



Health and Social Care Act 2008

2008 CHAPTER 14

PART 3

PUBLIC HEALTH PROTECTION

129 Public health protection

Before Part 3 of the Public Health (Control of Disease) Act 1984 (c. 22) insert—

“PART 2A

PUBLIC HEALTH PROTECTION

Introductory

45A Infection or contamination

- (1) The following provisions have effect for the interpretation of this Part.
- (2) “Contamination” includes radiation.
- (3) Any reference to infection or contamination is a reference to infection or contamination which presents or could present significant harm to human health.
- (4) Any reference to the spread of contamination includes a reference to the spread of any source of contamination.
- (5) Any reference to disinfection or decontamination includes a reference to the removal of any vector, agent or source of the infection or contamination.
- (6) Related expressions are to be read accordingly.

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Power to make regulations

45B Health protection regulations: international travel etc.

- (1) The appropriate Minister may by regulations make provision—
 - (a) for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place,
 - (b) for preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place, and
 - (c) for giving effect to any international agreement or arrangement relating to the spread of infection or contamination.
- (2) Regulations under subsection (1) may in particular include provision—
 - (a) for the detention of conveyances,
 - (b) for the medical examination, detention, isolation or quarantine of persons,
 - (c) for the inspection, analysis, retention, isolation, quarantine or destruction of things,
 - (d) for the disinfection or decontamination of conveyances, persons or things or the application of other sanitary measures,
 - (e) for prohibiting or regulating the arrival or departure of conveyances and the entry or exit of persons or things,
 - (f) imposing duties on masters, pilots, train managers and other persons on board conveyances and on owners and managers of ports, airports and other points of entry, and
 - (g) requiring persons to provide information or answer questions (including information or questions relating to their health).

45C Health protection regulations: domestic

- (1) The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere).
- (2) The power in subsection (1) may be exercised—
 - (a) in relation to infection or contamination generally or in relation to particular forms of infection or contamination, and
 - (b) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to a particular set of circumstances.
- (3) Regulations under subsection (1) may in particular include provision—
 - (a) imposing duties on registered medical practitioners or other persons to record and notify cases or suspected cases of infection or contamination,
 - (b) conferring on local authorities or other persons functions in relation to the monitoring of public health risks, and

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- (c) imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health.
- (4) The restrictions or requirements mentioned in subsection (3)(c) include in particular—
- (a) a requirement that a child is to be kept away from school,
 - (b) a prohibition or restriction relating to the holding of an event or gathering,
 - (c) a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains, and
 - (d) a special restriction or requirement.
- (5) The power in subsection (1) is subject to section 45D.
- (6) For the purposes of this Part—
- (a) a “special restriction or requirement” means a restriction or requirement which can be imposed by a justice of the peace by virtue of section 45G(2), 45H(2) or 45I(2), but
 - (b) a restriction or requirement mentioned in subsection (4)(a), (b) or (c) is not to be regarded as a special restriction or requirement.

45D Restrictions on power to make regulations under section 45C

- (1) Regulations under section 45C may not include provision imposing a restriction or requirement by virtue of subsection (3)(c) of that section unless the appropriate Minister considers, when making the regulations, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.
- (2) Regulations under section 45C may not include provision enabling the imposition of a restriction or requirement by virtue of subsection (3)(c) of that section unless the regulations provide that a decision to impose such a restriction or requirement may only be taken if the person taking it considers, when taking the decision, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.
- (3) Regulations under section 45C may not include provision imposing a special restriction or requirement mentioned in section 45G(2)(a), (b), (c) or (d).
- (4) Regulations under section 45C may not include provision enabling the imposition of a special restriction or requirement unless—
- (a) the regulations are made in response to a serious and imminent threat to public health, or
 - (b) imposition of the restriction or requirement is expressed to be contingent on there being such a threat at the time when it is imposed.
- (5) For the purposes of this section—
- (a) regulations “enable the imposition of a restriction or requirement” if the restriction or requirement is imposed by virtue of a decision taken under the regulations by the appropriate Minister, a local authority or other person;

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- (b) regulations “impose a restriction or requirement” if the restriction or requirement is imposed without any such decision.

45E Medical treatment

- (1) Regulations under section 45B or 45C may not include provision requiring a person to undergo medical treatment.
- (2) “Medical treatment” includes vaccination and other prophylactic treatment.

45F Health protection regulations: supplementary

- (1) This section makes further provision about regulations under section 45B or 45C (“health protection regulations”).
- (2) Health protection regulations may—
 - (a) confer functions on local authorities and other persons;
 - (b) create offences;
 - (c) enable a court to order a person convicted of any such offence to take or pay for remedial action in appropriate circumstances;
 - (d) provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations;
 - (e) provide for appeals from and reviews of decisions taken under the regulations;
 - (f) permit or prohibit the levy of charges;
 - (g) permit or require the payment of incentive payments, compensation and expenses;
 - (h) provide for the resolution of disputes.
- (3) Health protection regulations may, for the purposes of giving effect to an international agreement or arrangement, amend any enactment.
- (4) Health protection regulations may not confer functions on officers of Revenue and Customs unless the regulations are made with the consent of the Commissioners for Her Majesty’s Revenue and Customs.
- (5) Health protection regulations may not create an offence triable on indictment or punishable with—
 - (a) imprisonment,
 - (b) a fine exceeding £20,000, or
 - (c) a further fine exceeding an amount equal to 2% of level 5 on the standard scale for each day on which the default continues after conviction.
- (6) Regulations under section 45C must provide for a right of appeal to a magistrates’ court against any decision taken under the regulations by virtue of which a special restriction or requirement is imposed on or in relation to a person, thing or premises.
- (7) Regulations under section 45C which enable a special restriction or requirement to be imposed by virtue of a decision taken under the regulations must also provide that, if the restriction or requirement is capable of remaining in force in relation to any person, thing or premises for more than a specified period, a

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specified person may require the continuation of the restriction or requirement to be reviewed in accordance with the regulations at specified intervals by a person determined in accordance with the regulations.

- (8) In relation to a special restriction or requirement mentioned in section 45G(2) (c) or (d)—
- (a) the period specified by virtue of subsection (7) and the intervals specified by virtue of that subsection must be 28 days or less, and
 - (b) the regulations must require the continuation of the restriction or requirement to be reviewed without an application being made.

Orders that may be made by justice of the peace

45G Power to order health measures in relation to persons

- (1) A justice of the peace may make an order under subsection (2) in relation to a person (“P”) if the justice is satisfied that—
- (a) P is or may be infected or contaminated,
 - (b) the infection or contamination is one which presents or could present significant harm to human health,
 - (c) there is a risk that P might infect or contaminate others, and
 - (d) it is necessary to make the order in order to remove or reduce that risk.
- (2) The order may impose on or in relation to P one or more of the following restrictions or requirements—
- (a) that P submit to medical examination;
 - (b) that P be removed to a hospital or other suitable establishment;
 - (c) that P be detained in a hospital or other suitable establishment;
 - (d) that P be kept in isolation or quarantine;
 - (e) that P be disinfected or decontaminated;
 - (f) that P wear protective clothing;
 - (g) that P provide information or answer questions about P’s health or other circumstances;
 - (h) that P’s health be monitored and the results reported;
 - (i) that P attend training or advice sessions on how to reduce the risk of infecting or contaminating others;
 - (j) that P be subject to restrictions on where P goes or with whom P has contact;
 - (k) that P abstain from working or trading.
- (3) A justice of the peace may make an order under subsection (4) in relation to a person (“P”) if the justice is satisfied that—
- (a) P is or may be infected or contaminated,
 - (b) the infection or contamination is one which presents or could present significant harm to human health,
 - (c) there is a risk that a related party might infect or contaminate others, and
 - (d) it is necessary to make the order in order to remove or reduce that risk.

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- (4) The order may impose on or in relation to P a requirement that P provide information or answer questions about P's health or other circumstances (including, in particular, information or questions about the identity of a related party).
- (5) "Related party" means—
 - (a) a person who has or may have infected or contaminated P, or
 - (b) a person whom P has or may have infected or contaminated.
- (6) An order under this section may also order a person with parental responsibility (within the meaning of the Children Act 1989) for P to secure that P submits to or complies with the restrictions or requirements imposed by the order.
- (7) The appropriate Minister must by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned in subsection (1) or (3).
- (8) Any reference in this section to a person who is infected or contaminated includes a reference to a person who carries the source of an infection or contamination, and any reference to infecting or contaminating others includes a reference to passing that source to others.

45H Power to order health measures in relation to things

- (1) A justice of the peace may make an order under subsection (2) in relation to a thing if the justice is satisfied that—
 - (a) the thing is or may be infected or contaminated,
 - (b) the infection or contamination is one which presents or could present significant harm to human health,
 - (c) there is a risk that the thing might infect or contaminate humans, and
 - (d) it is necessary to make the order in order to remove or reduce that risk.
- (2) The order may impose in relation to the thing one or more of the following restrictions or requirements—
 - (a) that the thing be seized or retained;
 - (b) that the thing be kept in isolation or quarantine;
 - (c) that the thing be disinfected or decontaminated;
 - (d) in the case of a dead body, that the body be buried or cremated;
 - (e) in any other case, that the thing be destroyed or disposed of.
- (3) A justice of the peace may make an order under subsection (4) in relation to a thing if the justice is satisfied that—
 - (a) the thing is or may be infected or contaminated,
 - (b) the infection or contamination is one which presents or could present significant harm to human health,
 - (c) there is a risk that a related person or related thing might infect or contaminate humans, and
 - (d) it is necessary to make the order in order to remove or reduce that risk.
- (4) The order may require—
 - (a) the owner of the thing, or

(b) any person who has or has had custody or control of the thing, to provide information or answer questions about the thing (including, in particular, information or questions about where the thing has been or about the identity of any related person or the whereabouts of any related thing).

(5) “Related person” means—

- (a) a person who has or may have infected or contaminated the thing mentioned in subsection (3)(a), or
- (b) a person whom the thing has or may have infected or contaminated.

(6) “Related thing” means—

- (a) a thing which has or may have infected or contaminated the thing mentioned in subsection (3)(a), or
- (b) a thing which the thing mentioned in subsection (3)(a) has or may have infected or contaminated.

(7) The appropriate Minister may by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned in subsection (1) or (3).

(8) In this section—

- (a) any reference to being infected or contaminated includes a reference to carrying the source of an infection or contamination, and
- (b) any reference to infecting or contaminating humans, or a person or thing, includes a reference to passing the source of an infection or contamination to humans, or to the person or thing.

45I Power to order health measures in relation to premises

(1) A justice of the peace may make an order under subsection (2) in relation to premises if the justice is satisfied that—

- (a) the premises are or may be infected or contaminated,
- (b) the infection or contamination is one which presents or could present significant harm to human health,
- (c) there is a risk that the premises might infect or contaminate humans, and
- (d) it is necessary to make the order in order to remove or reduce that risk.

(2) The order may impose in relation to the premises one or more of the following restrictions or requirements—

- (a) that the premises be closed;
- (b) that, in the case of a conveyance or movable structure, the conveyance or structure be detained;
- (c) that the premises be disinfected or decontaminated;
- (d) that, in the case of a building, conveyance or structure, the premises be destroyed.

(3) A justice of the peace may make an order under subsection (4) in relation to premises if the justice is satisfied that—

- (a) the premises are or may be infected or contaminated or are or may be a place where infection or contamination was spread between persons or things,

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- (b) the infection or contamination is one which presents or could present significant harm to human health,
 - (c) there is a risk that a related person or related thing might infect or contaminate humans, and
 - (d) it is necessary to make the order in order to remove or reduce that risk.
- (4) The order may require the owner or any occupier of the premises to provide information or answer questions about the premises (including, in particular, information about the identity of any related person or the whereabouts of any related thing).
- (5) “Related person” means—
- (a) a person who has or may have infected or contaminated the premises,
 - (b) a person who has or may have infected or contaminated a person who or thing which is or has been on the premises,
 - (c) a person whom the premises have or may have infected or contaminated, or
 - (d) a person who has or may have been infected or contaminated by a person who or thing which is or has been on the premises.
- (6) “Related thing” means—
- (a) a thing which has or may have infected or contaminated the premises,
 - (b) a thing which has or may have infected or contaminated a person who or thing which is or has been on the premises,
 - (c) a thing which the premises have or may have infected or contaminated, or
 - (d) a thing which has or may have been infected or contaminated by a person who or thing which is or has been on the premises.
- (7) The appropriate Minister may by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned in subsection (1) or (3).
- (8) In this section—
- (a) any reference to being infected or contaminated includes a reference to carrying the source of an infection or contamination, and
 - (b) any reference to infecting or contaminating humans, or a person, thing or premises, includes a reference to passing the source of an infection or contamination to humans, or to the person, thing or premises.

45J Orders in respect of groups

- (1) The powers in sections 45G, 45H and 45I include power to make an order in relation to a group of persons, things or premises.
- (2) For those purposes, the sections have effect as follows.
- (3) In section 45G—
- (a) in subsections (1)(a) and (c) and (3)(a), the reference to P is a reference to each person in the group, and
 - (b) in subsections (2) and (4), any reference to P is a reference to any one or more of the persons in the group.

- (4) In section 45H—
- (a) in subsections (1)(a) and (c) and (3)(a), the reference to the thing is a reference to each thing in the group, and
 - (b) in subsections (2) and (4) any reference to the thing is a reference to any one or more of the things in the group.
- (5) In section 45I—
- (a) in subsections (1)(a) and (c) and (3)(a), the reference to the premises is a reference to each set of premises in the group, and
 - (b) in subsections (2) and (4), any reference to the premises is a reference to any one or more of the sets of premises in the group.

45K Part 2A orders: supplementary

- (1) This section makes further provision about orders under sections 45G, 45H and 45I (referred to in this Part as “Part 2A orders”).
- (2) A Part 2A order may include, in addition to the restrictions or requirements mentioned in the provision under which it is made, such other restrictions or requirements as the justice considers necessary for the purpose of reducing or removing the risk in question.
- (3) A restriction or requirement contained in a Part 2A order may be expressed to take effect subject to conditions specified in the order.
- (4) Two or more Part 2A orders may be combined in a single order.
- (5) A Part 2A order may contain such directions as the justice considers appropriate to give effect to it.
- (6) Without prejudice to subsection (5)—
 - (a) a Part 2A order may, if the justice is satisfied as mentioned in subsection (4) of section 61, authorise anything which may be authorised by warrant under subsection (3) of that section, and
 - (b) if the order does so, section 62(1) and (1A) have effect as if—
 - (i) the order were a warrant issued under section 61, and
 - (ii) the person so authorised were a proper officer.
- (7) A Part 2A order may order the payment of compensation or expenses in connection with the taking of measures pursuant to the order.
- (8) A Part 2A order is authority for those persons to whom it is addressed to do such things as may be necessary to give effect to it.

45L Period for which Part 2A order may be in force

- (1) A Part 2A order must specify the period for which any restriction or requirement imposed by or under the order is to remain in force.
- (2) That period may be extended by further order of a justice of the peace.
- (3) In relation to restrictions or requirements mentioned in section 45G(2)(c) or (d), neither the period specified under subsection (1) nor the period of any

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extension under subsection (2) may exceed 28 days or such shorter period as the appropriate Minister may by regulations prescribe.

- (4) The appropriate Minister may by regulations prescribe, in relation to any other restrictions or requirements, the maximum period which may be specified under subsection (1) and the maximum period of any extension under subsection (2).

45M Procedure for making, varying and revoking Part 2A orders

- (1) The power of a justice of the peace to make a Part 2A order is exercisable on the application of a local authority.
- (2) Local authorities must co-operate with each other in deciding which of them should apply for a Part 2A order in any particular case.
- (3) The appropriate Minister must by regulations require a local authority to give notice to such persons as may be prescribed by the regulations of the making of an application for a Part 2A order, but this is subject to subsection (4).
- (4) If a justice of the peace considers it necessary to do so, the justice may make a Part 2A order without a person having been given such notice as is otherwise required to be given to that person under rules of court or regulations under subsection (3).
- (5) A Part 2A order may be varied or revoked by a justice of the peace on the application of—
- (a) an affected person,
 - (b) a local authority, or
 - (c) any other authority with the function of executing or enforcing the order in question.
- (6) In the case of an order under section 45G, the following persons are affected persons—
- (a) P,
 - (b) a person with parental responsibility (within the meaning of the Children Act 1989) for P,
 - (c) P's husband, wife or civil partner,
 - (d) a person living with P as P's husband, wife or civil partner, and
 - (e) such other persons as may be prescribed by regulations.
- (7) In the case of an order under section 45H(2), the following persons are affected persons—
- (a) the owner of the thing,
 - (b) any person with custody or control of the thing, and
 - (c) such other persons as may be prescribed by regulations.
- (8) In the case of an order under section 45I(2), the following persons are affected persons—
- (a) the owner of the premises,
 - (b) any occupier of the premises, and
 - (c) such other persons as may be prescribed by regulations.

- (9) In the case of an order under section 45H(4) or 45I(4), the person required to provide information or answer questions and such other persons as may be prescribed by regulations are affected persons.
- (10) Variation or revocation of a Part 2A order does not invalidate anything done under the order prior to the variation or revocation.
- (11) In this section “regulations” means regulations made by the appropriate Minister.

45N Power to make further provision by regulations

- (1) The appropriate Minister may by regulations make provision about the taking of measures pursuant to Part 2A orders.
- (2) The regulations may in particular make provision about—
 - (a) the type of investigation which may be carried out as part of a medical examination;
 - (b) the manner in which measures are to be taken;
 - (c) who is to be responsible for executing and enforcing measures;
 - (d) who is to be liable for the costs of measures;
 - (e) the payment of compensation or expenses in connection with the taking of measures.
- (3) But the regulations may not confer functions on officers of Revenue and Customs to execute or enforce Part 2A orders unless the regulations are made with the consent of the Commissioners for Her Majesty’s Revenue and Customs.

45O Enforcement of Part 2A orders

- (1) A person commits an offence if the person—
 - (a) fails without reasonable excuse to comply with a restriction or requirement imposed by or under a Part 2A order, or
 - (b) wilfully obstructs anyone acting in the execution of a Part 2A order.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £20,000.
- (3) If—
 - (a) a person is convicted of an offence under subsection (1), and
 - (b) the court by which the person is convicted is satisfied that the failure or wilful obstruction constituting the offence has caused premises or things to become infected or contaminated or otherwise damaged them in a material way,the court may, if it considers it appropriate to do so, order the person to take or pay for such remedial action as may be specified in the order.
- (4) Subsection (5) applies if—
 - (a) a Part 2A order imposes a requirement that a person be detained or kept in isolation or quarantine in a place, and
 - (b) the person leaves that place contrary to the requirement.

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- (5) A constable may take the person into custody and return the person to that place.
- (6) But a person may not be taken into custody under subsection (5) after expiry of the period for which the requirement is in force.

Regulations under Part 2A: general

45P General provision about regulations

- (1) A power to make regulations under this Part is exercisable by statutory instrument.
- (2) A power to make regulations under this Part includes power to make different provision for different cases or different areas.

45Q Parliamentary control

- (1) An instrument containing regulations under this Part, except one to which subsection (4) applies, is subject to annulment—
 - (a) in the case of English regulations, in pursuance of a resolution of either House of Parliament;
 - (b) in the case of Welsh regulations, in pursuance of a resolution of the National Assembly for Wales.
- (2) Subject to subsection (3), subsection (4) applies to an instrument containing (whether alone or with other provisions)—
 - (a) regulations under section 45C,
 - (b) regulations which amend an enactment pursuant to section 45F(3),
 - (c) the first regulations to be made under section 45G(7),
 - (d) the first regulations to be made under section 45L(4), or
 - (e) the first regulations to be made under section 45N.
- (3) Subsection (4) does not apply by virtue of subsection (2)(a) if the instrument contains a declaration that the person making it is of the opinion that the instrument does not contain any provision made by virtue of section 45C(3)(c) which imposes or enables the imposition of—
 - (a) a special restriction or requirement, or
 - (b) any other restriction or requirement which has or would have a significant effect on a person's rights.
- (4) Subject to section 45R, an instrument to which this subsection applies may not be made unless—
 - (a) in the case of English regulations, a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament;
 - (b) in the case of Welsh regulations, a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (5) If an instrument, or a draft of an instrument, containing regulations under section 45B or 45C would, apart from this subsection, be treated for the

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purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

- (6) In this section—
- “English regulations” means regulations made by the Secretary of State;
 - “Welsh regulations” means regulations made by the Welsh Ministers.

45R Emergency procedure

- (1) This section applies to an instrument to which subsection (4) of section 45Q applies by virtue of subsection (2)(a) or (b) of that section.
- (2) The instrument may be made without a draft having been laid and approved as mentioned in subsection (4) of that section if the instrument contains a declaration that the person making it is of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) After an instrument is made in accordance with subsection (2), it must be laid—
- (a) in the case of English regulations, before each House of Parliament;
 - (b) in the case of Welsh regulations, before the National Assembly for Wales.
- (4) Regulations contained in an instrument made in accordance with subsection (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved—
- (a) in the case of English regulations, by a resolution of each House of Parliament;
 - (b) in the case of Welsh regulations, by a resolution of the National Assembly for Wales.
- (5) But if on any day during that period, on proceedings on a motion that (or to the effect that) the instrument be so approved, either House of Parliament or, as the case may be, the National Assembly for Wales comes to a decision rejecting the instrument, the regulations cease to have effect at the end of that day instead.
- (6) In reckoning any such period of 28 days, no account is to be taken—
- (a) in the case of English regulations, of any time during which Parliament is prorogued or dissolved or during which both Houses are adjourned for more than 4 days;
 - (b) in the case of Welsh regulations, of any time during which the National Assembly for Wales is dissolved or is in recess for more than 4 days.
- (7) Subsections (4) and (5) do not—
- (a) affect anything done in reliance on the regulations before they ceased to have effect, or
 - (b) prevent the making of new regulations.
- (8) In this section “English regulations” and “Welsh regulations” have the same meaning as in section 45Q.

General

45S Application to territorial sea

The provisions of this Part have effect in relation to the territorial sea adjacent to England or Wales.

45T Part 2A: further definitions

- (1) This Part is to be read in accordance with this section.
- (2) “Enactment” means an enactment whenever passed or made, and includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978).
- (3) “Medical examination” includes microbiological, radiological and toxicological tests.
- (4) “Special restriction or requirement” has the meaning given by section 45C(6).
- (5) “Thing” includes—
 - (a) human tissue,
 - (b) a dead body or human remains,
 - (c) animals, and
 - (d) plant material.
- (6) “The appropriate Minister” means—
 - (a) the Secretary of State, as respects England (including the sea adjacent to England out as far as the seaward boundary of the territorial sea);
 - (b) the Welsh Ministers, as respects Wales (including the sea adjacent to Wales out as far as that boundary).
- (7) An order made under section 158(3) of the Government of Wales Act 2006 (orders to determine boundary of the sea adjacent to Wales) applies for the purposes of subsection (6) as it applies for the purposes of that Act.
- (8) Any reference to amending an enactment includes a reference to repealing, revoking or modifying the application of an enactment, and “amendment” is to be read accordingly.
- (9) Any reference to giving effect to an international agreement or arrangement includes a reference to giving effect to a recommendation issued under such an agreement or arrangement.”