National Health Service (Wales) Act 2006

2006 CHAPTER 42

PART 10

PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES

Preliminary

143 Compulsory disclosure of documents

(1) This Part confers power to require the production of documents in connection with the exercise of the Welsh Ministers' counter fraud functions in relation to the health service.

(2) The Welsh Ministers' "counter fraud functions" in relation to the health service means their power (by virtue of section 2(1)(b)) to take action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities carried out against or otherwise affecting—

(a) the health service, or

(b) the Welsh Ministers, in relation to their responsibilities for the health service.

(3) In this Part, the Welsh Ministers' counter fraud functions in relation to the health service are collectively referred to as functions to which this Part applies.

(4) "Investigating" means investigating in relation to civil or criminal proceedings.

144 Persons and bodies about which provision is made by this Part

(1) This section applies for the purposes of this Part.

(2) Subject to any provision made under subsection (6), "NHS body" has the meaning given by **[**[F1]section 206(1)**]**.

(3) 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 Act 2006 (c. 41),

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(b) primary ophthalmic services under that Act, or

(c) general ophthalmic services.

(4) An "NHS contractor" means any person (other than an NHS body or a person within subsection (3)) providing services of any description under arrangements made with an NHS body.

(5) A "statutory health body" means any body (other than an NHS body, or a person within subsection (3) or (4)) 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.

(6) The Welsh Ministers may by order—

(a) make such amendments of any of subsections (2) to (5) as they consider appropriate,

(b) make such consequential amendments of this Part as they consider appropriate.

Textual Amendments

F1 Words in s. 144(2) substituted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 33**; S.I. 2012/2657, art. 2(4)

Disclosure notices

145 Notice requiring production of documents

(1) This section applies if it appears to the Welsh Ministers that there are reasonable grounds for suspecting—

(a) that any documents containing information relevant to the exercise of any of their functions to which this Part applies are in the possession or under the control of any NHS body, statutory health body, health service provider or NHS contractor ("the relevant organisation"), and

(b) that a person within subsection (3) is accountable for the documents.

(2) The Welsh Ministers 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 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—

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(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.

146 Production of documents

(1) This section applies where a notice has been served under section 145.

(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, and
(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 145 may be retained for so long as the Welsh Ministers consider that it is necessary to retain them (rather than copies of them) in connection with the exercise of any of their functions to which this Part applies.

(5) If the Welsh Ministers have 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 145 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 145 or any requirement under subsection (6) unless evidence of authority is given—

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(a) at the time when the notice is served, or
(b) at the time when the requirement is imposed under subsection (6).

(8) In addition, a person may not be required under section 145 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.

147 Delegation of functions

(1) This section applies if the Welsh Ministers give a direction under section 24 directing a Special Health Authority to exercise so much of their functions under sections 145 and 146 as is specified in the directions ("the delegated functions").

(2) The Welsh Ministers 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 Welsh Ministers may by regulations make such provision as they consider 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.

148 Code of practice relating to delegated functions

(1) The Welsh Ministers may issue a code of practice relating to—
(a) the exercise of functions under section 145 or 146 by or on behalf of a Special Health Authority,
(b) procedures to be followed in relation to the disclosure (in accordance with sections 149 and 150) of information obtained by or on behalf of a Special Health Authority in the exercise of such functions.

(2) The Welsh Ministers 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 Welsh Ministers propose to issue a code of practice under this section they must—
(a) prepare a draft of the code, and
(b) consult such persons as they consider appropriate about the draft.

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(4) Where the Welsh Ministers propose to issue a revised code under this section which in their opinion would result in a substantial change in the code, they must—
  (a) prepare a draft of the revised code, and
  (b) consult such persons as they consider appropriate about the change.

(5) Where, following consultation under subsection (3) or (4), the Welsh Ministers issue the code or revised code (whether in the form of the draft or with such modifications as they consider appropriate), it comes into force at the time when it is issued by the Welsh Ministers.

(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 Welsh Ministers before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

149 Disclosure of information

(1) This section applies to information which—
  (a) is held by or on behalf of the Welsh Ministers, and
  (b) was obtained by virtue of section 145 or 146.

(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 any of the Welsh Ministers' functions in relation to the health service in Wales,
  (b) for the purposes of the exercise of any of the Secretary of State's functions in relation to the health service in England,
  (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 **[**[F2]the Professional Standards Authority for Health and Social Care**]**).

(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

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(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

F2 Words in s. 149(4) substituted (1.12.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 68(c)**; S.I. 2012/2657, art. 2(3)

150 Protection of personal information disclosed for purposes of proceedings

(1) Information obtained from personal records produced in compliance with a notice under section 145 is "protected information" for the purposes of this section if—

(a) a person ("the discloser"), in accordance with section 149(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 145 or 146 and disclosed by or on behalf of the Welsh Ministers.

(2) The discloser must take all reasonable steps to ensure that, once disclosed by him in accordance with section 149(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 Welsh Ministers must make provision, whether in a code of practice issued under section 148 or otherwise, for requiring any person disclosing protected information in accordance with section 149(3) to ensure, by the use of a distinguishing mark or in 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—

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(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 149(4)).

151 Manner in which disclosure notice may be served

(1) This section provides for the manner in which a notice may be served under section 145.

(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.

Offences under this Part

152 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 145 or 146.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction—

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(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 146—
(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 **[**[F3]the general limit in a magistrates' court**]** or to a fine not exceeding the statutory maximum, or to both.

Textual Amendments

F3 Words in s. 152(6)(b) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1**

153 Offences relating to disclosure or use of information

(1) A person commits an offence if he fails to comply with section 149(2) or (5) or section 150(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 145 or 146 and disclosed by or on behalf of the Welsh Ministers.

154 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.

155 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 154(4) or (6).

(8) "Offence" means an offence under this Part.

156 Penalties for offences under this Part: transitional modification

(1) In relation to an offence committed before **[**[F4]2 May 2022**]**, the reference in section 152(6)(b) to a period of imprisonment of **[**[F5]the general limit in a magistrates' court**]** 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 152(2)(a) and 153(2)(b) to periods of imprisonment of 51 weeks are references to periods of imprisonment of 3 months.

Textual Amendments

F4 Words in s. 156(1) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), **Sch. Pt. 1**

F5 Words in s. 156(1) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1**

Supplementary

157 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 the National Assembly for Wales.

(3) A statutory instrument containing an order under section 144(6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(4) Any power under this Part to make an order or regulations—

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(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.

Modifications etc. (not altering text)

C1 S. 157(2)(3) excluded (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 5, 8(2), **Sch. 3 para. 10(5)** (with Sch. 3 Pt. 1)

158 Interpretation of this Part

(1) In this Part—

"authorised officer", in relation to any function, means (subject to subsection (5)) an officer of the Welsh Ministers authorised by them 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 143(3),

"health service provider" and "NHS contractor"have the meaning given by section 144,

"NHS body" must be construed in accordance with section 144,

"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 144.

(2) References in this Part to the provision of services—

(a) in relation to statutory health bodies, health service providers 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 Wales.

(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 Welsh Ministers 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

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(b) references in this Part to information held or disclosed by or on behalf of the Welsh Ministers include information held or disclosed by or on behalf of the Special Health Authority.

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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. 201A-201C inserted by 2017 c. 23 s. 9
- s. 201C(2) words substituted by 2018 c. 12 Sch. 19 para. 118(2)
- s. 201C(4) inserted by 2018 c. 12 Sch. 19 para. 118(3)
- Sch. 7 para. 1(2A) inserted by 2009 c. 21 s. 32(3)