowing **[**F704the Board**]** to defer consideration of pharmaceutical list applications relating to **[**F703relevant areas**]**, premises or descriptions of premises that have been designated,

(c) allowing a designation to be cancelled in prescribed circumstances,

(d) requiring a designation to be cancelled—

(i) if the Secretary of State gives a direction to that effect, or

(ii) in prescribed circumstances.

(3) "Pharmaceutical list applications" means applications for inclusion in a pharmaceutical list.

[F705(4) "Relevant area" has the same meaning as in section 129(2A).**]**

Textual Amendments

F701 Words in s. 136(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 72** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F702 Words in s. 136(1)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(11)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F703 Words in s. 136(2)(a)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(11)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F704 Words in s. 136(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 72** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F705 S. 136(4) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(11)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

137 Reviews of pilot schemes

(1) At least one review of the operation of each pilot scheme must be conducted by the Secretary of State.

(2) Each pilot scheme must be reviewed under this section before the end of the period of three years beginning with the date on which piloted services are first provided under the scheme.

(3) When conducting a review of a pilot scheme, the Secretary of State must give—

(a) **[**F706the Board**]**, and

(b) any person providing services under the scheme,

an opportunity to comment on any matter relevant to the review.

(4) Otherwise, the procedure on any review must be determined by the Secretary of State.

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Textual Amendments

F706 Words in s. 137(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 73** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

138 Variation and termination of pilot schemes

(1) The Secretary of State may give directions authorising **[**F707the Board**]** to vary pilot schemes (otherwise than in response to directions given under subsection (2)) in such circumstances, and subject to such conditions, as may be specified in the directions.

(2) The Secretary of State may by directions require a pilot scheme to be varied by **[**F708the Board**]** in accordance with the directions.

(3) If satisfied that a pilot scheme is (for any reason) unsatisfactory, the Secretary of State may give directions to **[**F708the Board**]** requiring it to bring the scheme to an end in accordance with the terms of the directions.

Textual Amendments

F707 Words in s. 138(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 74(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F708 Words in s. 138(2)(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 74(3)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

139 NHS contracts and the provision of piloted services

(1) In the case of a pilot scheme entered into, or to be entered into, by a single individual or body corporate (other than an NHS foundation trust), that individual or body may make an application under this section to become a health service body.

(2) In the case of any other pilot scheme, all of those providing, or proposing to provide, piloted services under the scheme may together make an application under this section to become a single health service body.

(3) An application must—

(a) be made to the Secretary of State in accordance with such provisions as may be made by regulations, and

(b) specify the pilot scheme in relation to which it is made.

(4) Except in such cases as may be prescribed, the Secretary of State may grant an application.

(5) If an application is granted, the Secretary of State must specify a date in relation to that application and, as from that date—

(a) in the case of an application under subsection (1), the applicant is, and

(b) in the case of an application under subsection (2), the applicants together are,

a health service body for the purposes of section 9.

(6) That section has effect in relation to such a health service body ("a PHS body"), acting as commissioner, as if the functions referred to in section 9(1) were the provision of piloted services.

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(7) Except in such circumstances as may be prescribed, a PHS body resulting from an application under subsection (2) must be treated, at any time, as consisting of those who are providing piloted services under the scheme.

(8) A direction as to payment made under section 9(11) against, or in favour of, a PHS body is enforceable in **[**F709the county court**]** (if the court so orders) as if it were a judgment or order of that court.

(9) Regulations may provide for a PHS body to cease to be a PHS body in prescribed circumstances.

(10) The Secretary of State must—

(a) maintain and publish a list of PHS bodies,

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(11) The list must be published in such manner as the Secretary of State considers appropriate.

Textual Amendments

F709 Words in s. 139(8) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

140 Funding of preparatory work

(1) Provision may be made by regulations for **[**F710the Board**]** to make payments of financial assistance for preparatory work.

(2) "Preparatory work" means work which it is reasonable for a person to undertake—

(a) in connection with preparing proposals for a pilot scheme, or

(b) in preparing for the provision by him of any piloted services.

(3) The regulations may, in particular, include provision—

(a) prescribing the circumstances in which payments of financial assistance may be made,

(b) imposing a limit on the amount of any payment of financial assistance which **[**F711the Board**]** may make in any prescribed period in respect of any one person or any one pilot scheme,

(c) imposing a limit on the aggregate amount which **[**F711the Board**]** may pay by way of financial assistance in any one financial year,

(d) requiring a person to whom assistance is given under this section to comply with such conditions as may be imposed in accordance with prescribed requirements, and

(e) for repayment in the case of a failure to comply with any condition so imposed.

Textual Amendments

F710 Words in s. 140(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 75(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F711 Words in s. 140(3)(b)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 75(3)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

141 Application of this Act

This Act has effect in relation to piloted services—

(a) subject to any provision of, or made under, this Chapter, section 145 (application of enactments) or section 178 (charges for local pharmaceutical services), but

(b) otherwise as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under section 7).

142 Premises from which piloted services may be provided

The Secretary of State may by regulations—

(a) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both piloted services and pharmaceutical services from the same premises,

(b) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list.

143 Control of entry regulations

The power to make regulations under section 129 includes power to prescribe the extent to which the provision of piloted services must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list.

CHAPTER 3

LOCAL PHARMACEUTICAL SERVICES: LPS SCHEMES

144 Local pharmaceutical services schemes

Schedule 12 makes provision with respect to the provision of local pharmaceutical services in accordance with schemes made by **[**F712the Board or the Secretary of State**]**F713... .

Textual Amendments

F712 Words in s. 144 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 76(1)(a)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F713 Words in s. 144 omitted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 76(1)(b)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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CHAPTER 4

LOCAL PHARMACEUTICAL SERVICES: MISCELLANEOUS

Application of enactments

145 Application of enactments

(1) The Secretary of State may by regulations make, in relation to local pharmaceutical services arrangements or persons providing or assisting in the provision of services under such arrangements, provision corresponding (whether or not exactly) to enactments containing provision relating to—

(a) section 92 arrangements or section 107 arrangements, or

(b) persons who provide or perform services under section 92 or section 107.

(2) The regulations may, in particular, provide for the application of any such enactment with such modifications, if any, as the Secretary of State considers appropriate.

(3) The provision which may be made under this section includes provision amending, repealing or revoking enactments.

(4) "Local pharmaceutical services arrangements" means arrangements made under an LPS scheme or a pilot scheme.

Performance of local pharmaceutical services

146 Persons performing local pharmaceutical services

[[F714](1) Regulations may provide that a health care professional of a prescribed description may not perform any local pharmaceutical service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust.

(2) For the purposes of this section—

(a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

(b) a Primary Care Trust is responsible for a local pharmaceutical service if it secures its provision by or under any enactment.

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—

(a) the preparation, maintenance and publication of a list,

(b) eligibility for inclusion in a list,

(c) applications for inclusion (including provision as to the Primary Care Trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application),

(d) the grounds on which an application for inclusion may or must be granted or refused,

(e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),

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(f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),

(g) circumstances in which a person included in a list may not withdraw from it,

(h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),

(i) the criteria to be applied in making decisions under the regulations,

(j) appeals against decisions made by a Primary Care Trust under the regulations, and

(k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by a Primary Care Trust,

(b) a Primary Care Trust to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from a list),

(d) the review by a Primary Care Trust of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing fraud.

(6) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by a Primary Care Trust to the Secretary of State, and

(b) by the Secretary of State to a Primary Care Trust.**]**

Textual Amendments

F714 S. 146 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(1)(a)**, 306(1)(d)(4) (with s. 208(7))

Assistance and support

147 Assistance and support: local pharmaceutical services

(1) A Primary Care Trust may provide assistance or support to any person providing local pharmaceutical services.

(2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.

(3) "Assistance" includes financial assistance.

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[F715CHAPTER 4A

LISTS OF PERFORMERS OF PHARMACEUTICAL SERVICES AND ASSISTANTS

Textual Amendments

F715 Pt. 7 Ch. 4A inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(2)**, 306(1)(d)(4)

147A Performers of pharmaceutical services and assistants

(1) Regulations may make provision for the preparation, maintenance and publication by the Board of one or more lists of—

(a) persons approved by the Board for the purpose of assisting in the provision of pharmaceutical services which the Board arranges;

(b) persons approved by the Board for the purpose of performing local pharmaceutical services.

(2) The regulations may, in particular, provide that—

(a) a person of a prescribed description may not assist in the provision of pharmaceutical services which the Board arranges unless the person is included in a list prepared by virtue of subsection (1)(a),

(b) a person of a prescribed description may not perform local pharmaceutical services unless the person is included in a list prepared by virtue of subsection (1)(b).

(3) The regulations may, in particular, also include provision as to—

(a) the preparation, maintenance and publication of a list,

(b) eligibility for inclusion in a list,

(c) applications for inclusion (including provision for the procedure for applications and the documents to be supplied on application, whether by the applicant or by arrangement with the applicant),

(d) the grounds on which an application for inclusion may or must be granted or refused or on which a decision on such an application may be deferred,

(e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),

(f) the grounds on which the Board may or must suspend or remove a person from a list, the procedure for doing so, and the consequences of doing so,

(g) circumstances in which a person included in a list may not withdraw from it,

(h) payments to or in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating it, to be determined by the Secretary of State or a person appointed by the Secretary of State),

(i) the supply to the Board by an applicant for inclusion in a list, or by a person included in a list, of a criminal conviction certificate under section 112 of the Police Act 1997, a criminal record certificate under **[**F716section 113A of that Act, an enhanced criminal record certificate under section 113B of that Act or up-date information within the meaning given by section 116A of that Act,**]**

(j) the criteria to be applied in making decisions under the regulations,

(k) appeals against decisions made by the Board under the regulations, and

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(l) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide that approval for the purposes of either paragraph (a) or paragraph (b) of subsection (1) is to be treated for the purposes of this section as approval for the purposes of the other paragraph (and for lists prepared by virtue of that subsection to be read accordingly).

(5) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by the Board,

(b) the Board to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including suspension or removal from a list),

(d) the review by the Board of decisions made by it by virtue of the regulations.

(6) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing any acts or omissions of the type described in section 151(3)(a).

(7) If the regulations provide under subsection (3)(f) or (5) that the Board may suspend or remove a person (P) from a list, they must include provision—

(a) requiring P to be given notice of any allegation against P,

(b) giving P the opportunity of putting P's case at a hearing before the Board makes any decision as to P's suspension or removal, and

(c) requiring P to be given notice of the decision of the Board, the reasons for it and any right of appeal under subsection (8) or (9).

(8) If the regulations provide under subsection (3)(d) or (f) that the Board may refuse a person's application for inclusion in a list, or remove a person from one, the regulations must provide for an appeal to the First-tier Tribunal against the decision of the Board.

(9) If the regulations make provision under subsection (5), they must provide for an appeal by the person in question to the First-tier tribunal against the decision of the Board—

(a) to impose conditions, or any particular condition,

(b) to vary a condition,

(c) to remove the person from the list for breach of condition,

(d) on any review of an earlier such decision of the Board.

(10) Regulations making provision as to the matters referred to in subsection (3)(l) may, in particular, authorise the disclosure of information—

(a) by the Board to the Secretary of State, and

(b) by the Secretary of State to the Board.

Textual Amendments

F716 Words in s. 147A(3)(i) substituted (17.6.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 123** (with s. 97); S.I. 2013/1180, art. 2(e)(v)

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147B Further provision about regulations under section 147A

(1) Regulations under section 147A may require a person (A) included in—

(a) a pharmaceutical list, or

(b) a list under section 132(3) (provision of drugs, medicines or listed appliances),

not to employ or engage a person (B) to assist A in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2).

(2) The lists are—

(a) a list referred to in subsection (1),

(b) a list under section 147A,

(c) a list under section 91, 106 or 123,

(d) a list corresponding to a list under section 91 prepared by the Board by virtue of regulations made under section 145,

(e) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by a Local Health Board under or by virtue of the National Health Service (Wales) Act 2006,

or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description.

(3) If regulations do so require, they may, in particular, require that both A and B be included in lists prepared by the Board.**]**

CHAPTER 5

[[F717]CONDITIONAL INCLUSION IN PHARMACEUTICAL LISTS**]**

Textual Amendments

F717 Pt. 7 Ch. 5 heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(3)**, 306(1)(d)(4)

148 Conditional inclusion in pharmaceutical lists

(1) Regulations may provide—

(a) that if a person is included in a pharmaceutical list he is subject, while he remains included in the list, to conditions determined by **[**[F718]the Board**]**,

(b) for **[**[F719]the Board**]** to vary that person's terms of service for the purpose of or in connection with the imposition of any such conditions,

(c) for **[**[F720]the Board**]** to vary the conditions or impose different ones,

(d) for the consequences of failing to comply with a condition (including removal from the list), and

(e) for the review by **[**[F721]the Board**]** of any decision made by virtue of the regulations.

(2) The imposition of conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services in question, or

(b) preventing any acts or omissions within section 151(3)(a).

(3) If regulations provide for a practitioner's removal from the list for breach of condition—

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(a) the regulations may provide that he may not withdraw from the list while **[**F722the Board**]** is investigating whether there are grounds for exercising their power to remove him, or after **[**F722the Board**]** has decided to remove him but before it has given effect to that decision, and

(b) the regulations must include provision—

(i) requiring the practitioner to be given notice of any allegation against him,

(ii) giving him the opportunity of putting his case at a hearing before **[**F723the Board**]** makes any decision as to his removal from the list, and

(iii) requiring him to be given notice of the decision of **[**F723the Board**]** and the reasons for it and of his right of appeal under subsection (4).

(4) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the **[**F724First-tier Tribunal**]** against the decision of **[**F725the Board**]** —

(a) to impose conditions, or any particular condition,

(b) to vary a condition,

(c) to vary his terms of service,

(d) on any review of an earlier such decision of **[**F725the Board**]**,

(e) to remove him from the list for breach of condition,

and the appeal must be by way of redetermination of the decision of **[**F725the Board**]**.

(5) The regulations may provide for any such decision not to have effect until the determination by the **[**F726First-tier Tribunal**]** of any appeal against it, and must so provide in relation to a decision referred to in subsection (4)(e).

(6) Regulations under this section may provide for the disclosure by **[**F727the Board**]**, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description—

(a) about persons whose inclusion in a pharmaceutical list is subject to conditions imposed under this section, and

(b) about the removal of such persons from a pharmaceutical list for breach of condition.

(7) In this Part, "terms of service" means the terms upon which, by virtue of regulations, a person undertakes to provide pharmaceutical services.

Textual Amendments

F718 Words in s. 148(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F719 Words in s. 148(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F720 Words in s. 148(1)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F721 Words in s. 148(1)(e) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F722 Words in s. 148(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F723 Words in s. 148(3)(b)(ii)(iii) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F724 Words in s. 148(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 113** (with Sch. 5)

F725 Words in s. 148(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F726 Words in s. 148(5) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 113** (with Sch. 5)

F727 Words in s. 148(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 77(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

149 Supplementary lists

[F728(1) The Secretary of State may make regulations providing for the preparation and publication by each Primary Care Trust of one or more lists of persons approved by the Primary Care Trust for the purpose of assisting in the provision of pharmaceutical services.

(2) Such a list is referred to in this section, section 150 and section 159 as a "supplementary list".

(3) The regulations may, in particular, include provision as to—

(a) the Primary Care Trust to which an application for inclusion in a supplementary list must be made,

(b) the procedure for applying for inclusion, including any information to be supplied to the Primary Care Trust (whether by the applicant or by arrangement with him),

(c) grounds on which the Primary Care Trust may, or must, refuse a person's application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which it may defer its decision on the application,

(d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),

(e) grounds on which a Primary Care Trust may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,

(f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),

(g) the supply to the Primary Care Trust by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,

(h) circumstances in which a person included in a supplementary list may not withdraw from it,

(i) criteria to be applied in making decisions under the regulations,

(j) appeals against decisions of Primary Care Trusts under the regulations,

(k) the disclosure by a Primary Care Trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about

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applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list.

(4) The regulations may, in particular, also provide for—

(a) a person's inclusion in a supplementary list to be subject to conditions determined by the Primary Care Trust,

(b) the Primary Care Trust to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from the list), and

(d) the review by the Primary Care Trust of its decisions made by virtue of regulations under this subsection.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which the supplementary list relates, or

(b) preventing any acts or omissions of the type described in section 151(3)(a).

(6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 151 to 159.

(7) If the regulations provide under subsection (3)(e) or (4) that a Primary Care Trust may suspend or remove a person from a supplementary list, they must include provision—

(a) requiring him to be given notice of any allegation against him,

(b) giving him the opportunity of putting his case at a hearing before the Primary Care Trust makes any decision as to his suspension or removal, and

(c) requiring him to be given notice of the decision of the Primary Care Trust and the reasons for it and of any right of appeal under subsection (8) or (9).

(8) If the regulations provide under subsection (3)(c) or (e) that a Primary Care Trust may refuse a person's application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the **[**F729First-tier Tribunal**]** against the decision of the Primary Care Trust.

(9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the **[**F730First-tier Tribunal**]** against the decision of the Primary Care Trust—

(a) to impose conditions, or any particular condition,

(b) to vary a condition,

(c) to remove him from the supplementary list for breach of condition,

(d) on any review of an earlier such decision of the Primary Care Trust.**]**

Textual Amendments

F728 S. 149 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(1)(b)**, 306(1)(d)(4) (with s. 208(7))

F729 Words in s. 149(8) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 114** (with Sch. 5)

F730 Words in s. 149(9) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 114** (with Sch. 5)

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150 Further provision about regulations under section 149

[F731(1) Regulations under section 149 may require a person ("A") included in—

(a) a pharmaceutical list, or

(b) a list under section 132(3) (provision of drugs, medicines or listed appliances),

not to employ or engage a person ("B") to assist him in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2).

(2) The lists are—

(a) a list referred to in subsection (1),

(b) a supplementary list,

(c) a list under section 91, 106 or 123,

(d) a list under section 146 or a list corresponding to a list under section 91 prepared by a Primary Care Trust by virtue of regulations made under section 145,

(e) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by a Local Health Board under or by virtue of the National Health Service (Wales) Act 2006 (c. 42),

or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description.

(3) If regulations do so require, they—

(a) need not require both A and B to be included in lists prepared by the same Primary Care Trust, but

(b) may, in particular, require that both A and B be included in lists prepared by Primary Care Trusts.**]**

Textual Amendments

F731 S. 150 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(1)(c)**, 306(1)(d)(4)

[F732CHAPTER 5A

NOTICES AND PENALTIES

Textual Amendments

F732 Pt. 7 Ch. 5A inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 28**, 40(1); S.I. 2012/1902, art. 2(c)

150A Notices and penalties

(1) The Secretary of State may by regulations provide that where a practitioner who provides pharmaceutical services under arrangements with **[**F733the Board**]** breaches a term of those arrangements, **[**F734the Board**]** may—

(a) by a notice require the practitioner to do, or not do, specified things or things of a specified description within a specified period, or

(b) in prescribed circumstances or for a prescribed period, withhold all or part of a payment due to the practitioner under the arrangements.

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(2) Regulations under this section must include provision conferring on such persons as may be prescribed rights of appeal from decisions of **[**F735the Board**]** made by virtue of this section.

(3) In this section—

"practitioner" means a person included in a pharmaceutical list, and

"specified" means specified in a notice under paragraph (a) of subsection (1).**]**

Textual Amendments

F733 Words in s. 150A(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 78(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F734 Words in s. 150A(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 78(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F735 Words in s. 150A(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 78(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

CHAPTER 6

DISQUALIFICATION

151 Disqualification of practitioners

(1) If it appears to **[**F736the Board**]** that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in a pharmaceutical list it may (or, in cases falling within subsection (5), must) decide to remove him from that list.

(2) The first condition is that the continued inclusion of the practitioner in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this Chapter as an "efficiency case").

(3) The second condition is that the practitioner—

(a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and

(b) knew that he or the other was not entitled to the benefit,

(and such a case is referred to in this Chapter as a "fraud case").

(4) The third condition is that the practitioner is unsuitable to be included in the list (and such a case is referred to in this Chapter as an "unsuitability case").

(5) In unsuitability cases, **[**F737the Board**]** must remove the practitioner from the list in prescribed circumstances.

(6) **[**F738The Board**]** must state which condition (or conditions) it is relying on when removing a practitioner from a list.

(7) "Health scheme" means—

(a) any of the health services under section 1(1) of this Act, section 1(1) of the National Health Service (Wales) Act 2006 (c. 42), or any enactment

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corresponding to section 1(1) of this Act and extending to Scotland or Northern Ireland, and

(b) any prescribed scheme,

and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.

(8) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.

(9) In this Chapter a "practitioner" means a person included in a pharmaceutical list.

Textual Amendments

F736 Words in s. 151(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 79(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F737 Words in s. 151(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 79(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F738 Words in s. 151(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 79(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

152 Contingent removal

(1) In an efficiency case or a fraud case, **[**F739the Board**]** may, instead of deciding to remove a practitioner from its list, decide to remove him contingently.

(2) If it so decides, it must impose such conditions as it may decide on his inclusion in the list with a view to—

(a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or

(b) preventing further acts or omissions within section 151(3)(a) (in a fraud case).

(3) If **[**F740the Board**]** determines that the practitioner has failed to comply with a condition, it may decide to—

(a) vary the conditions, or impose different conditions, or

(b) remove him from its list.

(4) **[**F741The Board**]** may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.

Textual Amendments

F739 Words in s. 152(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 80(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F740 Words in s. 152(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 80(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F741 Words in s. 152(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 80(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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153 Fraud and unsuitability cases: supplementary

(1) Where the practitioner is a body corporate providing pharmaceutical services, the body corporate must be treated for the purposes of this Chapter as meeting a condition referred to in section 151(3) or (4) if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).

(2) A practitioner must be treated for the purposes of this Chapter as meeting the condition referred to in section 151(3) if—

(a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 151(1) on the practitioner's behalf, meets that condition, and

(b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 151(3)(a) occurring in the course of the provision of those services on his behalf.

154 Suspension

(1) If **[**F742the Board**]** is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a practitioner from its list—

(a) while it decides whether or not to exercise its powers under section 151 or 152 (other than in circumstances falling within paragraph (b)), or

(b) while it waits for a decision affecting the practitioner of a court or of a body which regulates—

(i) the practitioner's profession,

(ii) the profession of a person providing any of the services mentioned in section 151(1) on the practitioner's behalf, or

(iii) if the practitioner is a body corporate, the profession of one of its directors, or one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,

or one of that regulatory body's committees.

(2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.

(3) In a case falling within subsection (1)(a), **[**F743the Board**]** must specify the length of the period of suspension.

(4) In a case falling within subsection (1)(b), **[**F744the Board**]** may specify that the practitioner remains suspended after the decision referred to there for an additional period which **[**F744the Board**]** must specify.

(5) In either case—

(a) before that period expires it may extend, or further extend, the suspension for a further specified period, or

(b) if that period has expired, it may impose a further suspension, for a period which it must specify.

(6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—

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(a) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),

(b) if, on the application of **[**F745the Board**]**, the **[**F746First-tier Tribunal**]** orders accordingly before the expiry of the period of suspension, or

(c) if **[**F745the Board**]** has applied under paragraph (b) before the expiry of the period of suspension, but the **[**F747First-tier Tribunal**]** has not made an order by the time it expires, in which case it continues until the **[**F747First-tier Tribunal**]** has made an order.

(7) If the **[**F748First-tier Tribunal**]** does so order, it must specify—

(a) the date on which the period of suspension will end, or

(b) an event beyond which it will not continue.

(8) The **[**F749First-tier Tribunal**]** may, on the application of **[**F750the Board**]**, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.

(9) The Secretary of State may make regulations providing for payments to practitioners who are suspended.

(10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

Textual Amendments

F742 Words in s. 154(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 81**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F743 Words in s. 154(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 81**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F744 Words in s. 154(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 81**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F745 Words in s. 154(6)(b)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 81**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F746 Words in s. 154(6)(b) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

F747 Words in s. 154(6)(c) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

F748 Words in s. 154(7) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

F749 Words in s. 154(8) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

F750 Words in s. 154(8) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 81**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

155 Suspension pending appeal

(1) This section applies if **[**F751the Board**]** decides to remove a practitioner from a list under section 151.

(2) In such a case it may also decide to suspend the practitioner from the list pending any appeal by him, if it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

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(3) If it does suspend the practitioner under this section, the suspension has effect from the date when **[**F752the Board**]** gave him notice of the suspension.

(4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 158(1), or, if the practitioner appeals under section 158, until the **[**F753First-tier Tribunal**]** has disposed of the appeal.

(5) **[**F754The Board**]** may revoke a suspension imposed under this section.

(6) If the practitioner appeals under section 158 against the decision of **[**F755the Board**]** to remove him from the list, the **[**F756First-tier Tribunal**]** may also revoke a suspension imposed on him under this section.

(7) Subsections (9) and (10) of section 154 apply for the purposes of this section as they apply for the purposes of that.

Textual Amendments

F751 Words in s. 155(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 82(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F752 Words in s. 155(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 82(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F753 Words in s. 155(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 116** (with Sch. 5)

F754 Words in s. 155(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 82(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F755 Words in s. 155(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 82(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F756 Words in s. 155(6) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 116** (with Sch. 5)

156 Effect of suspension

While a practitioner is suspended (whether under section 154 or under section 155) he must be treated as not being included in the list from which he has been suspended even though his name appears in it.

157 Review of decisions

(1) **[**F757The Board**]** may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the **[**F758First-tier Tribunal**]** , or a suspension imposed under section 155).

(2) The practitioner may not request a review before the expiry of the period of—

(a) three months beginning with the date of the decision of **[**F759the Board**]** to suspend or contingently remove him, or (as appropriate),

(b) six months beginning with the date of its decision on the previous review.

(3) On such a review, **[**F760the Board**]** may—

(a) confirm the contingent removal or the suspension,

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(b) in the case of a suspension, terminate it,

(c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.

Textual Amendments

F757 Words in s. 157(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 83(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F758 Words in s. 157(1) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 117** (with Sch. 5)

F759 Words in s. 157(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 83(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F760 Words in s. 157(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 83(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

158 Appeals

(1) A practitioner may appeal to the **[**F761First-tier Tribunal**]** against a decision of **[**F762the Board**]** mentioned in subsection (2) F763....

(2) **[**F764The Board**]** decisions in question are—

(a) to remove the practitioner from a list (under section 151 or 152(3) or under subsection (5)(b) of this section),

(b) to remove him contingently (under section 152),

(c) to impose any particular condition under section 152, or to vary any condition or to impose any different condition under that section,

(d) to vary his terms of service (under section 152(4)),

(e) any decision on a review of a contingent removal under section 157.

(3) The appeal must be way of redetermination of the decision of **[**F765the Board**]**.

(4) On an appeal, the **[**F766First-tier Tribunal**]** may make any decision which **[**F767the Board**]** could have made.

(5) If the FHSAA decides to remove the practitioner contingently—

(a) **[**F768the Board**]** and the practitioner may each apply to the **[**F769First-tier Tribunal**]** for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked, and

(b) **[**F768the Board**]** may remove him from its list if it determines that he has failed to comply with a condition.

(6) **[**F770The Board**]** may not remove a person from a list, or impose a contingent removal—

(a) until the expiry of the period of 28 days referred to in subsection (1), or

(b) if the practitioner appeals within that period, until the **[**F771First-tier Tribunal**]** has disposed of the appeal.

(7) Regulations may provide for payments by **[**F772the Board**]** to practitioners who are removed from lists pursuant to decisions of the **[**F773First-tier Tribunal**]** under this section, but whose appeals against those decisions are successful.

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(8) Regulations under subsection (7) may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

Textual Amendments

F761 Words in s. 158(1) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(a)(i)** (with Sch. 5)

F762 Words in s. 158(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 84(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F763 Words in s. 158(1) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(a)(ii)** (with Sch. 5)

F764 Words in s. 158(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 84(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F765 Words in s. 158(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 84(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F766 Words in s. 158(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

F767 Words in s. 158(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 84(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F768 Words in s. 158(5)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 84(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F769 Words in s. 158(5) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

F770 Words in s. 158(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 84(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F771 Words in s. 158(6)(b) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

F772 Words in s. 158(7) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 84(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F773 Words in s. 158(7) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

159 National disqualification

(1) If the **[**F774First-tier Tribunal**]** removes the practitioner from a list, it may also decide to disqualify him from inclusion in—

(a) the pharmaceutical lists prepared by **[**F775the Board**]**,

(b) **[**F776the supplementary lists prepared by **[**F775the Board**]**,**]**

(c) the lists under section 91, 106, or 123 prepared by **[**F775the Board**]**,

(d) the lists under **[**F777section 147A**]** prepared by **[**F775the Board**]**, or the lists corresponding to the lists under section 91 prepared by **[**F775the Board**]** by virtue of regulations made under section 145,

(e) the lists corresponding to the lists mentioned in paragraphs (a) to (d) prepared by each Local Health Board under or by virtue of the National Health Service (Wales) Act 2006 (c. 42),

or only from inclusion in one or more descriptions of such lists prepared by **[**F775the Board**]** and each Local Health Board, the description being specified by the **[**F774First-tier Tribunal**]** in its decision.

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(2) A decision by the **[**F774First-tier Tribunal**]** to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.

(3) The **[**F774First-tier Tribunal**]** may also impose a national disqualification on a practitioner if it dismisses an appeal by him against the refusal by **[**F778the Board**]** to include him in such a list.

(4) **[**F779The Board**]** may apply to the **[**F774First-tier Tribunal**]** for a national disqualification to be imposed on a person after **[**F780the Board**]** has—

(a) removed him from a list prepared by it of any of the kinds referred to in subsection (1)(a) to (d), or

(b) refused to include him in such a list.

(5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of **[**F781the Board's**]** refusal.

(6) If the **[**F782First-tier Tribunal**]** imposes a national disqualification on a person—

(a) **[**F783neither the Board nor a**]** Local Health Board may include him in a list of any of the kinds prepared by it from which he has been disqualified from inclusion, and

(b) if he is included in such a list, **[**F784the Board (if he is included in a list prepared by it)**]** and each Local Health Board in whose list he is included must remove him from it.

(7) The **[**F785First-tier Tribunal**]** may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.

(8) Subject to subsection (9), the person may not request such a review before the end of the period of—

(a) two years beginning with the date on which the national disqualification was imposed, or

(b) one year beginning with the date of the **[**F786First-tier Tribunal's**]** decision on the last such review.

(9) The Secretary of State may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to "two years" or "one year" were a reference to a different period specified in the regulations.

Textual Amendments

F774 Words in s. 159(1)-(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(a)** (with Sch. 5)

F775 Words in s. 159(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 85(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F776 S. 159(1)(b) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(4)(a)**, 306(1)(d)(4)

F777 Words in s. 159(1)(d) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(4)(b)**, 306(1)(d)(4)

F778 Words in s. 159(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 85(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F779 Words in s. 159(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 85(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F780 Words in s. 159(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 85(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F781 Words in s. 159(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 85(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F782 Words in s. 159(6) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(a)** (with Sch. 5)

F783 Words in s. 159(6)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 85(6)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F784 Words in s. 159(6)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 85(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F785 Words in s. 159(7) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(a)** (with Sch. 5)

F786 Words in s. 159(8)(b) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(b)** (with Sch. 5)

Modifications etc. (not altering text)

C67 S. 159(8) modified (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **87(3)**

C68 S. 159(8) modified (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **87(3)**

C69 S. 159(8)(a) modified (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **87(1)**

C70 S. 159(8)(a) modified (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **87(1)**

C71 S. 159(8)(b) modified (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **87(2)**

C72 S. 159(8)(b) modified (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **87(2)**

160 Notification of decisions

Regulations may require **[**F787the Board**]** to notify prescribed persons, or persons of prescribed descriptions, of any decision it makes under this Chapter, and of any information relevant to the decision which it considers appropriate to include in the notification.

Textual Amendments

F787 Words in s. 160 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 86**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

161 Withdrawal from lists

Regulations may provide for circumstances in which a practitioner—

(a) whom **[**F788the Board**]** is investigating in order to see whether there are grounds for exercising its powers under section 151, 152 or 154,

(b) whom **[**F788the Board**]** has decided to remove from a list under section 151 or 152, or contingently remove under section 152, but who has not yet been removed or contingently removed, or

(c) who has been suspended under section 154,

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may not withdraw from a list in which he is included.

Textual Amendments

F788 Words in s. 161(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 87**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

162 Regulations about decisions under this Chapter

(1) Any decision by **[**F789the Board**]** referred to in this Chapter must be reached in accordance with regulations about such decisions.

(2) The regulations must include provision—

(a) requiring the practitioner to be given notice of any allegation against him,

(b) giving him the opportunity of putting his case at a hearing before **[**F790the Board**]** makes any decision affecting him under this Chapter,

(c) requiring him to be given notice of the decision of **[**F791the Board**]** and the reasons for it and of any right of appeal which he may have.

(3) The regulations may, in particular, make provision as to criteria which **[**F792the Board**]** must apply when making decisions in unsuitability cases.

Textual Amendments

F789 Words in s. 162(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 88(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F790 Words in s. 162(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 88(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F791 Words in s. 162(2)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 88(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F792 Words in s. 162(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 88(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

163 Corresponding provisions in Scotland and Northern Ireland

(1) This section applies where it appears to the Secretary of State that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this Chapter.

(2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a "corresponding decision".

(3) If this section applies, the Secretary of State may make regulations providing for the effect to be given in England to a corresponding decision.

(4) That effect need not be the same as the effect of the decision in the place where it was made.

(5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England.

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CHAPTER 7

MISCELLANEOUS

Remuneration

164 Remuneration for persons providing pharmaceutical services

(1) The remuneration to be paid to persons who provide pharmaceutical services under this Part must be determined by determining authorities.

(2) Determining authorities may also determine the remuneration to be paid to persons who provide those services in respect of the instruction of any person in matters relating to those services.

(3) For the purposes of this section and section 165 determining authorities are—

(a) the Secretary of State, and

(b) so far as authorised by him to exercise the functions of determining authorities, **[**F793the Board**]** or other person appointed by him in an instrument.

(4) The instrument mentioned in subsection (3)(b) is called in this section an "instrument of appointment".

[F794(4A) An instrument of appointment—

(a) must be contained in regulations if it provides for the appointment of **[**F795the Board**]** or other person as a determining authority in relation to the remuneration to be paid **[**F796for providing**]** services under section 126, and

(b) if paragraph (a) does not apply, may be contained in regulations.**]**

(5) An instrument of appointment—

(a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations, F797...

F797(b) . . . . . .

(6) Subject to this section and section 165, regulations may make provision about determining remuneration under this section and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).

(7) Regulations may provide that determinations may be made by reference to any of—

(a) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or will be fixed or determined, otherwise than by way of a determination under this section,

(b) scales, indices or other data of any description specified in the regulations.

(8) Where regulations provide as mentioned in subsection (7)(b), they may provide that any determination which falls to be made by reference to a scale, index or other data may be made by reference to the scale, index or data—

(a) in the form current at the time of the determination, and

(b) in any subsequent form taking effect after that time.

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[[F798](8A) Regulations may impose requirements in relation to remuneration in respect of special medicinal products.

(8B) Such regulations may, for example, require determining authorities to ensure—

(a) that remuneration is to be calculated by reference to the outcome of prescribed procedures, or

(b) that determinations do not provide for or permit remuneration to be paid in prescribed circumstances.

(8C) Procedures prescribed by virtue of subsection (8B)(a) may include the person to whom remuneration is payable, a health service body or a determining authority—

(a) carrying out inquiries to ensure that remuneration is reasonable, or

(b) estimating an amount of remuneration that is reasonable (whether or not the estimated amount corresponds exactly to expenses in respect of which remuneration is to be paid).

(8D) Circumstances prescribed by virtue of subsection (8B)(b) may include circumstances in which special medicinal products are made available to persons who provide pharmaceutical services under this Part—

(a) by a health service body, or

(b) under an arrangement for the supply of special medicinal products to which a health service body is a party.

(8E) In subsections (8A) to (8D)—

"health service body" has the meaning given by section 9(4);

"special medicinal product" means a product which is a special medicinal product for the purposes of regulation 167 of the Human Medicines Regulations 2012 (S.I. 2012/1916).**]**

(9) Regulations may—

(a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates,

(b) provide that any determination which does not specify such a date has effect in relation to remuneration in respect of a period beginning—

(i) if it is required to be published, on the date of publication,

(ii) if it is not so required, on the date on which it is made.

(10) A reference in this section or section 165 to a determination is to a determination of remuneration under this section.

Textual Amendments

F793 Words in s. 164(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 89(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F794 S. 164(4A) inserted (1.4.2013) by Health and Social Care Act 2008 (c. 14), **ss. 141(1)(a)**, 170(3)(4); S.I. 2013/159, art. 2(a)

F795 Words in s. 164(4A)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 89(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F796 Words in s. 164(4A)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 89(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F797 S. 164(5)(b) and word repealed (1.4.2013) by Health and Social Care Act 2008 (c. 14), ss. 141(1)(b), 170(3)(4), **Sch. 15 Pt. 4**; S.I. 2013/159, art. 2(a)(c)

F798 S. 164(8A)-(8E) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 1**, 12(3); S.I. 2017/809, reg. 2(a)

165 Section 164: supplementary

(1) Before a determination is made by the Secretary of State which relates to all persons who provide pharmaceutical services, or a category of such services, he—

(a) must consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and

(b) may consult such other persons as he considers appropriate.

(2) Determinations may make different provision for different cases, including different provision for any particular case, class of case or area.

(3) Determinations may be—

(a) made in more than one stage,

(b) made by more than one determining authority,

(c) varied or revoked by subsequent determinations.

(4) A determination may be varied—

(a) to correct an error, or

(b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.

(5) Determinations may, in particular, provide that the whole or any part of the remuneration—

(a) is payable only if the determining authority is satisfied as to certain conditions, or

(b) must be applied for certain purposes or is otherwise subject to certain conditions.

(6) Remuneration under section 164 may be determined from time to time and may consist of payments by way of—

(a) salary,

(b) fees,

(c) allowances,

(d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction.

(7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time.

(8) The matters which may be reserved include in particular—

(a) the amount of remuneration to be paid in particular cases,

(b) whether any remuneration is to be paid in particular cases.

(9) Any determination may be made only after taking into account all the matters which are considered to be relevant by the determining authority.

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(10) Such matters may include in particular—

(a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of pharmaceutical services or of any category of pharmaceutical services,

(b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services,

(c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons,

(d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of pharmaceutical services or the category of pharmaceutical services to which the determination will relate,

(e) the desirability of promoting pharmaceutical services which are—

(i) economic and efficient, and

(ii) of an appropriate standard.

(11) If the determination is of remuneration for a category of pharmaceutical services, the reference in subsection (10)(a) to a category of pharmaceutical services is a reference to the same category of pharmaceutical services or to any other category of pharmaceutical services falling within the same description.

[F799 165A Pharmaceutical remuneration: further provision

(1) The Board must provide the Secretary of State with such information relating to the remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services as the Secretary of State may require.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

(3) Schedule 12A makes further provision about pharmaceutical remuneration.]

Textual Amendments

F799 S. 165A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 51(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Indemnity cover

166 Indemnity cover

(1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed persons included in a pharmaceutical list hold approved indemnity cover.

(2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

(a) for securing that a person must not be added to a pharmaceutical list unless he holds approved indemnity cover,

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(b) for the removal from a pharmaceutical list prepared by **[**F800the Board**]** of a person who does not within a prescribed period after the making of a request by **[**F801the Board**]** in the prescribed manner satisfy **[**F801the Board**]** that he holds approved indemnity cover.

(3) For the purposes of this section—

"approved body" means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed,

"approved indemnity cover" means indemnity cover made—

(a) on prescribed terms, and

(b) with an approved body,

"indemnity cover", in relation to a person included in a pharmaceutical list (or a person who proposes to provide pharmaceutical services), means a contract of insurance or other arrangement made for the purpose of indemnifying him, and any person prescribed in relation to him, to any prescribed extent against any liability which—

(a) arises out of the provision of pharmaceutical services in accordance with arrangements made by him with **[**F802the Board**]**, and

(b) is incurred by him or any such person in respect of the death or personal injury of a person,

"personal injury" means any disease or impairment of a person's physical or mental condition and includes the prolongation of any disease or such impairment,

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

(a) in a form identified in accordance with the regulations in relation to persons of that description, and

(b) made with a person or persons so identified,

must be treated as holding approved indemnity cover for the purposes of the regulations.

Textual Amendments

F800 Words in s. 166(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 90(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F801 Words in s. 166(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 90(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F802 Words in s. 166(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 90(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Local Pharmaceutical Committees

167 Local Pharmaceutical Committees

(1) **[**F803The Board may recognise a committee formed for an area**]** which it is satisfied is representative of—

(a) the persons providing pharmaceutical services from premises in the area for which the committee is formed ("pharmaceutical services providers"),

(b) pharmaceutical services providers and the persons to whom subsections (2) and (3) apply,

(c) pharmaceutical services providers and the persons to whom subsection (2) applies, or

(d) pharmaceutical services providers and the persons to whom subsection (3) applies.

(2) This subsection applies to each person who—

(a) is providing local pharmaceutical services F804... under an LPS scheme made (whether with himself or another person) by **[**F805the Board**]**, and

(b) has notified **[**F805the Board**]** that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

(3) This subsection applies to each person who—

(a) is providing local pharmaceutical services F806... under a pilot scheme made (whether with himself or another person) by **[**F807the Board**]**, and

(b) has notified **[**F807the Board**]** that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

(4) A committee recognised under this section is called the Local Pharmaceutical Committee for the area for which it is formed.

(5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(6) Regulations may require **[**F808the Board**]**, in the exercise of functions relating to pharmaceutical services or local pharmaceutical services, to consult committees recognised by it under this section on such occasions and to such extent as may be prescribed.

(7) Subsection (6) does not affect any other power to require **[**F809the Board**]** to consult committees recognised by it under this section.

(8) A committee recognised under this section has such other functions as may be prescribed.

(9) **[**F810The Board**]** may, on the request of any committee recognised by it under this section, allot to that committee such sums for defraying the committee's administrative expenses (other than any determined under subsection (12)) as may be determined by **[**F811the Board**]**.

(10) Any sums so allotted must be out of the moneys available to **[**F812the Board**]** for the remuneration of persons of whom the committee is representative under subsection (1)(a).

(11) The amount of any such sums must be deducted from the remuneration of those persons in such manner as may be determined by **[**F813the Board**]**.

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(12) A committee recognised under subsection (1)(b), (c) or (d) must, in respect of each year, determine the amount of its administrative expenses for that year attributable to the persons of whom it is representative under subsection (2) or (3).

(13) The committee must apportion the amount determined under subsection (12) among the persons of whom it is representative under subsection (2) or (3), and each such person must pay in accordance with the committee's directions the amount so apportioned to him.

(14) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

Textual Amendments

F803 Words in s. 167(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F804 Words in s. 167(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F805 Words in s. 167(2)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F806 Words in s. 167(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F807 Words in s. 167(3)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F808 Words in s. 167(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F809 Words in s. 167(7) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F810 Words in s. 167(9) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F811 Words in s. 167(9) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F812 Words in s. 167(10) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F813 Words in s. 167(11) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 91(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Provision of accommodation by the Secretary of State

168 Use of accommodation: provision of pharmaceutical services and local pharmaceutical services

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of pharmaceutical services or local pharmaceutical services, he may make the accommodation available on such terms as he considers appropriate to persons providing those services.

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[F814 Directions

Textual Amendments

F814 S. 168A and cross-heading inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 49(4)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

168A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to services that may be provided as pharmaceutical services, or as local pharmaceutical services, under this Part.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to pharmaceutical services or to local pharmaceutical services (including functions which the Board has been directed to exercise under subsection (1)).**]**

PART 8

[F815 APPEALS TO FIRST-TIER TRIBUNAL]

Textual Amendments

F815 Pt. 8 heading substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 120** (with Sch. 5)

169 [F816 Appeals to the First-tier Tribunal]

F817(1) . . . . . .

F817(2) . . . . . .

(3) The Secretary of State may direct the **[**F818First-tier Tribunal**]** to exercise any of his functions relating to the determination of appeals to him which are specified in the directions.

F819(4) . . . . . .

F819(5) . . . . . .

Textual Amendments

F816 S. 169 heading substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(a)** (with Sch. 5)

F817 S. 169(1)(2) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(b)** (with Sch. 5)

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F818 Words in s. 169(3) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(c)** (with Sch. 5)

F819 S. 169(4)(5) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(d)** (with Sch. 5)

F820 170 FHSAA: financial provisions

. . . . . .

Textual Amendments

F820 S. 170 omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 122** (with Sch. 5)

F821 171 Conditions of use of services of persons under section 169

. . . . . .

Textual Amendments

F821 S. 171 omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 123** (with Sch. 5)

PART 9

CHARGING

Power to charge generally

172 Charges for drugs, medicines or appliances, or pharmaceutical services

(1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—

(a) the supply under this Act (otherwise than under Chapter 1 of Part 7) of drugs, medicines or appliances (including the replacement and repair of those appliances), and

(b) such of the pharmaceutical services referred to in that Chapter as may be prescribed.

(2) Regulations under this section may in particular make provision in relation to the supply of contraceptive substances and appliances under paragraph 8 of Schedule 1.

(3) This section does not apply in relation to the provision of any relevant dental service (within the meaning of section 176).

173 Exemptions from general charging

(1) No charge may be made under regulations under section 172(1) in respect of—

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(a) the supply of any drug, medicine or appliance for a patient who is resident in hospital,

(b) the supply of any drug or medicine for the treatment of sexually transmitted disease (otherwise than in the provision of primary medical services or in accordance with a pilot scheme **[**F822established under section 134(1) of this Act**]** or an LPS scheme),

(c) the supply of any appliance (otherwise than in pursuance of paragraph 8(d) of Schedule 1) for a person who is under 16 years of age or is under 19 years of age and receiving qualifying full-time education, or

(d) the replacement or repair of any appliance in consequence of a defect in the appliance as supplied.

(2) In subsection (1)(c) "qualifying full-time education" means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State.

(3) For the purposes of subsection (2)—

(a) "recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university, and

(b) regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction.

Textual Amendments

F822 Words in s. 173(1)(b) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(c)**; S.I. 2010/30, art. 2(b)

174 Pre-payment certificates

(1) Regulations under section 172(1) may provide for the grant, on payment of such sums as may be prescribed, of a pre-payment certificate.

(2) A pre-payment certificate is a certificate which confers on the person to whom it is granted exemption from charges otherwise chargeable under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed.

(3) Different sums may be prescribed in relation to different periods.

175 Charges in respect of non-residents

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of such charges as the Secretary of State may determine in respect of the services mentioned in subsection (2).

(2) The services are such services as may be prescribed which are—

(a) provided under this Act, and

(b) provided in respect of such persons not ordinarily resident in Great Britain as may be prescribed.

(3) Regulations under this section may provide that the charges may be made only in such cases as may be determined in accordance with the regulations.

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(4) The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.

Charging for dental services

176 Dental charging

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for relevant dental services.

(2) Regulations under subsection (1) may in particular include provision—

(a) specifying the amount, or maximum amount, of any charge (or aggregate charge in respect of the provision for two or more relevant dental services),

(b) for calculating the amount of any charge,

(c) for the variation of the amount, or maximum amount, of any charge in cases of a prescribed description,

(d) for any charge not to be payable in cases of a prescribed description,

(e) for power to direct that a charge is not payable in any particular case,

(f) for the repayment of any charge (including provision as to the persons by whom, and manner in which, repayments must be made).

(3) Regulations under subsection (1) may provide for sums which would otherwise be payable by **[**F823the Board**]** to persons providing relevant dental services to be reduced by the amount of the charges authorised by the regulations.

(4) In this section and section 177 "relevant dental services" means—

(a) dental treatment provided—

F824(i) . . . . . .

(ii) under a general dental services contract, or

(iii) in accordance with section 107 arrangements, and

(b) the supply of dentures and other dental appliances under this Act.

(5) Any reference in this section or 177 to the supply of an appliance includes a reference to its repair, adjustment, refitting or replacement and, in the case of dentures, to their being relined or having additions made to them.

Textual Amendments

F823 Words in s. 176(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 94(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F824 S. 176(4)(a)(i) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 94(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

177 Exemptions from dental charging

(1) No charge may be made under regulations under section 176(1) in respect of a relevant dental service provided for any person who at the prescribed time—

(a) was under 18,

(b) was under 19 and receiving qualifying full-time education,

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(c) was pregnant, or

(d) had given birth to a child within the previous 12 months.

(2) No charge may be made under regulations under section 176(1) in respect of—

(a) the repair or replacement of any appliance,

(b) any appliance supplied to a patient who is resident in a hospital,

(c) the arrest of bleeding.

(3) Subsections (1) and (2)(a) do not apply in relation to—

(a) the repair or replacement of any appliance of a prescribed description,

(b) the repair or replacement of any appliance where it is determined in the prescribed manner—

(i) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied, or

(ii) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.

(4) Subsection (2)(b) does not apply where an appliance is supplied—

F825(a) . . . . . .

(b) under a general dental services contract, or

(c) in accordance with section 107 arrangements.

(5) Regulations may provide, with respect to any exemption under this section, that it must be a condition of the exemption that—

(a) a declaration of the prescribed kind is made in the prescribed form and manner,

(b) a certificate or other evidence of the prescribed kind is supplied in the prescribed form and manner.

(6) In subsection (1)(b) "qualifying full-time education" means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State.

(7) For the purposes of subsection (6)—

(a) "recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university, and

(b) regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction.

(8) In subsection (1)(d), "child" includes a still-born child (within the meaning of the Births and Deaths Registration Act 1953 (c. 20).

Textual Amendments

F825 S. 177(4)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 95**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Charging for local pharmaceutical services

178 Charges, recovery of payments and penalties

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for—

(a) local pharmaceutical services provided under pilot schemes, or

(b) local pharmaceutical services provided under LPS schemes.

(2) The regulations may in particular provide for—

(a) exemptions from charges,

(b) the liability to pay charges to be disregarded in prescribed circumstances or for prescribed purposes,

(c) section 192 (recovery of certain charges and payments) to apply also in relation to local pharmaceutical services (with or without modification),

(d) section 193 (penalties) to apply also in relation to local pharmaceutical services (with or without modification).

(3) The regulations must secure that the amount charged for any service is the same as the amount that would be charged for that service if it were provided under Chapter 1 of Part 7.

Charging for optical appliances

179 Charges for optical appliances

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges in respect of the supply under this Act of optical appliances.

(2) The amount of the charges may be determined—

(a) in regulations, or

(b) by or in accordance with directions given by the Secretary of State.

(3) Regulations or directions may—

(a) vary the amount or maximum amount of charges, or

(b) provide that the charges are not payable.

(4) A reference to supply includes a reference to replacement.

(5) In this Act "optical appliances" means glasses and contact lenses, but regulations may provide for a different definition of optical appliances to have effect for the purposes of this Act.

180 [F826Payments in respect of costs of optical appliances and sight tests]

(1) The Secretary of State must provide by regulations for payments to be made by [F827the Board] to meet, or to contribute towards, the cost incurred (whether by way of charge under this Act or otherwise) for the supply of optical appliances for which—

(a) a prescription has been given for a person mentioned in subsection (2) in consequence of a sight test under this Act, or

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(b) a prescription has been given for a person mentioned in subsection (2) in consequence of a sight test otherwise than under this Act which took place in prescribed circumstances.

(2) The persons are—

(a) a child,

(b) a person whose resources fall to be treated under the regulations as being less than or equal to his requirements,

F828(c) . . . . . .

(d) a person of such other description as may be prescribed.

(3) The Secretary of State may by regulations—

[F829(za) provide for payments to be made by the Board to meet, or to contribute towards, any cost accepted by the Board as having been incurred for the cost of a sight test of a person who—

(i) falls within section 115(2)(c), but

(ii) at the time of the test has not been issued with a notice by the Secretary of State of entitlement to receive assistance in respect of the cost of a sight test (or has been issued with such a notice but has yet to receive it),**]**

(a) provide for **[**F830the Board**]** to contribute to the cost of a sight test which **[**F831the Board**]** accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations, and

(b) provide for payments to be made by **[**F832the Board**]** to meet, or to contribute towards, any cost accepted by **[**F833the Board**]** as having been incurred (whether by way of charge under this Act or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a sight test of a person of a prescribed description.

[F834(3A) The amount of a payment by virtue of subsection (3)(za) or (a) must not exceed the amount for the time being set in regulations under this section as the applicable fee in the case in question for the provision of the sight-testing service under section 115(1)(a).**]**

(4) Regulations under this section may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must be calculated—

(a) by a method set out in the regulations,

(b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications,

(c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament, or

(d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

(5) Descriptions of persons may be prescribed for the purposes of this section by reference to any criterion and, in particular, by reference to any of the following criteria—

(a) their age,

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(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition,

(c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances,

(d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit,

(e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits, and

(f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(6) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument—

(a) as it has effect at the time when the regulations are made, or

(b) both as it has effect at that time and as amended subsequently.

[F835(6A) The Board may direct a Special Health Authority, or such other body as may be prescribed, to exercise any of the Board's functions under regulations under this section.**]**

(7) In subsection (2)(a) "child" means—

(a) a person who is under the age of 16 years, or

(b) a person who is under the age of 19 years and receiving qualifying full-time education.

(8) In subsection (7)(b) "qualifying full-time education" means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State.

(9) For the purposes of subsection (8)—

(a) "recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university, and

(b) regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction.

F836(10) . . . . . .

(11) Sums falling to be paid in pursuance of regulations under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine **[**F837in accordance with the regulations**]**.

F838(12) . . . . . .

Textual Amendments

F826 S. 180 title substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(9)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F827 Words in s. 180(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F828 S. 180(2)(c) repealed (1.9.2012, 12.1.2010) by Health Act 2009 (c. 21), ss. 34, 40(7)(a), **Sch. 6**; S.I. 2012/1902, art. 2(f)

F829 S. 180(3)(za) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 205(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F830 Words in s. 180(3)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F831 Words in s. 180(3)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F832 Words in s. 180(3)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F833 Words in s. 180(3)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F834 S. 180(3A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 205(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F835 S. 180(6A) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F836 S. 180(10) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F837 Words in s. 180(11) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(7)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F838 S. 180(12) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(8)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C73 S. 180 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 8(2)(a)** (with Sch. 3 Pt. 1)

181 Section 180: supplementary

(1) Regulations under section 180 providing for payments for meeting or contributing towards the cost incurred for the supply of optical appliances or their replacement or repair may also provide as follows.

(2) They may make provision for such payments not to be made to any person falling within a prescribed description.

(3) They may make provision for the Secretary of State to give notice as mentioned in subsection (4) to a person to whom such payments have been made [F839]....

(4) Such a notice is notice that no further such payments in respect of the supply, replacement or repair of optical appliances at a particular location or in a particular

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area, in either case specified in the notice, will be made to him after a date specified in the notice.

(5) If such a notice is given, no further payments as mentioned in subsection (4) may be made to him after the date specified in the notice, unless the notice is cancelled by the Secretary of State.

(6) The regulations may make provision conferring on the Secretary of State the right, if he has given a notice by virtue of subsection (3), to apply to the **[**F840First-tier Tribunal**]** for a stop order.

(7) A stop order is an order that no further such payments may be made (whether by the Secretary of State or by any relevant body) to the person in question in respect of the supply, replacement or repair of optical appliances, wherever the supply, replacement or repair occurred.

(8) If the regulations make the provision mentioned in subsection (3), they must also make provision conferring prescribed rights of appeal to the **[**F841First-tier Tribunal**]** upon the person to whom the notice was given.

F842(9) . . . . . .

Textual Amendments

F839 Words in s. 181(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 97(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F840 Words in s. 181(6) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 124** (with Sch. 5)

F841 Words in s. 181(8) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 124** (with Sch. 5)

F842 S. 181(9) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 97(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Exemptions, etc

182 Remission and repayment of charges

Regulations may provide in relation to prescribed descriptions of person for the remission or repayment of the whole or any part of any charges which would otherwise be payable by virtue of section 172, 176 or 179.

183 Payment of travelling expenses

Regulations may provide in relation to prescribed descriptions of persons—

[F843(a) for the payment by the Secretary of State **[**F844, the Board, a clinical commissioning group,**]**F845... an NHS trust or an NHS foundation trust, in such cases as may be prescribed, of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their obtaining—

(i) any services provided under this Act,

(ii) any services in respect of which the costs are reimbursable under section 6A **[**F846or 6BA**]**, or

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(iii) any services authorised to be received in another EEA state or Switzerland under Article 20 or Article 27(3) of Regulation (EC) No. 883/2004,**]**

(b) for the reimbursement by **[**F847the Board,**]**F848... **[**F849or a clinical commissioning group**]** to an NHS trust or an NHS foundation trust F850... of such payments,

(c) for the reimbursement by **[**F851the Board,**]**F852... **[**F853or a clinical commissioning group**]** to an NHS trust and, in such cases as may be prescribed, to a Local Health Board, of payments made by virtue of section 131(a) of the National Health Service (Wales) Act 2006 (c. 42).

Textual Amendments

F843 S. 183(a) substituted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **3**

F844 Words in s. 183(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F845 Words in s. 183(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F846 Words in s. 183(a)(ii) inserted (25.10.2013) by The National Health Service (Cross-Border Healthcare) Regulations 2013 (S.I. 2013/2269), regs. 1(1), **8**

F847 Words in s. 183(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F848 Words in s. 183(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F849 Words in s. 183(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F850 Words in s. 183(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(3)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F851 Words in s. 183(c) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F852 Words in s. 183(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F853 Words in s. 183(c) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 98(4)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

184 Sections 182 and 183: supplementary

(1) Descriptions of persons may be prescribed for the purposes of section 182 or 183 by reference to any criterion and, in particular, by reference to any of the following criteria—

(a) their age,

(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition,

(c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances,

(d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit,

(e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits, and

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(f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(2) Regulations under section 182 or 183 may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must be calculated—

(a) by a method set out in the regulations,

(b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications,

(c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament, or

(d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

(3) Regulations under section 182 or 183 which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument—

(a) as it has effect at the time when the regulations are made, or

(b) both as it has effect at that time and as amended subsequently.

Other provisions relating to charging

185 Charges for more expensive supplies

(1) Regulations may provide for the making and recovery of such charges falling within subsection (2) as may be prescribed.

(2) The charges are charges by the Secretary of State, **[**F854the Board, a clinical commissioning group, a local authority,**]**F855... an NHS trust or an NHS foundation trust—

(a) in respect of the supply of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or

(b) in respect of the repair or replacement of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in paragraph 10(2) of Schedule 1.

Textual Amendments

F854 Words in s. 185(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 99(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F855 Words in s. 185(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 99(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

186 Charges for repairs and replacements in certain cases

(1) Regulations may provide for the making and recovery of such charges falling within subsection (2) as may be prescribed.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The charges are charges by the Secretary of State, **[**F856the Board, a clinical commissioning group, a local authority,**]**F857... an NHS trust or an NHS foundation trust, in respect of the repair or replacement of any appliance or vehicle, where it is determined in the prescribed manner—

(a) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied, or

(b) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.

Textual Amendments

F856 Words in s. 186(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 100(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F857 Words in s. 186(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 100(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F858186A Charges in respect of public health functions

(1) The Secretary of State may make charges under this subsection in respect of any step taken under section 2A.

(2) The power conferred by subsection (1) does not apply in respect of the provision of a service or facility to an individual, or the taking of any other step in relation to an individual, for the purpose of protecting the individual's health.

(3) Charges under subsection (1) may be calculated on such basis as the Secretary of State considers appropriate.

(4) Regulations may provide for the making and recovery of charges in respect of—

(a) the taking of prescribed steps by a local authority under section 2A (by virtue of regulations under section 6C(1)), and

(b) the taking of prescribed steps by a local authority under section 2B.

(5) Regulations under subsection (4) may make provision as to the calculation of charges authorised by the regulations, including provision prescribing the amount or the maximum amount that may be charged.

(6) Nothing in this section affects any other power conferred by or under this Act to make charges.**]**

Textual Amendments

F858 S. 186A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 50(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

187 Charges for designated services or facilities

Regulations may provide for the making and recovery of charges in respect of services or facilities **[**F859of a kind mentioned in section 3(1)(d) or (e) (whether provided in pursuance of those provisions or any other provision of this Act)**]**.

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Textual Amendments

F859 Words in s. 187 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 101**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

188 Sums otherwise payable to those providing services

(1) Subsection (2) applies to regulations under—

(a) section 172 (charges for drugs, medicines or appliances, or pharmaceutical service),

(b) section 179 (charges for optical appliances),

(c) section 185 (charges for more expensive supplies), or

(d) section 186 (charges for repairs and replacements in certain cases),

which provide for the making and recovery of charges in respect of any services.

(2) The regulations may provide for the sums which would otherwise be payable by **[**[F860]the Board or a clinical commissioning group**]**[F861]... or Special Health Authority to the persons by whom the services are provided, to be reduced by the amount of the charges authorised by the regulations in respect of the services.

Textual Amendments

F860 Words in s. 188(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 102(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F861 Words in s. 188(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 102(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

189 Hospital accommodation on part payment

(1) The Secretary of State—

(a) may authorise accommodation to be made available for patients to such extent as he may determine, and

(b) may recover such charges as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis.

(2) Accommodation means—

(a) accommodation in single rooms or small wards which is not needed by any patient on medical grounds,

(b) accommodation at any health service hospital or group of hospitals, or a hospital in which patients are treated under arrangements made by virtue of section 12, or at the health service hospitals in a particular area or a hospital in which patients are so treated.

(3) References in subsection (2) to a health service hospital include references to such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.

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190 Expenses payable by employed patients

(1) The Secretary of State may require any person—

(a) who is a resident patient for whom the Secretary of State provides services under this Act, and

(b) who is absent during the day from the hospital where he is a patient for the purpose of engaging in remunerative employment,

to pay such part of the cost of his maintenance in the hospital and any incidental cost as may seem reasonable to the Secretary of State having regard to the amount of that person's remuneration.

(2) The Secretary of State may recover the amount required under subsection (1).

Recovery, etc

191 Recovery of charges

(1) All charges recoverable under this Act by—

(a) the Secretary of State,

(b) a local social services authority, or

(c) any body established under this Act,

may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

(2) If any person, for the purpose of evading the payment of any charge under this Act, or of reducing the amount of any such charge—

(a) knowingly makes any false statement or false representation, or

(b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

the charge or the balance of the charge, may be recovered from him by the person by whom the cost of the service in question was defrayed.

192 Recovery of charges and payments in relation to goods and services

(1) Where goods or services to which this section applies are provided and—

(a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment, or

(b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in subsection (2) is recoverable summarily as a civil debt from the person in question by the responsible authority.

(2) That amount—

(a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction,

(b) in a case within subsection (1)(b), is the amount of the payment.

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(3) Where two or more persons are liable under section 191(1) or this section to pay an amount in respect of the same charge or payment, those persons are jointly and severally liable.

(4) For the purposes of this section, the circumstances in which a person is treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

(a) on the ground that he or another is a person of a particular description, where the person in question is not of that description,

(b) on the ground that he or another holds a particular certificate, when the person in question does not hold such a certificate or does hold such a certificate but is not entitled to it,

(c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this section and section 193, "responsible authority" means—

(a) in relation to the recovery of any charge under section 191(1) in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable,

(b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable,

(c) in a case within subsection (1)(b), the person who made the payment.

(6) But the Secretary of State may by directions provide for—

(a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies,

(b) the functions of any responsible authority under this section and section 193,

to be exercised on behalf of the authority by another health service body.

(7) This section applies to the following goods and services—

(a) dental treatment and appliances provided in pursuance of this Act,

(b) drugs and medicines provided in pursuance of this Act,

(c) sight tests,

(d) optical appliances,

(e) any other appliances provided in pursuance of this Act.

(8) "Health service body" means a body which is a health service body for the purposes of section 9.

193 Penalties relating to charges

(1) Regulations may provide that, where a person fails to pay—

(a) any amount recoverable from him under section 191(1) in respect of the provision of goods or services to which section 192 applies, or

(b) any amount recoverable from him under section 192,

a notice (referred to in this section as a penalty notice) may be served on the person by the responsible authority.

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(2) A penalty notice is a notice requiring the person on whom it is served to pay the amount to the authority within a prescribed period, together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.

(3) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—

(a) £100,

(b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.

(4) The Secretary of State may by order provide for subsection (3) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or multiplier specified in the order.

(5) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.

(6) The further sum must not exceed 50 per cent of the amount of the penalty charge.

(7) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority summarily as a civil debt.

(8) But a person is not liable by virtue of a penalty notice—

(a) to pay at any time so much of any amount referred to in subsection (1)(a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other, or

(b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

194 Offences relating to charges

(1) A person is guilty of an offence if he does any act mentioned in subsection (2) with a view to securing for himself or another—

(a) the evasion of the whole or part of any charge under this Act in respect of the provision of goods or services to which section 192 applies,

(b) the reduction, remission or repayment of any such charge, where he or the other is not entitled to the reduction, remission or repayment,

(c) a payment under this Act (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or the other is not entitled to, or to the benefit of, the payment.

(2) The acts referred to in subsection (1) are—

(a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation, or

(b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.

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(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) A person [F862]... may conduct any proceedings under this section before a magistrates' court if he is authorised to do so by the Secretary of State.

(5) Proceedings for an offence under this section may be begun within—

(a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Secretary of State to justify a prosecution for the offence, comes to his knowledge, or

(b) the period of 12 months beginning with the commission of the offence.

(6) For the purposes of subsection (5), a certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to his knowledge, is conclusive evidence of that date.

(7) Where a person is convicted of an offence under this section in respect of any charge or payment under this Act, he is not liable in respect of the charge or payment to pay any penalty charge or further sum by way of penalty which would otherwise be recoverable from him under section 193.

(8) Where a person pays any penalty charge, or further charge by way of penalty, recoverable under section 193 in respect of any charge or payment under this Act, he must not be convicted of an offence under this section in respect of the charge or payment.

(9) Subsection (4) of section 192 applies for the purposes of this section as it applies for the purposes of that.

Textual Amendments

F862 Words in s. 194(4) repealed (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), Sch. 21 para. 154, **Sch. 23** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)(i)(xii)

PART 10

PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES

Preliminary

195 Compulsory disclosure of documents

(1) This Part confers power to require the production of documents in connection with the exercise of the Secretary of State's counter fraud functions or security management functions in relation to the health service.

(2) The Secretary of State's "counter fraud functions" in relation to the health service means his power (by virtue of [F863section 2]) to take action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities carried out against or otherwise affecting—

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(a) the health service, or

(b) the Secretary of State in relation to his responsibilities for the health service.

(3) The Secretary of State's "security management functions" in relation to the health service means his power (by virtue of **[**F864section 2**]**) to take action for the purpose of protecting and improving the security of—

(a) persons employed by the Secretary of State or an NHS body in the provision of services for the purposes of the health service ("NHS services") **[**F865or in arranging for the provision of such services**]**,

(b) health service providers and persons employed by them so far as they or persons so employed are engaged in any activity directly related to the provision of NHS services,

(c) NHS contractors and persons employed by them so far as they or persons so employed are engaged in any activity directly related to the provision of NHS services,

(d) persons not within paragraphs (a) to (c) who work in any capacity on premises used by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of NHS services **[**F866or with arranging for the provision of such services**]**,

(e) persons on such premises—

(i) who are there for the purpose of receiving, or are receiving or have received, treatment or other services as patients, or

(ii) who are accompanying persons within sub-paragraph (i),

(f) property and information used or held by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of NHS services **[**F867or with arranging for the provision of such services**]**.

(4) In this Part, the Secretary of State's counter fraud functions and security management functions in relation to the health service are collectively referred to as functions to which this Part applies.

(5) "Investigating" means investigating in relation to civil or criminal proceedings.

Textual Amendments

F863 Words in s. 195(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 103(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F864 Words in s. 195(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 103(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F865 Words in s. 195(3)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 103(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F866 Words in s. 195(3)(d) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 103(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F867 Words in s. 195(3)(f) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 103(3)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

196 Persons and bodies about which provision is made by this Part

(1) This section applies for the purposes of this Part.

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(2) Subject to subsection (3), and any provision made under subsection (7), "NHS body" has the meaning given by **[**F868section 275(1)**]**.

(3) In section 195(3), and in section 197(1) so far as having effect in relation to the Secretary of State's security management functions referred to in section 195(3), an "NHS body" means—

[F869(za) the Board,

(zb) a clinical commissioning group,**]**

F870(a) . . . . . .

(b) a Special Health Authority, so far as performing functions in respect of England,

F871(c) . . . . . .

(d) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England, or

(e) an NHS foundation trust.

(4) A "health service provider" means any person (other than an NHS body) providing—

(a) primary medical services, primary dental services or pharmaceutical services under this Act or the National Health Service (Wales) Act 2006 (c. 42),

(b) general ophthalmic services under that Act, or

(c) primary ophthalmic services.

(5) An "NHS contractor" means any person (other than an NHS body or a person within subsection (4)) providing services of any description under arrangements made with an NHS body.

[F872(5A) A "public health service contractor" means any person providing services of any description under arrangements made in the exercise of the public health functions of the Secretary of State or a local authority.**]**

(6) A "statutory health body" means any body (other than an NHS body, or a person within subsection (4) or (5)) established by or under an enactment and—

(a) providing services in connection with the provision of, or

(b) exercising functions in relation to,

the health service in either England or Wales or both.

(7) The Secretary of State may by order—

(a) make such amendments of any of subsections (2) to (6) as he considers appropriate,

(b) make such consequential amendments of this Part as he considers appropriate.

Textual Amendments

F868 Words in s. 196(2) substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 104(2)**; S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F869 S. 196(3)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 104(3)(a)**; S.I. 2012/1831, art. 2(2)

F870 S. 196(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 104(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F871 S. 196(3)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 104(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F872 S. 196(5A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 104(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Disclosure notices

197 Notice requiring production of documents

(1) This section applies if it appears to the Secretary of State that there are reasonable grounds for suspecting—

(a) that any documents containing information relevant to the exercise of any of his functions to which this Part applies are in the possession or under the control of any NHS body, statutory health body, health service provider **[**F873, public health service contractor**]** or NHS contractor ("the relevant organisation"), and

(b) that a person within subsection (3) is accountable for the documents.

(2) The Secretary of State may serve on that person a notice requiring him to produce the documents to an authorised officer.

(3) The persons within this subsection are—

(a) any member, officer or director of the relevant organisation,

(b) any other person who takes part in the management of the affairs of that organisation,

(c) any person employed by that organisation, and

(d) (in the case of a health service provider **[**F874, public health service contractor**]** or NHS contractor who is an individual) that individual.

(4) A notice under this section must specify or describe the documents to which it relates.

(5) Subject to subsections (6) and (7), the notice may require those documents to be produced—

(a) at or by such time as is specified in the notice, or at once, and

(b) at such place, and in such manner, as is so specified.

(6) When specifying a time at or by which the documents must be produced, the notice must not require them to be produced otherwise than at a reasonable hour.

(7) If the notice requires documents to be produced at once, it may only be served at a reasonable hour.

(8) An authorised officer may, by agreement with the person served with a notice within subsection (6) or (7), vary the notice so as to extend the time for compliance with it.

(9) Any notice under this section, and any variation of such a notice under subsection (8), must be in writing.

(10) An individual is "accountable" for any documents if he has either day-to-day, or an overall, responsibility for the custody or control of the documents.

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Textual Amendments

F873 Words in s. 197(1)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 105(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F874 Words in s. 197(3)(d) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 105(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C74 S. 197 functions made exercisable (E.) (1.11.2017) by The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (S.I. 2017/958), art. 1(1), **Sch. 1 paras. 2-13** (with art. 4(5), Sch. 3 para. 6)

198 Production of documents

(1) This section applies where a notice has been served under section 197.

(2) An authorised officer may—

(a) take away any documents produced in compliance with the notice,

(b) take copies of or extracts from any documents so produced,

(c) require the person producing any such documents to provide an explanation of any of them.

(3) If—

(a) the officer takes away any such document,

(b) the person producing it requests the officer to provide him with a copy of it, and

(c) the request appears to the officer to be reasonable in the circumstances,

the officer must, as soon as is reasonably practicable, provide that person with a copy of the document (in such form as the officer considers appropriate).

(4) Documents produced in compliance with a notice under section 197 may be retained for so long as the Secretary of State considers that it is necessary to retain them (rather than copies of them) in connection with the exercise of any of his functions to which this Part applies.

(5) If the Secretary of State has reasonable grounds for believing—

(a) that any such documents may have to be produced for the purposes of any legal proceedings, and

(b) that they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(6) If a person who is required by a notice under section 197 to produce any documents does not produce the documents in compliance with the notice, an authorised officer may require that person to state, to the best of his knowledge and belief, where they are.

(7) A person is not bound to comply with any requirement imposed by a notice under section 197 or any requirement under subsection (6) unless evidence of authority is given—

(a) at the time when the notice is served, or

(b) at the time when the requirement is imposed under subsection (6).

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(8) In addition, a person may not be required under section 197 or subsection (6) to produce any document or disclose any information which he would be entitled to refuse to produce or disclose in proceedings in the High Court on grounds of legal professional privilege.

Modifications etc. (not altering text)

C75 S. 198 functions made exercisable (E.) (1.11.2017) by The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (S.I. 2017/958), art. 1(1), **Sch. 1 paras. 2-13** (with art. 4(5), Sch. 3 para. 6)

199 Delegation of functions

(1) This section applies if the Secretary of State gives a direction under section 7 directing a Special Health Authority to exercise so much of his functions under sections 197 and 198 as is specified in the directions ("the delegated functions").

(2) The Secretary of State may give directions providing for senior officers of the Special Health Authority to exercise the delegated functions on behalf of the Special Health Authority.

(3) "Senior officer" means an officer of or above a level specified in the directions.

(4) The Secretary of State may by regulations make such provision as he considers appropriate in connection with the exercise of the delegated functions.

(5) The regulations may, in particular, make provision—

(a) specifying conditions as to training that must be satisfied in relation to officers of the Special Health Authority involved in the exercise of the delegated functions,

(b) for requiring officers to obtain specific authorisation before the delegated functions are exercised in relation to personal records,

(c) providing for the designation of officers for the purpose of giving such authorisations,

(d) otherwise prescribing the manner in which the delegated functions may be exercised.

200 Code of practice relating to delegated functions

(1) The Secretary of State may issue a code of practice relating to—

(a) the exercise of functions under section 197 or 198 by or on behalf of a Special Health Authority,

(b) procedures to be followed in relation to the disclosure (in accordance with sections 201 and 202) of information obtained by or on behalf of a Special Health Authority in the exercise of such functions.

(2) The Secretary of State must keep the code under review and may from time to time—

(a) revise the whole or any part of the code, and

(b) issue a revised code.

(3) Where the Secretary of State proposes to issue a code of practice under this section he must—

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(a) prepare a draft of the code, and
(b) consult such persons as he considers appropriate about the draft.

(4) Where the Secretary of State proposes to issue a revised code under this section which in his opinion would result in a substantial change in the code, he must—
(a) prepare a draft of the revised code, and
(b) consult such persons as he considers appropriate about the change.

(5) Where, following consultation under subsection (3) or (4), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as he considers appropriate), it comes into force at the time when it is issued by the Secretary of State.

(6) A failure to observe any provision of a code or revised code issued under this section does not of itself make a person liable to any criminal or civil proceedings.

(7) A code or revised code issued under this section is admissible in evidence in any criminal or civil proceedings.

(8) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

201 Disclosure of information

(1) This section applies to information which—
(a) is held by or on behalf of the Secretary of State, and
(b) was obtained by virtue of section 197 or 198.

(2) The information must not be disclosed except in accordance with subsection (3).

(3) A disclosure is made in accordance with this subsection if it is made—
(a) for the purposes of the exercise of **[**F875any of the functions of the Secretary of State, the Board, a clinical commissioning group or a local authority**]** in relation to the health service in England,
(b) for the purposes of the exercise of any of the Welsh Ministers' functions in relation to the health service in Wales,
(c) for the purposes of any civil proceedings brought in the exercise of any of the functions mentioned in paragraph (a) or (b),
(d) for the purposes of any criminal investigation or proceedings,
(e) for the purposes of any relevant disciplinary proceedings, or
(f) in accordance with an enactment or order of a court or tribunal.

(4) In subsection (3)—
"relevant disciplinary proceedings" means disciplinary proceedings conducted in relation to an individual by—
(a) an NHS body, statutory health body or health service provider, or
(b) any of the regulatory bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (bodies within remit of **[**F876the Professional Standards Authority for Health and Social Care**]**).

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(5) Where information to which this section applies is disclosed to any person in accordance with subsection (3), the information must not be used or further disclosed except—

(a) for a purpose connected with the functions, investigation or proceedings for the purposes of which it was so disclosed, or

(b) in accordance with an enactment or order of a court or tribunal.

(6) Information to which this section applies may be disclosed in accordance with subsection (3) despite any obligation of confidence that would otherwise prohibit or restrict the disclosure.

(7) This section does not prohibit any disclosure or use of information relating to a particular person if it is made with the consent of that person.

Textual Amendments

F875 Words in s. 201(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 106**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F876 Words in s. 201(4) substituted (1.12.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 68(b)**; S.I. 2012/2657, art. 2(3)

202 Protection of personal information disclosed for purposes of proceedings

(1) Information obtained from personal records produced in compliance with a notice under section 197 is "protected information" for the purposes of this section if—

(a) a person ("the discloser"), in accordance with section 201(3), discloses the information for the purposes of any proceedings, and

(b) either—

(i) the identity of the individual in question can be ascertained from the information itself, or

(ii) the discloser has reasonable cause to believe that it will be possible for a person who obtains the information as a direct or indirect consequence of the disclosure to ascertain the individual's identity from that information taken with other information obtained by virtue of section 197 or 198 and disclosed by or on behalf of the Secretary of State.

(2) The discloser must take all reasonable steps to ensure that, once disclosed by him in accordance with section 201(3), the protected information is not further disclosed to any person who is not someone to whom it is necessary to disclose the information for any purpose connected with the proceedings mentioned in subsection (1)(a).

(3) In subsection (2) the reference to further disclosure of the information does not include any such disclosure—

(a) by way of evidence in any proceedings, or

(b) in accordance with an enactment or order of a court or tribunal.

(4) The Secretary of State must make provision, whether in a code of practice issued under section 200 or otherwise, for requiring any person disclosing protected information in accordance with section 201(3) to ensure, by the use of a distinguishing mark or in

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some other way, that the information is clearly identified as protected information for the purposes of this section.

(5) Information that appears to be protected information must not be disclosed by way of evidence in any proceedings unless—

(a) the whole of the proceedings are held in private, or

(b) in any other case, the information is disclosed in accordance with permission given by the court or tribunal on an application under subsection (6).

(6) If, on an application by a party to—

(a) proceedings before a court, or

(b) proceedings of any description before a tribunal that sits, or may sit, in public during the whole or part of proceedings of that description,

the court or tribunal is satisfied that it is in the interests of justice for any information that appears to be protected information to be disclosed by way of evidence in the proceedings, it may give permission for the information to be so disclosed, on such terms as it thinks fit.

(7) When determining such an application, the court or tribunal must consider whether, in the interests of protecting the identity of the individual to whom the information relates, the whole or part of the proceedings should be held in private.

(8) If the court or tribunal is satisfied that the whole or part of the proceedings should be held in private, it must give such directions, or take such other steps, as appear to it to be appropriate.

(9) In this section "proceedings" means—

(a) criminal or civil proceedings, or

(b) relevant disciplinary proceedings (as defined by section 201(4)).

203 Manner in which disclosure notice may be served

(1) This section provides for the manner in which a notice may be served under section 197.

(2) The notice may be served on a person by—

(a) delivering it to him,

(b) leaving it at his proper address,

(c) sending it by post to him at that address.

(3) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is his usual or last-known address (whether residential or otherwise), except that—

(a) in the case of a notice to be served on the secretary, clerk or similar officer of a body corporate, it is the address of the registered office of that body or its principal office in the United Kingdom,

(b) in the case of a notice to be served on a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership in the United Kingdom, and

(c) in the case of a notice to be served on an officer of an unincorporated association (other than a partnership), it is the address of the principal office of the association in the United Kingdom.

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Offences under this Part

204 Offences in connection with production of documents

(1) A person commits an offence if, without reasonable excuse, he fails to comply with any requirement imposed on him under section 197 or 198.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction—

(a) to imprisonment for a term not exceeding 51 weeks, or

(b) to a fine not exceeding level 3 on the standard scale,

or to both.

(3) If a person is convicted of an offence under subsection (1) in respect of a failure to produce a document and the failure continues after the date of his conviction, the person—

(a) commits a further offence, and

(b) is liable on summary conviction to a fine not exceeding 2% of level 3 on the standard scale for each day on which the failure so continues.

(4) A person commits an offence if, in purported compliance with any requirement imposed on him under section 198—

(a) he makes a statement which is false or misleading, and

(b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

(5) "False or misleading" means false or misleading in a material particular.

(6) A person guilty of an offence under subsection (4) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

205 Offences relating to disclosure or use of information

(1) A person commits an offence if he fails to comply with section 201(2) or (5) or section 202(2).

(2) A person guilty of an offence under subsection (1) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both,

(b) on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding the statutory maximum, or to both.

(3) It is a defence for a person charged with an offence under subsection (1) in respect of a disclosure of information to prove that at the time of the alleged offence—

(a) any of the circumstances in subsection (4) applied, or

(b) he reasonably believed that they applied.

(4) The circumstances referred to in subsection (3) are—

(a) that the disclosure was lawful,

(b) that the information had already been lawfully made available to the public,

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(c) that the disclosure was necessary or expedient for the purpose of protecting the welfare of any individual,

(d) that the disclosure was made in a form in which no person to whom the information relates is identified.

(5) Subsection (4)(d) is not satisfied if the identity of any such person can be ascertained either—

(a) from the information itself, or

(b) from that information taken with other information obtained by virtue of section 197 or 198 and disclosed by or on behalf of the Secretary of State.

206 Offences by bodies corporate etc

(1) If an offence committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) "Officer", in relation to the body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) If an offence committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) "Partner" includes a person purporting to act as a partner.

(6) If an offence committed by an unincorporated association (other than a partnership) is proved—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) "Offence" means an offence under this Part.

207 Offences committed by partnerships and other unincorporated associations

(1) Proceedings for an offence alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) Proceedings for an offence alleged to have been committed by an unincorporated association (other than a partnership) must be brought in the name of the association (and not in that of any of its members).

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(3) Rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate.

(4) In proceedings for an offence brought against a partnership or an unincorporated association, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate.

(5) A fine imposed on a partnership on its conviction for an offence must be paid out of the partnership assets.

(6) A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association.

(7) Subsections (1) and (2) do not affect any liability of a partner, officer or member under section 206(4) or (6).

(8) "Offence" means an offence under this Part.

208 Penalties for offences under this Part: transitional modification

(1) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' courts power to impose imprisonment), the reference in section 204(6)(b) to a period of imprisonment of 12 months is a reference to a period of imprisonment of 6 months.

(2) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the references in sections 204(2)(a) and 205(2)(b) to periods of imprisonment of 51 weeks are references to periods of imprisonment of 3 months.

Supplementary

209 Orders and regulations under this Part

(1) Any power under this Part to make an order or regulations is exercisable by statutory instrument.

(2) Subject to subsection (3) a statutory instrument made by virtue of this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A statutory instrument containing an order under section 196(7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) Any power under this Part to make an order or regulations—

(a) may make different provision for different cases or descriptions of case or different purposes or areas, and

(b) may make incidental, supplementary, consequential, transitory, transitional or saving provision.

210 Interpretation of this Part

(1) In this Part—

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"authorised officer", in relation to any function, means (subject to subsection (5)) an officer of the Secretary of State authorised by him to act in exercise of the function,

"document" means anything in which information of any description is recorded,

"enactment" includes any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), and references to enactments include enactments passed or made after the passing of this Act,

"employed" means employed whether under a contract of service or a contract for services or otherwise, and whether for remuneration or not,

"functions to which this Part applies" has the meaning given by section 195(4),

"health service provider" **[**F877, "public health service contractor"**]** and "NHS contractor" have the meaning given by section 196,

"NHS body" must be construed in accordance with section 196,

"personal records" has the meaning given by section 12 of the Police and Criminal Evidence Act 1984 (c. 60),

"statutory health body" has the meaning given by section 196.

(2) References in this Part to the provision of services—

(a) in relation to **[**F878the Secretary of State, local authorities,**]** statutory health bodies, health service providers **[**F879, public health service contractors**]** or NHS contractors, include references to the provision of goods or facilities, and

(b) include references to the provision of services (or goods or facilities) wherever that takes place.

(3) References in this Part to the health service are references to the health service in England.

(4) In relation to information recorded otherwise than in legible form, any reference in this Part to the production of documents is a reference to the production of a copy of the information in legible form.

(5) Where functions of the Secretary of State are exercisable by a Special Health Authority—

(a) references in this Part to authorised officers include officers of the Special Health Authority authorised by or on behalf of the Special Health Authority to act in exercise of the functions, and

(b) references in this Part to information held or disclosed by or on behalf of the Secretary of State include information held or disclosed by or on behalf of the Special Health Authority.

Textual Amendments

F877 Words in s. 210(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 107(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F878 Words in s. 210(2)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 107(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F879 Words in s. 210(2)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 107(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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PART 11

PROPERTY AND FINANCE

CHAPTER 1

LAND AND OTHER PROPERTY

211 Acquisition, use and maintenance of property

(1) The Secretary of State may acquire—

(a) any land, either by agreement or compulsorily,

(b) any other property,

required by him for the purposes of this Act.

(2) In particular, land may be so acquired to provide residential accommodation for persons employed for any of those purposes.

(3) The Secretary of State may use for the purposes of any of the functions conferred on him by this Act any property belonging to him by virtue of this Act, and he has power to maintain all such property.

(4) **[**[F880]A local authority**]** may be authorised to purchase land compulsorily for the purposes of this Act by means of an order made by the authority and confirmed by the Secretary of State.

[[F881](4A) In subsection (4), "local authority" has the same meaning as in section 2B.**]**

(5) The Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this section.

(6) Section 120(3) of the Local Government Act 1972 (c. 70) (which relates to the application of Part 1 of the Compulsory Purchase Act 1965 (c. 56) where a council is authorised to acquire land by agreement) applies to the acquisition of land by the Secretary of State under this section as it applies to such acquisition by a council under that section.

(7) Sections 238 and 239 of the Town and Country Planning Act 1990 (c. 8) (use and development of consecrated land and burial grounds) apply to consecrated land or land comprised in a burial ground (within the meaning of section 240 of that Act) which—

(a) the Secretary of State holds for the purposes of the health service, and

(b) has not been the subject of a relevant acquisition (within the meaning of that section) by him,

as if that land had been the subject of such an acquisition by him for those purposes.

Textual Amendments

F880 Words in s. 211(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 108(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F881 S. 211(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 108(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Modifications etc. (not altering text)

C76 S. 211 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 10** (with Sch. 3 Pt. 1)

CHAPTER 2

TRUSTS

212 Special trustees for a university hospital or teaching hospital

(1) In this Act "special trustees" are trustees appointed by the Secretary of State in relation to England under—

(a) section 29 of the National Health Service Reorganisation Act 1973 (c. 32),

(b) section 95 of the National Health Service Act 1977 (c. 49), and

(c) this section,

for any hospital falling within subsection (2).

(2) A hospital falls within this subsection if, immediately before the day appointed for the purposes of section 29 of the National Health Service Reorganisation Act 1973 (c. 32), it was controlled and managed by a University Hospital Management Committee or a Board of Governors, other than—

(a) a body on whose request an order was made under section 24(2) of that Act, or

(b) a preserved Board within the meaning of section 15(6) of that Act.

(3) Special trustees must hold and administer the property transferred under the National Health Service Reorganisation Act 1973.

(4) The number of special trustees appointed under this section is such as the Secretary of State may from time to time determine after consultation with such persons as he considers appropriate.

(5) Special trustees have power to accept, hold and administer any property on trust, being a trust which is wholly or mainly for hospitals for which they are appointed, for all or any purposes relating to—

(a) hospital services (including research), or

(b) any other part of the health service associated with hospitals.

(6) The term of office of any special trustee appointed under this section must be fixed by the Secretary of State, but a special trustee may be removed by the Secretary of State at any time during the special trustee's term of office.

(7) Subsection (3) is subject to sections 213 and 214.

213 Transfers of trust property

(1) The Secretary of State may, having regard to any change or proposed change—

(a) in the arrangements for the administration of a hospital or other establishment or facility, or

(b) in the area or functions of any NHS body other than an NHS foundation trust,

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by order provide for the transfer of any trust property from any relevant health service body to any other relevant health service body.

(2) In this section "relevant health service body" means—

(a) an NHS body,

(b) special trustees, or

(c) trustees for **[**F882the Board or a clinical commissioning group,**]**F883... an NHS trust or an NHS foundation trust.

(3) Where property is transferred by an order under this section to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned.

(4) Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property.

(5) In this section "special trustees" includes special trustees within the meaning of section 160 of the National Health Service (Wales) Act 2006 (c. 42).

Textual Amendments

F882 Words in s. 213(2)(c) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 109(a)**; S.I. 2012/1831, art. 2(2)

F883 Words in s. 213(2)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 109(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

214 Transfer of functions and property to or from special trustees

(1) If it appears to the Secretary of State at any time that all the functions of any special trustees should be discharged by **[**F884the Board, a clinical commissioning group,**]**F885... an NHS trust, a Special Health Authority or an NHS foundation trust, he may by order provide for the transfer of all trust property from the special trustees to the body or, in such proportions as may be specified in the order, to those bodies.

(2) Before acting under subsection (1) the Secretary of State must consult the special trustees and other bodies concerned.

(3) If it appears to the Secretary of State at any time that—

(a) the functions of any special trustees should be discharged by the trustees for **[**F886the Board or a clinical commissioning group,**]**F887... an NHS trust or an NHS foundation trust ("the trustees of the body"), or

(b) the functions of the trustees of the body should be discharged by special trustees,

he may, after consulting the special trustees and the trustees of the body, by order provide for the transfer of all trust property from the special trustees to to the trustees of the body, or from the trustees of the body to the special trustees.

(4) Where property is transferred by an order under this section to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned.

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(5) Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property.

(6) "Special trustees" includes special trustees within the meaning of section 160 of the National Health Service (Wales) Act 2006.

Textual Amendments

F884 Words in s. 214(1) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 110(2)(a)**; S.I. 2012/1831, art. 2(2)

F885 Words in s. 214(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 110(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F886 Words in s. 214(3)(a) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 110(3)(a)**; S.I. 2012/1831, art. 2(2)

F887 Words in s. 214(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 110(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

215 Trustees and property under section 222

(1) Where property is given in pursuance of section 222 (power of NHS bodies to raise money) to or on trust for any purposes of a hospital for which special trustees have been appointed, the property may be held, administered and applied by the special trustees instead of by the body responsible for the hospital if that body and the special trustees agree.

(2) The body responsible for a hospital is—

(a) in the case of a hospital vested in an NHS trust or an NHS foundation trust, that trust, F888...

F888(b) . . . . . .

(3) Subsection (4) applies where property is given in pursuance of section 222—

[F889(za) on trust for any purposes of the Board for which trustees have been appointed under paragraph 11 of Schedule A1,

(zb) on trust for any purposes of a clinical commissioning group for which trustees have been appointed under paragraph 15 of Schedule 1A,**]**

F890(a) . . . . . .

(b) on trust for any purposes of an NHS trust for which trustees have been appointed under paragraph 10 of Schedule 4, or paragraph 10 of Schedule 3 to the National Health Service (Wales) Act 2006 (c. 42), or

(c) on trust for any purposes of an NHS foundation trust for which trustees have been appointed under section 51.

(4) Where this subsection applies and the trustees and **[**F891the Board, clinical commissioning group,**]**F892... NHS trust or NHS foundation trust agree, the property may be held, administered and applied by the trustees instead of by **[**F893the Board, clinical commissioning group,**]**F892... NHS trust or NHS foundation trust.

(5) Property given in pursuance of section 222 on trust may be transferred by order of the Secretary of State under section 213 or 214 in the same circumstances as other trust property may be transferred under either of those sections.

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Textual Amendments

F888 S. 215(2)(b) and word omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 111(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F889 S. 215(3)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 111(3)(a)**; S.I. 2012/1831, art. 2(2)

F890 S. 215(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 111(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F891 Words in s. 215(4) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 111(4)(a)**; S.I. 2012/1831, art. 2(2)

F892 Words in s. 215(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 111(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F893 Words in s. 215(4) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 111(4)(c)**; S.I. 2012/1831, art. 2(2)

216 Application of trust property: further provisions

(1) Any discretion given by a trust instrument to the trustees of property transferred under—

(a) section 24 of the National Health Service Reorganisation Act 1973 (c. 32) (transfer of trust property from abolished authorities),

(b) section 25 of that Act (transfer of trust property held for health services by local health authorities),

(c) section 92 of the National Health Service Act 1977 (c. 49) (further transfers of trust property), or

(d) section 213 or 214 of this Act,

is exercisable by the person to whom the property is so transferred and, subject to this section, the transfer does not affect the trusts on which the property is held.

(2) Where—

(a) property has been transferred under section 24 of the National Health Service Reorganisation Act 1973, or section 92 of the National Health Service Act 1977, and

(b) any discretion is given by a trust instrument to the trustees to apply the property, or income arising from the property, to such hospital services (including research) as the trustees consider appropriate without any restriction on the kinds of hospital services and without any restriction to one or more specified hospitals,

the discretion is enlarged so as to allow the application of the property or of the income arising from the property, to such extent as the trustees consider appropriate, for any other part of the health service associated with any hospital.

(3) Subsection (2) applies on any subsequent transfer of the property under section 213 or 214 **[**[F894]of this Act or section 300 or 302 of the Health and Social Care Act 2012**]**.

Textual Amendments

F894 Words in s. 216(3) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 112**; S.I. 2012/1319, art. 2(3)

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217 Trusts: supplementary provisions

(1) This section applies in relation to—

(a) section 51(1) to (3),

(b) sections 212 to 214,

(c) section 216,

(d) section 218,

(e) section 220,

[F895(ea) paragraph 11 of Schedule A1,

(eb) paragraph 15 of Schedule 1A,**]**

F896(f) . . . . . .

F897(g) . . . . . .

(h) paragraph 10 of Schedule 4, and

(i) paragraphs 8 and 9 of Schedule 6.

(2) A provision—

(a) contained in a provision to which this section applies,

(b) for the transfer of any property,

includes provision for the transfer of any rights and liabilities arising from that property.

(3) Where a transfer of property by virtue of a provision to which this section applies is of, or includes—

(a) land held on lease from a third party, or

(b) any other asset leased or hired from a third party or in which a third party has an interest,

the transfer is binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.

(4) "Third party" means a person other than the Secretary of State or an NHS body.

(5) Nothing in a provision to which this section applies affects any power of Her Majesty, **[**F898the court (as defined in the Charities Act 2011)**]** or any other person, to alter the trusts of any charity.

(6) Nothing in section 12 of the Finance Act 1895 (c. 16) (which requires certain Acts and certain instruments relating to the vesting of property by virtue of an Act to be stamped as conveyances on sale) applies to—

(a) a provision to which this section applies, or

(b) an order made in pursuance of any such provision.

(7) Stamp duty is not payable on an order falling within subsection (6)(b).

Textual Amendments

F895 S. 217(1)(ea)(eb) inserted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 113(a)**; S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F896 S. 217(1)(f) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 113(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F897 S. 217(1)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 113(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F898 Words in s. 217(5) substituted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, **Sch. 7 para. 111** (with s. 20(2), Sch. 8)

Modifications etc. (not altering text)

C77 S. 217 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 10** (with Sch. 3 Pt. 1)

218 Private trusts for hospitals

(1) Subsection (2) applies where the terms of a trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property for the purposes of any health service hospital.

(2) The trust instrument must be construed as authorising or requiring the trustees to apply the trust property to the like extent, and at the like times, for the purpose of making payments, whether of capital or income, to the appropriate hospital authority.

(3) Any sum paid to the appropriate hospital authority must, so far as practicable, be applied by it for the purpose specified in the trust instrument.

(4) "The appropriate hospital authority" means—

(a) where special trustees are appointed for the hospital, those trustees,

(b) where the hospital is managed by, and trustees have been appointed for, an NHS trust, an NHS foundation trust F899..., the trustees,

(c) where the hospital is managed by an NHS trust, an NHS foundation trust F900... and neither paragraph (a) nor paragraph (b) applies, the NHS trust, NHS foundation trust F900..., and

[F901(d) in any other case—

(i) where the hospital is vested in the Secretary of State, the Special Health Authority exercising functions of the Secretary of State in respect of it or, where there is no such Special Health Authority, the Secretary of State,

(ii) where the Welsh Ministers have functions in respect of the hospital, the Special Health Authority or Local Health Board exercising those functions.**]**

(5) Nothing in this section applies to property transferred under section 24 of the National Health Service Reorganisation Act 1973.

(6) In this section—

"health service hospital" includes such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), and

"special trustees" includes special trustees within the meaning of section 160 of that Act.

Textual Amendments

F899 Words in s. 218(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 114(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F900 Words in s. 218(4)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 114(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F901 S. 218(4)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 114(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

CHAPTER 3

PROPERTY TRANSFERRED UNDER THE NATIONAL HEALTH SERVICE ACT 1946

219 Transferred property free of trusts

(1) All property vested in the Secretary of State in consequence of the transfer of that property under section 6 of the National Health Service Act 1946 (c. 81) (transfer of hospitals) is vested free of any trust existing immediately before that transfer.

(2) The Secretary of State may use any such property for the purpose of any of his functions under this Act, but he must so far as practicable secure that the objects for which any such property was used immediately before that transfer are not prejudiced by the exercise of the power conferred by this subsection.

220 Trust property previously held for general hospital purposes

(1) This section applies to property—

(a) transferred under section 23 of the National Health Service Reorganisation Act 1973 (c. 32) (winding-up of hospital endowment funds), or

(b) transferred under section 24 of that Act (transfer of trust property from abolished authorities) and which immediately before the day appointed for the purposes of that section was, in accordance with any provision contained in or made under section 7 of the National Health Service Act 1946, applicable for purposes relating to hospital services or relating to some form of research,

including any such property which has been further transferred under section 92 of the National Health Service Act 1977 (c. 49).

(2) This section continues to apply to any such property after any further transfer under section 213 or 214 **[**F902of this Act or section 300 or 302 of the Health and Social Care Act 2012**]**.

(3) The person holding the property after the transfer or last transfer must secure, so far as is reasonably practicable, that the objects of any original endowment, and the observance of any conditions attached to that endowment, including in particular conditions intended to preserve the memory of any person or class of persons, are not prejudiced by this Part of this Act.

(4) "Original endowment" means a hospital endowment which was transferred under section 7 of the National Health Service Act 1946 (c. 81) and from which the property in question is derived.

(5) Subject to subsection (3), the property must be held on trust for such purposes relating to hospital services (including research), or to any other part of the health service associated with any hospital, as the person holding the property considers appropriate.

(6) Where the person holding the property is a body of special trustees, the power conferred by subsection (5) must be exercised as respects the hospitals for which they are appointed.

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Textual Amendments

F902 Words in s. 220(2) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 115**; S.I. 2012/1319, art. 2(3)

221 Voluntary hospitals

(1) Subsection (2) applies where—

(a) any hospital provided by the Secretary of State in accordance with this Act was a voluntary hospital transferred by virtue of the National Health Service Act 1946, and

(b) the character and associations of that hospital before its transfer were such as to link it with a particular religious denomination.

(2) Regard must be had in the general administration of the hospital to the preservation of that character and those associations.

CHAPTER 4

RAISING MONEY

222 Power to raise money

(1) This section applies to any NHS body other than a Local Health Board.

(2) A body to which this section applies has power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to—

(a) assist the body in providing or improving any services or any facilities or accommodation which is or are, or will be, provided as part of the health service, or

(b) assist it in connection with its functions with respect to research.

(3) Subject to any directions of **[**F903the appropriate authority**]** excluding specified descriptions of activity, the activities authorised by this section include—

(a) public appeals or collections,

(b) competitions,

(c) entertainments,

(d) bazaars,

(e) sales of produce or other goods, and

(f) other similar activities.

[F904(3A) In subsection (3) "appropriate authority" means—

(a) in relation to a clinical commissioning group, the Board, and

(b) in relation to any other body to which this section applies, the Secretary of State.**]**

(4) The activities may involve the use of land, premises or other property held by or for the benefit of the body exercising the power.

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(5) Subsection (4) is subject to any restrictions on the purposes for which trust property may be used.

(6) Subject to this section and section 215, the body at whose instance property is given in pursuance of this section must, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given.

(7) Where property held by a body under this section is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess is applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the body as it considers appropriate.

(8) Where property held by a body under this section is insufficient to enable the purpose for which it was given to be fulfilled the body may apply so much of the capital or income at its disposal as is needed to enable the purpose to be fulfilled.

(9) Subsection (8) is subject in the case of trust property to any restrictions on the purpose for which the trust property may be applied and, in the case of money paid or payable by the Secretary of State under **[**F905section 225**]**, to any directions he may give.

(10) Where the capital or income applicable under subsection (8) is insufficient or is not applied to enable the purpose to be fulfilled, the property held by the body is applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the body as it considers appropriate.

(11) Where under subsection (7) or (10) property becomes applicable for purposes other than that for which it was given the body applying the property must have regard to the desirability of applying it for a purpose similar to that for which it was given.

(12) References in this section to the purposes for which trust property may be used or applied include, in the case of trust property which has been transferred under section 213 or 214, references to those purposes as enlarged by section 216.

Textual Amendments

F903 Words in s. 222(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 116(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F904 S. 222(3A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 116(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F905 Words in s. 222(9) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 116(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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CHAPTER 5

FORMATION OF COMPANIES

223 Public-private partnerships

(1) The Secretary of State **[**[F906]or the Board**]** may form, or participate in forming, companies to provide facilities or services to persons or bodies exercising functions, or otherwise providing services, under this Act.

(2) The Secretary of State **[**[F907]or the Board**]** may, with a view to securing or facilitating the provision by companies of facilities or services to persons or bodies falling within subsection (1)—

(a) invest in the companies (whether by acquiring assets, securities or rights or otherwise), or

(b) provide loans and guarantees and make other kinds of financial provision to or in respect of them,

or both.

(3) For the purposes of subsections (1) and (2) it is immaterial that the facilities or services provided or to be provided by the companies in question are not provided or to be provided—

(a) only to persons or bodies falling within subsection (1), or

(b) to persons or bodies falling within subsection (1) only in their capacities as persons or bodies such as are mentioned in that provision.

(4) "Companies" means companies **[**[F908]as defined in section 1(1) of the Companies Act 2006**]** (c. 6).

(5) This section does not affect any powers of the Secretary of State **[**[F909]or the Board**]** exercisable otherwise than by virtue of this section.

Textual Amendments

F906 Words in s. 223(1) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 117(1)**; S.I. 2012/1831, art. 2(2)

F907 Words in s. 223(2) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 117(1)**; S.I. 2012/1831, art. 2(2)

F908 Words in s. 223(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 258(2)** (with art. 10)

F909 Words in s. 223(5) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 117(1)**; S.I. 2012/1831, art. 2(2)

[[F910]223A Application of section 223 to clinical commissioning groups

(1) Section 223 applies in relation to a clinical commissioning group as it applies in relation to the Board.

(2) But the powers conferred by that section are exercisable by a clinical commissioning group only for the purpose of securing improvement—

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(a) in the physical and mental health of the people for whom it has responsibility for the purposes of section 3, or

(b) in the prevention, diagnosis and treatment of illness in such people.**]**

Textual Amendments

F910 S. 223A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 117(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

CHAPTER 6

FINANCE

[F911 The Board

Textual Amendments

F911 Ss. 223B-223F and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 24**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

223B Funding of the Board

(1) The Secretary of State must pay to the Board in respect of each financial year sums not exceeding the amount allotted for that year by the Secretary of State towards meeting the expenditure of the Board which is attributable to the performance by it of its functions in that year.

(2) An amount is allotted to the Board for a financial year under this section when the Board is notified in writing by the Secretary of State that the amount is allotted to it for that year.

(3) The Secretary of State may make a new allotment under this section increasing or reducing the allotment previously so made only if—

(a) the Board agrees to the change,

(b) a parliamentary general election takes place, or

(c) the Secretary of State considers that there are exceptional circumstances that make a new allotment necessary.

(4) The Secretary of State may give directions to the Board with respect to the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.

(5) Sums falling to be paid to the Board under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

[F912(6) Where the mandate specifies objectives relating to service integration, the requirements that may be specified under section 13A(2)(b) include such requirements

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relating to the use by the Board of an amount of the sums paid to it under this section as the Secretary of State considers it necessary or expedient to impose.

(7) The amount referred to in subsection (6)—

(a) is to be determined in such manner as the Secretary of State considers appropriate, and

(b) must be specified in the mandate.

(8) The reference in subsection (6) to service integration is a reference to the integration of the provision of health services with the provision of health-related services or social care services, as referred to in sections 13N and 14Z1.**]**

Textual Amendments

F912 Ss. 223B(6)-(8) inserted (1.10.2014) by Care Act 2014 (c. 23), **ss. 121(1)**, 127(1); S.I. 2014/2473, art. 6

223BC Financial duties of the Board: expenditure

(1) The Board must ensure that total health expenditure in respect of each financial year does not exceed the aggregate of—

(a) the amount allotted to the Board for that year under section 223B,

(b) any sums received by the Board or clinical commissioning groups in that year under any provision of this Act (other than sums received by the Board under section 223B or by clinical commissioning groups under section 223G), and

(c) any sums received by the Board or clinical commissioning groups in that year otherwise than under this Act for the purpose of enabling it or them to defray such expenditure.

(2) In this section, "total health expenditure", in relation to a financial year, means—

(a) expenditure which is attributable to the performance by the Board of its functions in that year, other than sums paid by it under section 223G, and

(b) expenditure which is attributable to the performance by clinical commissioning groups of their functions in that year.

(3) The Secretary of State may by directions determine whether expenditure by the Board or a clinical commissioning group which is of a description specified in the directions must, or must not, be treated for the purposes of this section as part of total health expenditure.

(4) The Secretary of State may by directions determine the extent to which, and the circumstances in which, sums received by the Board or a clinical commissioning group under section 223B or (as the case may be) 223G but not yet spent must be treated for the purposes of this section as part of total health expenditure, and to which financial year's expenditure they must be attributed.

(5) The Secretary of State may by directions require the Board to use banking facilities specified in the directions for any purposes so specified.

223D Financial duties of the Board: controls on total resource use

(1) In this Chapter—

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"total capital resource use", in relation to a financial year, means the use of capital resources in that year by the Board and clinical commissioning groups (taken together);

"total revenue resource use", in relation to a financial year, means the use of revenue resources in that year by the Board and clinical commissioning groups (taken together).

(2) The Board must ensure that total capital resource use in a financial year does not exceed the amount specified by the Secretary of State.

(3) The Board must ensure that total revenue resource use in a financial year does not exceed the amount specified by the Secretary of State.

(4) The Secretary of State may give directions, in relation to a financial year, specifying descriptions of resources which must, or must not, be treated as capital resources or revenue resources for the purposes of this Chapter.

(5) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must not be taken into account for the purposes of this Chapter.

(6) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must be taken into account for the purposes of this section.

(7) The amount specified for the purposes of subsection (2) or (3) may be varied only if—

(a) the Board agrees to the change,

(b) a parliamentary general election takes place, or

(c) the Secretary of State considers that there are exceptional circumstances which make the variation necessary.

(8) Any reference in this Chapter to the use of capital resources or revenue resources is a reference to their expenditure, consumption or reduction in value.

223E Financial duties of the Board: additional controls on resource use

(1) The Secretary of State may direct the Board to ensure that total capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(2) The Secretary of State may direct the Board to ensure that total revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(3) The Secretary of State may direct the Board to ensure —

(a) that total revenue resource use in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified;

(b) that the Board's use of revenue resources in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified.

(4) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).

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(5) The Secretary of State may not give a direction under subsection (1) or (2) unless the direction is for the purpose of complying with a limit imposed by the Treasury.

223F Power to establish contingency fund

(1) The Board may use a proportion of the sums paid to it under section 223B to establish a contingency fund.

(2) The Board may make a payment out of the fund where the payment is necessary in order to enable—

(a) the Board to discharge any of its commissioning functions, or

(b) a clinical commissioning group to discharge any of its functions.

(3) The Board must publish guidance as to how it proposes to exercise its powers to make payments out of the contingency fund.

(4) In this section, "commissioning functions" means functions in arranging for the provision of services as part of the health service.**]**

[F913 Clinical commissioning groups

Textual Amendments

F913 Ss. 223G-223K and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 27**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

223G Means of meeting expenditure of clinical commissioning groups out of public funds

(1) The Board must pay in respect of each financial year to each clinical commissioning group sums not exceeding the amount allotted for that year by the Board to the group towards meeting the expenditure of the group which is attributable to the performance by it of its functions in that year.

(2) In determining the amount to be allotted to a clinical commissioning group for any year, the Board may take into account—

(a) the expenditure of the clinical commissioning group during any previous financial year, and

(b) the amount that it proposes to hold, during the year to which the allotment relates, in any contingency fund established under section 223F.

(3) An amount is allotted to a clinical commissioning group for a year under this section when the group is notified in writing by the Board that the amount is allotted to it for that year.

(4) The Board may make a new allotment under this section increasing or reducing an allotment previously so made.

(5) Where the Board allots an amount to a clinical commissioning group or makes a new allotment under subsection (4), it must notify the Secretary of State.

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(6) The Board may give directions to a clinical commissioning group with respect to—

(a) the application of sums paid to it by virtue of a new allotment increasing an allotment previously so made, and

(b) the payment of sums by it to the Board in respect of charges or other sums referable to the valuation or disposal of assets.

(7) Sums falling to be paid to clinical commissioning groups under this section are payable subject to such conditions as to records, certificates or otherwise as the Board may determine.

(8) In this section and sections 223H to 223K "financial year" includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

[F914 223GE Expenditure on integration

(1) Where the mandate includes a requirement in reliance on section 223B(6) (requirements relating to use by the Board of an amount paid to the Board where mandate specifies service integration objectives), the Board may direct a clinical commissioning group that an amount (a "designated amount") of the sums paid to the group under section 223G is to be used for purposes relating to service integration.

(2) The designated amount is to be determined—

(a) where the mandate includes a requirement (in reliance on section 223B(6)) that designated amounts are to be determined by the Board in a manner specified in the mandate, in that manner;

(b) in any other case, in such manner as the Board considers appropriate.

(3) The conditions under section 223G(7) subject to which the payment of a designated amount is made must include a condition that the group transfers the amount into one or more funds ("pooled funds") established under arrangements under section 75(2)(a) ("pooling arrangements").

(4) The conditions may also include—

(a) conditions relating to the preparation and agreement by the group and each local authority and other clinical commissioning group that is party to the pooling arrangements of a plan for how to use the designated amount (a "spending plan");

(b) conditions relating to the approval of a spending plan by the Board;

(c) conditions relating to the inclusion of performance objectives in a spending plan;

(d) conditions relating to the meeting of any performance objectives included in a spending plan or specified by the Board.

(5) Where a condition subject to which the payment of a designated amount is made is not met, the Board may—

(a) withhold the payment (in so far as it has not been made);

(b) recover the payment (in so far as it has been made);

(c) direct the clinical commissioning group as to the use of the designated amount for purposes relating to service integration or for making payments under section 256.

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(6) Where the Board withholds or recovers a payment under subsection (5)(a) or (b)—

(a) it may use the amount for purposes consistent with such objectives and requirements relating to service integration as are specified in the mandate, and

(b) in so far as the exercise of the power under paragraph (a) involves making a payment to a different clinical commissioning group or some other person, the making of the payment is subject to such conditions as the Board may determine.

(7) The requirements that may be specified in the mandate in reliance on section 223B(6) include requirements to consult the Secretary of State or other specified persons before exercising a power under subsection (5) or (6).

(8) The power under subsection (5)(b) to recover a payment may be exercised in a financial year after the one in respect of which the payment was made.

(9) The payments that may be made out of a pooled fund into which a designated amount is transferred include payments to a local authority which is not party to the pooling arrangements in question in connection with the exercise of its functions under Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (disabilities facilities grants).

(10) In exercising a power under this section, the Board must have regard to the extent to which there is a need for the provision of each of the following—

(a) health services (see subsection (12)),

(b) health-related services (within the meaning given in section 14Z1), and

(c) social care services (within the meaning given in that section).

(11) A reference in this section to service integration is a reference to the integration of the provision of health services with the provision of health-related services or social care services, as referred to in sections 13N and 14Z1.

(12) "Health services" means services provided as part of the health service in England.**]**

Textual Amendments

F914 S. 223GA inserted (1.10.2014) by Care Act 2014 (c. 23), **ss. 121(2)**, 127(1); S.I. 2014/2473, art. 6

223H Financial duties of clinical commissioning groups: expenditure

(1) Each clinical commissioning group must, in respect of each financial year, perform its functions so as to ensure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—

(a) the amount allotted to it for that year under section 223G,

(b) any sums received by it in that year under any provision of this Act (other than sums received by it under section 223G), and

(c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray such expenditure.

(2) The Board may by directions determine—

(a) whether specified sums must, or must not, be treated for the purposes of this section as received by a specified clinical commissioning group,

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(b) whether specified expenditure must, or must not, be treated for those purposes as expenditure within subsection (1) of a specified clinical commissioning group, or

(c) the extent to which, and the circumstances in which, sums received by a clinical commissioning group under section 223G but not yet spent must be treated for the purposes of this section as part of the expenditure of the group, and to which financial year's expenditure they must be attributed.

(3) The Secretary of State may by directions require a clinical commissioning group to use specified banking facilities for any specified purposes.

(4) In this section, "specified" means specified in the directions.

223I Financial duties of clinical commissioning groups: use of resources

(1) For the purposes of this section and section 223J—

(a) a clinical commissioning group's capital resource use, in relation to a financial year, means the group's use of capital resources in that year, and

(b) a clinical commissioning group's revenue resource use, in relation to a financial year, means the group's use of revenue resources in that year.

(2) A clinical commissioning group must ensure that its capital resource use in a financial year does not exceed the amount specified by direction of the Board.

(3) A clinical commissioning group must ensure that its revenue resource use in a financial year does not exceed the amount specified by direction of the Board.

(4) Any directions given in relation to a financial year under subsection (6) of section 223D apply (in relation to that year) for the purposes of this section as they apply for the purposes of that section.

(5) The Board may by directions make provision for determining to which clinical commissioning group a use of capital resources or revenue resources is to be attributed for the purposes of this section or section 223J.

(6) Where the Board gives a direction under subsection (2) or (3), it must notify the Secretary of State.

223J Financial duties of clinical commissioning groups: additional controls on resource use

(1) The Board may direct a clinical commissioning group to ensure that its capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(2) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(3) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to prescribed matters relating to administration does not exceed an amount specified in the direction.

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(4) The Board may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).

(5) The Board may not exercise the power conferred by subsection (1) or (2) in relation to particular matters unless the Secretary of State has given a direction in relation to those matters under subsection (1) of section 223E or (as the case may be) subsection (2) of that section.

(6) The Board may not exercise the power conferred by subsection (3) in relation to prescribed matters relating to administration unless the Secretary of State has given a direction in relation to those matters under subsection (3)(a) of section 223E.

223K Payments in respect of quality

(1) The Board may, after the end of a financial year, make a payment to a clinical commissioning group.

(2) For the purpose of determining whether to make a payment under subsection (1) and (if so) the amount of the payment, the Board must take into account at least one of the following factors—

(a) the quality of relevant services provided during the financial year;

(b) any improvement in the quality of relevant services provided during that year (in comparison to the quality of relevant services provided during previous financial years);

(c) the outcomes identified during the financial year as having been achieved from the provision at any time of relevant services;

(d) any improvement in the outcomes identified during that financial year as having been so achieved (in comparison to the outcomes identified during previous financial years as having been so achieved).

(3) For that purpose, the Board may also take into account either or both of the following factors—

(a) relevant inequalities identified during that year;

(b) any reduction in relevant inequalities identified during that year (in comparison to relevant inequalities identified during previous financial years).

(4) Regulations may make provision as to the principles or other matters that the Board must or may take into account in assessing any factor mentioned in subsection (2) or (3).

(5) Regulations may provide that, in prescribed circumstances, the Board may, if it considers it appropriate to do so—

(a) not make a payment that would otherwise be made to a clinical commissioning group under subsection (1), or

(b) reduce the amount of such a payment.

(6) Regulations may make provision as to how payments under subsection (1) may be spent (which may include provision as to circumstances in which the whole or part of any such payments may be distributed to members of the clinical commissioning group).

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(7) A clinical commissioning group must publish an explanation of how the group has spent any payment made to it under subsection (1).

(8) In this section—

"relevant services" means services provided in pursuance of arrangements made by the clinical commissioning group—

(a) under section 3 or 3A or Schedule 1, or

(b) by virtue of section 7A;

"relevant inequalities" means inequalities between the persons for whose benefit relevant services are at any time provided with respect to—

(a) their ability to access the services, or

(b) the outcomes achieved for them by their provision.**]**

Strategic Health Authorities and Special Health Authorities

[F915]224 Means of meeting expenditure of Strategic Health Authorities out of public funds

. . . . . .

Textual Amendments

F915 S. 224 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 118**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

225 Means of meeting expenditure of Special Health Authorities out of public funds

(1) The Secretary of State must pay in respect of each financial year to each Special Health Authority sums not exceeding the amount allotted for that year by the Secretary of State to the Special Health Authority towards meeting the expenditure of the Special Health Authority which is attributable to the performance by it of its functions in that year.

(2) An amount is allotted to a Special Health Authority for a year under this section when it is notified by the Secretary of State that the amount is allotted to it for that year.

(3) The Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.

(4) The Secretary of State may give directions to a Special Health Authority with respect to—

(a) the application of sums paid to it under this section, or

(b) the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.

(5) Sums falling to be paid to Special Health Authorities under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

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226 Financial duties of [F916]... Special Health Authorities

[F917](1) . . . . . .

(2) Each Special Health Authority must, in respect of each financial year, perform its functions so as to secure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—

(a) the amount allotted to it for that year under section 225(1),

(b) any sums received by it in that year under any provision of this Act (other than sums received by it under that subsection), and

(c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.

(3) The Secretary of State may give such directions to a [F918]... Special Health Authority as appear to be requisite to secure that the Authority complies with the duty under **[**[F919]subsection (2)**]**.

(4) To the extent to which—

(a) any expenditure is defrayed by a [F920]... Special Health Authority as trustee or on behalf of a [F920]... Special Health Authority by special trustees, or

(b) any sums are received by a [F920]... Special Health Authority as trustee or under section 222,

that expenditure and, subject to subsection (6), those sums, must be disregarded for the purposes of this section.

(5) For the purposes of this section sums which, in the hands of a [F921]... Special Health Authority, cease to be trust funds and become applicable by the Authority otherwise than as trustee must be treated, on their becoming so applicable, as having been received by the Authority otherwise than as trustee.

(6) Of the sums received by a [F922]... Special Health Authority under section 222, so much only as accrues to the Authority after defraying any expenses incurred in obtaining them must be disregarded under subsection (4).

(7) Subject to subsection (4), the Secretary of State may by directions determine—

(a) whether specified sums must, or must not, be treated for the purposes of this section as received under this Act by a [F923]... specified Special Health Authority,

(b) whether specified expenditure must, or must not, be treated for those purposes as—

[F924](i) . . . . . .

(ii) expenditure within subsection (2) of a specified Special Health Authority, or

(c) the extent to which, and the circumstances in which, sums received—

[F925](i) . . . . . .

(ii) by a Special Health Authority under section 225,

but not yet spent must be treated for the purposes of this section as part of the expenditure of the [F926]... Special Health Authority and to which financial year's expenditure they must be attributed.

(8) "Specified" means of a description specified in the directions.

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Textual Amendments

F916 Words in s. 226 heading omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(8)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F917 S. 226(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F918 Words in s. 226(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F919 Words in s. 226(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F920 Words in s. 226(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F921 Words in s. 226(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F922 Words in s. 226(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F923 Words in s. 226(7)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(7)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F924 S. 226(7)(b)(i) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(7)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F925 S. 226(7)(c)(i) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(7)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F926 Words in s. 226(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 119(7)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

227 Resource limits for [F927]... Special Health Authorities

(1) Each [F928]... Special Health Authority must ensure that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the Secretary of State.

(2) For the purpose of subsection (1) the Secretary of State may give directions—

(a) specifying uses of resources which must, or must not, be taken into account,

(b) making provision for determining to which [F929]... Special Health Authority certain uses of resources must be attributed,

(c) specifying descriptions of resources which must, or must not, be taken into account.

(3) The Secretary of State may give such directions to a [F930]... Special Health Authority as appear to be requisite to secure that the Authority complies with the duty under subsection (1).

(4) Subsections (4) to (6) of section 226 apply in relation to the duty under subsection (1) of this section as they apply in relation to the duties under **[**[F931]subsection (2)**]** of that section; and for that purpose references to the defraying of expenditure and the receipt of sums are references to the incurring of liabilities and the acquisition of assets.

(5) Where the Secretary of State has specified an amount under this section in respect of a financial year, he may vary the amount by a later specification.

(6) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

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Textual Amendments

F927 Words in s. 227 heading omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 120(6)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F928 Words in s. 227(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 120(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F929 Words in s. 227(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 120(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F930 Words in s. 227(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 120(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F931 Words in s. 227(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 120(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Primary Care Trusts

F932 228 Public funding of Primary Care Trusts

. . . . . .

Textual Amendments

F932 Ss. 228-231 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 121**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F932 229 Financial duties of Primary Care Trusts

. . . . . .

Textual Amendments

F932 Ss. 228-231 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 121**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F932 230 Resource limits for Primary Care Trusts

. . . . . .

Textual Amendments

F932 Ss. 228-231 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 121**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F932 231 Further provision about the expenditure of Primary Care Trusts

. . . . . .

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Textual Amendments

F932 Ss. 228-231 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 121**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Accounts and audit

232 Accounts and audit

Schedule 15 makes provision about the accounts of certain health service bodies and the auditing of such accounts.

Allowances and remuneration

233 Allowances for members of certain bodies

(1) The Secretary of State may pay to members of any body specified by him in an order as a body formed for the purpose of performing a function connected with the provision of services under this Act, such travelling and other allowances, including compensation for loss of remunerative time, as he may determine.

(2) Payments under this section are subject to such conditions as to records, certificates, or otherwise as the Secretary of State may determine.

234 Special arrangement as to payment of remuneration

(1) Subsection (2) applies where the Secretary of State considers it appropriate for remuneration in respect of—

(a) primary medical services, primary dental services, primary ophthalmic services or pharmaceutical services, or

(b) services provided under a pilot scheme **[**F933established under section 134(1) of this Act**]** or an LPS scheme,

to be paid by a particular body.

(2) Where this subsection applies, and the functions of the body do not include the function of paying the remuneration, the Secretary of State may by order confer that function on that body.

(3) Any sums required to enable a body to pay the remuneration must, if apart from this section there is no provision authorising the payment of the sums by the Secretary of State or out of money provided by Parliament, be paid by him.

F934(4) . . . . . .

Textual Amendments

F933 Words in s. 234(1)(b) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(d)**; S.I. 2010/30, art. 2(b)

F934 S. 234(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 122**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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235 Superannuation of officers of certain hospitals

(1) The Secretary of State may enter into an agreement with the governing body of any hospital to which this section applies—

(a) for admitting officers of the hospital of such classes as may be provided in the agreement to participate, on such terms and conditions as may be so provided, in the superannuation benefits provided under regulations made under section 10 of the Superannuation Act 1972 (c. 11) in like manner as officers of NHS trusts, and

(b) those regulations apply accordingly in relation to the officers so admitted subject to such modifications as may be provided in the agreement.

(2) The governing body of any hospital to which this section applies has such powers as may be necessary for the purpose of giving effect to any terms and conditions on which their officers are admitted to participate in those superannuation benefits.

(3) This section applies to any hospital (not vested in the Secretary of State) which is used, in pursuance of arrangements made by the governing body of the hospital with the Secretary of State, for the provision of services under this Act or the National Health Service (Wales) Act 2006 (c. 42).

(4) "Superannuation benefits" means annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits.

236 Payments for certain medical examinations

(1) Where a medical practitioner carries out a medical examination of any person with a view to an application for his admission to hospital for assessment or treatment being made under Part 2 of the Mental Health Act 1983 (c. 20) **[**F935the prescribed clinical commissioning group**]** must pay to that medical practitioner—

(a) reasonable remuneration in respect of that examination and in respect of any recommendation or report made by him with regard to the person examined, and

(b) the amount of any expenses reasonably incurred by him in connection with the examination or the making of any such recommendation or report.

(2) No payment may be made under this section to a medical practitioner—

(a) in respect of an examination carried out in the provision of primary medical services for that person, or

(b) in respect of an examination carried out or any recommendation or report made**[**F936—

(i)**]** as part of his duty as an officer of F937... **[**F938an**]** NHS trust, Special Health Authority, NHS foundation trust or Local Health Board**[**F939, or

(ii) pursuant to arrangements made by the National Health Service Commissioning Board or a clinical commissioning group, or

(iii) pursuant to arrangements made in the exercise (by any person) of the public health functions of the Secretary of State or a local authority**]**.

(3) This section applies only in a case where it is intended, when the medical examination of the person in question is carried out, that if he is admitted to hospital in pursuance of an application mentioned in subsection (1), the whole cost of his maintenance and treatment will be defrayed out of moneys provided by Parliament.

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Textual Amendments

F935 Words in s. 236(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F936 Word in s. 236(2)(b) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F937 Words in s. 236(2)(b) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F938 Word in s. 236(2)(b) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F939 S. 236(2)(b)(ii)(iii) and word inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

PART 12

PUBLIC INVOLVEMENT AND SCRUTINY

CHAPTER 1

PATIENTS' FORUMS

237 Establishment of Patients' Forums

F940(1) . . . . . .

F940(2) . . . . . .

F941(3) . . . . . .

F941(4) . . . . . .

F941(5) . . . . . .

F941(6) . . . . . .

F941(7) . . . . . .

F941(8) . . . . . .

F941(9) . . . . . .

Textual Amendments

F940 S. 237(1)(2) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 231(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F941 S. 237(3)-(9) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F942 238 Additional functions of PCT Patients' Forums

. . . . . .

Textual Amendments

F942 S. 238 repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F943 239 Entry and inspection of premises

. . . . . .

Textual Amendments

F943 S. 239 repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F944 240 Annual reports

. . . . . .

Textual Amendments

F944 S. 240 repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 231(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

241 Further provision about Patients' Forums

F945(1) . . . . . .

F945(2) . . . . . .

F946(3) . . . . . .

F946(4) . . . . . .

(5) The regulations may include provision applying, or corresponding to, any provision of Part 5A of the Local Government Act 1972 (c 70) (access to meetings and documents), with or without modifications.

Textual Amendments

F945 S. 241(1)(2) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 231(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F946 S. 241(3)(4) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

CHAPTER 2

PUBLIC INVOLVEMENT AND CONSULTATION

242 Public involvement and consultation

[F947(1) This section applies to—

(a) relevant English bodies, and

(b) relevant Welsh bodies.

(1A) In this section—

" relevant English body " means—

(a) F948...

(b) F949...

(c) an NHS trust that is not a relevant Welsh body, or

(d) an NHS foundation trust;

" relevant Welsh body " means an NHS trust all or most of whose hospitals, establishments and facilities are in Wales.

(1B) Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services, whether directly or through representatives, are involved (whether by being consulted or provided with information, or in other ways) in—

(a) the planning of the provision of those services,

(b) the development and consideration of proposals for changes in the way those services are provided, and

(c) decisions to be made by that body affecting the operation of those services.

(1C) Subsection (1B)(b) applies to a proposal only if implementation of the proposal would have an impact on—

(a) the manner in which the services are delivered to users of those services, or

(b) the range of health services available to those users.

(1D) Subsection (1B)(c) applies to a decision only if implementation of the decision (if made) would have an impact on—

(a) the manner in which the services are delivered to users of those services, or

(b) the range of health services available to those users.

(1E) The reference in each of subsections (1C)(a) and (1D)(a) to the delivery of services is to their delivery at the point when they are received by users.

(1F) For the purposes of subsections (1B) to (1E), **[**F950—

(a) health services" does not include pharmaceutical services or local pharmaceutical services, and

(b)**]** a person is a "user" of any health services if the person is someone to whom those services are being or may be provided.

(1G) A relevant English body must have regard to any guidance given by the Secretary of State as to the discharge of the body's duty under subsection (1B).

(1H) The guidance mentioned in subsection (1G) includes (in particular)—

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(a) guidance given by the Secretary of State as to when, or how often, involvement under arrangements under subsection (1B) is to be carried out;

(b) guidance given by the Secretary of State as to the form to be taken by such involvement in any case specified by the guidance.**]**

(2) Each **[**F951relevant Welsh body**]** must make arrangements with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on—

(a) the planning of the provision of those services,

(b) the development and consideration of proposals for changes in the way those services are provided, and

(c) decisions to be made by that body affecting the operation of those services.

(3) For the purposes of this section a body is responsible for health services—

(a) if the body provides or will provide those services to individuals, or

(b) if another person provides, or will provide, those services to individuals—

(i) at that body's direction,

(ii) on its behalf, or

(iii) in accordance with an agreement or arrangements made by that body with that other person,

and references in this section to the provision of services include references to the provision of services jointly with another person.

F952(4) . . . . . .

F952(5) . . . . . .

[F953(6) This section does not require a body to make arrangements in relation to matters to which a trust special administrator's report or draft report under section 65F, **[**F954or 65I**]** relates before **[**F955the Secretary of State makes a decision under section 65K(1), is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9) (as the case may be).**]]**

Textual Amendments

F947 S. 242(1)-(1H) substituted for s. 242(1) (3.11.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 233(2)**, 245(5); S.I. 2008/2434, art. 2(2)(a)

F948 Words in s. 242(1A) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 126(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F949 Words in s. 242(1A) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 126(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F950 Words in s. 242(1F) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 206(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F951 Words in s. 242(2) substituted (3.11.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 233(3)**, 245(5); S.I. 2008/2434, art. 2(2)(a)

F952 S. 242(4)(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 126(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F953 S. 242(6) inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(7)**, 40(1); S.I. 2010/30, art. 3(b)

F954 Words in s. 242(6) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(17)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F955 Words in s. 242(6) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(17)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

[F956]242A Strategic Health Authorities: further duty to involve users

. . . . . .

Textual Amendments

F956 S. 242A omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 127**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F957]242B Directions in cases where Strategic Health Authority arranges involvement

. . . . . .

Textual Amendments

F957 S. 242B omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 127**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F958]243 The Commission for Patient and Public Involvement in Health

. . . . . .

Textual Amendments

F958 S. 243 repealed (1.4.2008 for the purpose of the omission of s. 243(2)(d)(f)(i), 30.6.2008 in so far as not already in force) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 232(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3)(4)(a), Sch.

CHAPTER 3

[F959]REVIEW AND SCRUTINY BY LOCAL AUTHORITIES]

Textual Amendments

F959 Pt. 12 Ch. 3 title substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(8)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

244 [F960]Review and scrutiny by local authorities]

(1) This section applies to any local authority, except that it applies to the council of a district only where the district is comprised in an area for which there is no county council.

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(2) Regulations may, in relation to F961... an authority to which this section applies, make provision—

(a) as to matters relating to the health service in the authority's area which **[**F962the authority**]** may review and scrutinise,

(b) as to matters relating to the health service in the authority's area on which **[**F962the authority**]** may make reports and recommendations to **[**F963relevant NHS bodies or relevant health service providers**]**, the Secretary of State or the regulator,

(c) as to matters on which **[**F963relevant NHS bodies or relevant health service providers**]** must consult **[**F962the authority**]** in accordance with the regulations F964...,

(d) as to information which **[**F963relevant NHS bodies or relevant health service providers**]** must provide to **[**F962the authority**]**,

(e) as to information which may not be disclosed by a **[**F965relevant NHS body or relevant health service provider**]** to **[**F962the authority**]**,

(f) requiring **[**F966any member or employee of a relevant NHS body, or a relevant health service provider or member or employee of a relevant health service provider,**]** to attend before **[**F962the authority**]** to answer questions.

[F967(2ZA) If (by virtue of subsection (2)(c)) regulations make provision as to matters on which relevant NHS bodies or relevant health service providers must consult the authority, the regulations may also make provision—

(a) as to circumstances in which the authority may refer any of those matters to the Secretary of State, the regulator or the Board;

(b) conferring powers on the Secretary of State to give directions to the Board in relation to a matter referred to the Secretary of State by virtue of regulations under paragraph (a);

(c) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter so referred;

(d) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter referred to the Board by virtue of regulations under paragraph (a);

(e) conferring powers on the Secretary of State to give directions to the Board as to the exercise of its powers by virtue of regulations under paragraph (c) or (d).

(2ZB) The powers that may be conferred under any of paragraphs (b) to (d) of subsection (2ZA) include powers to require the person to whom the direction is given—

(a) to consult (or consult further) with the authority on the matter in question;

(b) to determine the matter in a particular way;

(c) to take, or not to take, any other steps in relation to the matter.

(2ZC) If (by virtue of subsection (2ZA)(a)) regulations make provision for an authority to refer a matter to the Secretary of State, the regulator or the Board, the regulations may also provide for any provision of section 101 of the Local Government Act 1972—

(a) not to apply in relation to the discharge by the authority of that function, or

(b) to apply in relation to its discharge with such modifications as may be prescribed.

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(2ZD) Any functions conferred on a local authority by regulations under this section are not to be the responsibility of an executive of the authority under executive arrangements (within the meaning of Part 1A of the Local Government Act 2000).

(2ZE) Regulations under this section may authorise a local authority to arrange for its functions under the regulations to be discharged by an overview and scrutiny committee of the authority.**]**

[F968(2A) In subsection (2)(d) and (e), references to information are to information relating to matters relating to the health service in the authority's area.**]**

[F969(3) For the purposes of subsections (2) and (2ZA)—

"relevant NHS body", in relation to an authority to which this section applies, means an NHS body, other than a Special Health Authority, which is prescribed for those purposes in relation to the authority;

"relevant health service provider", in relation to an authority to which this section applies, means a body or person which—

(a) provides services in pursuance of arrangements made—

(i) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

(ii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or

(iii) by the Board, a clinical commissioning group or a local authority by virtue of section 7A, and

(b) is prescribed, or is of a description prescribed, for those purposes in relation to the authority.**]**

[F970(3A) In subsection (2)(f) "member"—

(a) in relation to a clinical commissioning group, includes a person who is not a member of the group but is a member of a committee or sub-committee of it;

(b) in relation to a relevant health service provider which is a body corporate, includes a person who is not a member of the body but is a director of it;

(c) in relation to an NHS trust, means a director of the trust;

(d) in relation to an NHS foundation trust, means a director or governor of the trust.

(3B) For the purposes of subsection (2)(f)—

(a) a member of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as a member of the group or (as the case may be) relevant health service provider, and

(b) an employee of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as an employee of the group or (as the case may be) relevant health service provider.**]**

(4) "The health service" includes services provided in pursuance of arrangements under regulations under section 75 in relation to the exercise of health-related functions of a local authority.

[F971(5) In **[**F972this section and section 245**]** references to an overview and scrutiny committee include references to—

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(a) an overview and scrutiny committee of a local authority operating executive arrangements under Part 1A of the Local Government Act 2000 (executive arrangements in England), and

(b) an overview and scrutiny committee appointed by a local authority under section 9JA of that Act (appointment of overview and scrutiny committees by committee system local authorities).**]**

Textual Amendments

F960 S. 244 heading substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(7)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F961 Words in s. 244(2) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 190(2)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F962 Words in s. 244(2) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F963 Words in s. 244(2) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(c)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F964 Words in s. 244(2)(c) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 190(2)(e)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F965 Words in s. 244(2) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(d)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F966 Words in s. 244(2)(f) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(f)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F967 S. 244(2ZA)-(2ZE) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F968 S. 244(2A) inserted (1.4.2009) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 121(4)**, 245(5); S.I. 2008/3110, art. 4(c)

F969 S. 244(3) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(4)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F970 S. 244(3A)(3B) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(5)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F971 S. 244(5) inserted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 74**; S.I. 2012/1008, art. 4(b)

F972 Words in s. 244(5) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 190(6)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C78 S. 244 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

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245 Joint overview and scrutiny committees etc

(1) In this section, **[**F973"relevant functions" means functions under regulations under section 244(2) to (2ZC).**]**

(2) Regulations may make provision under which—

(a) two or more local authorities may appoint a joint committee of those authorities (a "joint overview and scrutiny committee") and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the committee,

(b) a local authority may arrange for relevant functions in relation to that authority to be exercisable by an overview and scrutiny committee of another local authority,

(c) a county council for any area may arrange for one or more of the members of an overview and scrutiny committee of the council for a district comprised in that area to be appointed as—

(i) a member of an overview and scrutiny committee of the county council or another local authority, for the purposes of **[**F974relevant functions exercisable by the committee**]** in relation to the county council, or

(ii) a member of an overview and scrutiny committee of the county council, for the purposes of **[**F974relevant functions exercisable by the committee**]** in relation to another local authority.

(3) The regulations may in particular—

(a) provide for arrangements to be made only in specified circumstances, or subject to specified conditions or limitations,

(b) in relation to joint overview and scrutiny committees, make provision applying, or corresponding to, any provision of—

(i) **[**F975sections 9F(5), 9FA, 9FC to 9FG and 9FI**]** of the 2000 Act, or

F976(ia) . . . . . .

F976(ib) . . . . . .

(ii) section 246 of, and Schedule 17 to, this Act, and Schedule 11 to the National Health Service (Wales) Act 2006 (c. 42),

with or without modifications.

(4) The regulations may require, or enable the Secretary of State to direct, a local authority—

(a) to make arrangements of any description within subsection (2), and

(b) to comply with such requirements in connection with the arrangements as may be specified in the regulations or as the Secretary of State may direct.

[F977(4A) The regulations may provide that, where a relevant function in relation to a local authority is exercisable by a joint overview and scrutiny committee by virtue of arrangements under regulations under subsection (2)(a), the local authority may not discharge the function.**]**

F978(5) . . . . . .

(6) In subsection (2)(c), references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority.

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(7) **[**F979Section 9F(5)**]** of the 2000 Act does not apply to the discharge of functions by virtue of arrangements under regulations under subsection (2).

(8) **[**F980Section 9FA(5)**]** of the 2000 Act does not apply to persons who are members of an overview and scrutiny committee by virtue of arrangements under regulations under subsection (2)(c).

F981(9) . . . . . .

Textual Amendments

F973 Words in s. 245(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F974 Words in s. 245(2)(c)(i)(ii) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F975 Words in s. 245(3)(b)(i) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(3)(a)**; S.I. 2012/1008, art. 4(b)

F976 S. 245(3)(b)(ia)(ib) repealed (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 3 para. 75(3)(b), **Sch. 25 Pt. 4**; S.I. 2012/1008, art. 4(b)(c)

F977 S. 245(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F978 S. 245(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 191(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F979 Words in s. 245(7) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(4)**; S.I. 2012/1008, art. 4(b)

F980 Words in s. 245(8) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(5)**; S.I. 2012/1008, art. 4(b)

F981 S. 245(9) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 191(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

246 **[**F982**Business relating to functions of local authorities by virtue of section 244]: exempt information**

(1) This section applies in relation to any item of business at **[**F983a meeting of a local authority or a committee of a local authority which is an item relating to functions of the authority under regulations under section 244(2) to (2ZC).**]**

(2) In relation to any such item, information is exempt information for the purposes of section 100A(4) of the Local Government Act 1972 (c. 70) (exclusion of public from meetings to prevent disclosure of exempt information) if it falls within any of the descriptions of information specified in Schedule 17, or in Schedule 11 to the National Health Service (Wales) Act 2006.

(3) The Secretary of State may by order vary Schedule 17—

(a) by adding any description or other provision in connection with a relevant body or services provided by, or under arrangements made by, a relevant body, **[**F984or services in respect of which direct payments under section 12A(1), or under regulations under section 12A(4), are made by a relevant body,**]** or

(b) by deleting or varying any description or other provision specified or contained in that Schedule.

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(4) The Secretary of State may exercise the power conferred by subsection (3) by amending any Part of Schedule 17, with or without amendment of any other Part.

(5) In this section and Schedule 17 "relevant body" means a body in respect of which **[**F985local authorities**]** exercise functions under regulations under section 244.

Textual Amendments

F982 Words in s. 246 heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(9)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F983 Words in s. 246(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(7)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F984 Words in s. 246(3)(a) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 9**; S.I. 2010/30, art. 2(b)

F985 Words in s. 246(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(8)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C79 S. 246: power to apply conferred by 2007 c. 28, s. 123(5)(b)(iii) (as substituted (12.1.2010) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), **ss. 32(1)**, 148(2)(a)(ii))

C80 S. 246 applied (1.4.2013) by The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (S.I. 2013/218), regs. 1(2), **30(3)**

247 Application to the City of London

[F986(1) This section applies to a committee of the Common Council appointed to exercise functions that the Council has under regulations under section 244(2) to (2ZC).**]**

(2) **[**F987Section 245(2)(b) and (c) applies**]** as if such a committee were an overview and scrutiny committee F988... .

(3) **[**F989Section 9F**]** of the Local Government Act 2000 applies as if such a committee were an overview and scrutiny committee and as if the Common Council were a local authority, but with the omission—

(a) of subsections (1) to **[**F990(4)**]**,

F991(b) . . . . . .

F991(c) . . . . . .

F991(d) . . . . . .

[F992(3A) Section 9FA of the Local Government Act 2000 applies as if such a committee were an overview and scrutiny committee and as if the Common Council were a local authority, but with the omission—

(a) of subsection (3),

(b) in subsection (6), of paragraph (b), and

(c) in subsection (8)(a), of the reference to members of the executive.**]**

(4) In the provisions applied by **[**F993subsections (3) and (3A)**]**, references to functions under any provision of **[**F994section 9F(2)**]** of the 2000 Act are, **[**F995in the case of a committee to which this section applies, references to functions under regulations under section 244(2) to (2ZC) which are exercisable by the committee.**]**

(5) "The Common Council" means the Common Council of the City of London.

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Textual Amendments

F986 S. 247(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(11)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F987 Words in s. 247(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(12)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F988 Words in s. 247(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 191(12)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F989 Words in s. 247(3) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(3)(a)**; S.I. 2012/1008, art. 4(b)

F990 Word in s. 247(3)(a) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(3)(b)**; S.I. 2012/1008, art. 4(b)

F991 S. 247(3)(b)-(d) repealed (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 3 para. 77(3)(c), **Sch. 25 Pt. 4**; S.I. 2012/1008, art. 4(b)(c)

F992 S. 247(3A) inserted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(4)**; S.I. 2012/1008, art. 4(b)

F993 Words in s. 247(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(13)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F994 Words in s. 247(4) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(5)(b)**; S.I. 2012/1008, art. 4(b)

F995 Words in s. 247(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 191(13)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F996 247A Application to certain other local authorities without overview and scrutiny committees

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Textual Amendments

F996 S. 247A omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 191(14)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

PART 13

MISCELLANEOUS

*I*F997 *Co-operation in relation to public health functions*

Textual Amendments

F997 S. 247B and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 60(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

247B Co-operation in relation to public health functions

(1) This section applies to any body or other person that exercises functions similar to those of the Secretary of State under section 2A (whether or not in relation to the United Kingdom).

(2) The Secretary of State must co-operate with the body or other person in the exercise by it of those functions.

(3) If the Secretary of State acts under subsection (2) at the request of the body or other person, the Secretary of State may impose charges in respect of any costs incurred by the Secretary of State in doing so.

(4) The body or other person must co-operate with the Secretary of State in the exercise by the Secretary of State of functions under section 2A.

(5) If the body or other person acts under subsection (4) at the request of the Secretary of State, it may impose charges in respect of any costs incurred by it in doing so.**]**

***[F998** Duty to keep under review*

Textual Amendments

F998 S. 247C and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 52**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

247C Secretary of State's duty to keep health service functions under review

(1) The Secretary of State must keep under review the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service in England.

(2) The bodies mentioned in this subsection are—

(a) the Board;

(b) Monitor;

(c) the Care Quality Commission and its Healthwatch England committee;

(d) the National Institute for Health and Care Excellence;

(e) the Health and Social Care Information Centre;

[F999(ea) Health Education England;**]**

(f) Special Health Authorities.

(3) The Secretary of State may include in an annual report under section 247D the Secretary of State's views on the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service.**]**

Textual Amendments

F999 S. 247C(2)(ea) inserted (1.4.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 5 para. 13(8)**; S.I. 2014/3186, art. 2(f)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F1000 Annual report

Textual Amendments

F1000 S. 247D and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 53**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

247D Secretary of State's annual report

(1) The Secretary of State must publish an annual report on the performance of the health service in England.

(2) The report must include the Secretary of State's assessment of the effectiveness of the discharge of the duties under sections 1A and 1C.

(3) The Secretary of State must lay any report prepared under this section before Parliament.**]**

Independent advocacy services

F1001 248 Independent advocacy services

. . . . . .

Textual Amendments

F1001 S. 248 omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 185(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Joint working with the prison service

249 Joint working with the prison service

(1) In exercising their respective functions, NHS bodies (on the one hand) and the prison service (on the other) must co-operate with one another with a view to improving the way in which those functions are exercised in relation to securing and maintaining the health of prisoners.

(2) The Secretary of State may by regulations make provision for or in connection with enabling prescribed NHS bodies (on the one hand) and the prison service (on the other) to enter into prescribed arrangements in relation to the exercise of—

(a) prescribed functions of the NHS bodies, and

(b) prescribed health-related functions of the prison service,

if the arrangements are likely to lead to an improvement in the way in which those functions are exercised in relation to securing and maintaining the health of prisoners.

(3) The arrangements which may be prescribed include arrangements—

(a) for or in connection with the establishment and maintenance of a fund—

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(i) which is made up of contributions by one or more NHS bodies and by the prison service, and

(ii) out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the prison service,

(b) for or in connection with the exercise by an NHS body on behalf of the prison service of prescribed health-related functions of the prison service in conjunction with the exercise by the NHS body of prescribed functions of the NHS body,

(c) for or in connection with the exercise by the prison service on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the prison service of prescribed health-related functions of the prison service,

(d) as to the provision of staff, goods or services in connection with any arrangements mentioned in paragraph (a), (b) or (c),

(e) as to the making of payments by the prison service to an NHS body in connection with any arrangements mentioned in paragraph (b),

(f) as to the making of payments by an NHS body to the prison service in connection with any arrangements mentioned in paragraph (c).

(4) Any arrangements made by virtue of this section do not affect the liability of NHS bodies, or of the prison service, for the exercise of any of their functions.

[F1002(4A) For the purposes of this section, each local authority (within the meaning of section 2B) is to be treated as an NHS body.**]**

(5) "The prison service" means the Minister of the Crown exercising functions in relation to prisons (within the meaning of the Prison Act 1952 (c. 52)); and "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

Textual Amendments

F1002 S. 249(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 29(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C81 S. 249 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

Standing advisory committees

F1003 250 Secretary of State's standing advisory committees

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Textual Amendments

F1003 S. 250 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 283(1)**, 306(4) (with s. 283(3)); S.I. 2012/1319, art. 2(3)

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The National Information Governance Board for Health and Social Care

F1004 250A National Information Governance Board: functions

. . . . . .

Textual Amendments

F1004 Ss. 250A-250D omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 280(2)**, 306(4) (with Sch. 20 para. 12); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1004 250B National Information Governance Board: Wales

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Textual Amendments

F1004 Ss. 250A-250D omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 280(2)**, 306(4) (with Sch. 20 para. 12); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1004 250C National Information Governance Board: further provisions.

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Textual Amendments

F1004 Ss. 250A-250D omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 280(2)**, 306(4) (with Sch. 20 para. 12); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1004 250D National Information Governance Board: annual reports

. . . . . .

Textual Amendments

F1004 Ss. 250A-250D omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 280(2)**, 306(4) (with Sch. 20 para. 12); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Patient information

251 Control of patient information

(1) The Secretary of State may by regulations make such provision for and in connection with requiring or regulating the processing of prescribed patient information for medical purposes as he considers necessary or expedient—

(a) in the interests of improving patient care, or

(b) in the public interest.

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(2) Regulations under subsection (1) may, in particular, make provision—

(a) for requiring prescribed communications of any nature which contain patient information to be disclosed by health service bodies **[**F1005or relevant social care bodies**]** in prescribed circumstances—

(i) to the person to whom the information relates,

(ii) (where it relates to more than one person) to the person to whom it principally relates, or

(iii) to a prescribed person on behalf of any such person as is mentioned in sub-paragraph (i) or (ii),

in such manner as may be prescribed,

(b) for requiring or authorising the disclosure or other processing of prescribed patient information to or by persons of any prescribed description subject to compliance with any prescribed conditions (including conditions requiring prescribed undertakings to be obtained from such persons as to the processing of such information),

(c) for securing that, where prescribed patient information is processed by a person in accordance with the regulations, anything done by him in so processing the information must be taken to be lawfully done despite any obligation of confidence owed by him in respect of it,

(d) for creating offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale or such other level as is prescribed or for creating other procedures for enforcing any provisions of the regulations.

(3) Subsections (1) and (2) are subject to subsections (4) to (7).

(4) Regulations under subsection (1) may not make provision requiring the processing of confidential patient information for any purpose if it would be reasonably practicable to achieve that purpose otherwise than pursuant to such regulations, having regard to the cost of and the technology available for achieving that purpose.

(5) Where regulations under subsection (1) make provision requiring the processing of prescribed confidential patient information, the Secretary of State—

(a) must, at any time within the period of one month beginning on each anniversary of the making of such regulations, consider whether any such provision could be included in regulations made at that time without contravening subsection (4), and

(b) if he determines that any such provision could not be so included, must make further regulations varying or revoking the regulations made under subsection (1) to such extent as he considers necessary in order for the regulations to comply with that subsection.

(6) Regulations under subsection (1) may not make provision for requiring the processing of confidential patient information solely or principally for the purpose of determining the care and treatment to be given to particular individuals.

(7) Regulations under this section may not make provision for or in connection with the processing of prescribed patient information in a manner inconsistent with any provision **[**F1006of the data protection legislation**]**.

(8) Subsection (7) does not affect the operation of provisions made under subsection (2)(c).

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(9) Before making any regulations under this section the Secretary of State must, to such extent as he considers appropriate in the light of the requirements of section 252, consult such bodies appearing to him to represent the interests of those likely to be affected by the regulations as he considers appropriate.

(10) In this section "patient information" means—

(a) information (however recorded) which relates to the physical or mental health or condition of an individual, to the diagnosis of his condition or to his care or treatment, and

(b) information (however recorded) which is to any extent derived, directly or indirectly, from such information,

whether or not the identity of the individual in question is ascertainable from the information.

(11) For the purposes of this section, patient information is "confidential patient information" where—

(a) the identity of the individual in question is ascertainable—

(i) from that information, or

(ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person processing that information, and

(b) that information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

(12) In this section "medical purposes" means the purposes of any of—

(a) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services, and

(b) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care and treatment.

[[F1007](12A) In this section—

"care" includes local authority social care,

"local authority social care" means—

(a) social care provided or arranged for by a local authority, and

(b) any other social care all or part of the cost of which is paid for with funds provided by a local authority,

"patient" includes an individual who needs or receives local authority social care or whose need for such care is being assessed by a local authority,

"social care" includes all forms of personal care and other practical assistance provided for individuals who are in need of such care or assistance by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or other similar circumstances.**]**

(13) In this section—

[[F1008]"the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);**]**

"health service body" means any body (including a government department) or person engaged in the provision of the health service that is prescribed, or of a description prescribed, for the purposes of this definition,

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"processing", in relation to information, means the use, disclosure or obtaining of the information or the doing of such other things in relation to it as may be prescribed for the purposes of this definition.

[[F1009]"relevant social care body" means—

(a) a local authority, or

(b) any other body or person engaged in the provision of local authority social care.**]**

Textual Amendments

F1005 Words in s. 251(2)(a) inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 7(2)**

F1006 Words in s. 251(7) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 114(2)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F1007 S. 251(12A) inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 7(3)**

F1008 Words in s. 251(13) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 114(3)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F1009 Words in s. 251(13) inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 7(4)**

Modifications etc. (not altering text)

C82 S. 251 functions transferred (W.) (24.5.2018) by The Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644), arts. 1(1), **43(1)**

[[F1010]**252[**[F1011]**Consultation with the Care Quality Commission]**

(1) Before laying before Parliament a draft of any statutory instrument containing regulations under section 251(1), or making any regulations pursuant to section 251(5)(b), the Secretary of State must seek and have regard to the views of **[**[F1012]the Care Quality Commission**]** on the proposed regulations.

(2) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, any views received from the Board on the proposed regulations.**]**

Textual Amendments

F1010 S. 252 substituted (1.1.2009) by Health and Social Care Act 2008 (c. 14), **ss. 158**, 170(3)(4); S.I. 2008/2497, art. 7(2)(b)

F1011 S. 252 title substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 280(5)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1012 Words in s. 252(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 280(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C83 S. 252 excluded (W.) (24.5.2018) by The Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644), arts. 1(1), **43(2)**

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[F1013 Emergencies: role of the Secretary of State, the Board and clinical commissioning groups]

Textual Amendments

F1013 S. 253 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 46**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1014 252A Role of the Board and clinical commissioning groups in respect of emergencies

(1) The Board and each clinical commissioning group must take appropriate steps for securing that it is properly prepared for dealing with a relevant emergency.

(2) The Board must take such steps as it considers appropriate for securing that each clinical commissioning group is properly prepared for dealing with a relevant emergency.

(3) The steps taken by the Board under subsection (2) must include monitoring compliance by each clinical commissioning group with its duty under subsection (1).

(4) The Board must take such steps as it considers appropriate for securing that each relevant service provider is properly prepared for dealing with a relevant emergency.

(5) The steps taken by the Board under subsection (4) must include monitoring compliance by the service provider with any requirements imposed on it by its service arrangements for the purpose of securing that it is properly prepared for dealing with a relevant emergency.

(6) The Board may take such steps as it considers appropriate for facilitating a co-ordinated response to an emergency by the clinical commissioning groups and relevant service providers for which it is a relevant emergency.

(7) The Board may arrange for any body or person to exercise any functions of the Board under subsections (2) to (6).

(8) Where the Board makes arrangements with another body or person under subsection (7) it may also arrange for that other body or person to exercise any functions that the Board has, by virtue of being a Category 1 responder, under Part 1 of the Civil Contingencies Act 2004.

(9) A relevant service provider must appoint an individual to be responsible for—

(a) securing that the provider is properly prepared for dealing with a relevant emergency,

(b) securing that the provider complies with any requirements mentioned in subsection (5), and

(c) providing the Board with such information as it may require for the purpose of discharging its functions under this section.

(10) In this section—

"relevant emergency"—

(a) in relation to the Board or a clinical commissioning group, means any emergency which might affect the Board or the group (whether by increasing the need for the services that it may arrange or in any other way);

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(b) in relation to a relevant service provider, means any emergency which might affect the provider (whether by increasing the need for the services that it may provide or in any other way);

"relevant service provider" means any body or person providing services in pursuance of service arrangements;

"service arrangements", in relation to a relevant service provider, means arrangements made by the Board or a clinical commissioning group under or by virtue of section 3, 3A, 3B, 4 or 7A or Schedule 1.**]**

Textual Amendments

F1014 S. 252A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 46**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

253 Emergency powers

(1) The Secretary of State may give directions under this section if he considers that by reason of an emergency **[**F1015it is appropriate to do so**]**.

[F1016(1A) A direction under this section may be given to—

(a) an NHS body other than a Local Health Board;

(b) the National Institute for Health and Care Excellence;

(c) the Health and Social Care Information Centre;

(d) any body or person, other than an NHS body, providing services in pursuance of arrangements made—

(i) by the Secretary of State under section 12,

(ii) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

(iii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or

(iv) by the Board, a clinical commissioning group or a local authority by virtue of section 7A.**]**

(2) **[**F1017In relation to a body within subsection (1A)(a) to (c), the powers conferred by this section may be exercised—

(a) to give directions to the body about the exercise of any of its functions;

(b) to direct the body to cease to exercise any of its functions for a specified period;

(c) to direct the body to exercise any of its functions concurrently with another body or person for a specified period;

(d) to direct the body to exercise any function conferred on another body or person under or by virtue of this Act for a specified period (whether to the exclusion of, or concurrently with, that body or person).

(2A) In relation to a body or person within subsection (1A)(d), the powers conferred by this section may be exercised—

(a) to give directions to the body or person about the provision of any services that it provides in pursuance of arrangements mentioned in subsection (1A)(d);

(b) to direct the body or person to cease to provide any of those services for a specified period;

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(c) to direct the body or person to provide other services for the purposes of the health service for a specified period.**]**

[F1018(2B) The Secretary of State may direct the Board to exercise the functions of the Secretary of State under this section.

(2C) The Secretary of State may give directions to the Board about its exercise of any functions that are the subject of a direction under subsection (2B).

(2D) In this section, "specified" means specified in the direction.**]**

(3) The powers conferred on the Secretary of State by this section are in addition to any other powers exercisable by him.

F1019(4) . . . . . .

Textual Amendments

F1015 Words in s. 253(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 47(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1016 S. 253(1A) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 47(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1017 S. 253(2)(2A) substituted for s. 253(2) (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 47(4)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1018 S. 253(2B)-(2D) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 47(5)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1019 S. 253(4) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 47(6)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Local social services authorities

254 Local social service authorities

F1020(1) . . . . . .

(2) A local social services authority which provides premises, furniture or equipment for any of the purposes of this Act may permit the use of the premises, furniture or equipment by—

(a) any other local social services authority,

(b) any of the bodies established under this Act, or

[F1021(c) a local authority (as defined in section 579(1) of the Education Act 1996) for the purposes of the exercise of any education functions (as defined in that section).**]**

(3) The permission may be on such terms (including terms with respect to the services of any staff employed by the authority giving permission) as may be agreed.

(4) A local social services authority may provide (or improve or furnish) residential accommodation for officers—

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(a) employed by it for the purposes of any of its functions as a local social services authority, [F1022]...

[F1022](b) . . . . . .

(5) In this section [F1023]... "equipment" includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle.

Textual Amendments

F1020 S. 254(1) omitted (1.4.2015) by virtue of The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 82(2)** (with arts. 1(3), 3)

F1021 S. 254(2)(c) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(2)**

F1022 S. 254(4)(b) and word omitted (1.4.2015) by virtue of The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 82(3)** (with arts. 1(3), 3)

F1023 Words in s. 254(5) omitted (1.4.2015) by virtue of The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 82(4)** (with arts. 1(3), 3)

I[F1024]Support functions of the Secretary of State

Textual Amendments

F1024 S. 254A and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 128**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

254A (1) The Secretary of State may, for the purpose of assisting any person exercising functions in relation to the health service or providing services for its purposes—

(a) provide (or otherwise make available) to the person goods, materials or other facilities;

(b) facilitate the recruitment and management of the person's staff;

(c) develop or operate information or communication systems;

(d) do such other things to facilitate or support the carrying out of the person's functions or other activities as the Secretary of State considers appropriate;

(e) arrange for any other person to do anything mentioned in paragraphs (a) to (d) or to assist the Secretary of State in doing any such thing.

(2) The power conferred by subsection (1)(a) includes power to purchase goods and materials for the purpose of providing them or making them available.

(3) The Secretary of State may, in connection with anything done under subsection (1), make available the services of any person employed by the Secretary of State.

(4) The powers conferred by this section may be exercised on such terms, including terms as to the making of payments to or by the Secretary of State, as may be agreed.

(5) In this section, "the health service" does not include that part of the health service that is provided in pursuance of the public health functions of the Secretary of State or local authorities.**]**

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Supplies by the Secretary of State

255 Supplies not readily obtainable

(1) Where the Secretary of State has acquired—

(a) supplies of human blood for the purposes of any service under this Act,

(b) any part of a human body for the purpose of, or in the course of providing, any such service, or

(c) supplies of any other substances or preparations not readily obtainable,

he may arrange to make such supplies or that part available (on such terms, including terms as to charges, as he considers appropriate) to any person.

(2) The Secretary of State may exercise the powers conferred by subsection (1) only if, and to the extent that, he is satisfied that anything which he proposes to do or allow under those powers—

(a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind, and

(b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than as private patients.

(3) "Health service hospital" includes such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42).

Community services

256 Power of [F1025the Board or a clinical commissioning group] to make payments towards expenditure on community services

(1) [F1026The Board or a clinical commissioning group] may make payments to—

(a) a local social services authority [F1027in England] towards expenditure incurred or to be incurred by it in connection with any social services functions (within the meaning of the Local Authority Social Services Act 1970 (c. 42)), other than functions under section 3 of the Disabled Persons (Employment) Act 1958 (c. 33),

[F1028(aa) a local social services authority in Wales towards expenditure incurred or to be incurred by it in connection with any of its functions which are social services functions for the purposes of the Social Services and Well-being (Wales) Act 2014 (anaw 4).]

(b) a district council, or a Welsh county council or county borough council, towards expenditure incurred or to be incurred by it in connection with its functions under Part 2 of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (meals and recreation for old people),

(c) [F1029a local authority (as defined in section 579(1) of the Education Act 1996)] (c. 56), towards expenditure incurred or to be incurred by it in connection with its functions under the Education Acts (within the meaning of that Act), in so far as it performs those functions for the benefit of disabled persons,

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(d) a local housing authority within the meaning of the Housing Act 1985 (c. 68), towards expenditure incurred or to be incurred by it in connection with its functions under Part 2 of that Act (provision of housing), or

(e) any of the bodies mentioned in subsection (2), in respect of expenditure incurred or to be incurred by it in connection with the provision of housing accommodation.

(2) The bodies are—

[F1030(za) a private registered provider of social housing,**]**

(a) a registered social landlord within the meaning of the Housing Act 1985 (see section 5(4) and (5) of that Act),

[F1031(b) the Homes and Communities Agency,

(ba) the Welsh new towns residuary body,**]**

[F1032(bb) the Greater London Authority,**]**

(c) a new town development corporation,

[F1033(ca) a Mayoral development corporation,**]**

(d) an urban development corporation established under the Local Government, Planning and Land Act 1980 (c. 65),

[F1034(e) the Regulator of Social Housing.**]**

(3) **[**F1035The Board or a clinical commissioning group**]** may make payments to a local authority towards expenditure incurred or to be incurred by the authority in connection with the performance of any of the authority's functions which, in the opinion of **[**F1036the Board or (as the case may be) the clinical commissioning group**]**—

(a) have an effect on the health of any individuals,

(b) have an effect on, or are affected by, any NHS functions, or

(c) are connected with any NHS functions.

(4) "NHS functions" means functions exercised by an NHS body.

(5) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.

[F1037(5A) The Secretary of State may by directions to the Board specify the minimum amount which the Board must spend in a financial year in making payments under—

(a) this section;

(b) subsection (1) of this section;

(c) subsection (3) of this section.

(5B) The Secretary of State may by directions to the Board specify—

(a) a body or description of bodies to whom payments under subsection (1) or (3), or under either or both of those subsections, must be made by the Board in a financial year;

(b) functions or activities, or descriptions of functions or activities, in respect of which such payments must be made by the Board in a financial year;

(c) the minimum amount which the Board must spend in a financial year in making such payments—

(i) to a body or description of bodies specified in relation to the year under paragraph (a);

(ii) in respect of functions or activities, or descriptions of functions or activities, specified in relation to the year under paragraph (b);

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(iii) to a body or description of bodies specified in relation to the year under paragraph (a) in respect of functions or activities or descriptions of functions or activities so specified under paragraph (b).**]**

(6) The Secretary of State may by directions prescribe conditions relating to payments under this section or section 257.

(7) The conditions include, in particular, conditions requiring, in such circumstances as may be specified—

(a) repayment of the whole or part of a payment under this section, or

(b) in respect of property acquired with a payment under this section, payment of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.

(8) No payment may be made under this section in respect of any expenditure unless the conditions relating to it conform with the conditions prescribed under subsection (6) for payments of that description.

(9) "A disabled person" is a person who has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities or who has such other disability as may be prescribed.

Textual Amendments

F1025 Words in s. 256 heading substituted (1.11.2013) by The Health and Social Care Act 2012 (Consequential Amendments) (No. 2) Order 2013 (S.I. 2013/2341), arts. 1(2), **4**

F1026 Words in s. 256(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1027 Words in s. 256(1)(a) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **243(a)**

F1028 S. 256(1)(aa) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **243(b)**

F1029 Words in s. 256(1)(c) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(3)**

F1030 S. 256(2)(za) inserted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 1(2), **Sch. 2 para. 134(a)** (with art. 6, Sch. 3)

F1031 S. 256(2)(b)(ba) substituted for s. 256(2)(b) (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), art. 1(2), **Sch. 1 para. 52** (with Sch. 2) (see S.I. 2008/3068, art. 2(1)(b))

F1032 S. 256(2)(bb) inserted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 19 para. 44**; S.I. 2012/628, art. 6(i) (with arts. 9, 11, 14, 15, 17)

F1033 S. 256(2)(ca) inserted (15.1.2012) by Localism Act 2011 (c. 20), s. 240(1)(l), **Sch. 22 para. 57**

F1034 S. 256(2)(e) substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 1(2), **Sch. 2 para. 134(b)** (with art. 6, Sch. 3)

F1035 Words in s. 256(3) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1036 Words in s. 256(3) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F1037 S. 256(5A)(5B) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C84 S. 256 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

C85 S. 256(2)(e) modified (1.12.2008) by The Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 (S.I. 2008/2839), arts. 1(1), 3, **Sch. para. 1** (with art. 6)

C86 S. 256(3) modified by 2004 c. 17, s. 4(5)(a)(i) (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 258(a)** (with Sch. 3 Pt. 1))

257 Payments in respect of voluntary organisations under section 256

(1) This section applies where the expenditure in respect of which a payment under section 256 is proposed to be made is expenditure in connection with services to be provided by a voluntary organisation.

(2) Where this section applies, **[**F1038the Board or the clinical commissioning group**]** may make payments to the voluntary organisation towards the expenditure incurred or to be incurred by the organisation in connection with the provision of those services, instead of or in addition to making payments under section 256(1) or (3).

(3) Where this section applies—

(a) a body falling within any of paragraphs (a) to (d) of section 256(1) which has received payments under the paragraph, and

(b) a local authority which has received payments under section 256(3),

may make out of the sums paid to it payments to the voluntary organisation towards expenditure incurred or to be incurred by the organisation in connection with the provision of those services.

(4) No payment may be made under subsection (2) or (3) except subject to conditions which conform with the conditions prescribed for payments of that description under section 256(6).

Textual Amendments

F1038 Words in s. 257(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 130**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C87 S. 257(2) modified by 2004 c. 17, s. 4(5)(a)(i) (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 258(a)** (with Sch. 3 Pt. 1))

Universities

258 University clinical teaching and research

(1) **[**F1039The functions under this Act of the Secretary of State, the Board and each clinical commissioning group must be exercised**]** so as to secure that there are made available such facilities as **[**F1040the Secretary of State, the Board or the clinical commissioning

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group (as the case may be)**]** considers are reasonably required by any university which has a medical or dental school, in connection with—

(a) clinical teaching, and

(b) research connected with clinical medicine or clinical dentistry.

(2) Regulations may provide for any functions—

(a) exercisable by **[**F1041the Board,**]** a **[**F1042clinical commissioning group,**]**F1043... F1044... Special Health Authority or Local Health Board,

(b) in relation to the provision of facilities such as are mentioned in subsection (1),

to be exercisable by the body jointly with one or more NHS body other than an NHS foundation trust.

Textual Amendments

F1039 Words in s. 258(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 131(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1040 Words in s. 258(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 131(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1041 Words in s. 258(2)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 131(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1042 Words in s. 258(2)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 131(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1043 Words in s. 258(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 131(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1044 Words in s. 258(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 131(3)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C88 S. 258 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

Sale of medical practices

259 Sale of medical practices

(1) It is unlawful to sell the goodwill of the medical practice of a person to whom any of subsections (2) to (4) applies, unless the person—

(a) no longer provides or performs the services mentioned, and

(b) has never carried on the practice in a relevant area.

(2) This subsection applies to a person who has at any time provided general medical services under arrangements made—

(a) with any Council, Committee or Authority under the National Health Service Act 1946 (c. 81) or the National Health Service Reorganisation Act 1973 (c. 32), or

(b) with any Primary Care Trust, Health Authority or Local Health Board under section 29 of the National Health Service Act 1977 (c. 49).

(3) This subsection applies to a person who has at any time provided or performed personal medical services in accordance with section 28C of the National Health Service Act 1977 (prior to the coming into force of section 16CC of that Act).

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(4) This subsection applies to a person who has at any time, in prescribed circumstances or, if regulations so provide, in all circumstances, provided or performed primary medical services—

(a) in accordance with section 28C arrangements (within the meaning given by section 28D of the National Health Service Act 1977),

(b) in accordance with arrangements under section 16CC(2)(b) of that Act,

(c) under a general medical services contract (within the meaning of section 28Q(2) of that Act),

(d) in accordance with section 92 arrangements or section 50 arrangements,

(e) in accordance with arrangements under **[**F1045section 83(2)**]** of this Act, or section 41(2)(b) of the National Health Service (Wales) Act 2006 (c. 42),

(f) under a general medical services contract or a Welsh general medical services contract.

[F1046(4A) The reference in subsection (4)(e) to arrangements under section 83(2) of this Act includes a reference to arrangements made under section 83(2)(b) of this Act before the commencement of paragraph 30 of Schedule 4 to the Health and Social Care Act 2012 (sub-paragraph (2) of which replaces section 83(2)).**]**

(5) In this section—

"goodwill" includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice,

"medical practice" includes any part of a medical practice,

"relevant area" **[**F1047—**]**

(a) in relation to any Council, Committee, Primary Care Trust, Local Health Board or Authority by arrangement or contract with whom a person has at any time provided or performed services, means the area, district or locality of that Council, Committee, Primary Care Trust, Local Health Board or Authority (at that time) **[**F1048;

(b) in relation to the Board, in a case where a person has at any time provided or performed services by arrangement or contract with the Board, means the prescribed area (at the prescribed time).**]**

"section 50 arrangements" means arrangements for the provision of services made under section 50 of the National Health Service (Wales) Act 2006 (c. 42), and

"Welsh general medical services contract" means a contract under section 42(2) of the National Health Service (Wales) Act 2006.

(6) Schedule 21 makes further provision in relation to this section.

Textual Amendments

F1045 Words in s. 259(4)(e) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 132(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1046 S. 259(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 132(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1047 Words in s. 259(5) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 132(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1048 Words in s. 259(5) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 132(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Modifications etc. (not altering text)

C89 S. 259 transfer of functions (10.7.2008) by Welsh Ministers (Transfer of Functions) Order 2008 (S.I. 2008/1786), **art. 2(b)** reg. 1(2)

Price of medical supplies

260 Control of maximum price of medical supplies other than health service medicines

(1) The Secretary of State may by order provide for the control of maximum prices to be charged for any medical supplies, other than health service medicines, required for the purposes of **[**F1049the health service**]**.

[F1050(1A) Before making an order under subsection (1) the Secretary of State must consult any body which appears to the Secretary of State appropriate to represent persons who manufacture, distribute or supply medical supplies falling within subsection (1).**]**

F1051(2) . . . . . .

F1051(3) . . . . . .

F1051(4) . . . . . .

(5) In this section F1052...—

"medical supplies" includes surgical, dental and optical materials and equipment, F1053... F1053...

and "equipment" includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle.

Textual Amendments

F1049 Words in s. 260(1) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(3)**, 12(3); S.I. 2017/809, reg. 2(f)

F1050 S. 260(1A) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(4)**, 12(3); S.I. 2017/809, reg. 2(f)

F1051 S. 260(2)-(4) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(3)(a)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1052 Words in s. 260(5) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(3)(b)(i)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1053 Words in s. 260(5) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(3)(b)(ii)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

261 Powers relating to voluntary schemes

(1) The powers under this section may be exercised where there is in existence a scheme (referred to in this section and sections 262 **[**F1054, 263 and 264A**]** as a "voluntary scheme") made by the Secretary of State and the industry body for **[**F1055one or more of the following purposes**]** —

(a) limiting the prices which may be charged by any manufacturer or supplier to whom the scheme relates for the supply of any health service medicines, F1056...

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(b) limiting the profits which may accrue to any manufacturer or supplier to whom the scheme relates in connection with the manufacture or supply of any health service medicines,

[F1057(c) providing for any manufacturer or supplier to whom the scheme relates to pay to the Secretary of State an amount calculated by reference to sales or estimated sales of any health service medicines (whether on the basis of net prices, average selling prices or otherwise).**]**

(2) For the purposes of this section and sections 262 and 263, a voluntary scheme must be treated as applying to a manufacturer or supplier to whom it relates if—

(a) he has consented to the scheme being so treated (and has not withdrawn that consent), and

(b) no notice is in force in his case under subsection (4).

(3) For the purposes of this section a voluntary scheme has effect, in relation to a manufacturer or supplier to whom it applies, with any additions or modifications made by him and the Secretary of State.

(4) If any acts or omissions of any manufacturer or supplier to whom a voluntary scheme applies (a "scheme member") have shown that, in the scheme member's case, the scheme is ineffective for **[**F1058any**]** of the purposes mentioned in subsection (1), the Secretary of State may by a written notice given to the scheme member determine that the scheme does not apply to him.

(5) A notice under subsection (4) must give the Secretary of State's reasons for giving the notice, and the Secretary of State may not give a notice under that subsection until he has given the scheme member an opportunity to make representations about the acts or omissions in question.

(6) Consent under subsection (2)(a) must be given, or withdrawn, in the manner required by the Secretary of State.

F1059(7) . . . . . .

(8) The Secretary of State may—

(a) prohibit any manufacturer or supplier to whom a voluntary scheme applies from increasing any price charged by him for the supply of any health service medicine covered by the scheme without the approval of the Secretary of State, and

(b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.

[F1060(9) The Secretary of State may provide for any amount payable in accordance with a voluntary scheme by any manufacturer or supplier to whom the scheme applies to be paid to the Secretary of State within a specified period.

(10) Neither of the following affects any liability of a manufacturer or supplier to pay amounts to the Secretary of State arising during a period when a health service medicine was covered by a voluntary scheme treated as applying to the person or the taking of any action in relation to any such liability—

(a) the withdrawal of consent by the person to the scheme being treated as applying to the person;

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(b) the giving of notice to the person under subsection (4).**]**

Textual Amendments

F1054 Words in s. 261(1) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 3(2)(a)**, 12(3); S.I. 2017/809, reg. 2(b)

F1055 Words in s. 261(1) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 3(2)(b)**, 12(3); S.I. 2017/809, reg. 2(b)

F1056 Word in s. 261(1) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 3(2)(c)**, 12(3); S.I. 2017/809, reg. 2(b)

F1057 S. 261(1)(c) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 3(2)(d)**, 12(3); S.I. 2017/809, reg. 2(b)

F1058 Word in s. 261(4) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 3(3)**, 12(3); S.I. 2017/809, reg. 2(b)

F1059 S. 261(7) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(4)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1060 S. 261(9)(10) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 3(4)**, 12(3); S.I. 2017/809, reg. 2(b)

Commencement Information

I2 S. 261(8) in force at 7.8.2017 immediately after 1999 c. 8, s. 33(8) comes into force by S.I. 2017/810, **art. 2(a)**

262 Power to control prices

(1) The Secretary of State may, after consultation with the industry body—

(a) limit any price which may be charged by any manufacturer or supplier for the supply of any health service medicine, and

(b) provide for any amount representing sums charged by that person for that medicine in excess of the limit to be paid to the Secretary of State within a specified period.

[F1061(2) If at any time a health service medicine is covered by a voluntary scheme applying to its manufacturer or supplier, the powers conferred by this section may not be exercised at that time in relation to that manufacturer or supplier as regards that medicine.**]**

Textual Amendments

F1061 S. 262(2) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 4**, 12(3); S.I. 2017/809, reg. 2(c)

263 Statutory schemes

(1) The Secretary of State may, after consultation with the industry body **[**F1062and any other person the Secretary of State thinks appropriate**]**, make a scheme (referred to in this section and section 264 as a statutory scheme) **[**F1063one or more of the following purposes**]** —

(a) limiting the prices which may be charged by any manufacturer or supplier for the supply of any health service medicines, F1064...

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(b) limiting the profits which may accrue to any manufacturer or supplier in connection with the manufacture or supply of any health service medicines,

[F1065(c) providing for any manufacturer or supplier of any health service medicines to pay to the Secretary of State an amount calculated by reference to sales or estimated sales of those medicines (whether on the basis of net prices, average selling prices or otherwise).**]**

[F1066(1A) Consultation about the proposed exercise of a power under subsection (1) must include consultation about the following—

(a) the economic consequences for the life sciences industry in the United Kingdom;

(b) the consequences for the economy of the United Kingdom;

(c) the consequences for patients to whom any health service medicines are to be supplied and for other health service patients.**]**

(2) A statutory scheme may, in particular, make any provision mentioned in subsections **[**F1067(4)**]** to (6).

F1068(3) . . . . . .

(4) The scheme may provide for any amount representing sums charged by any manufacturer or supplier to whom the scheme applies, in excess of the limits determined under the scheme, for health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.

(5) The scheme may provide for any amount representing the profits, in excess of the limits determined under the scheme, accruing to any manufacturer or supplier to whom the scheme applies in connection with the manufacture or supply of health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.

[F1069(5A) The scheme may provide for any amount payable in accordance with the scheme by any manufacturer or supplier to whom the scheme applies to be paid to the Secretary of State within a specified period.**]**

(6) The scheme may—

(a) prohibit any manufacturer or supplier to whom the scheme applies from increasing, without the approval of the Secretary of State, any price charged by him for the supply of any health service medicine covered by the scheme, and

(b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.

[F1070(7) If at any time a health service medicine is covered by a voluntary scheme applying to its manufacturer or supplier, the powers conferred by this section may not be exercised at that time in relation to that manufacturer or supplier as regards that medicine.**]**

[F1071(8) Subsection (7) does not affect any liability of a person to pay amounts to the Secretary of State arising during a period when a health service medicine was covered by a statutory scheme applying to the person or the taking of any action in relation to any such liability.**]**

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Textual Amendments

F1062 Words in s. 263(1) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(2)(a)**, 12(3); S.I. 2017/809, reg. 2(d)

F1063 Words in s. 263(1) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(2)(b)**, 12(3); S.I. 2017/809, reg. 2(d)

F1064 Word in s. 263(1) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(2)(c)**, 12(3); S.I. 2017/809, reg. 2(d)

F1065 S. 263(1)(c) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(2)(d)**, 12(3); S.I. 2017/809, reg. 2(d)

F1066 S. 263(1A) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(3)**, 12(3); S.I. 2017/809, reg. 2(d)

F1067 Word in s. 263(2) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(5)(a)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1068 S. 263(3) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(5)(b)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1069 S. 263(5A) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(4)**, 12(3); S.I. 2017/809, reg. 2(d)

F1070 S. 263(7) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(5)**, 12(3); S.I. 2017/809, reg. 2(d)

F1071 S. 263(8) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 5(6)**, 12(3); S.I. 2017/809, reg. 2(d)

Commencement Information

I3 S. 263 in force at 7.8.2017 immediately after 1999 c. 8, s. 35 comes into force by S.I. 2017/810, **art. 2(b)**

264 Statutory schemes: supplementary

(1) The Secretary of State may, after consultation with the industry body, make any provision he considers necessary or expedient for the purpose of enabling or facilitating—

(a) the introduction of a statutory scheme or of a limit under section 262, or

(b) the determination of the provision to be made in a proposed statutory scheme.

F1072(2) . . . . . .

(3) Where the Secretary of State is preparing to make or vary a statutory scheme, he may make any provision he considers necessary or expedient for transitional or transitory purposes which could be made by such a scheme.

Textual Amendments

F1072 S. 264(2) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(6)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Commencement Information

I4 S. 264 in force at 3.4.2007 in so far as not already in force immediately after 1999 c. 8, s. 36 comes into force by S.I. 2007/1179, **art. 2(b)**

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[F1073 264A Provision of information about health service products

(1) References in this section to a UK producer are to a person who manufactures, distributes or supplies any UK health service products.

(2) Regulations may require any UK producer to—

(a) record and keep information which the Secretary of State may require for the purpose specified in subsection (3), and

(b) provide that information to the Secretary of State,

(subject to subsection (9)).

(3) The purpose is that of enabling or facilitating any of the following—

(a) the determination of the payments to be made to any persons who provide primary medical services under Part 4;

(b) the determination of the remuneration to be paid to any persons who provide pharmaceutical services under Part 7;

(c) the consideration by the Secretary of State of whether—

(i) adequate supplies of English health service products are available, and

(ii) the terms on which those products are available represent value for money;

(d) the determination of the payments to be made to any persons who provide primary medical services under Part 4 of the National Health Service (Wales) Act 2006;

(e) the determination of the remuneration to be paid to any persons who provide pharmaceutical services under Part 7 of that Act;

(f) the consideration by the Welsh Ministers of whether—

(i) adequate supplies of Welsh health service products are available, and

(ii) the terms on which those products are available represent value for money;

(g) the determination of the payments to be made to any persons who provide primary medical services under section 2C(1) of the National Health Service (Scotland) Act 1978 ("the 1978 Act");

(h) the determination of the remuneration to be paid to any persons who provide pharmaceutical care services under section 2CA(1) of the 1978 Act;

(i) the consideration by the Scottish Ministers of whether—

(i) adequate supplies of Scottish health service products are available, and

(ii) the terms on which those products are available represent value for money;

(j) the determination of the remuneration to be paid to any persons who provide primary medical services or pharmaceutical services under Part 2 or 6 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));

(k) the consideration by a Northern Ireland department of whether—

(i) adequate supplies of Northern Ireland health service products are available, and

(ii) the terms on which those products are available represent value for money;

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(l) the exercise by the Secretary of State of any powers under sections 260 to 264 and 265;

(m) the operation of a voluntary scheme.

(4) The information which the Secretary of State may require from a UK producer by virtue of this section includes the following—

(a) the price charged or paid by the producer for UK health service products;

(b) the price charged or paid by the producer for delivery or other services in connection with the manufacturing, distribution or supply of UK health service products;

(c) the discounts or rebates or other payments given or received by the producer in connection with the manufacturing, distribution or supply of UK health service products;

(d) the revenue or profits accrued to the producer in connection with the manufacturing, distribution or supply of UK health service products (including, in relation to profits, the costs incurred by the producer in connection with the manufacturing, distribution or supply of the products);

(e) such information about medicinal products, other medical supplies or other related products as is necessary to verify whether they are UK health service products and, if so, which of the following they are—

(i) English health service products;

(ii) Welsh health service products;

(iii) Scottish health service products;

(iv) Northern Ireland health service products.

(5) Regulations under this section must require the Secretary of State to give a UK producer an information notice if information is required in respect of the costs incurred by the producer in connection with the manufacturing, distribution or supply of a particular UK health service product (other than costs which relate to any transaction between the producer and a UK producer for that product).

(6) An information notice is a notice stating—

(a) the period in relation to or for which, or intervals at which, information is required to be provided,

(b) the form and manner in which information is required to be provided,

(c) the time at which or period within which information is required to be provided, and

(d) that a right of appeal is conferred by virtue of section 265(5A).

(7) Regulations under this section may require information which does not fall within subsection (5) to be provided—

(a) in relation to or for a prescribed period or at prescribed intervals,

(b) in a prescribed form and manner, and

(c) at a prescribed time or within a prescribed period.

(8) The provision of information by virtue of this section does not breach—

(a) any obligation of confidence owed by the person providing it, or

(b) any other restriction on the provision of information (however imposed).

(9) Regulations under this section may not do any of the following—

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(a) require any person who provides primary medical services under Part 4 of the National Health Service (Wales) Act 2006, or any person who provides pharmaceutical services under Part 7 of that Act, to record, keep or provide information relating to any Welsh health service products which are supplied by the person in providing the services in question;

(b) require any person who provides primary medical services under section 2C(1) of the 1978 Act, or any person who provides pharmaceutical care services under section 2CA(1) of that Act, to record, keep or provide information relating to any Scottish health service products which are supplied by the person in providing the services in question;

(c) require any person who provides primary medical services or pharmaceutical services under Part 2 or 6 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) to record, keep or provide information relating to Northern Ireland health service products which are supplied by the person in providing the services in question.

(10) "English health service products" means any medicinal products used to any extent for the purposes of the health service continued under section 1(1) and any other medical supplies, or other related products, required for the purposes of that health service.

(11) "Medical supplies" is to be read in accordance with section 260(5).

(12) "Northern Ireland health service products" means any medicinal products used to any extent for the purposes of health care provided by virtue of the Health and Social Care (Reform) Act (Northern Ireland) 2009 and any other medical supplies, or other related products, required for the purposes of health care provided by virtue of that Act.

(13) "Scottish health service products" means any medicinal products used to any extent for the purposes of the health service within the meaning of the 1978 Act and any other medical supplies, or other related products, required for the purposes of that health service.

(14) "UK health service products" means any English health service products, Welsh health service products, Scottish health service products or Northern Ireland health service products.

(15) "Welsh health service products" means any medicinal products used to any extent for the purposes of the health service continued under section 1(1) of the National Health Service (Wales) Act 2006 and any other medical supplies, or other related products, required for the purposes of that health service.

(16) Until the coming into force of the repeal of section 27 of the 1978 Act by schedule 3 to the Smoking, Health and Social Care (Scotland) Act 2005 the references in subsections (3)(h) and (9)(b) to pharmaceutical care services under section 2CA(1) of the 1978 Act are to be read as references to pharmaceutical services under section 27(1) of that Act.

Textual Amendments

F1073 Ss. 264A-264C inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 8**, 12(3); S.I. 2017/809, reg. 2(g)

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264B Disclosure of information

(1) Information provided by virtue of section 264A may be disclosed by the Secretary of State to any of the following persons—

(a) the Board;

(b) any Special Health Authority;

(c) the Health and Social Care Information Centre;

(d) any government department;

(e) the Welsh Ministers;

(f) the Scottish Ministers;

(g) the Common Services Agency for the Scottish Health Service constituted under section 10 of the 1978 Act;

(h) a Northern Ireland department;

(i) the Regional Business Services Organisation established under section 14 of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(j) any person who provides services to any person falling within any of paragraphs (a) to (i);

(k) any prescribed body appearing to the Secretary of State to represent UK producers;

(l) such of the following as may be prescribed—

(i) an NHS foundation trust;

(ii) any health service body within the meaning of section 9(4) (not falling within any of paragraphs (a) to (k) above).

(2) A person to whom any confidential or commercially sensitive information is disclosed under subsection (1) may not—

(a) use the information for any purpose other than the purpose specified in relation to that person in subsection (3), or

(b) disclose the information to another person (subject to subsection (4)).

(3) For the purposes of subsection (2)—

(a) in relation to a person falling within subsection (1)(a) to (c), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(a) to (c), (l) or (m);

(b) in relation to a person falling within subsection (1)(d), the purpose is that of—

(i) exercising functions connected with any of the matters specified in section 264A(3)(a) to (c), (l) or (m), or

(ii) preventing, detecting or investigating any unlawful activities;

(c) in relation to a person falling within subsection (1)(e), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(d) to (f), (l) or (m);

(d) in relation to a person falling within subsection (1)(f) or (g), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(g) to (i), (l) or (m);

(e) in relation to a person falling within subsection (1)(h) or (i), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(j) to (m);

(f) in relation to a person falling within subsection (1)(j), the purpose is that of providing services in connection with any purpose specified in relation to the

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person for whom the services are provided in any of paragraphs (a) to (e) above;

(g) in relation to a person falling within subsection (1)(k) or (l), the purpose is any prescribed purpose connected with any of the matters specified in section 264A(3).

(4) The Welsh Ministers may disclose any confidential or commercially sensitive information disclosed to them under subsection (1) to any of the following persons—

(a) a Local Health Board or other person appointed under section 88(3)(b) of the National Health Service (Wales) Act 2006 to exercise the functions of a determining authority under Part 7 of that Act;

(b) a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;

(c) any person who provides services to the Welsh Ministers or to any person falling within paragraph (a) or (b).

(5) A person to whom any confidential or commercially sensitive information is disclosed under subsection (4) may not—

(a) use the information for any purpose other than the purpose of exercising functions connected with any of the matters specified in section 264A(3)(d) to (f), (l) or (m), or

(b) disclose the information to another person.

Textual Amendments

F1073 Ss. 264A-264C inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 8**, 12(3); S.I. 2017/809, reg. 2(g)

264C Sections 264A and 264B: supplementary

(1) Before making regulations under section 264A or 264B the Secretary of State must consult any body which appears to the Secretary of State appropriate to represent UK producers.

(2) Nothing in section 264A or 264B requires information to be provided, or authorises information to be disclosed or used, in contravention of **[**F1074the data protection legislation**]**.

(3) Nothing in section 264A or 264B affects any duties, obligations or powers to require or authorise information to be provided, disclosed or used which exist apart from that section.

F1075 **[** In this section, "the data protection legislation" has the same meaning as in the Data (4) Protection Act 2018 (see section 3 of that Act).**]]**

Textual Amendments

F1073 Ss. 264A-264C inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 8**, 12(3); S.I. 2017/809, reg. 2(g)

F1074 Words in s. 264C(2) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 115(2)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

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F1075 S. 264C(4) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 115(3)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

265 Enforcement

(1) Regulations may provide for a person who contravenes any provision of **[**F1076orders, regulations or directions under sections 260**]** to **[**F1077264A**]** to be liable to pay a penalty to the Secretary of State.

(2) The penalty may be—

(a) a single penalty not exceeding £100,000, or

(b) a daily penalty not exceeding £10,000 for every day on which the contravention occurs or continues.

(3) Regulations may provide for any amount required to be paid to the Secretary of State by virtue of section 261(8)(b), 262(1)(b) or 263(4) or (6)(b) to be increased by an amount not exceeding 50 per cent.

(4) Regulations may provide for any amount payable to the Secretary of State by virtue of provision made under section 261(8)(b) **[**F1078or (9)**]**, 262(1)(b) or 263(4), (5) **[**F1079, (5A)**]** or (6)(b) (including such an amount as increased under subsection (3)) to carry interest at a rate specified or referred to in the regulations.

(5) Provision may be made by regulations for

[F1080(a)**]** conferring on manufacturers and suppliers a right of appeal against enforcement decisions taken in respect of them in pursuance of sections **[**F1081260**]** to 264 and this section **[**F1082, and

(b) conferring on UK producers a right of appeal against enforcement decisions taken in respect of them in pursuance of section 264A and this section (other than enforcement decisions falling within subsection (5A)).**]**

[F1083(5A) Provision must be made by regulations for conferring on UK producers a right of appeal against enforcement decisions taken in respect of them in pursuance of section 264A and this section if the enforcement decisions relate to information notices given by virtue of section 264A(5).**]**

(6) The provision which may be made by virtue of subsection (5) includes any provision which may be made by model provisions with respect to appeals under section 6 of the Deregulation and Contracting Out Act 1994 (c. 40), reading—

(a) the references in subsections (4) and (5) of that section to enforcement action as references to action taken to implement an enforcement decision,

(b) in subsection (5) of that section, the references to interested persons as references to any persons and the reference to any decision to take enforcement action as a reference to any enforcement decision.

(7) In subsections (5) and (6), "enforcement decision" means a decision of the Secretary of State or any other person to—

(a) require a specific manufacturer or supplier **[**F1084, or other person who is a UK producer,**]** to provide information to him,

(b) limit, in respect of any specific manufacturer or supplier, any price or profit,

(c) refuse to give his approval to a price increase made by a specific manufacturer or supplier,

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(d) require a specific manufacturer or supplier **[**F1085, or other person who is a UK producer,**]** to pay any amount (including an amount by way of penalty) to him,

and in this subsection "specific" means specified in the decision.

(8) A requirement or prohibition, or a limit, under sections **[**F1086260**]** to **[**F1087264A**]**, may only be enforced under this section and may not be relied on in any proceedings other than proceedings under this section.

[F1088(8A) Subsection (8) does not apply to any action by the Secretary of State to recover as a debt any amount required to be paid to the Secretary of State by virtue of any of sections 261 to 263 or this section.**]**

[F1089(9) Before making any regulations under this section the Secretary of State must consult the industry body and any other body which appears to the Secretary of State appropriate to represent UK producers.**]**

(10) The Secretary of State may by order increase (or further increase) either of the sums mentioned in subsection (2).

[F1090(11) In this section "UK producer" is to be read in accordance with section 264A.**]**

Textual Amendments

F1076 Words in s. 265(1) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(5)(a)**, 12(3); S.I. 2017/809, reg. 2(f)

F1077 Word in s. 265(1) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(8)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1078 Words in s. 265(4) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 6(3)(a)**, 12(3); S.I. 2017/809, reg. 2(e)

F1079 Word in s. 265(4) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 6(3)(b)**, 12(3); S.I. 2017/809, reg. 2(e)

F1080 S. 265(5)(a): words in s. 265(5) renumbered as s. 265(5)(a) (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(9)(a)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1081 Word in s. 265(5)(a) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(5)(b)**, 12(3); S.I. 2017/809, reg. 2(f)

F1082 S. 265(5)(b) and preceding word inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(9)(b)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1083 S. 265(5A) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(10)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1084 Words in s. 265(7)(a) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(11)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1085 Words in s. 265(7)(d) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(11)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1086 Word in s. 265(8) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(5)(c)**, 12(3); S.I. 2017/809, reg. 2(f)

F1087 Word in s. 265(8) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(12)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1088 S. 265(8A) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 6(4)**, 12(3); S.I. 2017/809, reg. 2(e)

F1089 S. 265(9) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(13)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1090 S. 265(11) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(14)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

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Commencement Information

I5 S. 265(10) in force at 7.8.2017 immediately after 1999 c. 8, s. 37(10) comes into force by S.I. 2017/810, **art. 2(c)**

266 Controls: supplementary

(1) Any power conferred on the Secretary of State by sections 261(6) to **[**F1091(9)**]** and 262 to 264 may be exercised by—

(a) making regulations, or

(b) giving directions to a specific manufacturer or supplier.

(2) Regulations under subsection (1)(a) may confer power for the Secretary of State to give directions to a specific manufacturer or supplier; and in this subsection "specific" means specified in the direction concerned.

(3) The powers to refuse approval under section 261(8)(a) or 263(6)(a) or to impose a limit under section 262(1)(a) or 263(1)**[**F1092(a) or (b)**]** are exercisable only with a view to limiting by reference to the prices or profits which would be reasonable in all the circumstances—

(a) the prices which may be charged for, or

(b) the profits which may accrue to any manufacturer or supplier in connection with,

the manufacture or supply for the purposes of the health service of health service medicines.

(4) In so exercising those powers (in the case of sections 262(1)(a) and 263(1)**[**F1093(a) and (b)**]** and (6)(a)) the Secretary of State and any other person must bear in mind, in particular—

(a) the need for medicinal products to be available for the health service on reasonable terms, and

(b) the costs of research and development.

[F1094(4A) The power under section 263(1)(c) is exercisable only with a view to requiring payments to be made which would be reasonable in all the circumstances, bearing in mind in particular—

(a) the need for medicinal products to be available for the health service on reasonable terms, and

(b) the costs of research and development.**]**

(5) The powers conferred by sections 261 to 264 do not affect any other powers of the Secretary of State to control prices or profits.

(6) In this section and sections **[**F1095260**]** to 265—

"health service" includes the health services within the meaning of the National Health Service (Scotland) Act 1978 (c. 29) and the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

"health service medicine" means a medicinal product used to any extent for the purposes of the health service,

"the industry body" means any body which appears to the Secretary of State appropriate to represent manufacturers and suppliers,

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"manufacture" includes assemble and "manufacturer" means any person who manufactures health service medicines,

"medicinal product" has the meaning given by section 130 of the Medicines Act 1968 (c. 67),

"supplier" means any person who supplies health service medicines,

and contravention of a provision includes a failure to comply with it, and supplying medicines includes selling them.

Textual Amendments

F1091 Word in s. 266(1) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 6(6)**, 12(3); S.I. 2017/809, reg. 2(e)

F1092 Words in s. 266(3) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 6(7)**, 12(3); S.I. 2017/809, reg. 2(e)

F1093 Words in s. 266(4) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 6(8)**, 12(3); S.I. 2017/809, reg. 2(e)

F1094 S. 266(4A) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 6(9)**, 12(3); S.I. 2017/809, reg. 2(e)

F1095 Word in s. 266(6) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(6)**, 12(3); S.I. 2017/809, reg. 2(f)

Commencement Information

I6 S. 266 in force at 3.4.2007 for specified purposes immediately after 1999 c. 8, s. 38 comes into force by S.I. 2007/1179, **art. 2(c)**

I7 S. 266 in force at 7.8.2017 in so far as not already in force immediately after 1999 c. 8, s. 38 comes into force by S.I. 2017/810, **art. 2(d)**

Use of facilities in private practice

267 Permission for use of facilities in private practice

(1) A person to whom this section applies who wishes to use any relevant health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients may apply in writing to the Secretary of State for permission under this section.

(2) Any application for permission under this section must specify—

(a) which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients, and

(b) which of the kinds of services mentioned in subsection (1) he wishes the permission to cover.

(3) On receiving an application under this section the Secretary of State—

(a) must consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any services provided under this Act, and

(b) must grant the permission applied for unless in his opinion anything for which permission is sought would so interfere.

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(4) Any grant of permission under this section is on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine.

(5) The persons to whom this section applies are—

(a) medical practitioners, registered pharmacists or other persons who provide pharmaceutical services under Chapter 1 of Part 7,

(b) chiropodists who provide services under this Act at premises where services are provided under that Chapter,

(c) persons providing primary medical services, primary dental services or primary ophthalmic services under a general medical services contract, a general dental services contract or a general ophthalmic services contract, or in accordance with section 92 arrangements or section 107 arrangements.

(6) "Relevant health service accommodation or facilities", in relation to a person to whom this section applies, means—

(a) any accommodation or facilities available at premises provided by the Secretary of State by virtue of this Act, being accommodation or facilities which that person is authorised to use for purposes of this Act, or

(b) in the case of a person to whom this section applies by virtue of subsection (5)(b), accommodation or facilities which that person is authorised to use for purposes of this Act at premises where services are provided under Chapter 1 of Part 7.

F1096...

Textual Amendments

F1096 S. 268 and cross-heading omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 133**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1096 268 Persons displaced by health service development

. . . . . .

Registration of information, etc

269 Special notices of births and deaths

(1) The requirements of this section with respect to the notification of births and deaths are in addition to, and not in substitution for, the requirements of any Act relating to the registration of births and deaths.

[F1097(2) Each registrar of births and deaths must furnish to such relevant body or bodies as may be determined in accordance with regulations the particulars of such births or deaths entered in a register of births or deaths kept for the registrar's sub-district as may be prescribed.**]**

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(3) Regulations may provide as to the manner in which and the times at which particulars must be furnished under subsection (2).

(4) In the case of each child born—

(a) the child's father, if at the time of the birth he is residing on the premises where the birth takes place, and

(b) any person in attendance upon the mother at the time of, or within six hours after, the birth,

must give notice of the birth to **[**F1098such relevant body or bodies as may be determined in accordance with regulations**]**.

(5) Subsection (4) applies to any child which is born after the expiry of the twenty-fourth week of pregnancy whether alive or dead.

(6) Notice under subsection (4) **[**F1099to a relevant body**]** must be given either—

(a) by posting within 36 hours after the birth a prepaid letter or postcard addressed to **[**F1100the body**]** at its offices and containing the required information, or

(b) by delivering within that period at the offices of **[**F1100the body**]** a written notice containing the required information.

(7) **[**F1101A relevant body to whom notice is required to be given under subsection (4)**]** must, upon application to it, supply without charge to **[**F1102such descriptions of medical practitioners or midwives as may be prescribed**]** prepaid addressed envelopes together with the forms of notice.

(8) Any person who fails to give notice of a birth in accordance with subsection (4) is liable on summary conviction to a fine not exceeding level 1 on the standard scale, unless he satisfies the court that he believed, and had reasonable grounds for believing, that notice had been duly given by some other person.

(9) Proceedings in respect of an offence under subsection (8) must not, without the Attorney-General's written consent, be taken by any person other than a party aggrieved or **[**F1103the relevant body or bodies to whom the failure relates**]**.

(10) A registrar of births and deaths must, for the purpose of obtaining information concerning births which have occurred in his sub-district, have access at all reasonable times to—

(a) notices of births received by **[**F1104a relevant body**]** under this section, or

(b) any book in which those notices may be recorded.

[F1105(11) For the purposes of this section, the following are relevant bodies—

(a) the National Health Service Commissioning Board,

(b) clinical commissioning groups,

(c) local authorities.

(12) Information received by a local authority by virtue of this section may be used by it only for the purposes of functions exercisable by it in relation to the health service.

(13) In this section, "local authority" has the same meaning as in section 2B.**]**

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Textual Amendments

F1097 S. 269(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1098 Words in s. 269(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1099 Words in s. 269(6) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(4)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1100 Words in s. 269(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(4)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1101 Words in s. 269(7) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(5)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1102 Words in s. 269(7) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(5)(b)**, 306(4); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

F1103 Words in s. 269(9) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(6)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1104 Words in s. 269(10)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(7)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1105 S. 269(11)-(13) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 284(8)**, 306(4) (with s. 284(9)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

270 Provision of information by Registrar General

(1) The Registrar General may provide to **[**F1106any of the following persons**]** any information to which this section applies**[**F1107—

(a) the Secretary of State,

(b) the Board,

(c) a clinical commissioning group,

(d) a local authority,

(e) the National Institute for Health and Care Excellence,

(f) the Health and Social Care Information Centre,

(g) a Special Health Authority which has functions that are exercisable in relation to England,

(h) the Care Quality Commission, and

(i) such other persons as the Secretary of State may specify in a direction.**]**

(2) Any information provided under subsection (1) must be provided in such form as appears to the Registrar General appropriate for the purpose of assisting **[**F1108the person to whom the information is provided**]** in the performance of **[**F1109functions exercisable by the person**]** in relation to the health service.

(3) This section applies to any information—

(a) entered in any register kept under the Births and Deaths Registration Act 1953 (c. 20),

(b) entered in the Adopted Children Register maintained by the Registrar General under the Adoption and Children Act 2002 (c. 38), or

(c) which is kept by the Registrar General under any other enactment and relates to any birth or death.

(4) "Enactment" includes an enactment contained in subordinate legislation.

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[F1110(5) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F1106 Words in s. 270(1) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 285(2)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1107 S. 270(1)(a)-(i) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 285(2)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1108 Words in s. 270(2) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 285(3)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1109 Words in s. 270(2) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 285(3)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1110 S. 270(5) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 285(4)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

PART 14

SUPPLEMENTARY

271 Territorial limit of exercise of functions

(1) The functions of a Minister of the Crown under this Act are exercisable only in relation to England.

(2) "Minister of the Crown" includes the Treasury.

(3) Subsection (1) does not apply in relation to—

(a) section 8(1) (directions to **[**F1111certain**]** health service bodies) to such extent as it allows directions to be given in respect of matters concerning xenotransplantation, surrogacy agreements, embryology or human genetics,

(b) Chapter 5 of **[**F1112Part 2**]** (NHS foundation trusts),

[F1113(c) section 169(3) (power of the Secretary of State to direct that the First-tier Tribunal exercise functions in relation to appeals),**]**

(d) section 235 (superannuation of officers of certain hospitals),

[F1114(da) section 247B (co-operation in relation to public health functions),**]**

F1115(e) . . . . . .

F1116(f) . . . . . .

F1117(fa) . . . . . .

(g) **[**F1118section**]** 251 (control of patient information) F1119... ,

(h) Schedule 21 (prohibition as to the sale of medical practices),

(i) section 260 F1120... (control of maximum price of medical supplies other than health service medicines) and sections 261 to 266 (control of prices of medicines and profits),

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and section 272(7) and (8), to the extent that they apply in relation to a provision mentioned in any of paragraphs (a) to (i).

Textual Amendments

F1111 Word in s. 271(3)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 134**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1112 Words in s. 271(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 172(12)**, 306(4); S.I. 2013/671, art. 2(3)

F1113 S. 271(3)(c) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 125** (with Sch. 5)

F1114 S. 271(3)(da) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 60(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1115 S. 271(3)(e) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F1116 S. 271(3)(f) repealed (30.6.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 4(b)(c)

F1117 S. 271(3)(fa) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 20 para. 10(1)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1118 Word in s. 271(3)(g) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 280(5)(b)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1119 Words in s. 271(3)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 280(5)(b)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1120 Words in s. 271(3)(i) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(15)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

[F1121 271A Services to be treated as services of the Crown for certain purposes

(1) Services to which this section applies are to be treated as services of the Crown for the purposes of—

(a) Schedule 1 to the Registered Designs Act 1949 (provisions as to the use of registered designs for the services of the Crown etc.), and

(b) sections 55 to 59 of the Patents Act 1977 (use of patented inventions for the services of the Crown).

(2) This section applies to services provided in pursuance of—

(a) the functions of the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1, or

(b) the public health functions of a local authority.]

Textual Amendments

F1121 S. 271A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 135**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

272 Orders, regulations, rules and directions

(1) This section does not apply to—

(a) Chapter 5 of Part 2 (as to which, see section 64), and

(b) Part 10 (as to which, see section 209).

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(2) Subject to subsection (3), any power under this Act to make an order, rules or regulations is exercisable by statutory instrument.

(3) Subsection (2) does not apply to an order under—

(a) section 66(2),

F1122(b) . . . . . .

(c) section 211(4),

F1123(d) . . . . . .

(e) paragraph 9, 27 or 29 of Schedule 4, or

(f) paragraph 2 of Schedule 18.

(4) Subject to subsections (5)**[**F1124, (6) and (6A)**]** , a statutory instrument made by virtue of this Act is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Subsection (4) does not apply to a statutory instrument containing F1125... an order under—

[F1126(za) section 14A(1),**]**

(a) section 25,

F1127**[**F1128(aa) . . . . . .

(ab) section 65B(1), **[**F1129 65D(2),**]**F1130... 65J(2), **[**F1131 65KC(3),**][**F1132 65L(2) or (7), 65LA(3)**]** , or 65V(2),**]**

(b) Schedule 4, or

(c) paragraph 1(1) of Schedule 5.

(6) A statutory instrument containing—

[F1133(zza) regulations under section 3(1D),**]**

[F1134(zzb) regulations under section 6C(1) or (2),**]**

[F1135(zzc) regulations under section 6E, except where they do not include provision by virtue of subsection (7)(c) of that section,**]**

[F1136(zzd) regulations under section 7(1C),**]**

[F1137(za) an order under section 12C(8) or (10),**]**

[F1138(zb) regulations under section 13Z1,**]**

[F1139(zc) an order under section 28 which varies such an order as mentioned in section 28A(5),**]**

[F1140(zd) regulations under section 186A(4),**]**

(a) regulations under section 251, except where they are made by virtue of subsection (5)(b) of that section,

[F1141(aa) the first order under section 260,**]**

(b) an order under section 265(10), or

(c) an order under section 193(4),

may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

[F1142(6ZA) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under Chapter 5A as if the regulator were a Minister of the Crown.**]**

[F1143(6A) A statutory instrument containing an order under section F1144... 65B(1), **[**F1145 65D(2),**]**F1146... 65J(2), **[**F1147 65KC(3),**]** 65L(2) or **[**F1148(7)**][**F1149, 65LA(3)**]** or 65V(2) must be laid before Parliament after it is made.**]**

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(7) Any power under this Act to make orders, rules, regulations or schemes, and any power to give directions—

(a) may be exercised either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,

(b) may be exercised so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition, and

(c) may, in particular, except where the power is a power to make rules, make different provision for different areas.

(8) Any such power includes power—

(a) to make such incidental, supplementary, consequential, saving or transitional provision (including, in the case of a power to make an order or regulations, provision amending, repealing or revoking enactments) as the person or body exercising the power considers to be expedient, and

(b) to provide for a person to exercise a discretion in dealing with any matter.

F1150(9) . . . . . .

Textual Amendments

F1122 S. 272(3)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 136(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1123 S. 272(3)(d) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 136(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1124 Words in s. 272(4) substituted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(8)(a)**, 40(1); S.I. 2010/30, art. 3(b)

F1125 Words in s. 272(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 136(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1126 S. 272(5)(za) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 136(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1127 S. 272(5)(aa) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(6)(a)**, 306(4); S.I. 2012/2657, art. 2(2)

F1128 S. 272(5)(aa)(ab) inserted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(8)(b)**, 40(1); S.I. 2010/30, art. 3(b)

F1129 Word in s. 272(5)(ab) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(6)(a)**, 306(4); S.I. 2012/2657, art. 2(2)

F1130 Word in s. 272(5)(ab) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 178(6)(b)**, 306(4); S.I. 2012/2657, art. 2(2)

F1131 Word in s. 272(5)(ab) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(6)(c)**, 306(4); S.I. 2012/2657, art. 2(2)

F1132 Words in s. 272(5)(ab) substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(6)(d)**, 306(4); S.I. 2012/2657, art. 2(2)

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F1133 S. 272(6)(zza) inserted (27.3.2012 for specified purposes, 1.2.2013 for further purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 13(8)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1134 S. 272(6)(zzb) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 18(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1135 S. 272(6)(zzc) inserted (27.3.2012 for specified purposes, 1.2.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 20(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4)

F1136 S. 272(6)(zzd) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(5)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1137 S. 272(6)(za) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 10**; S.I. 2010/30, art. 2(b)

F1138 S. 272(6)(zb) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 23(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1139 S. 272(6)(zc) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 48(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1140 S. 272(6)(zd) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 50(2)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1141 S. 272(6)(aa) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(7)**, 12(3); S.I. 2017/809, reg. 2(f)

F1142 S. 272(6ZA) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(7)**, 306(4); S.I. 2012/2657, art. 2(2)

F1143 S. 272(6A) inserted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(8)(c)**, 40(1); S.I. 2010/30, art. 3(b)

F1144 Words in s. 272(6A) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(6)(b)**, 306(4); S.I. 2012/2657, art. 2(2)

F1145 Word in s. 272(6A) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(8)(a)**, 306(4); S.I. 2012/2657, art. 2(2)

F1146 Word in s. 272(6A) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 178(8)(b)**, 306(4); S.I. 2012/2657, art. 2(2)

F1147 Word in s. 272(6A) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(8)(c)**, 306(4); S.I. 2012/2657, art. 2(2)

F1148 Word in s. 272(6A) substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(8)(e)**, 306(4); S.I. 2012/2657, art. 2(2)

F1149 Word in s. 272(6A) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(8)(d)**, 306(4); S.I. 2012/2657, art. 2(2)

F1150 S. 272(9) omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(16)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Modifications etc. (not altering text)

C90 S. 272 applied (1.3.2007) by National Health Service (Wales) Act 2006 (c. 42), ss. 208(1), **209(4)** (with s. 19(3))

C91 S. 272(7)(8) applied by 2006 c. 28, **s. 70(3)** (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act (c. 43), Sch. 1 para. 285 (with Sch. 3 Pt. 1))

C92 S. 272(7) applied by 2007 c. 18, s. 42(5B) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 287(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

273 Further provision about orders and directions under this Act

(1) Where under or by virtue of any provision of this Act—

(a) an order may be made, or

(b) directions may be given,

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that provision includes power to vary or revoke the order or directions by subsequent order or by subsequent directions.

(2) Subsection (1) does not affect section 14(b) of the Interpretation Act 1978 (c. 30).

(3) A direction under this Act **[**F1151by the Board**]** must be given by an instrument in writing.

(4) A direction under this Act by the Secretary of State must be given—

(a) (subject to paragraphs (b) and (c)) by an instrument in writing,

(b) in the case of a direction under—

[F1152(zi) section 7 about a function of a person other than the Secretary of State,**]**

(i) section 7 about a function **[**F1153of the Secretary of State**]** under section 4, 197 or 198, or

(ii) section **[**F1154169(3) or**]** 199(2),

by regulations,

(c) in the case of—

(i) any other direction under section 7, or

(ii) a direction under section 8, **[**F1155 13Z1,**]**F1156... 87, 94(4), 103, 109(4) **[**F1157, 120 or 253**]**,

by regulations or an instrument in writing.

(5) Subsection (4) does not apply to a direction under section 88 (as to which, see that section).

Textual Amendments

F1151 Words in s. 273(3) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 137(2)**; S.I. 2012/1831, art. 2(2) (with art. 12)

F1152 S. 273(4)(b)(zi) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(6)(a)**, 306(1)(d)(4) (with Sch. 6 para. 5(3)); S.I. 2012/1831, art. 2(2) (with art. 12)

F1153 Words in s. 273(4)(b)(i) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(6)(b)**, 306(1)(d)(4) (with Sch. 6 para. 5(3)); S.I. 2012/1831, art. 2(2) (with art. 12)

F1154 Words in s. 273(4)(b)(ii) inserted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 126(a)** (with Sch. 5)

F1155 Word in s. 273(4)(c)(ii) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 137(3)(a)**; S.I. 2012/1831, art. 2(2) (with art. 12)

F1156 Word in s. 273(4)(c)(ii) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 137(3)(b)**; S.I. 2012/1831, art. 2(2) (with art. 12)

F1157 Words in s. 273(4)(c)(ii) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 47(7)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C93 S. 273 applied (1.3.2007) by National Health Service (Wales) Act 2006 (c. 42), ss. 208(1), **209(4)** (with s. 19(3))

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C94 S. 273(1) applied by 2007 c. 18, s. 42(5B) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 287(3)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

274 Supplementary regulatory powers

Regulations may provide for—

(a) prescribing the forms and manner of service of notices and other documents,

(b) prescribing the manner in which documents may be executed or proved,

(c) exempting judges and justices of the peace from disqualification by their liability to rates.

275 Interpretation

(1) In this Act (except where the context otherwise requires)—

[F1158"the Board" means the National Health Service Commissioning Board,**]**

[F1158"clinical commissioning group" means a body established under section 14D of this Act,**]**

[F1159"combined authority" means a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009,**]**

"dental practitioner" means a person registered in the dentists register under the Dentists Act 1984 (c. 24),

"facilities" includes the provision of (or the use of) premises, goods, materials, vehicles, plant or apparatus,

F1160 . . . . . .

"financial year" means a period of 12 months ending with 31st March in any year,

"functions" includes powers and duties,

"goods" include accommodation,

"the health service" means the health service continued under section 1(1) and under section 1(1) of the National Health Service (Wales) Act 2006 (c. 42),

"health service hospital" means a hospital vested in the Secretary of State for the purposes of his functions under this Act or vested in F1161... an NHS trust or an NHS foundation trust,

"hospital" means—

(a) any institution for the reception and treatment of persons suffering from illness,

(b) any maternity home, and

(c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation,

and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution, and "hospital accommodation" must be construed accordingly,

"illness" includes **[**F1162any disorder or disability of the mind**]** and any injury or disability requiring medical or dental treatment or nursing,

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"local authority" means a county council, a county borough council, a district council, a London borough council, and the Common Council of the City of London,

F1163 . . . . . .

"Local Health Board" means a body established under section 11 of the National Health Service (Wales) Act 2006 (c. 42),

"local pharmaceutical services" means such services as are prescribed under section 134(7) or paragraph 1(7) of Schedule 12,

"local social services authority" means the council of a non-metropolitan county, of a county borough or of a metropolitan district or London borough, or the Common Council of the City of London,

"medical" includes surgical,

"medical practitioner" means a registered medical practitioner within the meaning of Schedule 1 to the Interpretation Act 1978 (c. 30),

"medicine" includes such chemical re-agents as are included in a list approved by the Secretary of State for the purposes of section 126,

"modifications" includes additions, omissions and amendments,

[F1164"NHS body" means—

(a) the Board,

(b) a clinical commissioning group,

(c) a Special Health Authority,

(d) an NHS trust,

(e) an NHS foundation trust, and

(f) a Local Health Board.**]**

"NHS trust" includes an NHS trust established under the National Health Service (Wales) Act 2006 F1165...

[F1166"NICE" means the National Institute for Health and Care Excellence;**]**

"officer" includes servant,

"optometrist" means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 (c. 44) **[**F1167, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,**]** or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist,

"patient" includes a woman who is pregnant or breast-feeding or who has recently given birth,

"prescribed" means prescribed by regulations made by the Secretary of State,

"property" includes rights,

[F1168"registered pharmacist" means a person registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 of the Pharmacy Order 2010,**]**

[F1169"Regulation (EC) No. 883/2004" means Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems,**]**

"regulations" means regulations made by the Secretary of State,

[F1170"the regulator" means Monitor,**]**

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"Special Health Authority" includes a Special Health Authority established under the National Health Service (Wales) Act 2006,

"university" includes a university college,

"voluntary organisation" means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

[F1171"Welsh new towns residuary body" means the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a) (i) to (iii) of the New Towns Act 1981.**]**

(2) In this Act (except where the context otherwise requires) any reference to a body established under this Act or the National Health Service (Wales) Act 2006 (c. 42) includes a reference to a body continued in existence by virtue of this Act.

(3) So far as is necessary or expedient in consequence of a direction under section 7 F1172... providing for the exercise by a F1173... F1174... Special Health Authority of a function exercisable by another person or body, any reference in any enactment, instrument or other document to that other person or body must be read as a reference to the F1173... F1174... Special Health Authority.

(4) Any reference in this Act to the purposes of a hospital is a reference to its general purposes and to any specific purpose.

[F1175(5) In each of the following, the reference to section 3 includes a reference to section 117 of the Mental Health Act 1983 (after-care)—

(a) in section 223K(8), paragraph (a) of the definition of "relevant services",

(b) in section 244(3), paragraph (a)(i) of the definition of "relevant health service provider",

(c) in section 252A(10), the definition of "service arrangements",

(d) section 253(1A)(d)(ii).**]**

Textual Amendments

F1158 Words in s. 275(1) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(2)(a)**; S.I. 2012/1831, art. 2(2) (with art. 13)

F1159 Words in s. 275(1) inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 8**

F1160 Words in s. 275(1) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 127** (with Sch. 5)

F1161 Words in s. 275(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1162 Words in s. 275(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), s. 56(1), **Sch. 1 para. 24**; S.I. 2008/1900, art. 2(a) (with art. 3, Sch.)

F1163 Words in s. 275(1) repealed (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, Sch. 2 para. 60(4), **Sch. 3 Pt. 2**

F1164 Words in s. 275(1) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(2)(c)** (with Sch. 4 para. 138(4)(5)); S.I. 2012/1831, art. 2(2) (with art. 13)

F1165 Words in s. 275(1) omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 178(9)**, 306(4); S.I. 2012/2657, art. 2(2)

F1166 Words in s. 275(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F1167 Words in s. 275(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **203**

F1168 Words in s. 275(1) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), art. 1(5), **Sch. 4 para. 13(4)**; S.I. 2010/1621, art. 2(1), Sch.

F1169 Words in s. 275(1) inserted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **4**

F1170 Words in s. 275(1) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 11**; S.I. 2012/1319, art. 2(3)

F1171 Words in s. 275(1) inserted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), art. 1(2), **Sch. 1 para. 54** (with Sch. 2) (see S.I. 2008/3068, art. 2(1)(b))

F1172 Words in s. 275(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1173 Words in s. 275(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1174 Words in s. 275(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1175 S. 275(5) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 40(5)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C95 S. 275 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 4** (with Sch. 3 Pt. 1)

C96 S. 275 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 11** (with Sch. 3 Pt. 1)

C97 S. 275 modified (temp.) (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(4)**; S.I. 2012/1831, art. 2(2) (with art. 13)

C98 S. 275 modified (temp.) (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 138(5)**; S.I. 2012/1831, art. 2(2) (with art. 13)

276 Index of defined expressions

In this Act the following expressions are defined or otherwise explained by the provisions indicated—

body established under this Act	section 275(2)
[[F1176]combined authority	section 275(1)**]**
commissioner, in relation to an NHS contract	section 9(1)
contractor, in relation to a general dental services contract	section 100(4)
contractor, in relation to a general medical services contract	section 84(5)
contractor, in relation to a general ophthalmic services contract	section 117(5)
fraud case	section 151(3)
general dental services contract	section 100(2)
general medical services contract	section 84(2)

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general ophthalmic services contract **F1177**	section 117(2) **F1177**
. . .	. . .
LPS scheme	paragraph 1(2) of Schedule 12
[[F1178]NHS constitution	section 1B(2)**]**
NHS contract	section 9(1)
NHS trust order	section 25(2)
optical appliances **F1179**	section 179(5) **F1179**
. . .	. . .
pharmaceutical list	section 129(11)
pharmaceutical services **F1180**	section 126(8) **F1180**
. . .	. . .
practitioner	section 151(9)
primary dental services	section 99
primary medical services	section 83
primary ophthalmic services	section 115
provider, in relation to an NHS contract	section 9(1)
[[F1181]public health functions of the Secretary of State	section 1H(5)(a)**]**
[[F1181]public health functions of local authorities	section 1H(5)(b)**]**
purposes of a hospital	section 275(4)
the regulator	**[**[F1182]section 275(1)**]**
relevant dental service	section 176(4)
section 92 arrangements	section 92(8)
section 107 arrangements	section 107(8)
special trustees **F1183**	section 212(1) **F1183**
. . .	. . .
terms of service	section 148(7)
unsuitability case	section 151(4)

Textual Amendments

F1176 Words in s. 276 inserted (28.1.2016 for specified purposes, 28.3.2016 in so far as not already in force) by Cities and Local Government Devolution Act 2016 (c. 1), s. 25(2), **Sch. 4 para. 9**

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F1177 Words in s. 276 omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 139(2)**; S.I. 2012/1831, art. 2(2)

F1178 Words in s. 276 inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 139(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1179 Words in s. 276 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 139(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1180 S. 276 entry repealed (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), Sch. 1 para. 11, **Sch. 6**; S.I. 2010/30, art. 2(b)

F1181 Words in s. 276 inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 139(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1182 Words in s. 276 substituted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 12**; S.I. 2012/1319, art. 2(3)

F1183 Words in s. 276 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(5)**, 306(1)(d)(4)

277 Commencement

(1) Subject to this section, this Act comes into force on 1st March 2007.

(2) In this section—

"the 1977 Act" means the National Health Service Act 1977 (c. 49), and

"the 2006 Act" means the Health Act 2006 (c. 28).

(3) Subsection (4) applies to—

(a) sections 33 and 35 to 38 of the Health Act 1999 (c. 8) (see sections 261 and 263 to 266 of this Act),

(b) subsection (7) of section 45 of the Nationality, Immigration and Asylum Act 2002 (c. 41) and paragraph 2(2B) of Schedule 8 to the 1977 Act as substituted by that subsection (see paragraph 2(7) of Schedule 20 to this Act),

(c) section 21 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (see section 50 of this Act),

(d) paragraph 3 of the Schedule to the Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006 (S.I. 2006/1056) and section 41B(2) and (6)(b) of the 1977 Act as amended by that paragraph (see section 128 of this Act),

(e) sub-paragraphs (a) and (b) of paragraph 5 of that Schedule and section 4A(1) and (3) of the National Health Service and Community Care Act 1990 (c. 19) as amended by those sub-paragraphs (see section 11 of this Act),

(f) sub-paragraph (c) of paragraph 5 of that Schedule and section 4A(4) of the National Health Service and Community Care Act 1990 as added by that sub-paragraph (see section 11 of this Act),

(g) section 34 of the 2006 Act, and section 42A of the 1977 Act as inserted by that section (see section 131 of this Act),

(h) section 35 of the 2006 Act, and subsections (2B) and (2C) of section 42 of the 1977 Act as inserted by that section (see section 129 of this Act),

(i) subsection (1) of section 36 of the 2006 Act, and section 43(2) of the 1977 Act as substituted by that subsection (see section 132 of this Act),

(j) sections 37 to 41 of, and paragraphs 7 to 9, 11, 12(a), 13(2), (5) and (6), 15, 16, 17, 21(b), 22, 29, 46 and 50 of Schedule 8 to, the 2006 Act (which relate to primary ophthalmic services) and—

(i) the 1977 Act,

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(ii) section 4A of the National Health Service and Community Care Act 1990,

(iii) Schedule 1 to the Health and Social Care Act 2001 (c. 15), and

(iv) section 17(1) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

to the extent that a provision mentioned in any of sub-paragraphs (i) to (iv), as amended by any of those provisions of the 2006 Act, relates to primary ophthalmic services,

(k) subsection (2) of section 42 of the 2006 Act, and paragraph 2A(1)(b) and (ba) of Schedule 12 to the 1977 Act as substituted by that subsection (see section 180 of this Act),

(l) subsection (3) of section 42 of the 2006 Act, and paragraph 2B of Schedule 12 to the 1977 Act as inserted by that subsection (see section 181 of this Act),

(m) sections 44 to 55 of the 2006 Act, and sections 76 to 78 of that Act so far as relating to those sections (see Part 10 of this Act),

(n) section 56 of, and paragraph 24(a) of Schedule 8 to, that Act and—

(i) section 98 of the 1977 Act as substituted by section 56 of that Act, and

(ii) Schedule 12B to the 1977 Act as inserted by that section,

(see section 232 of, and Schedule 15 to, this Act), and

(o) paragraphs 14, 24(b) and 25 of Schedule 8 to the 2006 Act (which relate to the substitution of "optometrist" for "ophthalmic optician") and the 1977 Act as amended by those paragraphs.

(4) To the extent that—

(a) this Act re-enacts a provision to which this subsection applies, and

(b) the provision has not come into force before the commencement of this Act,

the re-enactment by this Act of the provision does not come into force until the provision which is re-enacted comes into force; and the re-enactment comes into force immediately after, and to the extent that, the provision which is re-enacted comes into force.

(5) Accordingly, the re-enactment by this Act of the provision does not affect any power to bring the provision into force.

278 Short title, extent and application

(1) This Act may be cited as the National Health Service Act 2006.

(2) Subject to this section, this Act extends to England and Wales only.

(3) Sections **[**F1184260**]** to 266 in Part 13 (price of medical supplies) **[**F1185, and this Part to the extent that it applies to those sections,**]** extend also to Scotland and Northern Ireland.

(4) The Secretary of State may by order provide that this Act, in its application to the Isles of Scilly, has effect with such modifications as may be specified in the order.

Textual Amendments

F1184 Word in s. 278(3) substituted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(8)**, 12(3); S.I. 2017/809, reg. 2(f)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F1185 Words in s. 278(3) inserted (7.8.2017) by Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(17)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULES

[F1186SCHEDULE A1

Section 1H(4)

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Textual Amendments

F1186 Sch. A1 inserted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 9(2), 306(4), **Sch. 1** (with Sch. 6 para. 2); S.I. 2012/1831, art. 2(2) (with art. 3(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1186

Status

1 (1) The Board is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown.

(2) The Board's property is not to be regarded as property of, or property held on behalf of, the Crown.

F1186

Membership

2 (1) The Board is to consist of—

(a) a chair appointed by the Secretary of State,

(b) at least five other members so appointed, and

(c) the chief executive and other members appointed in accordance with paragraph 3.

(2) In this Schedule—

(a) references to non-executive members of the Board are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and

(b) references to executive members of the Board are references to the other members.

(3) The number of executive members must be less than the number of non-executive members.

F1186

The chief executive and other executive members: appointment and status

3 (1) The chief executive and the other executive members of the Board are to be appointed by the non-executive members.

(2) A person may not be appointed as chief executive without the consent of the Secretary of State.

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(3) The chief executive and the other executive members are to be employees of the Board.

(4) The first chief executive of the Board is to be appointed by the Secretary of State.

F1186

Non-executive members: tenure

4 (1) A person holds and vacates office as a non-executive member of the Board in accordance with that person's terms of appointment.

(2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.

(3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds—

(a) incapacity,

(b) misbehaviour, or

(c) failure to carry out his or her duties as a non-executive member.

(4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove that person from office under sub-paragraph (3).

(5) A person may not be appointed as a non-executive member for a period of more than four years.

(6) A person who ceases to be a non-executive member is eligible for re-appointment.

F1186

Suspension of non-executive members

5 (1) This paragraph applies where a person is suspended under paragraph 4(4).

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

(3) The notice may be—

(a) delivered in person (in which case the person is taken to receive it when it is delivered), or

(b) sent by first class post to the person's last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).

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

(5) The Secretary of State may at any time review the suspension.

(6) The Secretary of State—

(a) must review the suspension if requested in writing by the person to do so, but

(b) need not review the suspension less than three months after the beginning of the initial period of suspension.

(7) Following a review during a period of suspension, the Secretary of State may—

(a) revoke the suspension, or

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(b) suspend the person for another period of not more than six months from the expiry of the current period.

(8) The Secretary of State must revoke the suspension if the Secretary of State —

(a) decides that there are no grounds to remove the person from office under paragraph 4(3), or

(b) decides that there are grounds to do so but does not remove the person from office under that provision.

6 (1) Where a person is suspended from office as the chair under paragraph 4(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair's functions.

(2) Appointment as interim chair is for a term not exceeding the shorter of—

(a) the period ending with either—

(i) the appointment of a new chair, or

(ii) the revocation or expiry of the existing chair's suspension, and

(b) the remainder of the interim chair's term as a non-executive member.

(3) A person who ceases to be the interim chair is eligible for re-appointment.

F1186

Payment of non-executive members

7 (1) The Board must pay to its non-executive members such remuneration as the Secretary of State may determine.

(2) The Board must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member of the Board.

(3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the Board must pay compensation to the person of such amount as the Secretary of State may, with the approval of the Treasury, determine.

F1186

Staff

8 The Board may appoint such persons to be employees of the Board as it considers appropriate.

9 (1) Employees of the Board are to be paid such remuneration and allowances as the Board may determine.

(2) Employees of the Board are to be appointed on such other terms and conditions as the Board may determine.

(3) The Board may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the Board.

(4) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of this paragraph, the Board must obtain the approval of the Secretary of State to its policy on the matter.

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F1186

Committees

10 (1) The Board may appoint such committees and sub-committees as it considers appropriate.

(2) A committee or sub-committee may consist of or include persons who are not members or employees of the Board.

(3) The Board may pay such remuneration and allowances as it determines to any person who—

(a) is a member of a committee or a sub-committee, but

(b) is not an employee of the Board,

whether or not that person is a non-executive member of the Board.

F1186

Trust funds and trustees

11 (1) The Secretary of State may by order provide for the appointment of trustees for the Board to hold property on trust—

(a) for the general or any specific purposes of the Board, or

(b) for any purposes relating to the health service in England.

(2) An order under sub-paragraph (1) may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his or her removal from office.

(3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the Board to the trustees.

F1186

Procedure

12 (1) The Board may regulate its own procedure.

(2) The validity of any act of the Board is not affected by any vacancy among the members or by any defect in the appointment of any member.

F1186

Exercise of functions

13 The Board may arrange for the exercise of any of its functions on its behalf by—

(a) any non-executive member,

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(b) any employee (including any executive member), or
(c) a committee or sub-committee.

F1186

Provision of information to Secretary of State

14 (1) The Secretary of State may require the Board to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

F1186

Accounts

15 (1) The Board must keep proper accounts and proper records in relation to the accounts.

(2) The Secretary of State may, with the approval of the Treasury, give directions to the Board as to—
(a) the content and form of its accounts, and
(b) the methods and principles to be applied in the preparation of its accounts.

(3) In sub-paragraph (2) the reference to accounts includes a reference to the Board's consolidated annual accounts prepared under paragraph 16 and any interim accounts prepared by virtue of paragraph 17.

(4) The chief executive of the Board is to be its accounting officer.

F1186

Annual accounts

16 (1) The Board must prepare consolidated annual accounts in respect of each financial year.

(2) The consolidated annual accounts must contain—
(a) the Board's annual accounts, and
(b) a consolidation of the Board's annual accounts and the annual accounts of each clinical commissioning group.

(3) The Board must send copies of the consolidated annual accounts to—
(a) the Secretary of State, and
(b) the Comptroller and Auditor General,
within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.

(4) The Comptroller and Auditor General must—
(a) examine, certify and report on the consolidated annual accounts, and
(b) lay copies of the accounts and the report on them before Parliament.

(5) In this paragraph, "financial year" includes the period which begins with the day on which the Board is established and ends on the following 31 March.

Changes to legislation: National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F1186

Interim Accounts

17 (1) The Secretary of State may, with the approval of the Treasury, direct the Board to prepare accounts in respect of such period or periods as may be specified in the direction ("interim accounts").

(2) The interim accounts in respect of any period must contain—

(a) the Board's accounts in respect of that period, and

(b) a consolidation of the Board's accounts in respect of that period and any accounts of clinical commissioning groups in respect of that period which are prepared by virtue of paragraph 17(3) of Schedule 1A.

(3) The Board must send copies of any interim accounts to—

(a) the Secretary of State, and

(b) if the Secretary of State so directs, the Comptroller and Auditor General,

within such period as the Secretary of State may direct.

(4) The Comptroller and Auditor General must—

(a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (3)(b),

(b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and

(c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

F1186

Seal and evidence

18 (1) The application of the Board's seal must be authenticated by the signature of any member of the Board or any other person who has been authorised (generally or specially) for that purpose.

(2) A document purporting to be duly executed under the Board's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.**]**

SCHEDULE 1

Section 5

FURTHER PROVISION ABOUT THE SECRETARY OF STATE AND SERVICES UNDER THIS ACT

Medical inspection of pupils

1 **[**F1187A local authority**]** must provide for the medical inspection at appropriate intervals of pupils in attendance at schools maintained by **[**F1188the local authority**]** and for the medical treatment of such pupils.

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F1187 Words in Sch. 1 para. 1 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(3)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1188 Words in Sch. 1 para. 1 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(3)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

2 (1) **[**F1189A local authority**]** may F1190... provide for any medical inspection or treatment of—

(a) senior pupils in attendance at any educational establishment, other than a school, which is maintained by the authority and at which full-time further education is provided, or

(b) any child or young person who, in pursuance of section 19 or 319 of the Education Act 1996 (c. 56), is receiving primary or secondary education otherwise than at a school.

(2) **[**F1191A local authority**]** may, by arrangement with the proprietor of any educational establishment **[**F1192in its area**]** which is not maintained by **[**F1193the local authority**]**, provide for any medical inspection or treatment of junior or senior pupils in attendance at the establishment.

F1194(3) . . . . . .

Textual Amendments

F1189 Words in Sch. 1 para. 2(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(4)(a)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1190 Words in Sch. 1 para. 2(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(4)(a)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1191 Words in Sch. 1 para. 2(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(4)(b)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1192 Words in Sch. 1 para. 2(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(4)(b)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1193 Words in Sch. 1 para. 2(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(4)(b)(iii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1194 Sch. 1 para. 2(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(4)(c)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

3 An arrangement under paragraph **[**F1195**2(2)]** may provide for payments by the proprietor in question.

Textual Amendments

F1195 Word in Sch. 1 para. 3 substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 14 para. 6**; S.I. 2009/462, art. 5

4 **[**F1196A local authority may not provide for any medical inspection or treatment**]** under paragraph 2(1)(a) unless the governing body of the educational establishment agrees to **[**F1197the inspection or (as the case may be) treatment**]**.

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Textual Amendments

F1196 Words in Sch. 1 para. 4 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(5)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1197 Words in Sch. 1 para. 4 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(5)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

5 (1) Sub-paragraph (2) applies to—

F1198(a) . . . . . .

(b) each governing body of a foundation, voluntary or foundation special school, in respect of the school.

(2) The F1199... governing body must make available to **[**F1200a local authority**]** such accommodation as is appropriate for the purpose of assisting **[**F1201it**]** to make provision under paragraph 1 in relation to the pupils in attendance at the schools or school in question.

Textual Amendments

F1198 Sch. 1 para. 5(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(6)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1199 Words in Sch. 1 para. 5(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(6)(b)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1200 Words in Sch. 1 para. 5(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(6)(b)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1201 Word in Sch. 1 para. 5(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(6)(b)(iii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

6 In paragraphs 1 to 5 any expression to which a meaning is given for the purposes of the Education Act 1996 (c. 56) or the School Standards and Framework Act 1998 (c. 31) has that meaning.

7 Any charge made under regulations under this Act in respect of the supply of drugs, medicines or appliances must be disregarded for the purposes of paragraphs 1 and 2.

[F1202 Weighing and measuring of children

Textual Amendments

F1202 Sch. 1 paras. 7A, 7B and cross-heading inserted (21.7.2008 for specified purposes, 1.10.2008 in so far as not already in force) by Health and Social Care Act 2008 (c. 14), **ss. 143(1)**, 170 (with s. 143(2)); S.I. 2008/2497, art. 6

7A (1) **[**F1203A local authority**]** may F1204 ... provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.

(2) **[**F1203A local authority**]** may, by arrangement with the proprietor of any school **[**F1205in its area**]** which is not maintained by **[**F1206the local authority**]**, provide for the weighing and measuring of junior pupils in attendance at that school.

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(3) **[**F1203A local authority**]** may, by arrangement with any person who is registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect of early years provision, provide for the weighing and measuring of young children for whom childcare is provided by that person.

(4) In sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of Part 3 of the Childcare Act 2006 has the same meaning as in that Part.

Textual Amendments

F1203 Words in Sch. 1 para. 7A substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(7)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1204 Words in Sch. 1 para. 7A(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(7)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1205 Words in Sch. 1 para. 7A(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(7)(c)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1206 Words in Sch. 1 para. 7A(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(7)(c)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

7B (1) The Secretary of State may by regulations—

(a) authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,

(b) require any weighing and measuring provided for **[**F1207by a local authority**]** under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,

(c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and

(d) make other provision regulating the processing of information resulting from any weighing or measuring provided for **[**F1208by a local authority**]** under paragraph 7A **[**F1209and of any other prescribed information relating to the children concerned**]**.

(2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring **[**F1210or in relation to information prescribed under sub-paragraph (1)**]** to have regard to any guidance given from time to time by the Secretary of State.

(3) In sub-paragraph (1)(d), " processing ", in relation to information, **[**F1211has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(4) and (14) of that Act)**]**.

(4) Regulations under this paragraph cannot include provision by virtue of section 272(8)(a) amending or repealing an Act.**]**

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Textual Amendments

F1207 Words in Sch. 1 para. 7B(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(8)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1208 Words in Sch. 1 para. 7B(1)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(8)(b)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1209 Words in Sch. 1 para. 7B(1)(d) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(8)(b)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1210 Words in Sch. 1 para. 7B(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(8)(c)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1211 Words in Sch. 1 para. 7B(3) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 116** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

[F1212 Supply of blood and other human tissues

Textual Amendments

F1212 Sch. 1 para. 7C and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(9)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

7C The Secretary of State must for the purposes of the health service make arrangements for—

(a) collecting, screening, analysing, processing and supplying blood or other tissues,

(b) preparing blood components and reagents, and

(c) facilitating tissue and organ transplantation.**]**

Contraceptive services

8 The Secretary of State must arrange, to such extent as he considers necessary to meet all reasonable requirements, for—

(a) the giving of advice on contraception,

(b) the medical examination of persons seeking advice on contraception,

(c) the treatment of such persons, and

(d) the supply of contraceptive substances and appliances.

Provision of vehicles for disabled persons

9**[**F1213(1)**]** **[**F1214A clinical commissioning group may make arrangements for the provision of**]** vehicles (including wheelchairs) for **[**F1215persons for whom the group has responsibility and who appear to it to have a physical impairment**]** which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

[F1216(2) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of sub-paragraph (1) as they apply for the purposes of that section.**]**

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Textual Amendments

F1213 Sch. 1 para. 9(1): Sch. 1 para. 9 renumbered as Sch. 1 para. 9(1) (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 17(10)(a)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1214 Words in Sch. 1 para. 9(1) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 17(10)(b)(i)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1215 Words in Sch. 1 para. 9(1) substituted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 17(10)(b)(ii)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1216 Sch. 1 para. 9(2) inserted (1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 17(10)(c)**, 306(4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

10 (1) Sub-paragraphs (2) and (3) apply in respect of—

(a) a vehicle provided **[**F1217in pursuance of arrangements made**]** under paragraph 9, and

(b) a vehicle belonging to a person mentioned in that paragraph.

(2) **[**F1218The clinical commissioning group may make arrangements for**]** —

(a) **[**F1219the adaptation of**]** the vehicle to make it suitable for the circumstances of the person in question,

(b) **[**F1220the maintenance and repair of**]** the vehicle,

(c) **[**F1221the taking out of**]** insurance policies relating to the vehicle and **[**F1222the payment of**]** any duty with which the vehicle is chargeable under the Vehicle Excise and Registration Act 1994 (c. 22),

(d) **[**F1223the provision of**]** a structure in which the vehicle may be kept, and **[**F1223the provision of**]** all material and **[**F1224the execution of**]** all works necessary to erect the structure.

(3) **[**F1225A clinical commissioning group**]** may make payments by way of grant towards costs incurred by a person mentioned in paragraph 9 in respect of any matter mentioned in sub-paragraph (4) in relation to the vehicle.

(4) The matters are—

(a) the taking of action referred to in sub-paragraph (2),

(b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel, and

(c) the taking of instruction in the driving of the vehicle.

(5) The powers under sub-paragraph (2) and sub-paragraph (3) may be exercised on such terms and subject to such conditions as **[**F1226the clinical commissioning group**]** may determine.

Textual Amendments

F1217 Words in Sch. 1 para. 10(1)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F1218 Words in Sch. 1 para. 10(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(b)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1219 Words in Sch. 1 para. 10(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(b)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1220 Words in Sch. 1 para. 10(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(b)(iii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1221 Words in Sch. 1 para. 10(2)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(b)(iv)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1222 Words in Sch. 1 para. 10(2)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(b)(v)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1223 Words in Sch. 1 para. 10(2)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(b)(vi)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1224 Words in Sch. 1 para. 10(2)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(b)(vii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1225 Words in Sch. 1 para. 10(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(c)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1226 Words in Sch. 1 para. 10(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(11)(d)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

11 Regulations may provide for any incidental or supplementary matter for which it appears to the Secretary of State necessary or expedient to provide in connection with—

(a) the taking of action under paragraph 10(2), or

(b) the making of any payment under paragraph 10(3).

Provision of a microbiological service by the Secretary of State

12 (1) The Secretary of State may—

F1227(a) . . . . . .

(b) carry on such F1228... activities as in his opinion can conveniently be carried on in conjunction with **[**F1229a microbiological service provided under section 2A**]**.

F1230(2) . . . . . .

(3) Charges may be made for services or materials supplied.

(4) A power under this paragraph may be exercised both for the purposes of the health service and for other purposes.

Textual Amendments

F1227 Sch. 1 para. 12(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(12)(a)(i)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1228 Word in Sch. 1 para. 12(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(12)(a)(ii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1229 Words in Sch. 1 para. 12(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 17(12)(a)(iii)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1230 Sch. 1 para. 12(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 17(12)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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[F1231 Powers in relation to research etc.]

Textual Amendments

F1231 Sch. 1 para. 13 and cross-heading substituted (1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 17(13)**, 306(4); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1231 13 (1) The Secretary of State, the Board or a clinical commissioning group may conduct, commission or assist the conduct of research into—

(a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and

(b) any such other matters connected with any service provided under this Act as the Secretary of State, the Board or the clinical commissioning group (as the case may be) considers appropriate.

(2) A local authority may conduct, commission or assist the conduct of research for any purpose connected with the exercise of its functions in relation to the health service.

(3) The Secretary of State, the Board, a clinical commissioning group or a local authority may for any purpose connected with the exercise of its functions in relation to the health service—

(a) obtain and analyse data or other information;

(b) obtain advice from persons with appropriate professional expertise.

(4) The power under sub-paragraph (1) or (2) to assist any person to conduct research includes power to do so by providing financial assistance or making the services of any person or other resources available.

(5) In this paragraph, "local authority" has the same meaning as in section 2B.]

[F1232 SCHEDULE 1A

Sections 14B(6), 14D(2) and 14I(4)

CLINICAL COMMISSIONING GROUPS

Textual Amendments

F1232 Sch. 1A inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 25(2), 306(1)(d)(4), **Sch. 2** (with Sch. 6 paras. 7-13); S.I. 2012/1831, art. 2(2); S.I. 2013/160, art. 2(2) (with arts. 7-9)

PART 1

CONSTITUTION OF CLINICAL COMMISSIONING GROUPS

General

1 A clinical commissioning group must have a constitution.

2 (1) The constitution must specify—

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) the name of the clinical commissioning group,
(b) the members of the group, and
(c) the area of the group.

(2) The name of the group must comply with such requirements as may be prescribed.

3 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of its functions (including its functions in determining the terms and conditions of its employees).

(2) The arrangements may include provision—
(a) for the appointment of committees or sub-committees of the clinical commissioning group, and
(b) for any such committees to consist of or include persons other than members or employees of the clinical commissioning group.

(3) The arrangements may include provision for any functions of the clinical commissioning group to be exercised on its behalf by—
(a) any of its members or employees,
(b) its governing body, or
(c) a committee or sub-committee of the group.

Modifications etc. (not altering text)
C99 Sch. 1A para. 3(1) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(p)**; S.I. 2012/1831, art. 2(2)
C100 Sch. 1A para. 3(3) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(p)**; S.I. 2012/1831, art. 2(2)

4 (1) The constitution must specify the procedure to be followed by the clinical commissioning group in making decisions.

(2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the group and the manner in which they are made.

5 The constitution must specify the arrangements made by the clinical commissioning group for discharging its duties under section 14O(1) to (4).

6 The provision made by virtue of paragraphs 3 and 4 must secure that there is effective participation by each member of the clinical commissioning group in the exercise of the group's functions.

Modifications etc. (not altering text)
C101 Sch. 1A para. 6 modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(p)**; S.I. 2012/1831, art. 2(2)

Governing bodies of clinical commissioning groups

7 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of the functions of its governing body.

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(2) The arrangements—

(a) must include provision for the appointment of the audit committee and remuneration committee of the governing body, and

(b) may include provision for the appointment of other committees or sub-committees of the governing body.

(3) Arrangements under sub-paragraph (2)(a) may include provision for the audit committee to include individuals who are not members of the governing body.

(4) Arrangements under sub-paragraph (2)(b) may include provision for a committee or sub-committee to include individuals who are not members of the governing body but are—

(a) members of the clinical commissioning group, or

(b) individuals of a description specified in the constitution.

(5) The arrangements may include provision for any functions of the governing body to be exercised on its behalf by—

(a) any committee or sub-committee of the governing body,

(b) a member of the governing body,

(c) a member of the clinical commissioning group who is an individual (but is not a member of the governing body), or

(d) an individual of a description specified in the constitution.

(6) In this paragraph, references to the functions of the governing body of a clinical commissioning group include references to the functions of the clinical commissioning group which are exercisable by the governing body under arrangements specified in the constitution by virtue of paragraph 3(3).

8 (1) The constitution must specify the procedure to be followed by the governing body in making decisions.

(2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the governing body and the manner in which they are made.

(3) The provision made under sub-paragraph (2) must include provision for meetings of governing bodies to be open to the public, except where the clinical commissioning group considers that it would not be in the public interest to permit members of the public to attend a meeting or part of a meeting.

Supplemental

9 In addition to the provision authorised or required to be included under this Part of this Schedule, the constitution may make further provision.

PART 2

FURTHER PROVISION ABOUT CLINICAL COMMISSIONING GROUPS

Status

10 (1) A clinical commissioning group is a body corporate.

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(2) A clinical commissioning group is not to be regarded as a servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.

(3) The property of a clinical commissioning group is not to be regarded as property of, or property held on behalf of, the Crown.

Staff

11 (1) A clinical commissioning group may appoint such persons to be employees of the group as it considers appropriate.

(2) A clinical commissioning group must—

(a) pay its employees remuneration and travelling or other allowances in accordance with determinations made by its governing body under section 14L(3)(a), and

(b) employ them on such other terms and conditions as it may determine.

(3) A clinical commissioning group may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.

(4) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.

(5) The arrangements that may be made under sub-paragraph (3) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any of the clinical commissioning group's employees who suffer loss of office or employment or loss or diminution of emoluments.

Accountable officer

12 (1) A clinical commissioning group must have an accountable officer.

(2) The accountable officer is to be appointed by the Board.

(3) The Board may appoint a person to be the accountable officer for more than one clinical commissioning group (and in the following provisions of this paragraph such an appointment is referred to as a "joint appointment").

(4) The accountable officer may be—

(a) an individual who is a member of the clinical commissioning group or of any body that is a member of the group or, in the case of a joint appointment, an individual who is a member of any of the groups in question or of any body that is a member of any of those groups, or

(b) an employee of the group or of any member of the group or, in the case of a joint appointment, an employee of any of the groups in question or of any member of those groups.

(5) If the accountable officer is not an employee of the clinical commissioning group or, in the case of a joint appointment, of any of the groups in question, the group or any of the groups may pay remuneration and travelling or other allowances to the accountable officer in accordance with determinations made by its governing body under section 14L(3)(a).

(6) A clinical commissioning group may, for or in respect of its accountable officer, make arrangements for providing pensions, allowances or gratuities.

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(7) The arrangements that may be made under sub-paragraph (6) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of the accountable officer where the officer suffers loss of office or loss or diminution of emoluments.

(8) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (6) include arrangements for the accountable officer to be a member of the scheme.

(9) The accountable officer is responsible for ensuring that the clinical commissioning group or, in the case of a joint appointment, each of the groups in question—

(a) complies with its obligations under—

(i) sections 14Q and 14R,

(ii) sections 223H to 223J,

(iii) paragraphs 17 to 19 of this Schedule, and

(iv) any other provision of this Act specified in a document published by the Board for the purposes of this sub-paragraph, and

(b) exercises its functions in a way which provides good value for money.

Modifications etc. (not altering text)

C102 Sch. 1A para. 12(9)(b) modified (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 6 para. 11(2)(p)**; S.I. 2012/1831, art. 2(2)

Remuneration etc for members of governing bodies

13 (1) A clinical commissioning group may pay members of its governing body such remuneration and travelling or other allowances as it considers appropriate.

(2) A clinical commissioning group may, for or in respect of such members of its governing body as it may determine, make arrangements for providing pensions, allowances or gratuities.

(3) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.

(4) The arrangements that may be made under sub-paragraph (2) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any members of the governing body who suffer loss or diminution of emoluments.

(5) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (2) include arrangements for members of the governing body to be members of the scheme.

(6) Sub-paragraph (2) does not apply to members of the governing body who are—

(a) members or employees of the clinical commissioning group, or

(b) members or employees of a body that is a member of the clinical commissioning group.

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Additional powers in respect of payment of allowances

14 A clinical commissioning group may pay such travelling or other allowances as it considers appropriate to any of the following—

(a) members of the clinical commissioning group who are individuals;

(b) individuals authorised to act on behalf of a member of the clinical commissioning group in dealings between the member and the group;

(c) members of any committee or sub-committee of the clinical commissioning group or its governing body.

Trust funds and trustees

15 (1) The Secretary of State may by order provide for the appointment of trustees for a clinical commissioning group to hold property on trust—

(a) for the general or any specific purposes of the group, or

(b) for any purposes relating to the health service in England.

(2) An order under sub-paragraph (1) may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his or her removal from office.

(3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the clinical commissioning group to the trustees.

Externally financed development agreements

16 (1) The powers of a clinical commissioning group include power to enter into externally financed development agreements.

(2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.

(3) The Secretary of State may give a certificate under this paragraph if—

(a) in the Secretary of State's opinion the purpose or main purpose of the agreement is the provision of services or facilities in connection with the discharge by a clinical commissioning group of any of its functions, and

(b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.

(4) If a clinical commissioning group enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.

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(5) In sub-paragraph (3)(b) "another party" means any party to the agreement other than the clinical commissioning group.

(6) The fact that an agreement made by a clinical commissioning group has not been certified under this paragraph does not affect its validity.

Accounts and audits

17 (1) A clinical commissioning group must keep proper accounts and proper records in relation to the accounts.

(2) A clinical commissioning group must prepare annual accounts in respect of each financial year.

(3) The Board may, with the approval of the Secretary of State, direct a clinical commissioning group to prepare accounts in respect of such period or periods as may be specified in the direction.

(4) The Board may, with the approval of the Secretary of State, give directions to a clinical commissioning group as to—

(a) the methods and principles according to which its annual or other accounts must be prepared, and

(b) the form and content of such accounts.

(5) The annual accounts and, if the Board so directs, accounts prepared by virtue of sub-paragraph (3) must be audited in accordance with the **[**F1233Local Audit and Accountability Act 2014**]**.

(6) The Comptroller and Auditor General may examine—

(a) the annual accounts and any records relating to them, and

(b) any report on them by the auditor or auditors.

(7) A clinical commissioning group must send its audited annual accounts, and any audited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.

(8) The Board may direct a clinical commissioning group to send its unaudited annual accounts, and any unaudited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.

(9) For the purposes of this paragraph "financial year" includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

Textual Amendments

F1233 Words in Sch. 1A para. 17(5) substituted (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 71**; S.I. 2015/841, art. 3(x)

Modifications etc. (not altering text)

C103 Sch. 1A para. 17(5) applied (with modifications) (10.2.2015) by The Local Audit (Appointing Person) Regulations 2015 (S.I. 2015/192), reg. 1(1), **Sch. para. 18** (with reg. 1(2))

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Provision of financial information to Board

18 (1) The Board may direct a clinical commissioning group to supply it with such information relating to its accounts or to its income or expenditure, or its use of resources, as may be specified in the direction.

(2) The power conferred by sub-paragraph (1) includes power to direct a clinical commissioning group to supply the Board with—

(a) estimates of its future income or expenditure or its future use of resources;

(b) any information which the Board considers is necessary to enable it to verify any other information supplied to it under sub-paragraph (1).

(3) A clinical commissioning group must supply the Board with any information specified in a direction under sub-paragraph (1) within such period as may be specified in the direction.

(4) In this paragraph, a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

Provision of information required by the Secretary of State

19 (1) The Secretary of State may require each clinical commissioning group to provide the Board with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

(3) The powers conferred by this paragraph must be exercised in the same way in relation to each clinical commissioning group.

(4) The Board must give any information obtained by it under sub-paragraph (1) to the Secretary of State, in such form, and at such time or within such period, as the Secretary of State may require.

Incidental powers

20 The power conferred on a clinical commissioning group by section 2 includes, in particular, power to—

(a) enter into agreements,

(b) acquire and dispose of property, and

(c) accept gifts (including property to be held on trust for the purposes of the clinical commissioning group).

Seal and evidence

21 (1) The application of a clinical commissioning group's seal must be authenticated by the signature of any person who has been authorised (generally or specially) for that purpose.

(2) Any instrument which, if executed by an individual, would not need to be under seal may be executed on behalf of a clinical commissioning group by any person who has been authorised (generally or specially) for that purpose.

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(3) A document purporting to be duly executed under a clinical commissioning group's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proven, taken to be so executed or signed.

PART 3

TRANSFER SCHEMES

22 The things that may be transferred under a property transfer scheme or a staff transfer scheme under section 14I include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme;

(c) criminal liabilities.

23 A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;

(d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee.

24 A property transfer scheme may make provision for the shared ownership or use of property.

25 A staff transfer scheme may make provision which is the same or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

26 A property transfer scheme or a staff transfer scheme may provide—

(a) for the scheme to be modified by agreement after it comes into effect, and

(b) for any such modifications to have effect from the date when the original scheme comes into effect.**]**

F1234SCHEDULE 2

Section 13

. . . . . .

Textual Amendments

F1234 Sch. 2 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 20**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F1235SCHEDULE 3

Section 18

. . . . . .

Textual Amendments

F1235 Sch. 3 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 21**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 4

Section 25

NHS TRUSTS ESTABLISHED UNDER SECTION 25

Modifications etc. (not altering text)

C104 Sch. 4 modified (temp.) (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 76**; S.I. 2015/841, art. 3(x)

PART 1

CONSTITUTION, ESTABLISHMENT, ETC

Status

1 Each NHS trust is a body corporate.

2 (1) An NHS trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) An NHS trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Board of directors

3 (1) Each NHS trust has a board of directors consisting of—

(a) a chairman appointed by the Secretary of State, and

(b) executive and non-executive directors.

(2) Sub-paragraph (1)(b) is subject to paragraph 7(2).

(3) An executive director is a director who is an employee of the NHS trust, and a non-executive director is a director who is not an employee of the NHS trust.

(4) Sub-paragraph (3) is subject to any provision made by regulations under paragraph 4(1)(d).

Regulations

4 (1) The Secretary of State may by regulations make provision with respect to—

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(a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they cease to hold, or may be removed from, office or may be suspended from performing the functions of the office),

(b) the persons by whom the directors and any of the officers must be appointed and the manner of their appointment,

(c) the maximum and minimum numbers of the directors,

(d) the circumstances in which a person who is not an employee of the NHS trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director,

(e) the proceedings of the NHS trust (including the validation of proceedings in the event of a vacancy or defect in appointment), and

(f) the appointment, constitution and exercise of functions by committees and sub-committees of the NHS trust (whether or not consisting of or including any members of the board).

(2) Regulations under sub-paragraph (1) may, in particular, make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

Provision to be made by first NHS trust order

5 (1) The first NHS trust order made in relation to any NHS trust must specify—

(a) the name of the NHS trust,

(b) the functions of the NHS trust,

(c) the number of executive directors and non-executive directors,

(d) where the NHS trust has a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order,

(e) the operational date of the NHS trust, and

(f) if a scheme is to be made under paragraph 8, the [F1236]... Special Health Authority or Local Health Board which is to make the scheme.

(2) The functions which may be specified in an NHS trust order include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.

(3) For the purposes of sub-paragraph (1)(d), an NHS trust has a significant teaching commitment in the following cases—

(a) if the NHS trust is established to provide services at a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment, and

(b) in any other case, if the Secretary of State so provides in the order.

(4) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—

(a) is employed by the university in question, and

(b) would also, apart from this sub-paragraph, be regarded as employed by the NHS trust,

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his employment by the NHS trust must be disregarded in determining whether, if appointed, he will be a non-executive director of the NHS trust.

(5) The operational date of the NHS trust is the date on which it will begin to undertake the whole of the functions conferred on it.

(6) An NHS trust order must specify the accounting date of the NHS trust.

Textual Amendments

F1236 Words in Sch. 4 para. 5(1)(f) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Temporary availability of staff etc.

6 (1) An NHS trust order may require a F1237... Special Health Authority F1238... or Local Health Board to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the NHS trust and the transfer of premises or other facilities to the NHS trust.

(2) An NHS trust order making provision under this paragraph may make provision with respect to the time when the functions of the F1239... Special Health Authority F1240... or Local Health Board under the provision are to come to an end.

Textual Amendments

F1237 Words in Sch. 4 para. 6(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(3)(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1238 Words in Sch. 4 para. 6(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(3)(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1239 Words in Sch. 4 para. 6(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(3)(b)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1240 Words in Sch. 4 para. 6(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(3)(b)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Establishment of NHS trust prior to operational date

7 (1) An NHS trust order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust and, during the period between that earlier date and the operational date, the NHS trust has such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.

(2) If an NHS trust order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust must be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.

(3) If an NHS trust order makes the provision referred to in sub-paragraph (1), the order may require a F1241... Special Health Authority or Local Health Board to discharge such liabilities of the NHS trust as—

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(a) may be incurred during the period referred to in that sub-paragraph, and

(b) are of a description specified in the order.

Textual Amendments

F1241 Words in Sch. 4 para. 7(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Transfer of staff to NHS trusts

8 (1) This paragraph applies to any person who, immediately before an NHS trust's operational date—

(a) is employed by a Special Health Authority [F1242]... or Local Health Board to work solely at, or for the purposes of, a hospital or other establishment or facility which will become the responsibility of the NHS trust, or

(b) is employed by a Special Health Authority [F1242]... or Local Health Board to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this paragraph by a scheme made by the Special Health Authority [F1242]... or Local Health Board specified as mentioned in paragraph 5(1)(f).

(2) Sub-paragraph (1) is subject to sub-paragraph (6).

(3) A scheme under this paragraph does not have effect unless approved by the Secretary of State.

(4) Subject to sub-paragraphs (9) to (11), the contract of employment between a person to whom this paragraph applies and the Special Health Authority [F1243]... or Local Health Board by whom he is employed has effect from the operational date as if originally made between him and the NHS trust.

(5) In particular—

(a) all the rights, powers, duties and liabilities of the Special Health Authority [F1244]... or Local Health Board under or in connection with a contract to which sub-paragraph (4) applies are by virtue of this paragraph transferred to the NHS trust on its operational date, and

(b) anything done before that date by or in relation to the Special Health Authority [F1244]... or Local Health Board in respect of that contract or the employee is deemed from that date to have been done by or in relation to the NHS trust.

(6) In any case where—

(a) an NHS trust order provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust,

(b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the NHS trust to a person who at that time is employed by a Special Health Authority [F1245]... or Local Health Board to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which will become the responsibility of the NHS trust, and

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(c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,

sub-paragraphs (4) and (5) have effect in relation to that person's contract of employment as if he were a person to whom this paragraph applies and as if any reference in those sub-paragraphs to the operational date of the NHS trust were a reference to the date on which he takes up employment with the NHS trust.

(7) Sub-paragraphs (4) and (5) do not affect any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only of the change in employer effected by this paragraph.

(8) A scheme under this paragraph may designate a person either individually or as a member of a class or description of employees.

(9) In the case of a person who falls within sub-paragraph (1)(b), a scheme under this paragraph may provide that, with effect from the NHS trust's operational date, his contract of employment (his "original contract") must be treated, in accordance with the scheme, as divided so as to constitute—

(a) a contract of employment with the NHS trust, and

(b) a contract of employment with the Special Health Authority [F1246]... or Local Health Board by whom he was employed before that date (the "transferor authority").

(10) Where a scheme makes provision as mentioned in sub-paragraph (9)—

(a) the scheme must secure that the benefits to the employee under the two contracts referred to in that sub-paragraph, when taken together, are not less favourable than the benefits under his original contract,

(b) this paragraph applies in relation to the contract referred to in sub-paragraph (9)(a) as if it were a contract transferred under this paragraph from the transferor authority to the NHS trust, and

(c) so far as necessary to preserve any rights and obligations, the contract referred to in sub-paragraph (9)(b) must be regarded as a continuation of the employee's original contract.

(11) Where, as a result of the provisions of this paragraph, by virtue of his employment during any period after the operational date of the NHS trust—

(a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and

(b) he also has statutory rights against the trust under Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) must be taken as satisfying his entitlement to benefits under that Part of that Act.

Textual Amendments

F1242 Words in Sch. 4 para. 8(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(5)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1243 Words in Sch. 4 para. 8(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(5)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F1244 Words in Sch. 4 para. 8(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(5)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1245 Words in Sch. 4 para. 8(6)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(5)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1246 Words in Sch. 4 para. 8(9)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(5)(e)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Transfer of property and liabilities to NHS trusts

9 (1) The Secretary of State may by order transfer, or provide for the transfer of, any of the property and liabilities of F1247... F1248... a Special Health Authority, a Local Health Board or the Secretary of State, to an NHS trust, with effect from any date as may be specified in the order.

(2) An order under this paragraph may create or impose such new rights or liabilities in respect of what is transferred or what is retained as appear to the Secretary of State to be necessary or expedient.

(3) Nothing in this paragraph affects the power of the Secretary of State or any power of a F1249... F1250... Special Health Authority or Local Health Board to transfer property or liabilities to an NHS trust otherwise than under sub-paragraph (1).

(4) Stamp duty is not chargeable in respect of any transfer to an NHS trust effected by or by virtue of an order under this paragraph.

(5) Where an order under this paragraph provides for the transfer—

(a) of land held on lease from a third party, or

(b) of any other asset leased or hired from a third party or in which a third party has an interest,

the transfer is binding on the third party notwithstanding that, apart from this sub-paragraph, it would have required his consent or concurrence.

(6) "Third party" means a person other than the Secretary of State, F1251...F1252... a Special Health Authority or a Local Health Board.

(7) Any property and liabilities which—

(a) belong to, or are used or managed by, a F1253... Special Health Authority or Local Health Board F1254..., and

(b) will be transferred to an NHS trust by or by virtue of an order under this paragraph,

must be identified by agreement between the F1255... F1256... Special Health Authority or Local Health Board and the NHS trust or, in default of agreement, by direction of the Secretary of State.

(8) Where, for the purpose of a transfer pursuant to an order under this paragraph, it becomes necessary to apportion any property or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose.

(9) Where any such property or rights fall within sub-paragraph (5), the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

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(10) In the case of any transfer made by or pursuant to an order under this paragraph, a certificate issued by the Secretary of State that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order is conclusive evidence of that fact for all purposes.

(11) An order under this paragraph may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

(12) Sub-paragraph (11) does not affect section 272(8).

Textual Amendments

F1247 Words in Sch. 4 para. 9(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1248 Words in Sch. 4 para. 9(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1249 Words in Sch. 4 para. 9(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(b)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1250 Words in Sch. 4 para. 9(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(b)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1251 Words in Sch. 4 para. 9(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(c)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1252 Words in Sch. 4 para. 9(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(c)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1253 Words in Sch. 4 para. 9(7)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(d)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1254 Words in Sch. 4 para. 9(7)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(d)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1255 Words in Sch. 4 para. 9(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(d)(iii)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1256 Words in Sch. 4 para. 9(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(6)(d)(iii)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Trust funds and trustees

10 (1) The Secretary of State may by order provide for the appointment of trustees for an NHS trust to hold property on trust—

(a) for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the NHS trust), or

(b) for any purposes relating to the health service.

(2) An order under sub-paragraph (1) may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by

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the Secretary of State after consultation with such persons as he considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where under sub-paragraph (1) trustees have been appointed for an NHS trust, the Secretary of State may by order provide for the transfer of any trust property from the NHS trust to the trustees.

Pay and allowances

11 (1) An NHS trust must pay—

(a) to the chairman and any non-executive director of the NHS trust remuneration of an amount determined by the Secretary of State, not exceeding such amount as may be approved by the Treasury,

(b) to the chairman and any non-executive director of the NHS trust such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury,

(c) to any member of a committee or sub-committee of the NHS trust who is not also a director such travelling and other allowances as may be so determined.

(2) If an NHS trust so determines in the case of a person who is or has been a chairman of the NHS trust, the NHS trust must pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury.

(3) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) in relation to different cases or descriptions of cases.

Reports and other information

12 (1) For each accounting year an NHS trust must prepare and send to the Secretary of State an annual report in such form as may be determined by the Secretary of State.

(2) At such time or times as may be prescribed, an NHS trust must hold a public meeting at which must be presented—

(a) its audited accounts and annual report, and

(b) any report on the accounts made pursuant to section 8 of the Audit Commission Act 1998 (c. 18) or paragraph 19 of Schedule 8 to the Government of Wales Act 2006 (c. 32).

[[F1257](2A) In the case of NHS Direct National Health Service Trust the reference to a report under section 8 of the Audit Commission Act 1998 has effect as a reference to a report under paragraph 6(2) of Schedule 15 to this Act.**]**

(3) In such circumstances and at such time or times as may be prescribed, an NHS trust must hold a public meeting at which such documents as may be prescribed must be presented.

Textual Amendments

F1257 Sch. 4 para. 12(2A) inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **5(2)** (with art. 10)

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Modifications etc. (not altering text)

C105 Sch. 4 para. 12(2)(b) modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 10(4)(a)** (with Sch. 3 Pt. 1)

13 An NHS trust must furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning, as, and in such form as, he may require.

PART 2

POWERS AND DUTIES

General

14 (1) An NHS trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

(2) In particular it may—

(a) acquire and dispose of property,

(b) enter into contracts, and

(c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the NHS trust or for any purposes relating to the health service).

(3) The reference in sub-paragraph (2)(c) to specific purposes of the NHS trust includes a reference to the purposes of a specific hospital or other establishment or facility at or from which services are provided by the NHS trust.

NHS contracts

15 (1) In addition to carrying out its other functions, an NHS trust may, as the provider, enter into NHS contracts.

F1258(2) . . . . . .

F1258(3) . . . . . .

Textual Amendments

F1258 Sch. 4 para. 15(2)(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(7)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Research

16 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

Training

17 An NHS trust may—

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(a) provide training for persons employed or likely to be employed by the NHS trust or otherwise in the provision of services under this Act, and

(b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.

Joint exercise of functions

18 An NHS trust may enter into arrangements for the carrying out, on such terms as the NHS trust considers appropriate, of any of its functions jointly with any [F1259]... [F1260]... Special Health Authority, Local Health Board or other NHS trust, or any other body or individual.

Textual Amendments

F1259 Words in Sch. 4 para. 18 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(8)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1260 Words in Sch. 4 para. 18 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(8)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

Payment for accommodation or services

19 (1) According to the nature of its functions, an NHS trust may make accommodation or services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS trust in respect of the accommodation or services.

(2) An NHS trust may exercise the power conferred by sub-paragraph (1) only—

(a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and

(b) in circumstances specified in directions under section 8, with the Secretary of State's consent.

Additional income

20 (1) For the purpose of making additional income available in order better to perform its functions, an NHS trust has the powers specified in section 7(2) of the Health and Medicines Act 1988 (c. 49) (extension of powers of Secretary of State for financing the health service).

(2) The power conferred by sub-paragraph (1) may be exercised only—

(a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and

(b) in circumstances specified in directions under section 8, with the consent of the Secretary of State.

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Provision of accommodation and services outside England and Wales

21 An NHS Trust may arrange for the provision of accommodation and services outside England and Wales.

Conferral of further powers by order

22 The Secretary of State may by order confer specific powers on NHS trusts, further to those provided for by paragraphs 15 to 21.

Powers of NHS trusts to enter into externally financed development agreements

23 (1) The powers of an NHS trust include power to enter into externally financed development agreements.

(2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.

(3) The Secretary of State may give a certificate under this paragraph if—

(a) in his opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the NHS trust of any of its functions, and

(b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.

(4) If an NHS trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.

(5) "Another party" means any party to the agreement other than the NHS trust.

(6) The fact that an agreement made by an NHS trust has not been certified under this paragraph does not affect its validity.

Agreements under section 92 or 107

24 An NHS trust may provide services under an agreement made under section 92 (primary medical services) or section 107 (primary dental services) and may do so as a member of a qualifying body (within the meaning given by section 93 or section 108).

Staff

25 (1) An NHS trust may employ such staff as it considers appropriate.

(2) An NHS trust may—

(a) pay its staff such remuneration and allowances, and

(b) employ them on such other terms and conditions,

as it considers appropriate.

(3) An NHS trust must—

(a) in exercising its powers under sub-paragraph (2), and

(b) otherwise in connection with the employment of its staff,

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act in accordance with regulations and any directions given by the Secretary of State.

(4) Before making any regulations under sub-paragraph (3), the Secretary of State must consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.

Pensions, etc.

26 (1) An NHS trust may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.

(2) Such arrangements may include the establishment and administration, by the NHS trust or otherwise, of one or more pension schemes.

(3) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the NHS trust's employees who suffer loss of office or employment or loss or diminution of emoluments.

(4) This paragraph does not affect the generality of paragraphs 14 and 25.

Compulsory acquisition

27 (1) An NHS trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the NHS trust and confirmed by the Secretary of State.

(2) Subject to sub-paragraph (3), the Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.

(3) No order may be made by an NHS trust under Part 2 of the Acquisition of Land Act 1981 with respect to any land unless the proposal to acquire the land compulsorily—

(a) has been submitted to the Secretary of State in such form and together with such information as he may require, and

(b) has been approved by him.

PART 3

DISSOLUTION

28 (1) The Secretary of State may by order dissolve an NHS trust.

(2) An order under this paragraph may be made—

(a) on the application of the NHS trust concerned, or

(b) if the Secretary of State considers it appropriate in the interests of the health service.

(3) Except where it appears to the Secretary of State necessary to make an order under this paragraph as a matter of urgency **[**F1261or where the order is made following the publication of a final report under section 65I(3)**]** , no such order may be made until after the completion of such consultation as may be prescribed.

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Textual Amendments

F1261 Words in Sch. 4 para. 28(3) inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(10)**, 40(1); S.I. 2010/30, art. 3(b)

29 (1) If an NHS trust is dissolved under paragraph 28, the Secretary of State may by order transfer, or provide for the transfer, to himself or an NHS body of such of the property and liabilities of the NHS trust which is dissolved as in his opinion is appropriate; and any such order may include provisions corresponding to those of paragraph 9.

(2) The liabilities which may be transferred by virtue of sub-paragraph (1) to an NHS body include criminal liabilities.

(3) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of paragraph 8, including provision for the making of a scheme by such F1262... Special Health Authority, Local Health Board or other body as may be specified in the order.

(4) No order may be made under this paragraph until after completion of such consultation as may be prescribed.

Textual Amendments

F1262 Words in Sch. 4 para. 29(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(9)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

30 (1) If an NHS trust is dissolved under paragraph 28, the Secretary of State or such other NHS trust, F1263... F1264... Special Health Authority or Local Health Board as he may direct must undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 11(2) or paragraph 26, would otherwise have been the responsibility of the NHS trust which has been dissolved.

(2) Sub-paragraph (1) does not affect the generality of paragraph 29.

Textual Amendments

F1263 Words in Sch. 4 para. 30(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(10)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1264 Words in Sch. 4 para. 30(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 22(10)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

31 **[**F1265Subject to section 56AA,**]** an NHS trust may not be dissolved or wound up except in accordance with paragraph 28 or section 57.

Textual Amendments

F1265 Words in Sch. 4 para. 31 inserted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 96(8)**, 115(7); S.I. 2015/994, art. 6(r)

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PART 4

MISCELLANEOUS

Use and development of consecrated land and burial grounds

32 Section 128 of the Town and Country Planning Act 1971 (c. 78) (use and development of consecrated land and burial grounds) applies to consecrated land and land comprised in a burial ground, within the meaning of that section, which an NHS trust holds for any of its purposes as if—

(a) that land had been acquired by the NHS trust as mentioned in subsection (1) of that section, and

(b) the NHS trust were a statutory undertaker, within the meaning of that Act.

Instruments etc.

33 (1) The fixing of the seal of an NHS trust must be authenticated by the signature—

(a) of the chairman or of some other person authorised (whether generally or specifically) by the NHS trust for that purpose, and

(b) of one other director.

(2) A document purporting to be duly executed under the seal of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so executed.

(3) A document purporting to be signed on behalf of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so signed.

Interpretation

34 In this Schedule—

"provide" includes manage,

"operational date" has the meaning given by paragraph 5(5).

SCHEDULE 5

Section 27

FINANCIAL PROVISION ABOUT NHS TRUSTS ESTABLISHED UNDER SECTION 25

Originating capital of NHS trusts

1 (1) Each NHS trust has an originating capital of an amount specified in an order made by the Secretary of State.

(2) The originating capital of an NHS trust is an amount representing the excess of the valuation of its assets over the amounts of its liabilities.

(3) In determining the originating capital of an NHS trust, there must be left out of account such assets or liabilities as are, or are of a class, determined for the purposes of this paragraph by the Secretary of State with the consent of the Treasury.

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(4) An NHS trust's originating capital is deemed to have been issued out of moneys provided by Parliament and is an asset of the Consolidated Fund.

(5) An NHS trust's originating capital is public dividend capital.

(6) With the consent of the Treasury, the Secretary of State may determine—

(a) the dividend which is payable at any time on any public dividend capital issued, or treated as issued, to an NHS trust under this Act,

(b) the amount of any such public dividend capital which must be repaid at any time,

(c) any other terms on which any public dividend capital is so issued, or treated as issued.

(7) An order under sub-paragraph (1) may be made only with the consent of the Treasury.

(8) In this paragraph—

"assets" means the assets which, on or in connection with the establishment of the NHS trust, are or will be transferred to it (whether before, on or after its operational date), and

"liabilities" means the liabilities which are or will be so transferred.

Financial obligations of NHS trusts

2 (1) Each NHS trust must ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.

(2) Each NHS trust must achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it.

(3) Any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.

Borrowing

3 (1) For the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State or from any other person.

(2) Sub-paragraph (1) is subject to any direction given by the Secretary of State under section 8, to the provisions of this paragraph and to any limit imposed under this Schedule.

(3) An NHS trust may not mortgage or charge any of its assets or in any other way use any of its assets as security for a loan.

(4) The Secretary of State must determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).

Guarantees of borrowing

4 (1) The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the

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principal of, and the payment of interest on, any sums which an NHS trust borrows from a person other than the Secretary of State.

(2) Immediately after a guarantee is given under this paragraph, the Secretary of State must lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is issued for fulfilling a guarantee so given, the Secretary of State must lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.

(4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned must make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—

(a) payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued, and

(b) payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued.

Limits on indebtedness

5 The aggregate of all sums borrowed by NHS trusts which are required to provide or manage services at or from hospitals or other establishments or facilities which are situated in England must not exceed £5,000 million or such other sum not exceeding £10,000 million as may be specified by order made by the Secretary of State with the consent of the Treasury.

Additional public dividend capital

6 The Secretary of State may, with the consent of the Treasury, instead of making a loan to an NHS trust under paragraph 3, pay an amount to the NHS trust as public dividend capital.

Supplementary payments

7 (1) The Secretary of State may make a payment to an NHS trust.

(2) The payment may be subject to such conditions as he considers appropriate, including conditions as to repayment.

Surplus funds

8 If it appears to the Secretary of State that any sum held by an NHS trust otherwise than as trustee is surplus to its foreseeable requirements, the trust must, if the Secretary of State with the approval of the Treasury and after consultation with the trust so directs, pay that sum into the Consolidated Fund.

Investment

9 (1) An NHS trust has power to invest money held by it in any investments, including investments which do not produce income, specified in directions under section 8.

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(2) Sub-paragraph (1) does not apply in relation to money held by an NHS trust as trustee.

10 Any direction under section 8 with respect to—

(a) the power conferred on an NHS trust by paragraph 3, or

(b) the maximum amount which an NHS trust may invest in any investments or class of investments,

may be given only with the consent of the Treasury.

SCHEDULE 6

Section 28

SPECIAL HEALTH AUTHORITIES ESTABLISHED UNDER SECTION 28

Corporate status

1 Each Special Health Authority is a body corporate.

Pay and allowances

2 (1) The Secretary of State may pay to—

(a) the chairman of a Special Health Authority, and

(b) any member of a Special Health Authority who is appointed by the Secretary of State,

such remuneration as he may determine with the approval of the Treasury.

(2) The Secretary of State may provide as he may determine with the approval of the Treasury for the payment of a pension, allowance or gratuity to or in respect of the chairman of a Special Health Authority.

(3) Where a person ceases to be chairman of a Special Health Authority, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may determine with the approval of the Treasury.

(4) The Secretary of State may pay to a member of a Special Health Authority, or of a committee or sub-committee of, or joint committee or joint sub-committee including, a Special Health Authority, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as he may determine with the approval of the Treasury.

(5) Allowances may not be paid under sub-paragraph (4) except in connection with the exercise, in such circumstances as the Secretary of State may determine with the approval of the Treasury, of such functions as he may so determine.

(6) Payments under this paragraph must be made at such times, and in such manner and subject to such conditions, as the Secretary of State may determine with the approval of the Treasury.

Staff

3 (1) A Special Health Authority may employ such officers as it may determine.

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(2) A Special Health Authority may—

(a) pay its officers such remuneration and allowances, and

(b) employ them on such other terms and conditions,

as it may determine.

(3) A Special Health Authority must, in exercising its powers under sub-paragraph (1) or (2), act in accordance with regulations and any directions given by the Secretary of State.

(4) Regulations and directions under sub-paragraph (3) may make provision with respect to any matter connected with the employment by a Special Health Authority of its officers, including in particular provision—

(a) with respect to the qualifications of persons who may be employed as officers of a Special Health Authority,

(b) requiring a Special Health Authority to employ a chief officer and officers of such other descriptions as may be prescribed and to employ, for the purpose of performing prescribed functions of the Special Health Authority or any other body, officers having prescribed qualifications or experience, and

(c) as to the manner in which any officers of a Special Health Authority must be appointed.

(5) A direction under sub-paragraph (3) may relate to a particular officer or class of officer specified in the direction.

(6) Regulations and directions under sub-paragraph (3) may provide for approvals or determinations to have effect from a date specified in them.

(7) The date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate.

(8) Regulations may provide for the transfer of officers from one Special Health Authority to another Special Health Authority or **[**[F1266]to the Board**]**, and for arrangements under which the services of an officer of a Special Health Authority are placed at the disposal of another Special Health Authority, **[**[F1267]the Board**]** or a local authority.

(9) Sub-paragraph (11) applies where the registration of a dental practitioner in the dentists register is suspended—

(a) by an interim suspension order under section 32 of the Dentists Act 1984 (c. 24) (interim orders), or

(b) by a direction or an order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(10) For the purposes of sub-paragraph (9), a "relevant determination" that a practitioner's fitness to practice is impaired is a determination which is based solely on—

(a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),

(b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or

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(c) both those grounds.

(11) The suspension does not terminate any contract of employment made between the dental practitioner and a Special Health Authority, but a person whose registration is so suspended must not perform any duties under a contract made between him and a Special Health Authority which involves the practice of dentistry within the meaning of the Dentists Act 1984.

(12) Directions may be given—

(a) by the Secretary of State to a Special Health Authority to place the services of any of its officers at the disposal of another Special Health Authority or **[**F1268of the Board**]**,

(b) by the Secretary of State to any Special Health Authority to employ as an officer of the Special Health Authority any person who is or was employed by another Special Health Authority F1269... and is specified in the direction.

(13) Regulations made in pursuance of this paragraph may not require that all consultants employed by a Special Health Authority must be so employed whole-time.

Textual Amendments

F1266 Words in Sch. 6 para. 3(8) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 23(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1267 Words in Sch. 6 para. 3(8) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 23(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1268 Words in Sch. 6 para. 3(12)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 23(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1269 Words in Sch. 6 para. 3(12)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 23(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

4 (1) The Secretary of State must, before he makes regulations under paragraph 3, consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.

(2) The Secretary of State must, before he gives directions to a Special Health Authority under paragraph 3(12) in respect of any officer of a Special Health Authority—

(a) consult the officer about the directions,

(b) satisfy himself that the Special Health Authority of which he is an officer has consulted the officer about the placing or employment in question, or

(c) in the case of a direction under paragraph 3(12)(a), consult with respect to the directions such body as he may recognise as representing the officer.

(3) But if the Secretary of State—

(a) considers it necessary to give directions under paragraph 3(12)(a) for the purpose of dealing temporarily with an emergency, and

(b) has previously consulted bodies recognised by him as representing the relevant officers about the giving of directions for that purpose,

the Secretary of State may disregard sub-paragraph (2) in relation to the directions.

Miscellaneous

5 Provision may be made by regulations as to—

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(a) the appointment and tenure of office of the chairman, vice-chairman and members of a Special Health Authority,

(b) the appointment and tenure of office of any members of a committee or sub-committee of a Special Health Authority who are not members of the Special Health Authority,

(c) the appointment and tenure of office of any members of a joint committee or joint sub-committee including a Special Health Authority who are not members of the Special Health Authority,

[F1270(d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office,**]**

(e) the appointment and constitution of committees and sub-committees (and joint committees and joint sub-committees) of (or including) a Special Health Authority (including any such committees consisting wholly or partly of persons who are not members of the Special Health Authority in question), and

(f) the procedure of a Special Health Authority and of such committees and sub-committees as are mentioned in paragraph (e).

Textual Amendments

F1270 Sch. 6 para. 5(d) substituted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), Sch. 3 paras. 11, **18(1)(a)** (with Sch. 3 para. 19); S.I. 2010/30, art. 2(d)

6 Regulations made under this Schedule may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Special Health Authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

7 A Special Health Authority may pay subscriptions, of such amounts as the Secretary of State may approve, to the funds of such bodies as he may approve.

8 A Special Health Authority has power to accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Special Health Authority or for any purposes relating to the health service).

9 (1) The Secretary of State may by order provide for the appointment of trustees for a Special Health Authority to hold property on trust—

(a) for the general or any specific purposes of the Special Health Authority (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the Special Health Authority), or

(b) for any purposes relating to the health service.

(2) An order under sub-paragraph (1) may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by

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the Secretary of State after consultation with such persons as he considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where under sub-paragraph (1) trustees have been appointed for a Special Health Authority, the Secretary of State may by order provide for the transfer of any trust property from the Special Health Authority to the trustees.

10 The proceedings of a Special Health Authority are not invalidated by any vacancy in its membership or by any defect in a member's appointment.

11 (1) A Special Health Authority may—

(a) make available at a hospital for which it has responsibility accommodation or services for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Special Health Authority in respect of the accommodation or services, and

(b) make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis.

(2) A Special Health Authority may exercise the power conferred by sub-paragraph (1) only if it is satisfied that its exercise—

(a) does not to any significant extent interfere with the performance by the Special Health Authority of any function conferred on it under this Act to provide accommodation or services of any kind, and

(b) does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

(3) Before a Special Health Authority decides to make accommodation or services available under sub-paragraph (1), it must consult organisations representative of the interests of persons likely to be affected by the decision.

(4) A Special Health Authority may allow accommodation or services which are made available under sub-paragraph (1) to be so made available in connection with treatment in pursuance of arrangements—

(a) made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital,

(b) for the treatment of private patients of that practitioner.

(5) References in this paragraph to a health service hospital include references to such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.

12 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Special Health Authority of any function exercisable by it by virtue of section 7 or section 29 are enforceable by or against that Special Health Authority (and no other body).

(2) This paragraph does not apply in relation to the joint exercise of any functions by a Special Health Authority with another body under section 29(1)(b).

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

13 Provision may be made by regulations with respect to the recording of information by a Special Health Authority, and the furnishing of information by a Special Health Authority to the Secretary of State, another Special Health Authority or **[**[F1271]the Board**]**.

Textual Amendments

F1271 Words in Sch. 6 para. 13 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 23(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 7

Section 30

CONSTITUTION OF PUBLIC BENEFIT CORPORATIONS

Requirement for a constitution

1 (1) A public benefit corporation must have a constitution.

(2) As well as any provision authorised or required to be made by this Schedule, the constitution may make further provision (other than provision as to the powers of the corporation) consistent with this Schedule.

2**[**[F1272](1)**]** The constitution must name the corporation and, if the corporation is an NHS foundation trust, its name must include the words "NHS foundation trust".

[[F1273](2) If the corporation is an NHS foundation trust, the constitution must specify its principal purpose (as to which, see section 43(1)).**]**

Textual Amendments

F1272 Sch. 7 para. 2(1): Sch. 7 para. 2 renumbered as Sch. 7 para. 2(1) (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 164(6)**, 306(4); S.I. 2012/1831, art. 2(2)

F1273 Sch. 7 para. 2(2) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 164(6)**, 306(4); S.I. 2012/1831, art. 2(2)

Eligibility for membership

3 (1) The persons who may become or continue as members of a public benefit corporation are—

(a) individuals who live in any area specified in the constitution as the area for a public constituency,

(b) individuals employed by the corporation under a contract of employment and, if the constitution so provides, individuals who exercise functions for the purposes of the corporation otherwise than under a contract of employment with the corporation,

(c) if the constitution so provides, individuals who have attended any of the corporation's hospitals as either a patient or the carer of a patient within a period specified in the constitution.

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The constitution may specify one or more areas as areas for public constituencies, each of which must be an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more such electoral areas.

(3) A person may become or continue as a member of the corporation by virtue of sub-paragraph (1)(b) only if—

(a) he is employed by the corporation under a contract of employment which has no fixed term or has a fixed term of at least 12 months, or

(b) he has been continuously employed by the corporation for at least 12 months or, where he exercises functions for the purposes of the corporation as mentioned in that sub-paragraph, he has done so continuously for such a period.

(4) Chapter 1 of Part 14 of the Employment Rights Act 1996 (c. 18) applies for the purpose of determining whether an individual has been continuously employed by the corporation, or has continuously exercised functions for the purposes of the corporation, as it applies for the purposes of that Act.

(5) The constitution may divide those who come within sub-paragraph (1)(b) into two or more descriptions of individuals.

(6) An individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation, does not come within sub-paragraph (1)(c).

(7) The constitution may divide those who come within sub-paragraph (1)(c) into three or more descriptions of individuals, one of which must comprise the carers of patients.

(8) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member.

Constituencies

4 (1) Members of a public benefit corporation are referred to as follows.

(2) Those who live in an area specified in the constitution as an area for any public constituency are referred to collectively as a public constituency.

(3) Those who come within paragraph 3(1)(b) are referred to collectively as the staff constituency and, if the power in paragraph 3(5) is exercised, each description of members is referred to as a class within that constituency.

(4) Those who come within paragraph 3(1)(c) are referred to collectively as the patient's constituency and, if the power in paragraph 3(7) is exercised, each description of members is referred to as a class within that constituency.

(5) A person who is a member of a constituency, or of a class within a constituency, may not while that membership continues be a member of any other constituency or class.

(6) A person who comes within paragraph 3(1)(b) may not become or continue as a member of any constituency other than the staff constituency.

5 The constitution must require a minimum number of members of each constituency or, where there are classes within the constituency, of each class.

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Becoming a member

6 (1) An individual who is eligible to become a member of a public benefit corporation may do so on an application made to the corporation.

(2) The constitution may provide for any individual who is—

(a) eligible to become a member of the staff constituency, and

(b) invited by the corporation to become a member of that constituency (and, where there are classes within the constituency, a member of the appropriate class),

to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.

(3) The constitution may provide for any individual who is—

(a) eligible to become a member of the patients' constituency (otherwise than as the carer of a patient), and

(b) invited by the corporation to become a member of a specified constituency (and where there are classes within the constituency, a member of the specified class),

to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.

(4) The constituency and, where applicable, class to be specified—

(a) if he is eligible to be a member of any public constituency, is that constituency,

(b) otherwise, is the patients' constituency and, where applicable, the class of which he is eligible to become a member.

[F1274Council of Governors]

Textual Amendments

F1274 Sch. 7 para. 7 cross-heading substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(c)**, 306(4); S.I. 2012/1831, art. 2(2)

7 (1) A public benefit corporation has **[**F1275a council of governors**]**.

(2) Only members of the corporation and persons appointed under the following provisions may become or continue as members of **[**F1276the council**]** .

(3) The members of **[**F1276the council**]** other than the appointed members must be chosen by election.

(4) Members of a constituency or, where there are classes within it, members of each class may elect any of their number to be a member of **[**F1276the council**]**.

Textual Amendments

F1275 Words in Sch. 7 para. 7(1) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(1)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F1276 Words in Sch. 7 para. 7(2)(3)(4) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(1)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

8 (1) The following may not become or continue as members of **[**F1277the council**]** of governors—

(a) a person who has been **[**F1278made**]** bankrupt or whose estate has been sequestrated and (in either case) has not been discharged,

[F1279(aa) a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986),**]**

(b) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,

(c) a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

(2) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member of **[**F1277the council**]**.

Textual Amendments

F1277 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F1278 Word in Sch. 7 para. 8(1)(a) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

F1279 Sch. 7 para. 8(1)(aa) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 57** (with art. 5)

9 (1) More than half of the members of **[**F1277the council**]** of governors must be elected by members of the corporation other than those who come within paragraph 3(1)(b).

(2) At least three members of **[**F1277the council**]** must be elected by the staff constituency or, where there are classes within it, at least one member of **[**F1277the council**]** must be elected by each class and at least three members must be elected altogether.

F1280(3) . . . . . .

(4) At least one member of **[**F1277the council**]** must be appointed by one or more qualifying local authorities.

(5) A qualifying local authority is a local authority for an area which includes the whole or part of an area specified in the constitution as the area for a public constituency.

(6) If any of the corporation's hospitals includes a medical or dental school provided by a university, at least one member of **[**F1277the council**]** must be appointed by that university.

[F1281(7) Any organisation specified in the constitution for the purposes of this sub-paragraph may appoint one or more members of the council (but no more than the number specified for those purposes in the constitution).**]**

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F1277 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F1280 Sch. 7 para. 9(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 151(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1281 Sch. 7 para. 9(7) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 151(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

10 (1) An elected member of **[**F1277the council**]** of governors may hold office for a period of three years.

(2) Such a member is eligible for re-election at the end of that period.

(3) But such a member ceases to hold office if he ceases to be a member of the corporation.

Textual Amendments

F1277 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

[F1282 10A The general duties of the council of governors are—

(a) to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and

(b) to represent the interests of the members of the corporation as a whole and the interests of the public.**]**

Textual Amendments

F1282 Sch. 7 para. 10A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 151(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1283 10B A public benefit corporation must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.**]**

Textual Amendments

F1283 Sch. 7 para. 10B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 151(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1284 10C For the purpose of obtaining information about the corporation's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the corporation's or directors' performance), the council of governors may require one or more of the directors to attend a meeting.**]**

Textual Amendments

F1284 Sch. 7 para. 10C inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 151(6)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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11 The corporation may pay travelling and other expenses to members of **[**F1277the council**]** of governors at rates decided by the corporation.

Textual Amendments

F1277 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

12 The constitution must provide for the chairman of the corporation or (in his absence) another person to preside at meetings of **[**F1277the council**]** of governors.

Textual Amendments

F1277 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

13 (1) The constitution must provide for meetings of **[**F1277the council**]** of governors to be open to members of the public.

(2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.

Textual Amendments

F1277 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

14 (1) The constitution must make provision as to—

(a) the conduct of elections for membership of **[**F1277the council**]**,

(b) the appointment of persons to membership,

(c) the practice and procedure of **[**F1277the council**]**,

(d) the removal of a member from office.

(2) The constitution may make further provision about **[**F1277the council**]**.

Textual Amendments

F1277 Words in Sch. 7 paras. 8-14 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

Directors

15 (1) A public benefit corporation has a board of directors.

(2) The constitution must provide for all the powers of the corporation to be exercisable by the board of directors on its behalf.

(3) But the constitution may provide for any of those powers to be delegated to a committee of directors or to an executive director.

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Modifications etc. (not altering text)

C106 Sch. 7 para. 15(3) modified by 1983 c. 20, s. 142B (as inserted (24.7.2007) by Mental Health Act 2007 (c. 12), **ss. 45(3)**, 56(1); S.I. 2007/2156, art. 2)

16 (1) The board consists of—

(a) executive directors, one of whom is the chief executive (and accounting officer) and another the finance director,

(b) non-executive directors, one of whom is the chairman.

(2) One of the executive directors must be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984 (c 24)); and another must be a registered nurse or a registered midwife.

(3) A person may not be appointed as an executive director if he is within paragraph 8(1).

(4) A person may be appointed as a non-executive director only if—

(a) he is a member of a public constituency or the patients' constituency, or

(b) where any of the corporation's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university,

and he is not within paragraph 8(1).

17 (1) It is for **[**F1285the council**]** of governors at a general meeting to appoint or remove the chairman and the other non-executive directors.

(2) Removal of a non-executive director under sub-paragraph (1) requires the approval of three-quarters of the members of **[**F1285the council**]** .

(3) It is for the non-executive directors to appoint or remove the chief executive.

(4) It is for a committee consisting of the chairman, the chief executive and the other non-executive directors to appoint or remove the executive directors.

(5) The appointment of a chief executive requires the approval of **[**F1285the council**]** of governors.

Textual Amendments

F1285 Words in Sch. 7 para. 17 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

18 (1) It is for **[**F1286the council**]** of governors at a general meeting to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors.

(2) The corporation must establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors; but the constitution may make provision for those matters to be decided pending the establishment of such a committee.

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Textual Amendments

F1286 Words in Sch. 7 para. 18 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

[F1287 18A The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public.**]**

Textual Amendments

F1287 Sch. 7 para. 18A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 152(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1288 18B (1) The duties that a director of a public benefit corporation has by virtue of being a director include in particular—

(a) a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation;

(b) a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

(2) The duty referred to in sub-paragraph (1)(a) is not infringed if—

(a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

(b) the matter has been authorised in accordance with the constitution.

(3) The duty referred to in sub-paragraph (1)(b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(4) In sub-paragraph (1)(b), "third party" means a person other than—

(a) the corporation, or

(b) a person acting on its behalf.**]**

Textual Amendments

F1288 Sch. 7 para. 18B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 152(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1289 18C (1) If a director of a public benefit corporation has in any way a direct or indirect interest in a proposed transaction or arrangement with the corporation, the director must declare the nature and extent of that interest to the other directors.

(2) If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(3) Any declaration required by this paragraph must be made before the corporation enters into the transaction or arrangement.

(4) This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

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(5) A director need not declare an interest—

(a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

(b) if, or to the extent that, the directors are already aware of it;

(c) if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered—

(i) by a meeting of the board of directors, or

(ii) by a committee of the directors appointed for the purpose under the constitution.**]**

Textual Amendments

F1289 Sch. 7 para. 18C inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 152(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F129018D (1) Before holding a meeting, the board of directors must send a copy of the agenda of the meeting to the council of governors.

(2) As soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors.**]**

Textual Amendments

F1290 Sch. 7 para. 18D inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 152(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F129118E (1) The constitution must provide for meetings of the board of directors to be open to members of the public.

(2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.**]**

Textual Amendments

F1291 Sch. 7 para. 18E inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 152(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Initial directors of former NHS trusts

19 (1) This paragraph applies, where the application for authorisation is made under section 33, to the exercise of the powers mentioned in paragraph 17 to appoint the initial non-executive directors and the initial chief executive.

(2) The power to appoint the initial chairman of the corporation must be exercised by appointing the chairman of the NHS trust, if he wishes to be appointed.

(3) The power to appoint the other initial non-executive directors of the corporation must be exercised, so far as possible, by appointing any of the non-executive directors of the NHS trust (other than the chairman) who wish to be appointed.

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(4) A person appointed in accordance with sub-paragraph (2) or (3) must be appointed for the unexpired period of his term of office as chairman or non-executive director of the NHS trust; but if, on any such appointment, that period is less than 12 months, he must be appointed for 12 months.

(5) The power to appoint the initial chief executive of the corporation must be exercised by appointing the chief officer of the NHS trust, if he wishes to be appointed.

(6) Sub-paragraphs (a) and (b) of paragraph 16(4) do not apply to the appointment of any initial non-executive director in pursuance of this paragraph; and paragraph 17(5) does not apply to the appointment of the initial chief executive of the corporation in pursuance of sub-paragraph (5).

Register of members etc

20 (1) A public benefit corporation must have—

(a) a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs,

(b) a register of members of **[**F1292the council**]** of governors,

(c) a register of interests of the members of **[**F1292the council**]** of governors,

(d) a register of directors,

(e) a register of interests of the directors.

(2) The constitution may make further provision about the registers including, in particular, admission to, and removal from, the registers.

Textual Amendments

F1292 Words in Sch. 7 para. 20 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

21 The constitution must make provision for dealing with conflicts of interest of members of **[**F1293the council**]** of governors and of the directors.

Textual Amendments

F1293 Words in Sch. 7 para. 21 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

22 (1) A public benefit corporation must make the following documents available for inspection by members of the public free of charge at all reasonable times—

(a) a copy of the current constitution,

F1294(b) . . . . . .

(c) a copy of the latest annual accounts and of any report of the auditor on them,

(d) a copy of the latest annual report,

F1295(e) . . . . . .

F1296(f) . . . . . .

[F1297(g) a copy of any order made under section 65D, 65J, 65KC, 65L or 65LA,

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(h) a copy of any report laid under section 65D,
(i) a copy of any information published under section 65D,
(j) a copy of any draft report published under section 65F,
(k) a copy of any statement provided under section 65F,
(l) a copy of any notice published under section 65F, 65G, 65H, 65J, 65KA, 65KB, 65KC or 65KD,
(m) a copy of any statement published or provided under section 65G,
(n) a copy of any final report published under section 65I,
(o) a copy of any statement published under section 65J or 65KC,
(p) a copy of any information published under section 65M.**]**

(2) Any person who requests it must be provided with a copy of or extract from any of the above documents.

(3) The corporation is also to make the registers mentioned in paragraph 20 available for inspection by members of the public, except in circumstances prescribed; and, so far as the registers are required to be available—
(a) they must be available free of charge at all reasonable times,
(b) a person who requests it must be provided with a copy of or extract from them.

(4) If the person requesting a copy or extract under this paragraph is not a member of the corporation, the corporation may impose a reasonable charge for doing so.

Textual Amendments

F1294 Sch. 7 para. 22(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(9)**, 306(4); S.I. 2013/671, art. 2(3)

F1295 Sch. 7 para. 22(1)(e) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 156(6)**, 306(1)(d)(4); S.I. 2013/671, art. 2(3)

F1296 Sch. 7 para. 22(1)(f) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 111(11)(b)**, 306(4); S.I. 2013/671, art. 2(3)

F1297 Sch. 7 para. 22(1)(g)-(p) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(10)**, 306(4); S.I. 2012/2657, art. 2(2)

Auditor

23 (1) A public benefit corporation must have an auditor.

(2) It is for **[**F1298the council**]** of governors to appoint or remove the auditor at a general meeting of **[**F1298the council**]**.

[F1299(3) An auditor may be **[**F1300an individual or a firm**]** —
F1301(a) . . . . . .
F1301(b) . . . . . .
F1301(c) . . . . . .**]**

[F1299(4) A person appointed as auditor must be—
(a) eligible for appointment as a statutory auditor (see Part 42 of the Companies Act 2006),

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[F1302(aa) eligible for appointment as a local auditor (see Part 4 of the Local Audit and Accountability Act 2014), or**]**

F1303(b) . . . . . .

(c) a member of **[**F1304a**]** body of accountants approved by the regulator for the purposes of this paragraph.**]**

F1305(5) . . . . . .

(6) The corporation must establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

[F1306(7) In this paragraph—

F1307...

"firm" has the same meaning as in **[**F1308section 1261(1) of the Companies Act 2006**]**.**]**

Textual Amendments

F1298 Words in Sch. 7 para. 23 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F1299 Sch. 7 para. 23(3)(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 258(3)(a)** (with art. 10)

F1300 Words in Sch. 7 para. 23(3) inserted (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(2)(a)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

F1301 Sch. 7 para. 23(3)(a)-(c) omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(2)(b)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

F1302 Sch. 7 para. 23(4)(aa) inserted (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(3)(a)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

F1303 Sch. 7 para. 23(4)(b) omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(3)(b)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

F1304 Word in Sch. 7 para. 23(4)(c) substituted (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(3)(c)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

F1305 Sch. 7 para. 23(5) omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(4)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

F1306 Sch. 7 para. 23(7) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 258(3)(b)** (with art. 10)

F1307 Words in Sch. 7 para. 23(7) omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(5)(a)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

F1308 Words in Sch. 7 para. 23(7) substituted (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 73(5)(b)**; S.I. 2015/841, art. 3(x) (with Sch. para. 2) (as amended (27.6.2016) by S.I. 2016/675, art. 2)

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Accounts

24 **[**F1309(1) A public benefit corporation must keep proper accounts and proper records in relation to the accounts.

(1A) The regulator may with the approval of the Secretary of State give directions to the corporation as to the content and form of its accounts.**]**

(2) The accounts must be audited by the corporation's auditor.

(3) But the Comptroller and Auditor General may examine—

(a) the accounts,

(b) **[**F1310the records**]** relating to them, and

(c) any report of the auditor on them.

(4) If trustees are appointed under section 51, the Comptroller and Auditor General may also examine—

(a) the accounts kept by the trustees,

(b) any records relating to them, and

(c) any report of an auditor on them.

[F1311(4A) The auditor must, in carrying out functions in relation to the accounts—

(a) comply with the code of audit practice applicable to the accounts that is for the time being in force (see Schedule 6 to the Local Audit and Accountability Act 2014), and

(b) have regard to guidance issued by the Comptroller and Auditor General under paragraph 9 of that Schedule (as it has effect by virtue of paragraph 10(6) of that Schedule).

(4B) The auditor of the accounts must comply with any directions given by the Secretary of State as to arrangements to monitor the standard of the work of auditors in the performance of audits under this paragraph (including arrangements to inspect that work).

(4C) The arrangements mentioned in sub-paragraph (4B) may include arrangements made by the regulator or by any other person the Secretary of State considers appropriate.**]**

F1312(5) . . . . . .

Textual Amendments

F1309 Sch. 7 para. 24(1)(1A) substituted for Sch. 7 para. 24(1) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1310 Words in Sch. 7 para. 24(3)(b) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1311 Sch. 7 para. 24(4A)-(4C) inserted (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 74(2)**; S.I. 2015/841, art. 3(x)

F1312 Sch. 7 para. 24(5) omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 74(3)**; S.I. 2015/841, art. 3(x)

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25 (1) A public benefit corporation must prepare in respect of each financial year annual accounts in such form as the regulator may with the approval of **[**F1313the Secretary of State**]** direct.

[F1314(1A) The regulator may with the approval of the Secretary of State direct a public benefit corporation—

(a) to prepare accounts in respect of such period or periods as may be specified in the direction;

(b) that any accounts prepared by it by virtue of paragraph (a) are to be audited in accordance with such requirements as may be specified in the direction.**]**

(2) In preparing its annual accounts **[**F1315or in preparing any accounts by virtue of sub-paragraph (1A)(a)**]**, the corporation must comply with any directions given by the regulator with the approval of **[**F1316the Secretary of State**]** as to—

(a) the methods and principles according to which the accounts must be prepared,

(b) the **[**F1317content and form of**]** the accounts.

(3) In determining the form and content of the annual accounts**[**F1318, or of any accounts to be prepared by it by virtue of sub-paragraph (1A)(a),**]** the regulator must aim to ensure that the accounts present a true and fair view.

(4) The corporation must—

(a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and

(b) F1319... send copies of those documents to the regulator **[**F1320within such period as the regulator may direct**]**.

[F1321(4A) The corporation must send to the regulator within such period as the regulator may direct—

(a) a copy of any accounts prepared by the corporation by virtue of sub-paragraph (1A)(a), and

(b) a copy of any report of an auditor on them prepared by virtue of sub-paragraph (1A)(b).**]**

(5) The constitution must provide for the functions of the corporation under this paragraph to be delegated to the accounting officer.

(6) In this paragraph and paragraph 27 "financial year" means—

(a) the period beginning with the date on which the corporation is authorised under section 35 and ending with the next 31st March, and

(b) each successive period of twelve months beginning with 1st April.

Textual Amendments

F1313 Words in Sch. 7 para. 25(1) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(3)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1314 Sch. 7 para. 25(1A) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(4)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1315 Words in Sch. 7 para. 25(2) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(5)(a)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

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F1316 Words in Sch. 7 para. 25(2) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(5)(b)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1317 Words in Sch. 7 para. 25(2) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(5)(c)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1318 Words in Sch. 7 para. 25(3) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(6)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1319 Words in Sch. 7 para. 25(4)(b) omitted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 154(7)(a)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1320 Words in Sch. 7 para. 25(4)(b) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(7)(b)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F1321 Sch. 7 para. 25(4A) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(8)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

Annual reports and forward plans

26 (1) A public benefit corporation must prepare annual reports and send them to the regulator.

(2) The reports must give—

(a) information on any steps taken by the corporation to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership,

[[F1322](aa) information on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C,**]**

[[F1323](ab) information on the corporation's policy on pay and on the work of the committee established under paragraph 18(2) and such other procedures as the corporation has on pay,

(ac) information on the remuneration of the directors and on the expenses of the governors and the directors,**]**

(b) any other information the regulator requires.

[[F1324](2A) Before imposing a requirement under sub-paragraph (2)(b) that the regulator considers is sufficiently significant to justify consultation, the regulator must consult such persons as it considers appropriate.**]**

(3) It is for the regulator to decide—

(a) the form of the reports,

(b) when the reports must be sent to it,

(c) the periods to which the reports are to relate.

Textual Amendments

F1322 Sch. 7 para. 26(2)(aa) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 151(8)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1323 Sch. 7 para. 26(2)(ab)(ac) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 156(1)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

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F1324 Sch. 7 para. 26(2A) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 156(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

Modifications etc. (not altering text)

C107 Sch. 7 para. 26(2): power to amend conferred (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(3)(a)**, 306(1)(d)(4)

C108 Sch. 7 para. 26(2A): power to repeal conferred (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(3)(b)**, 306(1)(d)(4)

27 (1) A public benefit corporation must give information to **[**F1325the Secretary of State**]** as to its forward planning in respect of each financial year.

(2) The document containing the information must be prepared by the directors.

(3) In preparing the document the directors must have regard to the views of **[**F1326the council**]** of governors.

Textual Amendments

F1325 Words in Sch. 7 para. 27(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(4)**, 306(1)(d)(4)

F1326 Words in Sch. 7 para. 27 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

[F1327 Annual meeting of members

Textual Amendments

F1327 Sch. 7 para. 27A and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 157(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

27A (1) A public benefit corporation must hold an annual meeting of its members.

(2) The meeting must be open to members of the public.

(3) At least one member of the board of directors of the corporation must attend the meeting and present the following documents to the members at the meeting—

(a) the annual accounts,

(b) any report of the auditor on them,

(c) the annual report.

(4) Where an amendment is made to the constitution in relation to the powers or duties of the council of governors of a public benefit corporation (or otherwise with respect to the role that the council has as part of the corporation)—

(a) at least one member of the council of governors must attend the next meeting to be held under this paragraph and present the amendment, and

(b) the corporation must give the members an opportunity to vote on whether they approve the amendment.

(5) If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the corporation must take such steps as are necessary as a result.**]**

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Meeting of [F1328council] of governors to consider annual accounts and reports

Textual Amendments

F1328 Word in Sch. 7 para. 28 cross-heading substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(d)**, 306(4); S.I. 2012/1831, art. 2(2)

28 [F1329(1)] The following documents must be presented to [F1330the council] of governors of a public benefit corporation at a general meeting—

(a) the annual accounts,

(b) any report of the auditor on them,

(c) the annual report.

[F1331(2) Nothing in sub-paragraph (1) prevents the council of governors from holding a general meeting more than once a year.]

Textual Amendments

F1329 Sch. 7 para. 28(1): Sch. 7 para. 28 renumbered as Sch. 7 para. 28(1) (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 157(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1330 Words in Sch. 7 para. 28 substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F1331 Sch. 7 para. 28(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 157(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1332Combined meetings of members and governors

Textual Amendments

F1332 Sch. 7 para. 28A and cross-heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 157(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

28A A public benefit corporation may hold a meeting which combines a meeting under paragraph 27A with a meeting under paragraph 28.

Instruments etc

29 (1) The constitution must make provision for the authentication of the fixing of the corporation's seal.

(2) A document purporting to be duly executed under the corporation's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

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[F1333 Power to make provision about voting

Textual Amendments

F1333 Sch. 7 para. 30 and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 158(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

30 (1) Regulations may amend this Chapter so as to add, vary or omit provision relating to voting by members of the council of governors of a public benefit corporation that is an NHS foundation trust, by its directors or by its members.

(2) The power under sub-paragraph (1) is exercisable only in relation to provision in this Chapter that was inserted, or otherwise provided for, by Part 4 of the Health and Social Care Act 2012.**]]**

F1334 SCHEDULE 8

Section 31

. . . . . .

Textual Amendments

F1334 Sch. 8 omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 9(1)**; S.I. 2012/2657, art. 2(2)

F1335 SCHEDULE 8A

Sections 52D and 65E

. . . . . .

Textual Amendments

F1335 Sch. 8A omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(4)**, 306(4); S.I. 2012/2657, art. 2(2)

F1336 SCHEDULE 9

Section 54

. . . . . .

Textual Amendments

F1336 Sch. 9 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)

Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULE 10

Section 62

AUDIT OF ACCOUNTS OF NHS FOUNDATION TRUSTS

General duty

1 In auditing the accounts of any NHS foundation trust an auditor must by examination of the accounts and otherwise satisfy himself that—

(a) they are prepared in accordance with directions under paragraph 25 of Schedule 7,

(b) they comply with the requirements of all other provisions contained in, or having effect under, any enactment which are applicable to them,

(c) proper practices have been observed in their compilation, and

(d) the trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

Right to documents and information

2 (1) An auditor of an NHS foundation trust has a right of access at all reasonable times to every document relating to the trust which appears to him necessary for the purposes of his functions under this Chapter.

(2) The auditor may—

(a) require a person holding or accountable for any such document to give him such information and explanation as he considers necessary for the purposes of his functions under this Chapter,

(b) if he considers it necessary, require the person to attend before him in person to give the information or explanation or to produce the document.

(3) The auditor may also—

(a) require any director or officer of the trust to give him such information or explanation as he considers necessary for the purposes of his functions under this Chapter,

(b) if he considers it necessary, require the director or officer to attend before him in person to give the information or explanation.

(4) The trust must provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under this Chapter; but this sub-paragraph does not affect the generality of sub-paragraphs (1) to (3).

(5) A person who without reasonable excuse fails to comply with any requirement of an auditor of an NHS foundation trust under any of sub-paragraphs (1) to (3) is guilty of an offence.

(6) A person guilty of an offence under sub-paragraph (5) is liable on summary conviction—

(a) to a fine not exceeding level 3 on the standard scale, and

(b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for the offence.

(7) Any expenses incurred by an auditor of an NHS foundation trust in connection with proceedings for an offence under sub-paragraph (5) alleged to have been committed

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in relation to the audit of the accounts of the trust, so far as not recovered from any other source, are recoverable from the trust.

Reports

3 In auditing the accounts of an NHS foundation trust, the auditor must consider—

(a) whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the trust or brought to the attention of the public, and

(b) whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit.

4 (1) When an auditor of an NHS foundation trust has concluded his audit of the trust's accounts, he must enter on the accounts—

(a) a certificate that he has completed the audit in accordance with this Chapter, and

(b) his opinion on the accounts.

(2) But where the auditor makes a report to the **[**F1337council of governors**]** and board of directors of the trust under paragraph 3 at the conclusion of the audit, he may instead include the certificate and his opinion in that report.

Textual Amendments

F1337 Words in Sch. 10 para. 4(2) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(e)**, 306(4); S.I. 2012/1831, art. 2(2)

5 (1) Any report under paragraph 3 must be sent by the auditor to the **[**F1338council of governors**]** and board of directors of the trust and to the regulator—

(a) at once if it is an immediate report,

(b) otherwise not later than 14 days after conclusion of the audit.

(2) The directors must take the report into consideration as soon as practicable after receiving it.

Textual Amendments

F1338 Words in Sch. 10 para. 5(1) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(e)**, 306(4); S.I. 2012/1831, art. 2(2)

Referral to regulator

6 If the auditor of an NHS foundation trust has reason to believe that the trust or a director or officer of the trust—

(a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful, or

(b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,

he must refer the matter at once to the regulator.

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Audit of accounts of directors or officers

7 (1) Where a director or officer of an NHS foundation trust receives money or other property—

(a) on behalf of the trust, or

(b) for which he ought to account to the trust,

the accounts of the director or officer must be audited by the auditor of the accounts of the trust.

(2) The accounts of the director or officer must be made up to 31st March.

(3) Paragraph 25(5) of Schedule 7 and paragraphs 1 to 5 of this Schedule apply with the necessary modifications to the audit under this paragraph.

Restriction on disclosure of information

8 (1) No information relating to an NHS foundation trust or other person and obtained by an auditor (or by a person acting on the auditor's behalf) under this Chapter or in the course of an audit under this Chapter may be disclosed except—

(a) with the consent of the person to whom the information relates,

(b) for the purposes of any functions of an auditor of an NHS foundation trust,

(c) for the purposes of the functions of the regulator,

(d) for the purposes of the functions of the Comptroller and Auditor General under this Chapter,

(e) for the purposes of the functions of **[**[F1339]the Care Quality Commission**]** ,

(f) for the purposes of any criminal proceedings.

(2) A person who discloses information in contravention of sub-paragraph (1) is guilty of an offence.

(3) A person guilty of an offence under sub-paragraph (2) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or to both),

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or to both).

(4) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' courts power to impose imprisonment) the reference in sub-paragraph (3) to a period of imprisonment of 12 months is a reference to a period of imprisonment of 6 months.

Textual Amendments

F1339 Words in Sch. 10 para. 8(1)(e) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 86**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

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SCHEDULE 11

Section 135

PILOT SCHEMES

How pilot schemes may be initiated

1 (1) A pilot scheme may be made—

(a) on the initiative of **[**F1340the Board**]**, or

(b) in response to a request made by a person wishing to participate in the scheme.

(2) The request referred to in sub-paragraph (1)(b) must—

(a) be made in writing, and

(b) comply with such requirements (if any) as may be prescribed.

Textual Amendments

F1340 Words in Sch. 11 para. 1(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(2)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Preliminary steps to be taken

2 (1) Before making a pilot scheme, **[**F1341the Board**]** must prepare proposals for the scheme and submit them to the Secretary of State.

(2) But proposals may be submitted by **[**F1342the Board**]** only with the agreement of the other proposed participants.

(3) In preparing proposals for a pilot scheme, **[**F1343the Board**]** must comply with any directions given to it by the Secretary of State as to—

(a) the matters to be dealt with, and information to be included, in the proposals, and

(b) the procedure to be followed by **[**F1344the Board**]**.

(4) Before submitting proposals for a pilot scheme, **[**F1345the Board**]** must (in addition to complying with any requirements about consultation imposed by or under any other enactment) comply with any directions given to it by the Secretary of State about the extent to which, and manner in which, it must consult on the proposals.

(5) The Secretary of State may give directions—

(a) requiring **[**F1346the Board**]** to submit proposals to him,

(b) as to the matters to which **[**F1346the Board**]** must have regard in making any recommendation to the Secretary of State when submitting proposals for a pilot scheme,

(c) as to the form in which any such recommendation must be made,

(d) requiring **[**F1347the Board**]** to provide the Secretary of State with summaries (prepared and presented in the manner specified in the directions) of all requests received by **[**F1348it**]** during the period specified in the directions.

(6) A direction under this paragraph may be given so as to apply—

(a) generally in circumstances specified in the direction, or

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(b) in relation to a particular case.

Textual Amendments

F1341 Words in Sch. 11 para. 2(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1342 Words in Sch. 11 para. 2(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1343 Words in Sch. 11 para. 2(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1344 Words in Sch. 11 para. 2(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(c)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1345 Words in Sch. 11 para. 2(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1346 Words in Sch. 11 para. 2(5)(a)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1347 Words in Sch. 11 para. 2(5)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(d)(i)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1348 Word in Sch. 11 para. 2(5)(d) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(3)(d)(ii)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Approval

3 (1) If proposals for a pilot scheme are submitted under paragraph 2, the Secretary of State must—

(a) approve them as submitted,

(b) make such modifications as he considers appropriate and approve them as modified, or

(c) reject them.

(2) The Secretary of State may not approve proposals for a pilot scheme unless satisfied that they include satisfactory provision for any participant other than **[**F1349the Board**]** to withdraw from the scheme if he wishes to do so.

(3) When the Secretary of State makes a decision under this paragraph—

(a) he must notify **[**F1350the Board**]** of the decision, and

(b) **[**F1351the Board**]** must, without delay, notify the other participants in the proposed scheme.

Textual Amendments

F1349 Words in Sch. 11 para. 3(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(4)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1350 Words in Sch. 11 para. 3(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(4)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1351 Words in Sch. 11 para. 3(3)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(4)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Preliminary approval

4 (1) This paragraph applies if **[**F1352the Board**]** proposes to make a pilot scheme but has not determined who the participants, or who all of the participants, will be.

(2) **[**F1353The Board**]** may apply to the Secretary of State for preliminary approval to be given to its proposals.

(3) If such an application is made, the Secretary of State must—

(a) give preliminary approval to the proposals as submitted,

(b) make such modifications as he considers appropriate and give preliminary approval to them as modified, or

(c) reject them.

(4) If **[**F1354the Board**]** is given preliminary approval, it must take such steps, with a view to obtaining final approval for the proposed pilot scheme, as the Secretary of State may direct.

(5) The fact that the Secretary of State has given preliminary approval to proposals for a pilot scheme does not affect his right to refuse to approve the completed proposals when they are submitted under paragraph 2.

(6) Sub-paragraphs (3) to (6) of paragraph 2 apply in relation to an application for preliminary approval of proposals under this paragraph as they apply in relation to proposals under that paragraph.

Textual Amendments

F1352 Words in Sch. 11 para. 4(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(5)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1353 Words in Sch. 11 para. 4(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(5)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1354 Words in Sch. 11 para. 4(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(5)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Effect of proposals on existing services

5 (1) Proposals for a pilot scheme submitted under paragraph 2, or included in an application for preliminary approval of proposals under paragraph 4, must include—

(a) an assessment by **[**F1355the Board**]** of the likely effect of the implementation of the proposals in **[**F1356the area concerned**]** on the services mentioned in sub-paragraph (2),

(b) any assessment **[**F1357prepared under sub-paragraph (3)**]**.

(2) The services are—

(a) pharmaceutical services,

(b) local pharmaceutical services provided under existing pilot schemes or LPS schemes,

(c) primary medical services.

(3) If it appears to **[**F1358the Board**]** that the proposals would, if implemented, affect any of the services mentioned in sub-paragraph (2) provided in **[**F1359another area**]**,

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it must **[**F1360prepare an assessment of the likely effect on those services of the implementation of**]** the proposals before submitting them under paragraph 2 or including them in an application for preliminary approval under paragraph 4.

F1361(4) . . . . . .

Textual Amendments

F1355 Words in Sch. 11 para. 5(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(6)(a)(i)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1356 Words in Sch. 11 para. 5(1)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(6)(a)(ii)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1357 Words in Sch. 11 para. 5(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(6)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1358 Words in Sch. 11 para. 5(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(6)(c)(i)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1359 Words in Sch. 11 para. 5(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(6)(c)(ii)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1360 Words in Sch. 11 para. 5(3) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(6)(c)(iii)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1361 Sch. 11 para. 5(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(6)(d)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Guidance

6 The Secretary of State may issue guidance about the criteria by reference to which, as a general rule, powers under paragraph 3 or 4 are likely to be exercised.

Making a scheme

7 (1) If the Secretary of State approves proposals for a pilot scheme under paragraph 3 and notifies **[**F1362the Board**]** in accordance with that paragraph, **[**F1363the Board must**]** implement the proposals in accordance with directions given by the Secretary of State.

(2) A proposed participant in a pilot scheme (other than **[**F1364the Board**]**) may withdraw at any time before the proposals relating to him are implemented.

(3) A pilot scheme, as implemented, may differ from the proposals for the scheme approved by the Secretary of State only if he agrees to the variation or—

(a) directions given by him (either under sub-paragraph (1) or generally) authorise variations that satisfy specified requirements, and

(b) the variation satisfies those requirements.

(4) As soon as is reasonably practicable after implementing proposals for a pilot scheme, **[**F1365the Board**]** must (in accordance with any directions given to it by the Secretary of State) publish details of the scheme.

Textual Amendments

F1362 Words in Sch. 11 para. 7(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(7)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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F1363 Words in Sch. 11 para. 7(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(7)(b)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1364 Words in Sch. 11 para. 7(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(7)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
F1365 Words in Sch. 11 para. 7(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 92(7)(a)** (with Sch. 4 para. 92(8)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 12

Section 144

LPS SCHEMES

Provision of local pharmaceutical services

1 (1) **[**F1366The Board or the Secretary of State**]**F1367... may establish LPS schemes.

(2) In this Act, an "LPS scheme" means one or more agreements—

(a) made by **[**F1368the Board or the Secretary of State (the "commissioner")**]**F1369... in accordance with this Schedule,

(b) under which local pharmaceutical services will be provided (otherwise than by the **[**F1370the commissioner**]**). F1371...

F1371(c) . . . . . .

F1372(2A) . . . . . .

[F1373(2B) The Secretary of State may establish an LPS scheme only where the other party is the Board.

(2C) The Board may provide local pharmaceutical services under an LPS scheme only in such circumstances as may be prescribed.**]**

(3) An LPS scheme may include arrangements—

(a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Act, other than under Chapter 1 of this Part, and whether or not of the kind usually provided by pharmacies,

(b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).

(4) An LPS scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services or primary dental services.

(5) In determining the arrangements it needs to make in order to comply with section 126, **[**F1374the Board**]** may take into account arrangements under an LPS scheme F1375....

(6) The functions of an NHS trust **[**F1376, an NHS foundation trust and **[**F1377the Board**]]** include power to provide any services to which an LPS scheme applies.

(7) In this Schedule—

"local pharmaceutical services" means such services of a kind which may be provided under section 126, or by virtue of section 127, (other than

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practitioner dispensing services) as may be prescribed for the purposes of this Schedule, and

"LP services" means services provided under an LPS scheme (including any services to which the scheme applies as a result of sub-paragraph (3)).

(8) "Practitioner dispensing services" means the provision of drugs, medicines or listed appliances (within the meaning given by section 126) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 132(1).

Textual Amendments

F1366 Words in Sch. 12 para. 1(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(a)(i)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1367 Words in Sch. 12 para. 1(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(a)(ii)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1368 Words in Sch. 12 para. 1(2)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(b)(i)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1369 Words in Sch. 12 para. 1(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(b)(ii)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1370 Words in Sch. 12 para. 1(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(b)(iii)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1371 Sch. 12 para. 1(2)(c) and word repealed (1.9.2012) by Health Act 2009 (c. 21), ss. 29(8)(c), 40(1), **Sch. 6**; S.I. 2012/1902, art. 2(d)

F1372 Sch. 12 para. 1(2A) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(c)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1373 Sch. 12 para. 1(2B)(2C) substituted for Sch. 12para. 1(2B) (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(d)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1374 Words in Sch. 12 para. 1(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(e)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1375 Words in Sch. 12 para. 1(5) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(f)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1376 Words in Sch. 12 para. 1(6) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(11)**, 40(1); S.I. 2012/1902, art. 2(d)

F1377 Words in Sch. 12 para. 1(6) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(2)(e)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Designation of priority neighbourhoods or premises

2 (1) The Secretary of State may make regulations allowing **[**F1378the Board**]**F1379... to designate—

[F1380(a) relevant areas**]**,

(b) premises, or

(c) descriptions of premises,

for the purposes of this paragraph.

(2) The regulations may, in particular, make provision—

(a) as to the circumstances in which, and the **[**F1381relevant areas**]** or premises in relation to which, designations may be made or maintained,

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(b) allowing **[**F1382the Board**]** to defer consideration of pharmaceutical list applications relating to **[**F1381relevant areas**]**, premises or descriptions of premises that have been designated,

(c) allowing a designation to be cancelled in prescribed circumstances,

(d) requiring a designation to be cancelled—

(i) if the Secretary of State gives a direction to that effect, or

(ii) in prescribed circumstances.

(3) "Pharmaceutical list applications" means applications for inclusion in a pharmaceutical list.

[F1383(4) "Relevant area" has the same meaning as in section 129(2A).**]**

Textual Amendments

F1378 Words in Sch. 12 para. 2(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(3)(a)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1379 Words in Sch. 12 para. 2(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(3)(b)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1380 Words in Sch. 12 para. 2(1)(a) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(12)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1381 Words in Sch. 12 para. 2(2)(a)(b) substituted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(12)(a)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1382 Words in Sch. 12 para. 2(2)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(3)(a)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1383 Sch. 12 para. 2(4) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(12)(b)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C109 Sch. 12 para. 2 modified (1.4.2013) by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349), regs. 1, **99(1)**

Regulations

3 (1) The Secretary of State may make regulations with respect to LP services.

(2) The regulations must include provision for participants other than **[**F1384the commissioner**]** to withdraw from an LPS scheme if they wish to do so.

(3) The regulations may, in particular—

(a) provide that an LPS scheme may be made only—

(i) in prescribed circumstances,

(ii) in relation to an area, a community or a category of persons determined in accordance with the regulations, or

(iii) in relation to premises determined in accordance with the regulations,

(b) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with an LPS scheme,

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(c) make provision as to the services, or categories of service, for which an LPS scheme must provide,

(d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons providing LP services,

(e) require details of each LPS scheme to be published,

(f) make provision with respect to the variation and termination of an LPS scheme,

(g) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both LP services and pharmaceutical services from the same premises,

(h) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list,

(i) provide for parties to an LPS scheme to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 9,

(j) provide for directions, as to payments, made under section 9(11) (as it has effect as a result of regulations made by virtue of paragraph (i)) to be enforceable in **[**F1385the county court**]** (if the court so orders) as if they were judgments or orders of that court,

(k) authorise **[**F1386the Board or the Secretary of State**]**F1387... to make payments of financial assistance for prescribed categories of preparatory work undertaken—

(i) in connection with preparing proposals for an LPS scheme, or

(ii) in preparation for the provision of services under a proposed LPS scheme.

Textual Amendments

F1384 Words in Sch. 12 para. 3(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(4)(a)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1385 Words in Sch. 12 para. 3(3)(j) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F1386 Words in Sch. 12 para. 3(3)(k) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(4)(b)(i)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F1387 Words in Sch. 12 para. 3(3)(k) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 93(4)(b)(ii)** (with Sch. 4 para. 93(6)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F1388SCHEDULE 12A

Section 165A(3)

PHARMACEUTICAL REMUNERATION

Textual Amendments

F1388 Sch. 12A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 51(2), 306(4), **Sch. 3**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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Interpretation

1 In this Schedule—

(a) "drugs" includes medicines and listed appliances (within the meaning of section 126), and

(b) "pharmaceutical remuneration" means remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services.

Pharmaceutical remuneration to be apportioned among clinical commissioning groups

2 (1) The Board must determine the elements of pharmaceutical remuneration in respect of which apportionments are to be made in relation to a financial year in accordance with this paragraph.

(2) In this Schedule, those elements of pharmaceutical remuneration are referred to as "designated elements".

(3) The Board must notify each clinical commissioning group of a determination under sub-paragraph (1).

(4) The Board must apportion the sums paid by it in respect of each designated element during the financial year among all clinical commissioning groups, in such manner as the Board thinks appropriate.

(5) In apportioning sums under sub-paragraph (4), the Board may, in particular, take into account the financial consequences of orders for the provision of drugs that are attributable to the members of each clinical commissioning group.

(6) Where an amount of pharmaceutical remuneration is apportioned to a clinical commissioning group, the Board—

(a) may deduct that amount from the sums that it would otherwise pay to the group under section 223G(1), and

(b) if it does so, must notify the group accordingly.

(7) The Secretary of State may direct the Board that an element of pharmaceutical remuneration specified in the direction is not to be included in a determination under sub-paragraph (1).

(8) In determining the amount to be allotted to a clinical commissioning group for the purposes of section 223G, the Board must take into account the effect of this Schedule.

(9) For the purposes of sections 223H and 223I(3) and paragraph 17 of Schedule 1A, any amount of which a clinical commissioning group is notified under sub-paragraph (6) is to be treated as expenditure of the group which is attributable to the performance by it of its functions in the year in question.

Other pharmaceutical remuneration

3 (1) This paragraph applies in relation to pharmaceutical remuneration paid in a financial year other than—

(a) designated elements of such remuneration, and

(b) remuneration of a prescribed description.

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(2) The Board may require a person to reimburse the Board for any pharmaceutical remuneration to which this paragraph applies if the drugs or services to which the remuneration relates were—

(a) ordered by that person, or

(b) ordered in the course of the delivery of a service arranged by that person.

(3) Any sum payable to the Board by virtue of sub-paragraph (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

Exercise of functions

4 The Board may, with the consent of the Secretary of State—

(a) direct a Special Health Authority to exercise any functions of the Board under this Schedule, or

(b) arrange for any other person to exercise any of those functions.**]**

F1389SCHEDULE 13

Section 169

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Textual Amendments

F1389 Sch. 13 omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 128** (with Sch. 5)

F1390SCHEDULE 14

Section 231

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Textual Amendments

F1390 Sch. 14 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 124**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

SCHEDULE 15

Section 232

ACCOUNTS AND AUDIT

NHS bodies

1 (1) The following are NHS bodies for the purposes of this Schedule—

F1391(a) . . . . . .

(b) any Special Health Authority to which sub-paragraph (2) applies,

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F1392(c) . . . . . .

(d) any NHS trust all or most of whose hospitals, establishments and facilities are situated in England,

(e) any trustees for such an NHS trust appointed under paragraph 10 of Schedule 4,

(f) any special trustees appointed as mentioned in section 212(1) for a trust all or most of whose hospitals, establishments and facilities are situated in England,

F1393(g) . . . . . .

(2) This sub-paragraph applies to any Special Health Authority which—

(a) performs functions only or mainly in respect of England, or

(b) neither performs functions only or mainly in respect of England, nor performs functions only or mainly in respect of Wales.

[F1394(3) References in this Schedule to "NHS Direct" are to NHS Direct National Health Service Trust.**]**

Textual Amendments

F1391 Sch. 15 para. 1(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 125(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)

F1392 Sch. 15 para. 1(1)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 125(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)

F1393 Sch. 15 para. 1(1)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 125(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)

F1394 Sch. 15 para. 1(3) inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(2)** (with art. 10)

Accounts to be kept by NHS bodies

2 (1) Each NHS body must keep proper accounts and proper records in relation to the accounts.

(2) If the Secretary of State so directs with the approval of the Treasury, the accounts of any such body of a description specified in the direction must be kept in such form as is so specified.

(3) This paragraph is subject to paragraph 8(2).

Preparation of annual accounts

3 (1) Each NHS body must prepare in respect of each financial year annual accounts in such form as the Secretary of State may direct with the approval of the Treasury.

(2) This paragraph is subject to paragraph 8(3).

Auditing of accounts of certain NHS bodies

4 (1) This paragraph applies to any NHS body that is not a Special Health Authority (as to which, see paragraph 6).

[F1395(a) a Special Health Authority (as to which, see paragraph 6).**][**F1396, or

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(b) NHS Direct (as to which, see paragraph 6). **]**

(2) Any annual accounts prepared by any such body under paragraph 3 must be audited in accordance with the **[**F1397Local Audit and Accountability Act 2014**]**.

(3) The Comptroller and Auditor General may examine—

(a) any such accounts and any records relating to them, and

(b) any report on them by the auditor or auditors.

F1398(4) . . . . . .

Textual Amendments

F1395 Sch. 15 para. 4(1)(a): words in Sch. 15 para. 4(1) renumbered as Sch. 15 para. 4(1)(a) (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(3)** (with art. 10)

F1396 Sch. 15 para. 4(1)(b) and word inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(3)** (with art. 10)

F1397 Words in Sch. 15 para. 4(2) substituted (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 75(a)**; S.I. 2015/841, art. 3(x)

F1398 Sch. 15 para. 4(4) omitted (1.4.2015) by virtue of Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 75(b)**; S.I. 2015/841, art. 3(x)

Modifications etc. (not altering text)

C110 Sch. 15 para. 4 applied (with modifications) (10.2.2015) by The Local Audit (Appointing Person) Regulations 2015 (S.I. 2015/192), reg. 1(1), **Sch. para. 19** (with reg. 1(2))

Transmission of annual accounts

5 (1) Each NHS body that is **[**F1399neither**]** a Special Health Authority **[**F1400nor NHS Direct**]** must send a copy of any accounts of the body audited as mentioned in paragraph 4(2) to the Secretary of State by the specified date.

F1401(2) . . . . . .

(3) Each **[**F1402NHS body that is a Special Health Authority or NHS Direct**]** must send copies of any annual accounts prepared by it under paragraph 3—

(a) to the Secretary of State by the specified date, and

(b) to the Comptroller and Auditor General as soon as is reasonably practicable following the end of the financial year in question.

(4) The "specified date", in relation to a financial year, means such date as the Secretary of State may direct in relation to that year.

Textual Amendments

F1399 Word in Sch. 15 para. 5(1) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(4)(a)** (with art. 10)

F1400 Words in Sch. 15 para. 5(1) inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(4)(b)** (with art. 10)

F1401 Sch. 15 para. 5(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 125(3)**; S.I. 2013/160, art. 2(2) (with arts. 4, 5, 7-9)

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F1402 Words in Sch. 15 para. 5(3) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(5)** (with art. 10)

Auditing of certain Special Health Authority accounts by Comptroller and Auditor General

6 (1) This paragraph applies where **[**F1403an NHS body that is a Special Health Authority or NHS Direct**]** sends a copy of its annual accounts to the Comptroller and Auditor General under paragraph 5(3).

(2) The Comptroller and Auditor General must examine, certify and report on the accounts.

(3) The **[**F1404body**]** must lay before both Houses of Parliament—

(a) a copy of the accounts, and

(b) the Comptroller and Auditor General's report on them.

Textual Amendments

F1403 Words in Sch. 15 para. 6(1) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(6)** (with art. 10)

F1404 Word in Sch. 15 para. 6(3) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(7)** (with art. 10)

Summarised accounts of NHS bodies other than Special Health Authorities

F1405 7 . . . . . .

Textual Amendments

F1405 Sch. 15 para. 7 omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 125(4)**; S.I. 2012/1831, art. 2(2) (with art. 11(1))

Exceptions for accounts of charitable trusts

8 (1) For the purposes of this paragraph a "relevant charitable trust", in relation to an NHS body, means a charitable trust whose trustee or trustees is or are that body.

(2) Nothing in paragraph 2, so far as it applies to an NHS body of any description, has effect in relation to accounts relating to a relevant charitable trust.

(3) Nothing in paragraph 3 F1406..., so far as it applies to an NHS body of any description, requires any annual or summarised accounts prepared by or in relation to the body to include matters relating to a relevant charitable trust.

Textual Amendments

F1406 Words in Sch. 15 para. 8(3) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 125(5)**; S.I. 2012/1831, art. 2(2) (with art. 11(1))

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Exceptions for accounts of non-charitable trusts

F1407 9 . . . . . .

Textual Amendments

F1407 Sch. 15 para. 9 omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 125(6)**; S.I. 2012/1831, art. 2(2) (with art. 11(1))

F1408 SCHEDULE 16

Section 243

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Textual Amendments

F1408 Sch. 16 repealed (30.6.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 232(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 4(b)(c)

SCHEDULE 17

Section 246

EXEMPT INFORMATION RELATING TO HEALTH SERVICES

Modifications etc. (not altering text)

C111 Sch. 17: power to apply conferred by 2007 c. 28, s. 123(5)(b)(iii) (as substituted (12.1.2010) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), **ss. 32(1)**, 148(2)(a)(ii))

C112 Sch. 17 applied (1.4.2013) by The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (S.I. 2013/218), regs. 1(2), **30(3)**

PART 1

DESCRIPTIONS OF EXEMPT INFORMATION

1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, a relevant body.

2 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of a relevant body.

3 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by a relevant body.

4 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by a relevant body.

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5 The amount of any expenditure proposed to be incurred by a relevant body under any particular contract for the acquisition of property or the supply of goods and services.

6 Any terms proposed or to be proposed by or to a relevant body in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.

7 The identity of a relevant body (as well as of any other person, by virtue of paragraph 6) as the person offering any particular tender for a contract for the supply of goods or services.

8 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between a relevant body or a Minister of the Crown and employees of, or office-holders under, a relevant body.

9 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with—

(a) any legal proceedings by or against a relevant body, or

(b) the determination of any matter affecting a relevant body,

(whether, in either case, proceedings have been commenced or are in contemplation).

10 Information relating to a particular person who was included in a list of persons undertaking to provide services under Part 2 of the National Health Service Act 1977 (c. 49).

11 Information relating to a particular person who is, or was formerly, included in, or is an applicant for inclusion in—

(a) a pharmaceutical list, or

(b) a pharmaceutical list or ophthalmic list under the National Health Service (Wales) Act 2006 (c. 42).

12 Information relating to a particular person who—

(a) provided primary medical services, primary dental services or primary ophthalmic services under a contract under section 28K, 28Q or 28WA of the National Health Service Act 1977, or

(b) was included in a list under section 28X of that Act.

13 (1) Information relating to a particular person who—

(a) is, or was formerly, providing primary medical services, primary dental services or primary ophthalmic services under a contract under section 84, 100 or 117, or

(b) is, or was formerly, included in, or is an applicant for inclusion in, a list under section 91, 106, 123 or **[**F1409147A**]**.

(2) In this paragraph—

(a) references to primary medical services and primary dental services include such services provided under the National Health Service (Wales) Act 2006, and

(b) references to provisions of this Act include references to corresponding provisions of that Act.

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Textual Amendments

F1409 Word in Sch. 17 para. 13(1)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(6)**, 306(1)(d)(4)

14 Information relating to any particular employee, former employee, or applicant to become an employee, of a person referred to in paragraph 10, 11, 12 or 13.

15 Information relating to the physical or mental health of a particular individual.

PART 2

QUALIFICATIONS

16 Information relating to a person of a description specified in any of paragraphs 1 to 4 and 10 to 14 of Part 1 is not exempt information by virtue of that paragraph unless it relates to an individual of that description in the capacity indicated by the description.

17 Information falling within paragraph 5 of Part 1 is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with a relevant body in respect of the property, goods or services, whether the advantage would arise as against that body or as against other such persons.

18 Information falling within paragraph 6 of Part 1 is exempt information if and so long as disclosure to the public of the terms would prejudice a relevant body in those or any other negotiations concerning the property or goods or services.

19 Information falling within paragraph 8 of Part 1 is exempt information if and so long as disclosure to the public of the information would prejudice a relevant body in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.

PART 3

INTERPRETATION

20 In this Schedule—

"disposal", in relation to property, includes the granting of an interest in or right over it,

"employee" means a person employed under a contract of service,

"labour relations matter" means—

(a) any of the matters specified in paragraphs (a) to (g) of section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (matters which may be the subject of a collective agreement), or

(b) any dispute about a matter falling within paragraph (a),

and for the purposes of this definition the enactments mentioned in paragraph (a), with the necessary modifications, apply in relation to office-holders under a relevant body as they apply in relation to employees of a relevant body,

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"office-holder", in relation to a relevant body, means the holder of any paid office appointments to which are or may be made or confirmed by the body or by any person who holds any such office or is an employee of the body.

SCHEDULE 18

Section 75

SECTION 75 ARRANGEMENTS: TRANSFER OF STAFF

Application of Schedule

1 This Schedule applies where, under any arrangements under regulations under section 75, any functions of a body ("the transferor") will be exercised by another body ("the transferee").

Orders transferring staff

2 (1) The Secretary of State may by order transfer to the transferee any specified description of employees of the transferor.

(2) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.

Effect of order on contracts of employment

3 (1) The contract of employment of an employee transferred by an order under paragraph 2—

(a) is not terminated by the transfer, and

(b) has effect from the date of the transfer as if originally made between the employee and the transferee.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee's contract of employment are by virtue of this sub-paragraph transferred to the transferee, and

(b) anything done before the date of the transfer by or in relation to the transferor in respect of the employee or his contract of employment is deemed from that date to have been done by or in relation to the transferee.

(3) Sub-paragraphs (1) and (2) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the transferor or the transferee that he objects to the transfer.

(4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.

(5) This paragraph does not affect any right of an employee transferred by an order under paragraph 2 to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only

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that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

Effect of order on pension rights

4 (1) An order under paragraph 2 may provide that, in the case of an employee of any specified description who is transferred by the order, paragraph 3 does not apply in relation to—

(a) so much of the employee's contract of employment as relates to relevant pension provisions, or

(b) any rights, powers, duties or liabilities under or in connection with that contract, or otherwise arising in connection with the employee's employment, and relating to such provisions.

(2) If an order under paragraph 2 provides as mentioned in sub-paragraph (1), the order may in relation to any such employee make such provision (if any) as the Secretary of State considers appropriate with respect to all or any of the matters mentioned in paragraphs (a) and (b) of that sub-paragraph.

(3) The provision which may be made by virtue of sub-paragraph (2) includes provision—

(a) for any such employee's contract of employment with the transferee to have effect with any specified modifications,

(b) for relevant pension provisions of any specified description to have effect in the case of any such employee with any such modifications.

(4) In this paragraph "relevant pension provisions" means the provisions of an occupational pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48), with the exception (if the order under paragraph 2 so provides) of any provisions of such a scheme falling within a description specified in the order.

Divided employments

5 (1) Where an employee will be transferred by an order under paragraph 2 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, divided so as to constitute two separate contracts of employment between the employee and the transferor and between the employee and the transferee.

(2) Where an employee's contract of employment is divided as provided under sub-paragraph (1)—

(a) the order must provide for paragraph 3 to have effect in the case of the employee and his contract of employment subject to appropriate modifications, and

(b) paragraph 4 similarly applies only so far as appropriate in connection with the employee's employment by the transferee.

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F1410 SCHEDULE 19

Section 250

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Textual Amendments

F1410 Sch. 19 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 283(1)**, 306(4) (with s. 283(3)); S.I. 2012/1319, art. 2(3)

F1411 SCHEDULE 20

Section 254

. . . . . .

Textual Amendments

F1411 Sch. 20 omitted (1.4.2015) by virtue of The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 83** (with arts. 1(3), 3)

SCHEDULE 21

Section 259

PROHIBITION OF SALE OF MEDICAL PRACTICES

Modifications etc. (not altering text)

C113 Sch. 21 transfer of functions (10.7.2008) by Welsh Ministers (Transfer of Functions) Order 2008 (S.I. 2008/1786), **art. 2(b)**

Prohibition, and certificate of the Secretary of State

1 (1) Any person who sells or buys the goodwill of a medical practice which it is unlawful to sell by virtue of section 259 is guilty of an offence and liable on conviction on indictment to a fine not exceeding—

(a) such amount as will in the court's opinion secure that he derives no benefit from the offence, and

(b) the further amount of £500,

or to imprisonment for a term not exceeding three months, or both.

(2) Any person proposing to be a party to a transaction or series of transactions which he considers might amount to a sale of the goodwill of a medical practice in contravention of section 259 may ask the Secretary of State for a certificate under this paragraph.

(3) The Secretary of State must—

(a) consider any such application, and

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(b) if he is satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of such a medical practice, issue to the applicant a certificate to that effect.

(4) The certificate must—

(a) be in the prescribed form, and

(b) set out all material circumstances disclosed to the Secretary of State.

(5) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it is a defence to prove that the transaction or series of transactions was certified by the Secretary of State under sub-paragraph (3).

(6) Any document purporting to be such a certificate is admissible in evidence and is deemed to be such a certificate unless the contrary is proved.

(7) The court may disregard such a certificate if it appears to the court that the applicant for the certificate—

(a) failed to disclose to the Secretary of State all the material circumstances, or

(b) made any misrepresentation with respect to the material circumstances.

(8) A prosecution for an offence under this paragraph may be instituted only by or with the consent of the Director of Public Prosecutions, and the Secretary of State must, at the request of the Director, furnish him with—

(a) a copy of any certificate issued by the Secretary of State under sub-paragraph (3), and

(b) copies of any documents produced to him in connection with the application for that certificate.

Certain transactions deemed sale of goodwill

2 (1) For the purposes of section 259 and paragraph 1, a disposal of premises previously used for the purposes of a medical practice is deemed to be a sale of the goodwill of a medical practice if—

(a) the person disposing of the premises did so knowing that another person ("A") intended to use them for the purposes of A's medical practice, and

(b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.

(2) If a person disposes of any premises together with any other property, the court must, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it considers just.

(3) For the purposes of sub-paragraphs (1) and (2)—

(a) "disposal" means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and "disposes" and "disposing" must be read accordingly, and

(b) a person who procures the disposal of any premises must be treated as having disposed of them.

(4) Where in pursuance of any partnership agreement—

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(a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership,

(b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or

(c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,

there is deemed for the purposes of section 259 and paragraph 1 to have been a sale of goodwill as specified in sub-paragraph (5).

(5) The sale of goodwill is the sale of the goodwill of the practice—

(a) of any partner to whom, or to whose personal representative, the consideration (or any part of it) is given or for whose benefit the services are performed,

(b) to the partner or each of the partners by or on whose behalf the consideration (or any part of it) was given or to the partner who performed the services.

(6) The sale is deemed for the purposes of section 259 and paragraph 1 to have been effected—

(a) in a case to which sub-paragraph (4)(a) or (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part was given, or

(b) in a case to which sub-paragraph (4)(c) applies, at the time when the agreement was made.

(7) Sub-paragraph (8) applies if a person ("the assistant")—

(a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice),

(b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed, and

(c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.

(8) For the purposes of section 259 and paragraph 1, a sale of the goodwill of the practice is deemed to have taken place (at the time when the remuneration was fixed) unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.

(9) For the purposes of section 259 and paragraph 1, the goodwill of a medical practice is deemed to have been sold if sub-paragraph (10) or (11) applies.

(10) This sub-paragraph applies where a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—

(a) to do or refrain from doing any act for the purpose of facilitating the succession of another to the practice, or

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(b) to allow any act to be done for that purpose.

(11) This sub-paragraph applies where a person—

(a) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice), and

(b) succeeds, or has previously succeeded, to the practice.

(12) Sub-paragraph (9) does not apply if it is proved that no part of the consideration was given in respect of the goodwill.

(13) Sub-paragraph (9) does not apply to anything done—

(a) in relation to the acquisition of premises for the purposes of a medical practice,

(b) in pursuance of a partnership agreement, or

(c) in the performance of medical services by one person as an assistant to another.

Consideration

3 (1) In determining for the purposes of section 259 and this Schedule the consideration given in respect of any transaction, the court must—

(a) have regard to any other transaction appearing to the court to be associated with the first transaction,

(b) estimate the total consideration given in respect of both or all the transactions, and

(c) apportion the total between the transactions in such manner as the court considers just.

(2) For the purposes of section 259 and this Schedule consideration is deemed to be given to a person ("B") if—

(a) it is given to another person but with B's knowledge and consent, and

(b) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration.

Carried-over goodwill

4 The fact that a person's medical practice was previously carried on by another person who at any time provided or performed services as specified in section 259 does not, by itself, make it unlawful under section 259 for the goodwill of his practice to be sold.

Interpretation

5 In section 259 and this Schedule, unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.

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SCHEDULE 22

Section 260

CONTROL OF MAXIMUM PRICES FOR MEDICAL SUPPLIES

Orders and directions

F1412 1 . . . . . .

Textual Amendments

F1412 Sch. 22 para. 1 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 7(9)**, 12(3); S.I. 2017/809, reg. 2(f)

Notices, authorisations and proof of documents

F1413 2 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Territorial extent

F1413 3 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

False documents and false statements

F1413 4 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Restrictions on disclosing information

F1413 5 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

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F1413 6 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Offences by corporations

F1413 7 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Penalties

F1413 8 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Production of documents

F1413 9 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

F1413 10 . . . . . .

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Penalties for offences: transitional modification for England and Wales

F1413 11 . . . . . .

***Changes to legislation:** National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F1413 Sch. 22 paras. 2-11 omitted (7.8.2017) by virtue of Health Service Medical Supplies (Costs) Act 2017 (c. 23), **ss. 10(18)**, 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

Changes to legislation:
National Health Service Act 2006 is up to date with all changes known to be in force on or before 26 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- Pt. 2 Ch. 3 repealed by 2012 c. 7 s. 179(2)
- s. 33 cross-heading substituted by 2012 c. 7 s. 180(5)
- s. 65KA cross-heading inserted by 2012 c. 7 Sch. 14 para. 21(5)
- s. 65K and cross-heading omitted by 2012 c. 7 Sch. 14 para. 20(1)
- s. 1F(1) power to apply conferred by 2014 c. 23 s. 97(2)
- s. 4(2) words omitted by 2012 c. 7 Sch. 14 para. 2
- s. 6A omitted by S.I. 2019/777 reg. 3(a)
- s. 6B omitted by S.I. 2019/777 reg. 3(b)
- s. 6D omitted by S.I. 2019/777 reg. 3(e)
- s. 6E(7)(b) omitted by S.I. 2019/777 reg. 3(f)
- s. 8(2)(c) omitted by 2012 c. 7 Sch. 14 para. 3
- s. 9(3) omitted by 2012 c. 7 Sch. 14 para. 4
- s. 13M words inserted by 2014 c. 23 s. 97(4)(b)
- s. 14Z words inserted by 2014 c. 23 s. 97(4)(c)
- s. 14Z2 words omitted by virtue of 2012 c. 7, Sch. 14 para. 4B (as inserted) by 2014 c. 23 s. 120(18)(a)
- s. 24(8)(a) words inserted by 2012 c. 7 s. 206(2)
- s. 24A(2) words substituted by 2012 c. 7 s. 206(3)
- s. 32 modified (temp.) by S.I. 2013/671 art. 3
- s. 33 omitted by 2012 c. 7 s. 180(1)
- s. 35 omitted by 2012 c. 7 s. 180(2)
- s. 36 title substituted by 2012 c. 7 s. 180(4)
- s. 36(1) omitted by 2012 c. 7 s. 180(3)
- s. 36(3)(4) omitted by 2012 c. 7 s. 180(3)
- s. 51 omitted by 2016 c. 10 s. 1(1)(a)
- s. 51(4) omitted by 2012 c. 7 Sch. 14 para. 7
- s. 56(1)(b) words omitted by 2012 c. 7 Sch. 14 para. 8(a)
- s. 56(1A) words omitted by 2012 c. 7 Sch. 14 para. 8(b)
- s. 56A(1)(b) words omitted by 2012 c. 7 Sch. 14 para. 9(a)
- s. 56A(2) words omitted by 2012 c. 7 Sch. 14 para. 9(b)
- s. 56A(3)(a) and word omitted by 2012 c. 7 Sch. 14 para. 9(c)
- s. 57(3)(a) words omitted by 2012 c. 7 Sch. 14 para. 10(a)
- s. 57(4) words omitted by 2012 c. 7 Sch. 14 para. 10(b)
- s. 57(5) omitted by 2012 c. 7 Sch. 14 para. 10(c)
- s. 65(1) words omitted by 2012 c. 7 Sch. 14 para. 11
- s. 65A(1)(a) omitted by 2012 c. 7 Sch. 14 para. 12
- s. 65B omitted by 2012 c. 7 Sch. 14 para. 13(1)
- s. 65C omitted by 2012 c. 7 Sch. 14 para. 14
- s. 65F(1) words substituted by 2012 c. 7 Sch. 14 para. 15(2)
- s. 65F(2)(b) words omitted by 2012 c. 7 Sch. 14 para. 15(3)(a)
- s. 65F(2)(b) words substituted by 2012 c. 7 Sch. 14 para. 15(3)(b)
- s. 65F(3) words substituted by 2012 c. 7 Sch. 14 para. 15(5)
- s. 65F(4)-(7) omitted by 2012 c. 7 Sch. 14 para. 15(6)
- s. 65F(5)(a) words substituted by 2014 c. 23 s. 85(4)
- s. 65F(8)-(10) omitted by virtue of 2012 c. 7, Sch. 14 para. 15(8) (as inserted) by 2014 c. 23 s. 120(18)(d)
- s. 65G(4) words omitted by 2012 c. 7 Sch. 14 para. 16(1) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 120(18)(e), 127(1); S.I. 2014/1714, art. 3(2)(c))
- s. 65G(4)(a) words substituted by 2014 c. 23 s. 85(7)

- s. 65G(4)(a)(ii) words omitted by 2012 c. 7 Sch. 14 para. 16(2) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 120(18)(e), 127(1); S.I. 2014/1714, art. 3(2)(c))
- s. 65G(7) words omitted by 2012 c. 7 Sch. 14 para. 16(3) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 120(18)(e), 127(1); S.I. 2014/1714, art. 3(2)(c))
- s. 65G(8) words omitted by 2012 c. 7 Sch. 14 para. 16(4) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 120(18)(e), 127(1); S.I. 2014/1714, art. 3(2)(c))
- s. 65H(7)(b) words omitted by 2012 c. 7 Sch. 14 para. 17(2)(a)
- s. 65H(7)(c)(d) words substituted by 2012 c. 7 Sch. 14 para. 17(2)(b)
- s. 65H(10) words substituted by 2012 c. 7 Sch. 14 para. 17(3)
- s. 65H(11A)(a) omitted by virtue of 2012 c. 7, Sch. 14 para. 17(4A)(a) (as inserted) by 2014 c. 23 s. 120(18)(g)
- s. 65H(11A)(b) words omitted by virtue of 2012 c. 7, Sch. 14 para. 17(4A)(b) (as inserted) by 2014 c. 23 s. 120(18)(g)
- s. 65H(12)(13) omitted by 2012 c. 7 Sch. 14 para. 17(5)
- s. 65I(1) words substituted by 2012 c. 7 Sch. 14 para. 18(2)
- s. 65I(3) words substituted by 2012 c. 7 Sch. 14 para. 18(3)
- s. 65I(4) omitted by 2012 c. 7 Sch. 14 para. 18(4)
- s. 65J(2) words substituted by 2012 c. 7 Sch. 14 para. 19(2)
- s. 65J(5) omitted by 2012 c. 7 Sch. 14 para. 19(3)
- s. 65L(1) words substituted by 2012 c. 7 Sch. 14 para. 22(2)(a)
- s. 65L(1) words substituted by 2012 c. 7 Sch. 14 para. 22(2)(b)
- s. 65L(2) words substituted by 2012 c. 7 Sch. 14 para. 22(3)(a)
- s. 65L(2) words substituted by 2012 c. 7 Sch. 14 para. 22(3)(b)
- s. 65L(2A)(2B) omitted by 2012 c. 7 Sch. 14 para. 22(4)
- s. 65L(6) omitted by 2012 c. 7 Sch. 14 para. 22(4)
- s. 65M(1) words substituted by 2012 c. 7 Sch. 14 para. 23(2)
- s. 65M(2) words substituted by 2012 c. 7 Sch. 14 para. 23(3)
- s. 65M(3) omitted by 2012 c. 7 Sch. 14 para. 23(4)
- s. 65N(1) words substituted by 2012 c. 7 Sch. 14 para. 24(2)
- s. 65N(1A) omitted by virtue of 2012 c. 7, Sch. 14 para. 24(2A) (as inserted) by 2014 c. 23 s. 120(18)(h)
- s. 65N(4) omitted by 2012 c. 7 Sch. 14 para. 24(3)
- s. 65O(2) omitted by virtue of 2012 c. 7, Sch. 14 para. 24A(a) (as inserted) by 2014 c. 23 s. 120(18)(i)
- s. 65O(3) words omitted by virtue of 2012 c. 7, Sch. 14 para. 24A(b) (as inserted) by 2014 c. 23 s. 120(18)(i)
- s. 65KA title words substituted by 2012 c. 7 Sch. 14 para. 21(4)
- s. 65KA(1) words omitted by 2012 c. 7 Sch. 14 para. 21(2)
- s. 65KA(5) words substituted by 2012 c. 7 Sch. 14 para. 21(3)
- s. 66(1)(a) and word omitted by 2012 c. 7 Sch. 14 para. 25
- s. 68(1)(a) omitted by 2012 c. 7 Sch. 14 para. 26
- s. 70 title words substituted by 2012 c. 7 Sch. 14 para. 27(2)
- s. 70(1) words omitted by 2012 c. 7 Sch. 14 para. 27(1)
- s. 71(2)(c) omitted by 2012 c. 7 Sch. 14 para. 28(a)
- s. 71(2)(f) word repealed by 2008 c. 14 Sch. 15 Pt. 4
- s. 71(3) words omitted by 2012 c. 7 Sch. 14 para. 28(b)
- s. 71(5) word omitted by 2012 c. 7 Sch. 14 para. 28(c)
- s. 71(6) words omitted by 2012 c. 7 Sch. 14 para. 28(b)
- s. 77(1)(a) words omitted by 2012 c. 7 Sch. 14 para. 29(a)
- s. 77(10) words omitted by 2012 c. 7 Sch. 14 para. 29(b)
- s. 77(12) words omitted by 2012 c. 7 Sch. 14 para. 29(b)
- s. 78 omitted by 2012 c. 7 Sch. 14 para. 30
- s. 79 omitted by 2012 c. 7 Sch. 14 para. 30
- s. 88(3) word substituted by S.I. 2019/775 Sch. 8 para. 1(2)
- s. 88(4) substituted by S.I. 2019/775 Sch. 8 para. 1(3)

- s. 183(a)(iii) and word omitted by S.I. 2019/776 reg. 3(a)
- s. 183(a)(iii) omitted by S.I. 2019/777 reg. 3(g)
- s. 185(2) words omitted by 2012 c. 7 Sch. 14 para. 31
- s. 186(2) words omitted by 2012 c. 7 Sch. 14 para. 32
- s. 196(3)(d) omitted by 2012 c. 7 Sch. 14 para. 33
- s. 208(1) words substituted by 2020 c. 17 Sch. 24 para. 443(1)
- s. 212 omitted by 2016 c. 10 s. 1(1)(b)
- s. 213(2)(b) word inserted by 2016 c. 10 Sch. 1 para. 2(a)(i)
- s. 213(2)(c) words omitted by 2016 c. 10 Sch. 1 para. 2(a)(ii)
- s. 213(5) words substituted by 2016 c. 10 Sch. 1 para. 2(b)
- s. 214 heading word inserted by 2016 c. 10 Sch. 1 para. 3(a)
- s. 214(1)-(3) words substituted by 2016 c. 10 Sch. 1 para. 3(b)
- s. 214(3)(a) words omitted by 2016 c. 10 Sch. 1 para. 3(c)
- s. 214(6) words substituted by 2016 c. 10 Sch. 1 para. 3(d)
- s. 215(1)(2) omitted by 2016 c. 10 Sch. 1 para. 4(a)
- s. 215(3)(b) words omitted by 2016 c. 10 Sch. 1 para. 4(b)(ii)
- s. 215(3)(c) and word omitted by 2016 c. 10 Sch. 1 para. 4(b)(i)
- s. 215(3)(za) omitted by 2016 c. 10 Sch. 1 para. 4(b)(i)
- s. 215(3)(zb) omitted by 2016 c. 10 Sch. 1 para. 4(b)(i)
- s. 215(4) words omitted by 2016 c. 10 Sch. 1 para. 4(c)(i)
- s. 215(4) words omitted by 2016 c. 10 Sch. 1 para. 4(c)(ii)
- s. 217(1)(a) omitted by 2016 c. 10 Sch. 1 para. 5(a)
- s. 217(1)(b) words substituted by 2016 c. 10 Sch. 1 para. 5(b)
- s. 217(1)(h) omitted by 2012 c. 7 Sch. 14 para. 34
- s. 217(1)(i) words substituted by 2016 c. 10 Sch. 1 para. 5(c)
- s. 217(1)(ea) omitted by 2016 c. 10 Sch. 1 para. 5(a)
- s. 217(1)(eb) omitted by 2016 c. 10 Sch. 1 para. 5(a)
- s. 218(4)(a) word inserted by 2016 c. 10 Sch. 1 para. 6(a)(i)
- s. 218(4)(b) words omitted by 2016 c. 10 Sch. 1 para. 6(a)(ii)
- s. 218(6) words substituted by 2016 c. 10 Sch. 1 para. 6(b)
- s. 220(6) omitted by 2016 c. 10 Sch. 1 para. 7
- s. 226(4)(a) words omitted by 2016 c. 10 Sch. 1 para. 8
- s. 242(1)(b) words substituted by 2012 c. 7 Sch. 14 para. 35(a)
- s. 242(1A) words omitted by 2012 c. 7 Sch. 14 para. 35(b)
- s. 242(1A) words omitted by 2012 c. 7 Sch. 14 para. 35(c)
- s. 242(2) words substituted by 2012 c. 7 Sch. 14 para. 35(d)
- s. 242(6) words omitted by virtue of 2012 c. 7, Sch. 14 para. 35(e) (as inserted) by 2014 c. 23 s. 120(18)(j)
- s. 242A(2) words added by 2012 c. 7 s. 206(5)
- s. 272(3)(e) omitted by 2012 c. 7 Sch. 14 para. 36(a)
- s. 272(5) omitted by 2012 c. 7 Sch. 14 para. 36(b)
- s. 275 words omitted in part by S.I. 2019/776 reg. 3(b)
- s. 275(1) word substituted by 2012 c. 7 Sch. 14 para. 37
- s. 275(1) words omitted by 2012 c. 7 s. 173(7)(a)
- s. 275(1) words omitted by 2012 c. 7 s. 173(7)(b)
- s. 275(1) words omitted by S.I. 2019/593 Sch. 5 para. 14
- s. 275(1) words omitted by S.I. 2019/777 reg. 3(h)
- s. 276 words omitted by 2012 c. 7 Sch. 14 para. 38
- s. 276 words omitted by 2016 c. 10 Sch. 1 para. 9
- Sch. A1 para. 11 and cross-heading omitted by 2016 c. 10 s. 1(1)(c)
- Sch. 1 para. 2(1)(b) words inserted by 2018 anaw 2 Sch. 1 para. 11(b)
- Sch. 1 para. 2(1)(b) words omitted by 2018 anaw 2 Sch. 1 para. 11(a)
- Sch. 1A para. 15 and cross-heading omitted by 2016 c. 10 s. 1(1)(d)
- Sch. 6 para. 9 omitted by 2016 c. 10 s. 1(1)(e)
- Sch. 7 para. 23(4)(c) words substituted by 2012 c. 7 s. 151(7)
- Sch. 7 para. 24(1A) words substituted by 2012 c. 7 s. 155(1)
- Sch. 7 para. 24(5) words substituted by 2012 c. 7 s. 155(2)
- Sch. 7 para. 25(1) words substituted by 2012 c. 7 s. 155(3)

- Sch. 7 para. 25(1A) words substituted by 2012 c. 7 s. 155(4)
- Sch. 7 para. 25(2) words substituted by 2012 c. 7 s. 155(5)
- Sch. 7 para. 25(3) words substituted by 2012 c. 7 s. 155(6)
- Sch. 7 para. 25(4) words substituted by 2012 c. 7 s. 155(6)
- Sch. 7 para. 25(4A) words substituted by 2012 c. 7 s. 155(6)
- Sch. 7 para. 19 and cross-heading omitted by 2012 c. 7 s. 180(6)
- Sch. 8A amendment to earlier affecting provision 2009 c. 21 s. 15 by 2012 c. 7 s. 173(5)
- Sch. 10 para. 8(4) words substituted by 2020 c. 17 Sch. 24 para. 443(1)
- Sch. 15 para. 7 excluded by S.I. 2012/2789 art. 2
- Sch. 15 para. 1(1)(d)(e) omitted by 2012 c. 7 Sch. 14 para. 39(2)(a)
- Sch. 15 para. 1(3) omitted by 2012 c. 7 Sch. 14 para. 39(2)(b)
- Sch. 15 para. 1(1)(f) omitted by 2016 c. 10 Sch. 1 para. 10
- Sch. 15 para. 5(1) words substituted by 2012 c. 7 Sch. 14 para. 39(4)(a)
- Sch. 15 para. 5(3) words substituted by 2012 c. 7 Sch. 14 para. 39(4)(b)
- Sch. 15 para. 6(1) words substituted by 2012 c. 7 Sch. 14 para. 39(5)(a)
- Sch. 15 para. 6(3) words substituted by 2012 c. 7 Sch. 14 para. 39(5)(b)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 0000IF(2) words inserted by 2014 c. 23 s. 97(4)(a)
- s. 6BA omitted by S.I. 2019/777 reg. 3(c)
- s. 6BB omitted by S.I. 2019/777 reg. 3(d)
- s. 13G(4) words omitted by virtue of 2012 c. 7, Sch. 14 para. 4A (as inserted) by 2014 c. 23 s. 120(18)(a)
- s. 35(3A)(3B) inserted by 2012 c. 7 s. 159(4)
- s. 40(4)-(4B) substituted for s. 40(4) by 2012 c. 7 Sch. 14 para. 5
- s. 42(1A) inserted by 2012 c. 7 Sch. 14 para. 6
- s. 65F(2A)-(2F) inserted by 2012 c. 7 Sch. 14 para. 15(4) (This amendment is itself amended before it comes into force by 2014 c. 23, ss. 85(15), 120(18)(b)(c), 127(1); S.I. 2014/1714, art. 3(2)(b)(c))
- s. 65H(10A) inserted by 2012 c. 7 Sch. 14 para. 17(4)
- Sch. 15 para. 4(1)(b) and word omitted by 2012 c. 7 Sch. 14 para. 39(3)