



# National Health Service Act 1977

## 1977 CHAPTER 49

### PART IV

#### PROPERTY AND FINANCE

##### *Land and other Property*

#### **87 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; and (without prejudice to the generality of paragraph (a) above) land may be so acquired to provide residential accommodation for persons employed for any of those purposes.
- (2) 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.
- (3) A local social services 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.
- [<sup>F1</sup>(4) The <sup>M1</sup>Acquisition of Land Act 1981 shall apply to the compulsory purchase of land under this section]
- (5) Section 120(3) of the <sup>M2</sup>Local Government Act 1972 (which relates to the application of Part I of the <sup>M3</sup>Compulsory Purchase Act 1965 where a council are authorised to acquire land by agreement) applies to the acquisition of land by the Secretary of State under this section in like manner as it applies to such acquisition by a council under that section.
- [<sup>F2</sup>(6) Sections 238 and 239 of the Town and Country Planning Act 1990 (use and development of consecrated land and burial grounds) shall apply to consecrated land

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or, as the case may be, 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 the Secretary of State,

as if that land had been the subject of such an acquisition by him for those purposes.]

#### Textual Amendments

- F1** S. 87(4) substituted by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(1), **Sch. 4 para. 28**
- F2** S. 87(6) substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 40**

#### Modifications etc. (not altering text)

- C1** S. 87(1)(2): transfer of functions (E.) (1.4.2001) by [S.I. 2001/747](#), regs. 2(1), 3, 4, **Sch. 1**

#### Marginal Citations

- M1** [1981 c. 67\(28:1\)](#).
- M2** [1972 c. 70\(81:1\)](#).
- M3** [1965 c. 56\(28:1\)](#).

## 88 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 <sup>M4</sup>National Health Service Act 1946 (transfer of hospitals) [<sup>F3</sup>is so 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 shall so far as practicable secure that the objects for which any such property was used immediately before that transfer are not prejudiced by [<sup>F3</sup>the exercise of the power hereby conferred].

#### Textual Amendments

- F3** Words substituted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), **Sch. 1, para. 66**

#### Marginal Citations

- M4** [1946 c. 81](#).

## 89 Power of voluntary organisations to transfer property.

- (1) Notwithstanding anything contained—
  - (a) in the constitution or rules of any voluntary organisation formed for the purpose of providing a service of nurses for attendance on the sick in their own homes, or of midwives, or
  - (b) in any trust deed or other instrument relating to such organisation or service, any property vested in the organisation or held by any persons on trust for the organisation or service or for any specific purposes connected with the organisation or service may be transferred to the Secretary of State, on such terms as may be agreed between him and the organisation or trustees, with a view to the property being used

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or held by him for purposes similar to the purposes for which it was previously used or held.

### Trusts

## 90 Gifts on trust.

—A [<sup>F4</sup>Strategic Health Authority,][<sup>F5</sup>Health Authority or Special Health Authority] has power to accept, hold and administer any property on trust for all or any purposes relating to the health service.

#### Textual Amendments

- F4** Words in s. 90 inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. 1(3), 42(3), [Sch. 1 Pt. 1 para. 24](#); S.I. 2002/2478, [art. 3\(1\)\(c\)](#)
- F5** Words in s. 90 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17](#), ss. 2(1)(3), 8(1), [Sch. 1 para. 42](#) (with [Sch. 2 para. 6](#))

## 91 Private trusts for hospitals.

- (1) Where—
- (a) 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, then
  - (b) the trust instrument shall be construed as authorising or (as the case may be) 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.
- (2) Any sum so paid to the appropriate hospital authority shall, so far as practicable, be applied by them for the purpose specified in the trust instrument.
- (3) In this section “the appropriate hospital authority” means—
- (a) where special trustees are appointed for the hospital, those trustees;
  - [<sup>F6</sup>(b) where the hospital is managed by, and trustees have been appointed for, an NHS trust or Primary Care Trust, the trustees,
  - (c) where the hospital is managed by an NHS trust or Primary Care Trust and neither paragraph (a) nor paragraph (b) applies, the NHS trust or (as the case may be) Primary Care Trust,
  - (d) in any other case, the [<sup>F7</sup>Strategic Health Authority,] Health Authority or Special Health Authority exercising functions of the Secretary of State in respect of the hospital]
- (4) Nothing in this section applies [<sup>F8</sup>to a trust for a special hospital, or] to property transferred under section 24 of the <sup>M5</sup>National Health Service Reorganisation Act 1973.

#### Textual Amendments

- F6** [S. 91\(3\)\(b\)-\(d\)](#) substituted for s. 91(3)(aa) to (b) (for E: 1.10.1999 subject to specified exceptions otherwise 4.1.2000; for W: 1.4.2000 subject to specified exceptions otherwise *prosp.*) by [1999 c. 8](#),

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ss. 65, 67, **Sch. 4 para. 27(a)**; S.I. 1999/2540, art. 2(1), **Sch. 1**; S.I. 1999/2342, art. 2(3), **Sch. 2**; S.I. 2000/1026, art. 2(1), **Sch.**

- F7** Words in s. 91(3)(d) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 25**; S.I. 2002/2478, **art. 3(1)(c)**
- F8** Words in s. 91(4) omitted (1.4.2000 for E. otherwise *prosp.*) by virtue of 1999 c. 8, ss. 65, 67, **Sch. 4 para. 27(b)**; S.I. 1999/2793, art. 2(3)(a), **Sch. 3**; and those words repealed (*prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 5**

#### Marginal Citations

**M5** 1973 c. 32(113:2).

## 92 Further transfers of trust property.

- (1) The Secretary of State may, having regard to any change or proposed change in the arrangements for the administration of a hospital [<sup>F9</sup>or other establishment or facility] or in the area or functions of any [<sup>F10</sup>Strategic Health Authority,][<sup>F11</sup> Primary Care Trust,][<sup>F12</sup>Health Authority or Special Health Authority], by order provide for the transfer of any trust property [<sup>F13</sup>from any relevant health service body to any other relevant health service body].

[<sup>F14</sup>(1A) In this section “relevant health service body” means—

[ a Strategic Health Authority;]  
<sup>F15</sup>(za)

- (a) a Health Authority;  
 (b) a Special Health Authority;  
 (c) an NHS trust [<sup>F16</sup>or a Primary Care Trust];

[ a Local Health Board;]  
<sup>F17</sup>(cc)

- (d) special trustees; or  
 (e) trustees for an NHS trust [<sup>F16</sup>or a Primary Care Trust].]

- (2) If it appears to the Secretary of State at any time that all the functions of any special trustees should be discharged by [<sup>F18</sup>one or more bodies which are relevant health service bodies by virtue of subsection (1A)(a) to (c) above] then, whether or not there has been any such change as is mentioned in subsection (1) above, he may by order provide for the transfer of all trust property from the special trustees to the [<sup>F19</sup>body or, in such proportions as may be specified in the order, to those bodies].
- (3) Before so acting the Secretary of State shall consult the [<sup>F20</sup>special trustees and other bodies] concerned.
- (4) Where by an order under this section, property is transferred to two or more [<sup>F21</sup>bodies], it shall 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 is to be apportioned.
- (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.

[<sup>F22</sup>(6) 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 an NHS trust, or

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(b) the functions of the trustees for an NHS trust should be discharged by special trustees,

then, whether or not there has been any such change as is mentioned in subsection (1) above, he may, after consulting the special trustees and the trustees for the NHS trust, by order provide for the transfer of all trust property from or to the special trustees to or from the trustees for the NHS trust.]

[<sup>F23</sup>(7) Subsection (6) above applies in relation to a Primary Care Trust as it applies in relation to an NHS trust.]

#### Textual Amendments

- F9** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 11(5) (a)
- F10** Words in s. 92(1) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), Sch. 1 Pt. 1 para. 26(a); S.I. 2002/2478, art. 3(1)(c)
- F11** Words in s. 92(1) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 2(5), 42(3), Sch. 2 Pt. 1 para. 33; S.I. 2002/2478, art. 3(1)(d)
- F12** Words in s. 92(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 44(a)(i) (with Sch. 2 para. 6)
- F13** Words in s. 92(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 44(a)(ii) (with Sch. 2 para. 6)
- F14** S. 92(1A) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 44(b) (with Sch. 2 para. 6)
- F15** S. 92(1A)(za) inserted (1.10.2002 for E.W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), Sch. 1 Pt. 1 para. 26(b); S.I. 2002/2478, art. 3(1)(c)
- F16** Words in s. 92(1A) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, Sch. 4 para. 28(a); S.I. 1999/2342, art. 2(3), Sch. 2
- F17** S. 92(1A)(cc) inserted (10.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 6(2), 42(3), Sch. 5 para. 19; S.I. 2002/2532, art. 2, Sch.
- F18** Words in s. 92(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 44(c)(i) (with Sch. 2 para. 6)
- F19** Words in s. 92(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 44(c)(ii) (with Sch. 2 para. 6)
- F20** Words in s. 92(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 44(d) (with Sch. 2 para. 6)
- F21** Words in s. 92(4) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 44(e) (with Sch. 2 para. 6)
- F22** S. 92(6) added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 11(5) (d)
- F23** S. 92(7) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, Sch. 4 para. 28(b); S.I. 1999/2342, art. 2(3), Sch. 2

#### Modifications etc. (not altering text)

- C2** S. 92 restricted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 301, Sch. 6 para. 7(2)

### 93 Trust property previously held for general hospital purposes.

(1) This section applies—

- (a) to property transferred under section 23 of the <sup>M6</sup>National Health Service Reorganisation Act 1973 (winding-up of hospital endowments funds), and

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- (b) to property transferred under section 24 of that Act (transfer of trust property from abolished authorities) 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<sup>M7</sup>National Health Service Act 1946, applicable for purposes relating to hospital services or relating to some form of research, and this section continues to apply to the property after any further transfer under section 92 above.
- (2) The person holding the property after the transfer or last transfer shall 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,<sup>F24</sup> . . . .
- In this subsection “original endowment” means a hospital endowment which was transferred under section 7 of that Act of 1946 and from which the property in question is derived.
- (3) Subject to subsection (2) above, the property shall 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 thinks fit.
- (4) Where the person holding the property is a body of special trustees, the power conferred by subsection (3) above shall be exercised as respects the hospitals for which they are appointed.

#### Textual Amendments

**F24** Words in s. 93(2) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with **Sch. 2 para. 6**)

#### Modifications etc. (not altering text)

**C3** S. 93(1)(2) extended (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 5(3)** (with **Sch. 2 para. 6**)

#### Marginal Citations

**M6** 1973 c. 32(113:2).

**M7** 1946 c. 81.

## 94 Application of trust property: further provisions.

- (1) Any discretion given by a trust instrument to the trustees of property transferred under—
- section 24 of the<sup>M8</sup>National Health Service Reorganisation Act 1973 (transfer of trust property from abolished authorities),
  - section 25 of that Act (transfer of trust property held for health services by local health authorities),
  - section 92 above,
- shall be exercisable by the person to whom the property is so transferred and, subject to section 93 above and the following provisions of this section, the transfer shall not affect the trusts on which property is held.
- (2) Where—

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- (a) property has been transferred under section 24 of that Act of 1973, 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 think fit without any restriction on the kinds of hospital services and without any restriction to one or more specified hospitals,

the discretion shall be enlarged so as to allow the application of the property or (as the case may be) of the income arising from the property, to such extent as the trustees think fit, for any other part of the health service associated with any hospital.

- (3) Subsection (2) above shall apply on any subsequent transfer of the property under section 92 above.

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**Modifications etc. (not altering text)**

- C4** S. 94(1)(3) extended (E.W.) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 5(3)** (with **Sch. 2 para. 6**)

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**Marginal Citations**

- M8** 1973 c. 32(113:2).

## 95 Special trustees for a university or teaching hospital.

- (1) The bodies of trustees (in this Act referred to as special trustees) appointed by the Secretary of State under section 29 of the National Health Service Reorganisation Act 1973 [<sup>F25</sup>or] this section shall (subject to section 92 above) hold and administer the property transferred to them under that Act of 1973.

The special trustees so appointed are bodies of trustees appointed for the hospital or hospitals which, immediately before the day appointed for the purposes of section 29 of that Act of 1973, were controlled and managed by a University Hospital Management Committee or a Board of Governors, but excluding—

- (a) a body on whose request an order was made under section 24(2) of that Act of 1973;
  - (b) a preserved Board within the meaning of section 15(6) of that Act of 1973.
- (2) Special trustees have power to accept, hold and administer any property on trust for all or any purposes relating to hospital services (including research), or to any other part of the health service associated with hospitals, being a trust which is wholly or mainly for hospitals for which the special trustees are appointed.
  - (3) The number of trustees for any hospital or hospitals shall be such as the Secretary of State may from time to time determine after consultation with such persons as he considers appropriate.
  - (4) The term of office of any special trustee shall 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.

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**Textual Amendments**

- F25** Word substituted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), **Sch. 1, para. 68**



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## 96 Trusts: supplementary provisions.

- (1) Any provision in sections 90 to 95 above [<sup>F26</sup>and 96B below] for the transfer of any property includes provision for the transfer of any rights and liabilities arising from that property.

[<sup>F27</sup>(1A) Where any transfer of property by virtue of those sections is of, or includes,—

- (a) land held on lease from a third party, that is to say, a person other than the Secretary of State or a [<sup>F28</sup>Strategic Health Authority,][<sup>F29</sup>Health Authority or Special Health Authority], or
- (b) any other asset leased or hired from a third party or in which a third party has an interest,

the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.]

- (2) Nothing in those sections shall affect any power of Her Majesty, the court (as defined in [<sup>F30</sup>the <sup>M9</sup>Charities Act 1993]) or any other person to alter the trusts of any charity.
- (3) Nothing in section 12 of the <sup>M10</sup>Finance Act 1895 (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 sections 90 to 95 above [and 96B below] or to an order made in pursuance of any of those sections; and stamp duty shall not be payable on such an order.

### Textual Amendments

**F26** Words in s. 96(1)(3) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 29**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**

**F27** S. 96(1A) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 11(6)(b)**

**F28** Words in s. 96(1A)(a) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 27**; S.I. 2002/2478, **art. 3(1)(c)**

**F29** Words in s. 96(1A) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1, Pt. 1 para. 45** (with Sch. 2 para. 6)

**F30** Words in s. 96(2) substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 30**

### Modifications etc. (not altering text)

**C5** S. 96 amended by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 11(6)**

### Marginal Citations

**M9** 1993 c. 10.

**M10** 1895 c. 16(114).

## [<sup>F31</sup>96A Power of health authorities, etc. to raise money, etc., by appeals, collections, etc.

- (1) A [<sup>F32</sup>Strategic Health Authority,][<sup>F33</sup>Health Authority, Special Health Authority][<sup>F34</sup>, Local Health Board][<sup>F35</sup>or NHS trust] shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist the [<sup>F32</sup>Strategic Health Authority,][<sup>F33</sup>Health Authority, Special Health Authority][<sup>F34</sup>, Local Health Board][<sup>F35</sup>or NHS trust] in providing or improving any services or any facilities or accommodation which is or are or is or are to be provided



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as part of the health service or to assist them in connection with their functions with respect to research.

- (2) A Board of Governors of a teaching hospital shall, so long as it is a preserved Board by virtue of section 15 of the <sup>M11</sup>National Health Service Reorganisation Act 1973, have the like power in relation to services, facilities or accommodation provided or to be provided at or by the hospital or their functions with respect to research.
- (3) Subject to any directions of the Secretary of State excluding specified descriptions of activity, the activities authorised by this section include public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the [<sup>F36</sup>Strategic Health Authority,]<sup>F37</sup>Health Authority, Special Health Authority [<sup>F34</sup>, Local Health Board] or NHS trust] exercising the power subject however to any restrictions on the purposes for which trust property may be used.
- (4) Subject to the following provisions of this section, the [<sup>F38</sup>Strategic Health Authority,]<sup>F37</sup>Health Authority, Special Health Authority [<sup>F34</sup>, Local Health Board] or NHS trust] at whose instance property is given in pursuance of this section shall, 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.
- (5) Where property is given in pursuance of this section 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 [<sup>F39</sup>body responsible for the hospital if that body and the special trustees agree; and in this subsection the body responsible for a hospital is,—
  - (a) in the case of a hospital vested in a NHS trust, that trust; and
  - (b) in any other case, the [<sup>F40</sup>Strategic Health Authority,]<sup>F41</sup>Primary Care Trust or]<sup>F42</sup>Health Authority] exercising functions <sup>F43</sup> . . . of the Secretary of State in respect of the hospital]

[ Where property is given in pursuance of this section on trust for any purposes of an <sup>F44</sup>(5A) NHS trust for which trustees have been appointed under section 11(1) of the National Health Service and Community Care Act 1990, then, if those trustees and the NHS trust agree, the property may be held, administered and applied by those trustees instead of by the NHS trust.]

[ Where property—<sup>F45</sup>(5B) (a) is given in pursuance of this section on trust for any purposes of a Primary Care Trust for which trustees have been appointed under section 96B below, and  
(b) those trustees and the Primary Care Trust agree,  
the property may be held, administered and applied by those trustees instead of by the Primary Care Trust.]

- (6) Property given in pursuance of this section on trust may be transferred <sup>F46</sup> . . . by order of the Secretary of State under section 92 above in the same circumstances as other trust property may be transferred under that section, and sections 94 and 96 above shall apply as they apply to other trust property transferred under the said section 92.
- (7) Where property held by a [<sup>F47</sup>Strategic Health Authority,]<sup>F48</sup>Health Authority, Special Health Authority [<sup>F34</sup>, Local Health Board] or NHS trust] under this section is more than sufficient to enable the purpose for which it was given to be fulfilled the excess

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shall be 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 authority or Board as the [F47Strategic Health Authority,][F48Health Authority, Special Health Authority [F34, Local Health Board] or NHS trust] think fit.

(8) Where property held by a [F47Strategic Health Authority,][F48Health Authority, Special Health Authority [F34, Local Health Board] or NHS trust] under this section is insufficient to enable the purpose for which it was given to be fulfilled then—

(a) the [F47Strategic Health Authority,][F48Health Authority, Special Health Authority [F34, Local Health Board] or NHS trust] may apply so much of the capital or income at their disposal as is needed to enable the purpose to be fulfilled subject, however, 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 <sup>F49</sup> . . . under section 97 below, to any directions he <sup>F49</sup> . . . may give; but

(b) where the capital or income applicable under paragraph (a) above is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the [F47Strategic Health Authority,][F48Health Authority, Special Health Authority [F34, Local Health Board] or NHS trust] shall be 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 authority or Board as the [F47Strategic Health Authority,][F48Health Authority, Special Health Authority [F34, Local Health Board] or NHS trust] think fit.

(9) Where under subsection (7) or (8) above property becomes applicable for purposes other than that for which it was given the [F47Strategic Health Authority,][F48Health Authority, Special Health Authority [F34, Local Health Board] or NHS trust] shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.

(10) In this section “special trustees” has the same meaning as in section 95 above and references to the purposes for which trust property may be used or applied are to be taken, in the case of trust property which has been transferred under section 92 above, to include references to those purposes as enlarged by section 94 above.]

[F50(11) This section (apart from subsection (5A)) has effect in relation to a Primary Care Trust as it has effect in relation to an NHS trust.]

#### Textual Amendments

**F31** S. 96A inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), s. 5(1)

**F32** Words in s. 96A(1) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 28(a)**; S.I. 2002/2478, **art. 3(1)(c)**

**F33** Words in s. 96A(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 46(a)** (with [Sch. 2 para. 6](#))

**F34** Words in s. 96A(1)(3)(4)(7)(8)(9) inserted (1.10.2002 for W., otherwise prosp.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. 6(2), 42(3), **Sch. 5 para. 20**; S.I. 2002/2532, **art. 2**, Sch.

**F35** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 5(8), **Sch. 2 para. 23(1)**

**F36** Words in s. 96A(3) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 28(b)**; S.I. 2002/2478, **art. 3(1)(c)**

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- F37** Words in s. 96A(3)(4) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by virtue of 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 46(b)** (with Sch. 2 para. 6)
- F38** Words in s. 96A(4) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 28(c)**; S.I. 2002/2478, **art. 3(1)(c)**
- F39** Words and subsections (a)(b) substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 23(3)**
- F40** Words in s. 96A(5)(b) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 28(d)**; S.I. 2002/2478, **art. 3(1)(c)**
- F41** Words in s. 96A(5)(b) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 2(5), 42(3), **Sch. 2 Pt. 1 para. 34**; S.I. 2002/2478, **art. 3(1)(d)**
- F42** Words in s. 96A(5)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 46(c)** (with Sch. 2 para. 6)
- F43** Words in s. 96A(5)(b) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, ss. 65, 67, **Sch. 4 para. 30(2)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and are repealed (1.4.2000) by 1999 c. 8, s. 65, **Sch. 5**; S.I. 2000/1041, art. 2(d), **Sch.**
- F44** S. 96A(5A) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 23(4)**
- F45** S. 96A(5B) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 30(3)**; S.I. 1999/2342, art. 2(3), **Sch. 2**
- F46** Words in s. 96A(6) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)
- F47** Words in s. 96A(7)(8)(9) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 28(e)**; S.I. 2002/2478, **art. 3(1)(c)**
- F48** Words in s. 96A(7)-(9) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 46(e)**, **Sch. 3** (with Sch. 2 para. 6)
- F49** Words in s. 96A(8)(a) repealed (1.4.1996) by 1995 c. 17, ss. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)
- F50** S. 96A(11) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 30(4)**; S.I. 1999/2342, art. 2(3), **Sch. 2**

**Modifications etc. (not altering text)**

- C6** S. 96A(10) extended (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), **Sch. 2 para. 5(3)** (with Sch. 2 para. 6)

**Marginal Citations**

- M11** 1973 c. 32(113:2).

**[<sup>F51</sup>96B Trust-funds and trustees for Primary Care Trusts.**

- (1) The Secretary of State may by order provide for the appointment of trustees for any Primary Care Trust.
- (2) Trustees for a Primary Care Trust may accept, hold and administer any property on trust—
  - (a) for the general or any specific purposes of the Primary Care Trust (including the purposes of any specific hospital or other establishment or facility which is managed by the trust), or
  - (b) for all or any purposes relating to the health service.
- (3) An order under subsection (1) above may—
  - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
  - (b) provide for any appointment to be subject to any conditions specified in the order (including conditions requiring the consent of the Secretary of State),

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- (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 any persons he considers appropriate, and
  - (d) make provision about the term of office of any trustee and his removal from office.
- (4) Where trustees have been appointed for a Primary Care Trust under subsection (1) above, the Secretary of State may by order provide for the transfer of any trust property from the Primary Care Trust to the trustees so appointed.]

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**Textual Amendments**

**F51** S. 96B inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 7, 67; S.I. 1999/2342, art. 2(3), Sch. 2

*[<sup>F52</sup> Companies*

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**Textual Amendments**

**F52** S. 96C and cross-heading inserted (1.8.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 4, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/2804 art. 2(1)(a)

**<sup>F53</sup>96C Public-private partnerships**

- (1) The Secretary of State may form, or participate in forming, companies to provide facilities or services for—
- (a) persons or bodies exercising functions, or otherwise providing services, under this Act; or
  - (b) NHS trusts.
- (2) The Secretary of State may, with a view to securing or facilitating the provision by companies of facilities or services for persons or bodies falling within subsection (1) (a) or (b)—
- (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) above 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)(a) or (b); or
  - (b) to persons or bodies falling within subsection (1)(a) only in their capacities as persons or bodies such as are mentioned in that provision.
- (4) In this section—
- “companies” means companies within the meaning of the Companies Act 1985 (c. 6);

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“facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus.

- (5) This section is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of this section.]]

#### Textual Amendments

**F53** S. 96C inserted (1.8.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 4, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/2804 art. 2(1)(a)

### Finance and Accounts

#### [<sup>F54</sup>97 **Means of meeting expenditure of Health Authorities and Special Health Authorities out of public funds.**

[ It is the duty of the Secretary of State to pay in respect of each financial year to each  
<sup>F55</sup>(A1) Strategic Health Authority sums not exceeding the amount allotted for that year by the Secretary of State to the Authority towards meeting the expenditure of the Authority which is attributable to the performance by the Authority of their functions in that year.]

[ It is the duty of the Secretary of State to pay to each Health Authority sums equal to  
<sup>F56</sup>(1) their general Part II expenditure.

[ “General Part II expenditure” is expenditure which—  
<sup>F57</sup>(2) (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II; but  
(b) does not fall within paragraphs (b) to (d) of subsection (3A).]

(3) It is the duty of the Secretary of State to pay to each Health Authority, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Authority towards meeting their main expenditure [<sup>F58</sup>in that year].

[ In determining the amount to be allotted for any year to a Health Authority under  
<sup>F59</sup>(3AA) subsection (3) above (or in varying the amount under subsection (5) below), the Secretary of State may take into account (in whatever way he thinks appropriate)—  
(a) the Authority’s general Part 2 expenditure, and  
(b) expenditure which would have been the Authority’s general Part 2 expenditure but for an order under section 103(1) below,  
during any period he thinks appropriate (or such elements of that expenditure as he thinks appropriate).]

[ Schedule 12A to this Act (which defines “general Part II expenditure” and “main  
<sup>F60</sup>(3BB) expenditure” for the purposes of, and supplements, this section and [<sup>F61</sup>sections 97C and 97F] below) shall have effect]]

[ Where the Secretary of State has made an initial determination of the amount (“the  
<sup>F62</sup>[ initial amount”) to be allotted for any year [<sup>F64</sup>to a Strategic Health Authority under  
<sup>F63</sup>(3C) subsection (A1) above or] to a Health Authority under subsection (3) above, he may increase the initial amount by a further sum if it appears to him that over a period notified to the Authority—

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- (a) they satisfied any objectives notified to them as objectives to be met in performing their functions, or
- (b) they performed well against any criteria notified to them as criteria relevant to the satisfactory performance of their functions (whether or not the method of measuring their performance against those criteria was also notified to them).]]

(3D) In subsection (3C) above, “notified” means specified or referred to in a notice given to [<sup>F65</sup>the Strategic Health Authority or][<sup>F66</sup>the Health Authority] by the Secretary of State.

(3E) In making any increase under subsection (3C) above, the Secretary of State may (whether by directions under subsection (6) below or otherwise) impose any conditions he thinks fit on the application or retention by the authority of the sum in question.

(3F) Where the Secretary of State has, under subsection (3C) above, increased by any sum the amount to be allotted for any year to [<sup>F67</sup>a Strategic Health Authority or] a Health Authority and notified the authority of the allotment and it subsequently appears to him that the authority have failed (wholly or in part) to satisfy any conditions imposed in making that increase, he may—

- (a) reduce the allotment made to that authority for that year, or
- (b) when he has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the authority under subsection (3) above, reduce the initial amount,

by an amount not exceeding that sum.]

(4) It is the duty of the Secretary of State to 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 the Special Health Authority of their functions in that year.

(5) An amount is allotted to a [<sup>F68</sup>Strategic Health Authority,] Health Authority or Special Health Authority for a year under this section when they are notified by the Secretary of State that it is allotted to them for that year; and the Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.

(6) The Secretary of State may give directions to a [<sup>F69</sup>Strategic Health Authority,] Health Authority or Special Health Authority with respect to—

- (a) the application of sums paid to them under [<sup>F70</sup>this section]; [<sup>F71</sup> or]
- (b) the payment of sums by them to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets; [<sup>F72</sup>or]
- (bb) <sup>F73</sup> .....
- (c) <sup>F73</sup> .....

<sup>F74</sup>(7) .....

(8) <sup>F75</sup> .....

(9) Sums falling to be paid [<sup>F76</sup>Strategic Health Authorities,][<sup>F77</sup>to Health Authorities or Special Health Authorities] under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.

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### Textual Amendments

- F54** S. 97 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 47** (with Sch. 2 para. 6)
- F55** S. 97(A1) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 7(2)**, 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F56** S. 97(1)-(3B) substituted (14.10.1997) for s. 97(1)-(3) by 1997 c. 46, **s. 36**; S.I. 1997/2457, **arts. 2, 3**
- F57** S. 97(2) omitted (1.9.1999 for E. with effect for the financial year 1999-2000 and subsequent financial years and otherwise *prosp.*) by virtue of 1999 c. 8, **ss. 4(2)(a)(4)**, 67; S.I. 1999/2342, **art. 2(1)**, **Sch. 1** and s. 97(2) repealed (*prosp.*) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5** Note
- F58** Words in s. 97(3) inserted (1.9.1999 for E. with effect for the financial year 1999-2000 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, **ss. 4(2)(b)(4)**, 67; S.I. 1999/2342, **art. 2(1)**, **Sch. 1**
- F59** S. 97(3AA) inserted (22.10.2001 for E. and otherwise *prosp.*) by 2001 c. 15, **ss. 1(2)**, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3619, **art. 2(1)** (with effect as mentioned in art. 2(2))
- F60** S. 97(3BB) substituted for s. 97(3A)(3B)(1.9.1999 for E. for specified purposes with effect for the financial year 1999-2000 and subsequent financial years, 1.4.2000 otherwise and *prosp.* for W.) by virtue of 1999 c. 8, **ss. 4(2)(c)(4)**, 67; S.I. 1999/2342, **art. 2(1)(4)**, Schs. 1, 3
- F61** Words in s. 97(3BB) substituted (10.10.2002 for W. and otherwise *prosp.*) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 10(2)**, 42(3); S.I. 2002/2532, **art. 2**, Sch.
- F62** S. 97(3C)-(3F) inserted (1.9.1999 for E. and otherwise *prosp.*) by 1999 c. 8, **ss. 8**, 67; S.I. 1999/2342, **art. 2(1)**, **Sch.**
- F63** S. 97(3C) substituted (30.9.2002 for E. for the purposes of the year ending with 31st March 2003 and subsequent years, otherwise *prosp.*) by 2001 c. 15, ss. 2(2), 70(2) (with ss. 64(9), 65(4)); S.I. 2002/2363, **art. 2** (subject to art. 2(2))
- F64** Words in s. 97(3C) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 7(3)**, 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F65** Words in s. 97(3D) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 7(4)**, 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F66** Words in s. 97(3D) substituted (30.9.2002 for E. for the purposes of the year ending with 31st March 2003 and subsequent years, otherwise *prosp.*) by 2001 c. 15, ss. 2(3), 70(2) (with ss. 64(9), 65(4)); S.I. 2002/2363, **art. 2** (subject to art. 2(2))
- F67** Words in s. 97(3F) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 7(5)**, 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F68** Words in s. 97(5) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), {ss. 7(6), 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F69** Words in s. 97(6) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 7(7)(a)**, 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F70** Words in s. 97(6)(a) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 22**; S.I. 1998/631, **art. 2(b)**, **Sch. 2** (with arts. 3-5)
- F71** Word in s. 97(6)(a) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 7(7)(b)**, 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F72** Word in s. 97(6)(b) omitted (1.4.2000 for E. and otherwise *prosp.*) by virtue of 1999 c. 8, ss. 65, 67, **Sch. 4 para. 31(2)**; S.I. 1999/2342, **art. 2(4)**, **Sch. 3** and repealed (*prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 5**



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- F73** S. 97(6)(bb)(c) repealed (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 7(7)(c), 37(2), 42(3), **Sch. 9 Pt. 1**; S.I. 2002/2478, **art. 3(1)(a)(f)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F74** S. 97(7) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, s. 65, **Sch. 4 para. 31(3)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and is repealed (1.4.2000 for E.W.) by 1999 c. 8, ss. 65, 67, **Sch. 5**; S.I. 2000/1041, **art. 2(d)**, **Sch.**
- F75** S. 97(8) repealed (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 7(8), 37(2), 42(3), **Sch. 9 Pt. 1**; S.I. 2002/2478, **art. 3(1)(a)(f)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F76** Words in s. 97(9) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), **ss. 7(9)**, 42(3); S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)
- F77** Words in s. 97(9) inserted (1.4.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 31(4)**; S.I. 1999/2342, art. 2(4), **Sch. 3**

#### Modifications etc. (not altering text)

- C7** S. 97 modified (E.) (with effect in relation to the period beginning with 1.4.2002 and ending with 30.9.2002) by The National Health Service Reform and Health Care Professions Act 2002 (Commencement No. 2) Order 2002 (S.I. 2002/2478), **art. 4**

### [<sup>F78</sup>97A Financial duties of Health Authorities and Special Health Authorities.

- (1) It is the duty of [<sup>F79</sup>every Strategic Health Authority and of] every Health Authority, in respect of each financial year, to perform their functions so as to secure that the expenditure of [<sup>F80</sup>the Authority] which is attributable to the performance by them of their functions in that year (not including expenditure within subsection (1) of section 97 above) does not exceed the aggregate of—
- (a) the [<sup>F81</sup>amount allotted to them for that year under subsection [<sup>F82</sup>(A1) or](3)] of that section;
  - (b) any sums received by them in that year under any provision of this Act (other than sums received by them under that section); and
  - (c) any sums received by them in that year otherwise than under this Act for the purpose of enabling them to defray any such expenditure.
- (2) It is the duty of every Special Health Authority, in respect of each financial year, to perform their functions so as to secure that the expenditure of the Special Health Authority which is attributable to the performance by them of their functions in that year does not exceed the aggregate of—
- (a) the amount allotted to them for that year under subsection (4) of section 97 above;
  - (b) any sums received by them in that year under any provision of this Act (other than sums received by them under that subsection); and
  - (c) any sums received by them in that year otherwise than under this Act for the purpose of enabling them to defray any such expenditure.
- (3) The Secretary of State may give such directions to a [<sup>F83</sup>Strategic Health Authority,] Health Authority or Special Health Authority as appear to be requisite to secure that the [<sup>F83</sup>Strategic Health Authority,] Health Authority or Special Health Authority comply with the duty imposed on them by subsection (1) or (2) above.
- (4) Directions under subsection (3) above may be specific in character.

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<sup>F84</sup>(5) .....

(6) To the extent to which—

- (a) any expenditure is defrayed by a [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority as trustee or on behalf of a [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority by special trustees; or
- (b) any sums are received by a [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority as trustee or under section 96A above,

that expenditure and, subject to subsection (8) below, those sums shall be disregarded for the purposes of this section.

(7) For the purposes of this section sums which, in the hands of a [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority, cease to be trust funds and become applicable by the [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority otherwise than as trustee.

(8) Of the sums received by a [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority under section 96A above so much only as accrues to the [<sup>F85</sup>Strategic Health Authority,] Health Authority or Special Health Authority after defraying any expenses incurred in obtaining them shall be disregarded under subsection (6) above.

(9) Subject to subsection (6) above, the Secretary of State may by directions determine—

- (a) whether sums of a description specified in the directions are, or are not, to be treated for the purposes of this section as received under this Act by a [<sup>F86</sup>Strategic Health Authority,] Health Authority or Special Health Authority of a description specified in the directions;
- (b) whether expenditure of a description specified in the directions is, or is not, to be treated for those purposes as—
  - (i) expenditure within subsection (1) above of a [<sup>F87</sup>Strategic Health Authority or] Health Authority of a description so specified; or
  - (ii) expenditure within subsection (2) above of a Special Health Authority of a description so specified; or
- (c) the extent to which, and the circumstances in which, sums received—
  - (i) by a [<sup>F88</sup>Strategic Health Authority or] Health Authority under <sup>F89</sup> . . . section 97 above; or
  - (ii) by a Special Health Authority under subsection (4) of that section,but not yet spent are to be treated for the purposes of this section as part of the expenditure of the [<sup>F86</sup>Strategic Health Authority,] Health Authority or Special Health Authority and to which financial year's expenditure they are to be attributed.]

#### Textual Amendments

**F78** S. 97A substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1) (3), 8(1), **Sch. 1 Pt. I para. 48** (with Sch. 2 para. 6)

**F79** Words in s. 97A(1) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(2)(a)**; S.I. 2002/2478, {art. 3(1)((e)}

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- F80** Words in s. 97A(1) substituted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(2)(b)**; S.I. 2002/2478, {art. 3(1)((e))} (and that amending provision, Sch. 8 para. 4(2)(b), purportedly brought into force at 10.10.2002 for W. by S.I. 2002/2532, **art 2** Sch.)
- F81** Words in s. 97A substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 23(a)**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)
- F82** Words in s. 97A(1)(a) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(2)(c)**; S.I. 2002/2478, {art. 3(1)((e))} (and that amending provision, Sch. 8 para. 4(2)(c), purportedly brought into force at 10.10.2002 for W. by S.I. 2002/2532, **art 2** Sch.)
- F83** Words in s. 97A(3) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(3)**; S.I. 2002/2478, {art. 3(1)((e))}
- F84** S. 97A(5) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of 1999 c. 8, s. 65, **Sch. 4 para. 32**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 1999/3184, art. 2(2), **Sch. 2** and is repealed (1.4.2000) by 1999 c. 8, s. 65, **Sch. 5**; S.I. 2000/1041, art. 2(d), **Sch.**
- F85** Words in s. 97A(6)(7)(8) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(3)**; S.I. 2002/2478, {art. 3(1)((e))}
- F86** Words in s. 97A(9) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(4)(a)**; S.I. 2002/2478, {art. 3(1)((e))}
- F87** Words in s. 97A(9)(b)(i) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(4)(b)**; S.I. 2002/2478, {art. 3(1)((e))}
- F88** Words in s. 97A(9)(c)(i) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 4(4)(b)**; S.I. 2002/2478, {art. 3(1)((e))}
- F89** Words in s. 97A(9)(c)(i) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 23(b), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(b), Sch. 2, **Sch. 3 Pt. I** (with arts. 3-5)

### [<sup>F90</sup>97AA Resource limits for Health Authorities and Special Health Authorities.

- (1) It is the duty of [<sup>F91</sup>every Strategic Health Authority,] every Health Authority and every Special Health Authority to ensure that the use of their resources in a financial year does not exceed the amount specified for them in relation to that year by the Secretary of State.
- (2) In the application of subsection (1) above to a Health Authority no account shall be taken of any use of resources for the purpose of general Part II expenditure (within the meaning of paragraph 1 of Schedule 12A).

[ But in specifying an amount for a Health Authority under subsection (1) above (or in <sup>F92</sup>(2A) varying the amount under subsection (6) below), the Secretary of State may take into account (in whatever way he thinks appropriate)—

- (a) any such use of resources, and
- (b) the use of any resources which would have been for the purpose of the Authority's general Part 2 expenditure but for an order under section 103(1) below,

during any period he thinks appropriate (or such elements of such uses of resources as he thinks appropriate).]

- (3) For the purpose of subsection (1) above the Secretary of State may give directions—
  - (a) specifying uses of resources which are to be, or not to be, taken into account;
  - (b) making provision for determining to which [<sup>F93</sup>Strategic Health Authority,] Health Authority or Special Health Authority certain uses of resources are to be attributed;

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- (c) specifying descriptions of resources which are to be, or not to be, taken into account.
- (4) Subsections (6) to (8) of section 97A above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duties under section 97A(1) and (2); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.
- (5) The provisions in section 97A(3) and (4) above about the giving of directions by the Secretary of State shall apply in relation to the duty under subsection (1) above as they apply in relation to the duties under section 97A(1) and (2).
- (6) 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.
- (7) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.]

**Textual Amendments**

- F90** S. 97AA inserted (22.12.2000 for E. for specified purposes, 1.4.2001 for other specified purposes and otherwise *prosp*) by 2000 c. 20, ss. 12(1), 30; S.I. 2000/3349, arts. 2(c), 3(1)(a), 4 (with transitional provisions in art. 5)
- F91** Words in s. 97AA(1) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), Sch. 8 para. 5(a); S.I. 2002/2478, art. 3(1)(e)
- F92** S. 97AA(2A) inserted (22.10.2001 for E. and otherwise *prosp.*) by 2001 c. 15, ss. 1(2), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3619, art. 2(1) (with effect as mentioned in art. 2(2))
- F93** Words in s. 97AA(3)(b) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), Sch. 8 para. 5(b); S.I. 2002/2478, art. 3(1)(e)

**Modifications etc. (not altering text)**

- C8** S. 97AA amended (W.) (*prosp.*) by 2000 c. 20, ss. 12(2), 30

<sup>F94</sup>**97B** .....

**Textual Amendments**

- F94** S. 97B repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), Sch. 3 (with Sch. 2 para. 6)

[<sup>F95</sup>[<sup>F96</sup>**97E**Public funding of Primary Care Trusts.

- (1) It is the duty of the Secretary of State, in respect of each financial year, to pay to each Primary Care Trust—
  - (a) sums equal to their general Part 2 expenditure; and
  - (b) sums not exceeding the amount allotted by the Secretary of State to the Primary Care Trust for that year towards meeting the Trust’s main expenditure in that year.

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- (2) In determining the amount to be allotted for any year to a Primary Care Trust under subsection (1)(b) above (or in varying the amount under subsection (7) below), the Secretary of State may take into account, in whatever way he thinks appropriate—
- (a) the Trust’s general Part 2 expenditure; and
  - (b) expenditure which would have been the Trust’s general Part 2 expenditure but for an order under section 103(1) below,
- during any period he thinks appropriate (or such elements of that expenditure as he thinks appropriate).
- (3) Where the Secretary of State has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Primary Care Trust under subsection (1) (b) above, he may increase the initial amount by a further sum if it appears to him that over a period notified to the Trust—
- (a) it satisfied any objectives notified to it as objectives to be met in performing its functions; or
  - (b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).
- (4) In subsection (3) above, “notified” means specified or referred to in a notice given to the Primary Care Trust by the Secretary of State.
- (5) In making any increase under subsection (3) above, the Secretary of State may (whether by directions under subsection (8) below or otherwise) impose any conditions he thinks fit on the application or retention by the Primary Care Trust of the sum in question.
- (6) Where the Secretary of State has, under subsection (3) above, increased by any sum the amount to be allotted for any year to a Primary Care Trust and notified the Trust of the allotment and it subsequently appears to him that the Trust has failed (wholly or in part) to satisfy any conditions imposed in making that increase, he may—
- (a) reduce the allotment made to the Trust for that year; or
  - (b) when he has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the Trust under subsection (1)(b) above, reduce the initial amount,
- by any amount not exceeding that sum.
- (7) An amount is allotted to a Primary Care Trust for a year under this section when the Trust is notified by the Secretary of State that the amount is allotted to the Trust for that year; and the Secretary of State may make an allotment under this section increasing or reducing (subject to subsection (6) above) an allotment previously so made, and the reference to a determination in subsection (3) above includes a determination made with a view to increasing or reducing an allotment previously so made.
- (8) The Secretary of State may give directions to a Primary Care Trust 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.
- (9) Sums falling to be paid to Primary Care Trusts under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.]]

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#### Textual Amendments

- F95** S. 97C inserted (1.4.2000 for E. for the purposes of the financial year 2000-2001 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, **ss. 3, 67**; S.I. 1999/2342, art. 2(4), **Sch. 3**
- F96** S. 97C substituted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), **ss. 8, 42(3)**; S.I. 2002/2478, **art. 3(1)(a)** (with effect for E. as mentioned in art. 3(3) of the commencing S.I.)

#### Modifications etc. (not altering text)

- C9** S. 97C modified (E.) (with effect in relation to the period beginning with 1.4.2002 and ending with 30.9.2002) by [The National Health Service Reform and Health Care Professions Act 2002 \(Commencement No. 2\) Order 2002 \(S.I. 2002/2478\)](#), **art. 4**

### [<sup>F97</sup>97D Financial duties of Primary Care Trusts.

- (1) It is the duty of every Primary Care Trust, in respect of each financial year, to perform its functions so as to secure that the expenditure of the trust which is attributable to the performance by the trust of its functions in that year (not including expenditure within subsection (1)(a) of section 97C above) does not exceed the aggregate of—
  - (a) the amount allotted to it for that year under subsection (1)(b) of that section,
  - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section <sup>F98</sup> . . . ), 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.
- (2) The Secretary of State may give such directions to a Primary Care Trust as appear to be requisite to secure that the trust complies with the duty imposed on it by subsection (1) above.
- (3) Directions under subsection (2) above may be specific in character.
- (4) To the extent to which—
  - (a) any expenditure is defrayed by a Primary Care Trust as trustee or on behalf of a Primary Care Trust by special trustees, or
  - (b) any sums are received by a Primary Care Trust as trustee or under section 96A above,that expenditure and, subject to subsection (6) below, those sums shall be disregarded for the purposes of this section.
- (5) For the purposes of this section sums which, in the hands of a Primary Care Trust, cease to be trust funds and become applicable by the Primary Care Trust otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Primary Care Trust otherwise than as trustee.
- (6) Of the sums received by a Primary Care Trust under section 96A above so much only as accrues to the Primary Care Trust after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.
- (7) Subject to subsection (4) above, the Secretary of State may by directions determine—
  - (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Primary Care Trust,



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- (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Primary Care Trust, or
- (c) the extent to which, and the circumstances in which, sums received by a Primary Care Trust under section 97C above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Primary Care Trust and to which financial year's expenditure they are to be attributed.

(8) In subsection (7) above, “specified” means of a description specified in the directions.]

#### Textual Amendments

- F97** s. 97D inserted (1.4.2000 for E. for the purposes of the financial year 2000-2001 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, ss. 3, 67; S.I. 1999/2342, art. 2(4), **Sch. 3**
- F98** Words in s. 97D(1)(b) repealed (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), Sch. 8 para. 6, **Sch. 9 Pt. 3**; S.I. 2002/2478, art. 3(1)(e) (f)

#### [<sup>F99</sup>97E Resource limits for Primary Care Trusts.

- (1) It is the duty of every Primary Care Trust to ensure that the use of their resources in a financial year does not exceed the amount specified for them in relation to that year by [<sup>F100</sup>the Secretary of State] .
- (2) For the purpose of subsection (1) above no account shall be taken of any use of resources for the purpose of a trust's general Part II expenditure (within the meaning of paragraph 4 of Schedule 12A).
- [<sup>F101</sup>(2A) But in specifying an amount for a Primary Care Trust under subsection (1) above (or in varying the amount under subsection (4) below), the Secretary of State may take into account (in whatever way he thinks appropriate)—
  - (a) any such use of resources; and
  - (b) the use of any resources which would have been for the purpose of the trust's general Part 2 expenditure but for an order under section 103(1) below,
 during any period he thinks appropriate (or such elements of such uses of resources as he thinks appropriate).]
- (3) For the purpose of subsection (1) above the Secretary of State may give directions—
  - (a) specifying uses of resources which are to be, or not to be, taken into account;
  - (b) making provision for determining to which Primary Care Trust certain uses of resources are to be attributed;
  - (c) specifying descriptions of resources which are to be, or not to be, taken into account.
- (4) Where an amount has been specified under this section in respect of a financial year, it may be varied by a later specification.
- (5) Subsections (4) to (6) of section 97D above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97D(1); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.



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- (6) The provisions in section 97D(2) and (3) above about the giving of directions by the Secretary of State shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97D(1).
- (7) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.]

#### Textual Amendments

- F99** S. 97E inserted (22.12.2000 for E. for specified purposes, 1.4.2001 for other specified purposes and otherwise *prosp.*) by 2000 c. 20, ss. 13(1), 30; S.I. 2000/3349, arts. 2(c), 3(1)(a), 4 (with transitional provisions in art. 5)
- F100** Words in s. 97E(1) substituted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), Sch. 8 para. 7(2); S.I. 2002/2478, art. 3(1)(e)
- F101** S. 97E(2A) substituted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), Sch. 8 para. 7(3); S.I. 2002/2478, art. 3(1)(e)

#### Modifications etc. (not altering text)

- C10** S. 97E amended (W.) (*prosp.*) by 2000 c. 20, ss. 13(2), 30

### [<sup>F102</sup>97F Public funding of Local Health Boards

- (1) It is the duty of the National Assembly for Wales, in respect of each financial year, to pay to each Local Health Board—
- sums equal to their general Part 2 expenditure; and
  - sums not exceeding the amount allotted by the National Assembly for Wales to the Local Health Board for that year towards meeting the Board's main expenditure in that year.
- (2) In determining the amount to be allotted for any year to a Local Health Board under subsection (1)(b) above (or in varying the amount under subsection (7) below), the National Assembly for Wales may take into account, in whatever way the Assembly thinks appropriate—
- the Board's general Part 2 expenditure; and
  - expenditure which would have been the Board's general Part 2 expenditure but for an order under section 103(1) below,
- during any period the Assembly thinks appropriate (or such elements of that expenditure as it thinks appropriate).
- (3) Where the National Assembly for Wales has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Local Health Board under subsection (1)(b) above, the Assembly may increase the initial amount by a further sum if it appears to it that over a period notified to the Board—
- the Board satisfied any objectives notified to it as objectives to be met in performing its functions; or
  - it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).
- (4) In subsection (3) above, “notified” means specified or referred to in a notice given to the Local Health Board by the National Assembly for Wales.

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- (5) In making any increase under subsection (3) above, the National Assembly for Wales may (whether by directions under subsection (8) below or otherwise) impose any conditions it thinks fit on the application or retention by the Local Health Board of the sum in question.
- (6) Where the National Assembly for Wales has, under subsection (3) above, increased by any sum the amount to be allotted for any year to a Local Health Board and notified the Board of the allotment and it subsequently appears to the Assembly that the Board has failed (wholly or in part) to satisfy any conditions imposed in making that increase, the Assembly may—
- (a) reduce the allotment made to the Board for that year; or
  - (b) when the Assembly has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the Board under subsection (1)(b) above, reduce the initial amount,
- by any amount not exceeding that sum.
- (7) An amount is allotted to a Local Health Board for a year under this section when the Board is notified by the National Assembly for Wales that the amount is allotted to the Board for that year; and the National Assembly for Wales may make an allotment under this section increasing or reducing (subject to subsection (6) above) an allotment previously so made, and the reference to a determination in subsection (3) above includes a determination made with a view to increasing or reducing an allotment previously so made.
- (8) The National Assembly for Wales may give directions to a Local Health Board with respect to—
- (a) the application of sums paid to the Board under this section, or
  - (b) the payment of sums by the Board to the National Assembly for Wales in respect of charges or other sums referable to the valuation or disposal of assets.
- (9) Sums falling to be paid to Local Health Boards under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the National Assembly for Wales may determine.

#### Textual Amendments

**F102** Ss. 97F-97H inserted (10.10.2002 for W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), [ss. 9](#), 42(3); S.I. 2002/2532, [art. 2](#), Sch.

## 97G Financial duties of Local Health Boards

- (1) It is the duty of every Local Health Board, in respect of each financial year, to perform its functions so as to secure that the expenditure of the Board which is attributable to the performance by the Board of its functions in that year (not including expenditure within subsection (1)(a) of section 97F above) does not exceed the aggregate of—
- (a) the amount allotted to it for that year under subsection (1)(b) of that section;
  - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section); 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.

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- (2) The National Assembly for Wales may give such directions to a Local Health Board as appear to be requisite to secure that the Board complies with the duty imposed on it by subsection (1) above.
- (3) Directions under subsection (2) may be specific in character.
- (4) To the extent to which—
  - (a) any expenditure is defrayed by a Local Health Board as trustee or on behalf of a Local Health Board by special trustees; or
  - (b) any sums are received by a Local Health Board as trustee or under section 96A above,that expenditure and, subject to subsection (6) below, those sums shall be disregarded for the purposes of this section.
- (5) For the purposes of this section sums which, in the hands of a Local Health Board, cease to be trust funds and become applicable by the Local Health Board otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Local Health Board otherwise than as trustee.
- (6) Of the sums received by a Local Health Board under section 96A above so much only as accrues to the Local Health Board after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.
- (7) Subject to subsection (4) above, the National Assembly for Wales may by directions determine—
  - (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Local Health Board;
  - (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Local Health Board; or
  - (c) the extent to which, and the circumstances in which, sums received by a Local Health Board under section 97F above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Local Health Board and to which financial year's expenditure they are to be attributed.
- (8) In subsection (7) above, “specified” means of a description specified in the directions.

#### Textual Amendments

**F102** Ss. 97F-97H inserted (10.10.2002 for W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), [ss. 9](#), 42(3); S.I. 2002/2532, [art. 2](#), Sch.

### 97H Resource limits for Local Health Boards

- (1) It is the duty of every Local Health Board to 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 National Assembly for Wales.
- (2) For the purpose of subsection (1) above no account shall be taken of any use of resources for the purposes of a Board's general Part 2 expenditure (within the meaning of paragraph 6A of Schedule 12A).

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- (3) But in specifying an amount for a Local Health Board under subsection (1) above (or in varying the amount under subsection (5) below), the National Assembly for Wales may take into account (in whatever way it thinks appropriate)—
- (a) any such use of resources; and
  - (b) the use of any resources which would have been for the purpose of the Board's general Part 2 expenditure but for an order under section 103(1) below, during any period the Assembly thinks appropriate (or such elements of such uses of resources as it thinks appropriate).
- (4) For the purpose of subsection (1) above the National Assembly for Wales may give directions—
- (a) specifying uses of resources which are to be, or not to be, taken into account;
  - (b) making provision for determining to which Local Health Board certain uses of resources are to be attributed;
  - (c) specifying descriptions of resources which are to be, or not to be, taken into account.
- (5) Where an amount has been specified under this section in respect of a financial year, it may be varied by a later specification.
- (6) Subsections (4) to (6) of section 97G above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.
- (7) The provisions in section 97G(2) and (3) above about the giving of directions by the National Assembly for Wales shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1).
- (8) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.]

#### Textual Amendments

**F102** Ss. 97F-97H inserted (10.10.2002 for W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), [ss. 9](#), 42(3); S.I. 2002/2532, [art. 2](#), Sch.

## 98 Accounts and audit.

- (1) Accounts, in such form as the Secretary of State may with the approval of the Treasury direct, shall be kept by—
- [<sup>F103</sup>(za) every Strategic Health Authority;]
  - [<sup>F104</sup>(a) every Health Authority;
  - (b) every Special Health Authority;
  - [ every Primary Care Trust]]
  - <sup>F105</sup>(bb)
  - [<sup>F106</sup>(bbb) every Local Health Board;]
  - (c) every NHS trust;
  - (d) all special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973 and section 95(1) above;

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- [<sup>F107</sup>(dd) any trustees for an NHS trust appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990]
- [<sup>F108</sup>(ddd) any trustees for a Primary Care Trust appointed in pursuance of section 96B above; and]
- (e) the Dental Estimates Board

Those accounts shall be audited by auditors [<sup>F109</sup>appointed by the Audit Commission for Local Authorities and the National Health Service in England and Wales and the Comptroller] and Auditor General may examine all such accounts and any records relating to them, and any report of the auditor on them.

- (2) Every such body shall prepare and transmit to the Secretary of State in respect of each financial year annual accounts in such form as the Secretary of State may with the approval of the Treasury direct.

F110

[<sup>F111</sup>(2AA) Every Primary Care Trust shall send a copy of any accounts it has prepared under subsection (2) above to the [<sup>F112</sup>Strategic Health Authority] within whose area the trust's area falls.]

[<sup>F113</sup>(2A) The accounts prepared and transmitted by a [<sup>F114</sup>Health Authority] in pursuance of subsection (2) above shall include annual accounts of a Community Health Council if—

- (a) the Council is established for the [<sup>F115</sup>Health Authority's area]; or
- (b) the [<sup>F116</sup>Health Authority is prescribed for the purposes of this subsection] in relation to the Council.]

[<sup>F117X1</sup>(2B) in preparing its annual accounts in pursuance of subsection (2) above, and NHS trust shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

- (a) the methods and principles according to which the accounts are to be prepared; and
- (b) the information to be given in the accounts.]

[<sup>F118F119X1</sup>[[ So far as relates to allotted sums paid [<sup>F120</sup>under section 15 of the <sup>M12</sup>National Health Service and Community Care Act 1990] to the members of a fund-holding practice—

- (a) accounts shall be kept in such form as the Secretary of State may with the approval of the Treasury direct;
- (b) the Comptroller and Auditor General may examine the accounts and records relating to them and any report of the auditor on them;
- (c) in respect of each financial year, annual accounts in such form as the Secretary of State may with the approval of the Treasury direct shall be prepared and submitted to the relevant [<sup>F121</sup>Health Authority]; and
- (d) in respect of each financial year, each [<sup>F121</sup>Health Authority] shall prepare in such form as the Secretary of State may with the approval of the Treasury direct, and include in its own accounts, a summarised version of the accounts submitted to [<sup>F122</sup>the Health Authority] under paragraph (c) above.]]

F123

(3) .....

(4) The Secretary of State shall prepare in respect of each financial year—

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- (a) in such form as the Treasury may direct, summarised accounts of [<sup>F124</sup>the bodies mentioned in subsection (1) above, other than the Dental Estimates Board]
- (b) in such form and containing such information as the Treasury may direct, a statement of the accounts of the Dental Estimates Board;

and shall transmit them on or before 30th November in each year to the Comptroller and Auditor General, who shall examine and certify them, and lay copies of them together with his report on them before both Houses of Parliament.

<sup>F125</sup>(5) .....

### Editorial Information

**X1** S.98(2B): this is one of two provisions of this number inserted by different authorities in the same Act

### Textual Amendments

- F103** S. 98(1)(za) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 29(a)**; S.I. 2002/2478, **art. 3(1)(c)**
- F104** S. 98(1)(a)-(c) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(a)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F105** S. 98(1)(bb) inserted (1.4.2000 for E. for the purposes of the financial year 2000-2001 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 33(a)**; S.I. 1999/2342, art. 2(4), **Sch. 3**
- F106** S. 98(1)(bbb) inserted (10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 6(2), 42(3), **Sch. 5 para. 21**; S.I. 2002/2532, **art. 2**, Sch.
- F107** S. 98(1)(dd) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. **11(7)**
- F108** S. 98(1)(ddd) inserted (1.4.2000 for E. for the purposes of the financial year 2000-2001 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 33(b)**; S.I. 1999/2342, art. 2(4), **Sch. 3**
- F109** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. **20(2)(a)(8)**
- F110** Para. repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F111** S. 98(2AA) inserted (1.4.2000 for E. for the purposes of the financial year 2000-2001 and subsequent financial years and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, **Sch. 4 para. 33(c)**; S.I. 1999/2342, art. 2(4), **Sch. 3**
- F112** Words in s. 98(2AA) substituted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 1(3), 42(3), **Sch. 1 Pt. 1 para. 29(b)**; S.I. 2002/2478, **art. 3(1)(c)**
- F113** S. 98(2A) inserted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. **6(2)**
- F114** Words in s. 98(2A) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(b)(i)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F115** Words in s. 98(2A)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(b)(ii)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F116** Words in s. 98(2A)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 50(b)(iii)** (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, **art. 5(1)**)
- F117** S. 98(2B) inserted (5.7.1990) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 5(8), **Sch. 2 para. 24(2)**

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- F118** S. 98(2B) inserted (1.10.1990) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 20(2)(b)(8)
- F119** S. 98(2B) repealed (1.10.1999 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65, 67, Sch. 5; S.I. 1999/2540, art. 2(1)(a), Sch. 1
- F120** Words in s. 98(2B) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 50(c)(i) (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, art. 5(1))
- F121** Words in s. 98(2B)(c)(d) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 50(c)(ii) (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, art. 5(1))
- F122** Words in s. 98(2B)(d) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 para. 50(c)(iii) (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, art. 5(1))
- F123** S. 98(3) repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 20(2)(c), 66(2), Sch. 10
- F124** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 12, Sch. 5 para. 3(b)
- F125** S. 98(5) repealed (1.4.1996) by 1995 c. 17, ss. 5(1)(2), Sch. 3 (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, art. 5(1))

#### Modifications etc. (not altering text)

- C11** S. 98 extended (1.4.1999) by S.I. 1999/804, art. 7  
S. 98 extended (1.4.1999) by S.I. 1999/807, art. 5(1)
- C12** S. 98(1) applied (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), Sch. 2 para. 13(4) (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, art. 5(1))
- C13** S. 98(2B) continued (W.) (1.4.2000) by S.I. 2000/999, art. 9(3)
- C14** S. 98(2B)(c) modified (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), Sch. 2 para. 13(5) (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, art. 5(1))  
S. 98(2B)(c) modified (W.) (1.4.2000) by S.I. 2000/999, art. 9(1)(2)
- C15** S. 98(4): Power to exclude conferred (1.4.2001) by 2000 c. 20, s. 14(1); S.I. 2000/3349, art. 3(1)(b) (with transitional provisions in art. 5)
- C16** S. 98(4) modified (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 4(1)(2), 8(1), Sch. 2 para. 13(6) (with Sch. 2 para. 6) (with transitional provisions in S.I. 1996/709, art. 5(1))

#### Marginal Citations

- M12** 1990 c. 19.

## 99 Regulation of financial arrangements.

(1) The Secretary of State may by regulations provide, in the case of all or any of the following bodies—

- [<sup>F126</sup>(za) Strategic Health Authorities,]
- [<sup>F127</sup>(a) Health Authorities,  
(b) Special Health Authorities,]
- [<sup>F128</sup>(ba) Primary Care Trusts]
- [<sup>F129</sup>(bb) Local Health Boards;]  
(e) Community Health Councils, and  
(f) the Dental Estimates Board,



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for restricting the making of payments by or on behalf of the body otherwise than on such authorisation and subject to such conditions as may be specified in the regulations.

- (2) Such provision may be made subject to such exceptions as may be so specified, and those regulations may contain such other provisions as to the making and carrying out by all or any of those bodies of such arrangements with respect to financial matters as the Secretary of State thinks necessary for the purpose of securing that the affairs of such bodies are conducted, so far as reasonably practicable, in such manner as to prevent financial loss and to ensure and maintain efficiency.
- (3) The Secretary of State may give directions to any of those bodies as to any matter with respect to which those regulations may be made; and those directions may be specific in character and shall be—
- (a) such as appear to him requisite to secure that the affairs of the body are conducted in such a manner as is mentioned in subsection (2) above,
  - (b) without prejudice to the operation of any such regulation,

F130 . . . .

#### Textual Amendments

- F126** S. 99(1)(za) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. 1(3), 42(3), [Sch. 1 Pt. 1 para. 30](#); S.I. 2002/2478, [art. 3\(1\)\(c\)](#)
- F127** S. 99(1)(a)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by s. 99(1)(a)-(d) by [1995 c. 17](#), ss. 2(1)(3), 8(1), [Sch. 1 para. 51](#) (with [Sch. 2 para. 6](#))
- F128** S. 99(ba) inserted (4.1.2000 for E. and otherwise *prosp.*) by [1999 c. 8](#), ss. 65, 67, [Sch. 4 para. 34](#); S.I. 1999/2342, art. 2(3), [Sch. 2](#)
- F129** S. 99(1)(bb) inserted (10.10.2002 for W.) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), ss. 6(2), 42(3), {[Sch. 5 para. 22](#)}; S.I. 2002/2532, [art. 2](#), [Sch.](#)
- F130** Words in s. 99(3) omitted (1.9.1999 for E. and 1.12.1999 for W.) by virtue of [1999 c. 8](#), s. 65, [Sch. 4 para. 34\(b\)](#); S.I. 1999/2342, art. 2(1), [Sch. 1](#); S.I. 1999/3184, art. 2(2), [Sch. 2](#) and is repealed (1.4.2000) by [1999 c. 8](#), s. 65, [Sch. 5](#); S.I. 2000/1041, art. 2(d), [Sch.](#)

## 100 Other Payments.

- (1) There shall be paid out of moneys provided by Parliament such expenses incurred by—
- <sup>F131</sup>(a) . . . . .
  - (b) any standing advisory committee constituted under section 6 above,
  - (c) <sup>F132</sup> . . . . .
  - (d) the Tribunal constituted under section 46 above, and
  - [<sup>F133</sup>(dd) the FHSAA,]
  - (e) the Dental Estimates Board,
- as may be determined by the Secretary of State with the approval of the Treasury.
- (2) Payments made under this section shall be . . . <sup>F134</sup> made at such times and in such manner as the Treasury may direct, and subject to such conditions as to records, certificates, or otherwise as the Secretary of State may with the approval of the Treasury determine.

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#### Textual Amendments

- F131** S. 100(1)(a) repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)
- F132** S. 100(1)(c) repealed (1.4.2002) by 2001 c. 15, ss. 67(1)(2), 70(2), Sch. 5 para. 5(10)(a), Sch. 6 Pt. I (with ss. 64(9), 65(4)); S.I. 2002/1095, [art. 2\(3\)](#), Sch.
- F133** S. 100(1)(dd) inserted (1.10.2001 for certain purposes for E., 1.12.2001 for all other purposes for E. and 26.8.2002 for W.) by 2001 c. 15, ss. 67(1), 70(2), Sch. 5 para. 5(10)(b) (with ss. 64(9), 65(4)); S.I. 2001/3294, [art. 4, Sch. Pt. I](#) (subject to transitional provisions in [Sch. Pt. II](#)); S.I. 2002/1919, [art. 3\(1\)](#), [Sch. Pt. II](#)
- F134** Words repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), ss. 29, 30(1), Sch. 9 Pt. I para. 21, [Sch. 10 Pt. I](#)

#### Modifications etc. (not altering text)

- C17** S. 100(2) partially repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#) s. 29. Sch. 9 para 21

### 101 Secretary of State's receipts.

Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund, . . . <sup>F135</sup>

#### Textual Amendments

- F135** Words repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 7](#)

*Miscellaneous provisions as to remuneration, allowances and superannuation*

### 102 Allowances and remuneration for members of certain bodies.

- (1) The Secretary of State may pay such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of [<sup>F136</sup>the Treasury], determine—
- (a) to members of any of the following bodies constituted under this Act—
- (i) <sup>F137</sup>, any standing advisory committee constituted under section 6 above to advise the Secretary of State . . . <sup>F137</sup> and any sub-committee appointed by any such standing advisory committee . . . <sup>F137</sup>;
  - (ii) the Medical Practices Committee;
  - (iii) any body on which functions are conferred by regulations under section 32 above [<sup>F138</sup> or by regulations which make provision in relation to section 28C arrangements of a kind that may be made by regulations under section 32 above];
  - (iv) the Dental Estimates Board;
  - (v) the Tribunal constituted under section 46 above [<sup>F139</sup> and the FHSAA];
- (b) to members of any other body being a body specified in an order made by the Secretary of State as being a body recognised by him to have been formed for the purpose of performing a function connected with the provision of services under this Act.

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- (2) The Secretary of State may pay to members of any of the following bodies such remuneration as he may, with the approval of [<sup>F140</sup>the Treasury], determine—
- (a) the Medical Practices Committee;
  - (b) any body on which functions are conferred by regulations under section 32 above;
  - (c) the Dental Estimates Board;
  - (d) the Tribunal constituted under section 46 above [<sup>F139</sup>and the FHSAA];
  - (e) any other body constituted under Part II of this Act, being a body specified in an order made for the purposes of this subsection, with the approval of [<sup>F141</sup>the Treasury], by the Secretary of State.
- (3) Allowances shall not be paid under subsection (1) above except in connection with the exercise or performance of such powers or duties, in such circumstances, as may, with the approval of [<sup>F136</sup>the Treasury], be determined by the Secretary of State.
- (4) Any payments under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may, with the approval of [<sup>F141</sup>the Treasury], determine.

#### Textual Amendments

**F136** Words substituted by virtue of S.I. 1981/1670, **arts. 2(1)(c)(d)(2), 3(5)**

**F137** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

**F138** Words in s. 102(1)(a)(iii) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 24**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)

**F139** Words in s. 102(1)(a)(v)(2)(d) added (1.10.2001 for certain purposes for E., 1.12.2001 for all other purposes for E. and 26.8.2002 for W.) by 2001 c. 15, ss. 27(2), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3294, art. 4(1), **Sch. Pt. I** (subject to transitional provisions in **Sch. Pt. II**); S.I. 2002/1919, **art. 3(1), Sch. Pt. II**

**F140** Words substituted by virtue of S.I. 1981/1670, **arts. 2(2), 3(5)**

**F141** Words substituted by virtue of S.I. 1981/1670, **arts 2(1)(2), 3(5)**

### 103 Special arrangement as to payment of remuneration.

- (1) If the Secretary of State—
- (a) considers it appropriate for remuneration in respect of services provided by any person in pursuance of Part II of this Act [<sup>F142</sup>or in accordance with section 28C arrangements ] [<sup>F143</sup>or LPS arrangements] to be paid by a particular body, and
  - (b) apart from this section 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 the body.
- (2) Any sums required to enable any body having that function to pay remuneration in respect of such services shall, 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.
- [<sup>F144</sup>(3) If the Secretary of State by order so provides with respect to remuneration in respect of such pharmaceutical services as may be specified in the order,—

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- (a) an NHS trust<sup>F145</sup>. . . determined in accordance with the order shall have the function of paying sums so determined to [<sup>F146</sup>a [<sup>F147</sup>Primary Care Trust, Health Authority or Local Health Board] so determined in respect of the whole or any part of that remuneration]
- (b) nothing in subsection (2) above shall apply with respect to [<sup>F148</sup>the whole or (as the case may be) that part of the] remuneration.]

#### Textual Amendments

- F142** Words in s. 103(1)(a) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. 1 para. 25**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)
- F143** Words in s. 103(1)(a) inserted (E.) (12.12.2002) by The National Health Service (Local Pharmaceutical Services Etc.) Regulations 2002 (S.I. 2002/2861), **art. 23**
- F144** S. 103(3) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(9)**
- F145** Words in s. 103(3)(a) repealed (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 2(5), 37(1), 42(3), **Sch. 2 Pt. 1 para. 35(a)**, **Sch. 9 Pt. 3**; S.I. 2002/2478, **art. 3(1)(d)(f)**
- F146** Words in s. 103(3)(a) substituted (1.9.1999 for E. and otherwise prosp.) by 1999 c. 8, **ss. 4(3)(a)(4)**, 67; S.I. 1999/2342, art. 2(1), **Sch. 1**
- F147** Words in s. 103(3)(a) substituted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 2(5), 42(3), **Sch. 2 Pt. 1 para. 35(a)(b)**; S.I. 2002/2478, **art. 3(1)(d)**
- F148** Words in s. 103(3)(b) substituted (1.9.1999 for E. and otherwise prosp.) by 1999 c. 8, **ss. 4(3)(b)(4)**, 67; S.I. 1999/2342, art. 2(1), **Sch. 1**

### 104 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 <sup>M13</sup>Superannuation Act 1972 in like manner as officers of [<sup>F149</sup>NHS trusts]; and
  - (b) those regulations shall 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 shall have all 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 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.

#### Textual Amendments

- F149** Words in 104(1)(a) substituted (1.10.2002 for E. and 10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 8**; S.I. 2002/2478, art. 3(2)(b)(i); S.I. 2002/2532, **art. 2**, **Sch.**

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### Marginal Citations

M13 1972 c. 11.

## 105 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 [<sup>F150</sup>assessment] or treatment being made under [<sup>F151</sup>Part II of the <sup>M14</sup>Mental Health Act 1983][<sup>F152</sup>the Secretary of State] shall, subject to the following provisions of this section, 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 shall be made under this section to a medical practitioner—
- (a) in respect of an examination carried out as part of his duty to provide general medical services for the person examined [<sup>F153</sup>or as part of his duty to perform personal medical services for that person in accordance with section 28C arrangements] ; or
  - (b) in respect of an examination carried out or any recommendation or report made as part of his duty as an officer of a [<sup>F154</sup>NHS trust, Primary Care Trust,][<sup>F155</sup>Health Authority or Special Health Authority].
- (3) This section shall only apply 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 any such application as mentioned in subsection (1) above, the whole cost of his maintenance and treatment will be defrayed out of moneys provided by Parliament under this Act . . . <sup>F156</sup>

### Textual Amendments

- F150** Words substituted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), ss. 65(1), 69(6), Sch. 3 para. 56, **Sch. 5 para. 1**
- F151** Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 47(b)**
- F152** Words substituted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85), **s. 64(4)**
- F153** Words in s. 105(2)(a) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 26**; S.I. 1998/631, art. 2(b), **Sch. 2** (with arts. 3-5)
- F154** Words in s. 105(2)(b) inserted (1.10.2002 for E. and 10.10.2002 for W.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), ss. 37(1), 42(3), **Sch. 8 para. 9**; S.I. 2002/2478, art. 3(2)(b)(i); S.I. 2002/2532, **art. 2**, Sch.
- F155** Words in s. 105(2)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 54** (with Sch. 2 para. 6)
- F156** Words repealed by Mental Health Act 1983 (c. 20, SIF 85), s. 148, Sch. 4 para. 47(c), **Sch. 6**

### Marginal Citations

M14 1983 c. 20(85).

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to National Health Service Act 1977. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act modified by [2003 c. 43 Sch. 7 para. 3\(7\)](#)
- Act repealed by [2006 c. 43 Sch. 4](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 3(4) inserted by [2003 c. 43 Sch. 11 para. 8](#)
- s. 3(4)(a) words substituted by [2006 c. 28 Sch. 8 para. 7\(4\)\(a\)](#)
- s. 3(4)(b) modified by [S.I. 2004/865 art. 109\(2\)\(a\)](#)
- s. 3(4)(b) words substituted by [2006 c. 28 Sch. 8 para. 7\(4\)\(b\)](#)
- s. 8(9)(10) added by [2006 c. 28 s. 74\(1\)](#)
- s. 11(4A)(4B) inserted by [2006 c. 28 s. 74\(2\)\(a\)](#)
- s. 16B(4) inserted by [2003 c. 43 s. 182\(1\)](#)
- s. 16BC(4) inserted by [2003 c. 43 s. 182\(2\)](#)
- s. 16CA and heading inserted by [2003 c. 43 s. 170](#)
- s. 16CB inserted by [2003 c. 43 s. 171\(1\)](#)
- s. 16CC inserted by [2003 c. 43 s. 174](#)
- s. 16CD16CE inserted by [2006 c. 28 s. 37](#)
- s. 19A(2)(aa) inserted by [2003 c. 43 Sch. 9 para. 9](#)
- s. 20A inserted by [2003 c. 4 s. 1\(1\)](#)
- s. 21(4) inserted by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 9](#)
- s. 22(1A)(e) inserted by [2003 c. 43 Sch. 4 para. 25](#)
- s. 28D(1)(b)-(bc) substituted for s. 28D(1)(b)(c) by [2003 c. 43 s. 177\(2\)](#)
- s. 28D(1)(bc)(i) modified by [S.I. 2004/865 art. 109\(2\)\(a\)](#)
- s. 28D(1)(bc)(iii) words substituted by [S.I. 2004/957 Sch. para. 3](#)
- s. 28D(1A) inserted by [2003 c. 43 s. 177\(3\)](#)
- s. 28E(3)(ca) inserted by [2003 c. 43 s. 177\(7\)](#)
- s. 28E(3A)(3B) inserted by [2003 c. 43 s. 177\(8\)](#)
- s. 28E(3C) inserted by [2003 c. 43 s. 177\(9\)](#)
- s. 28E(3D) inserted by [2003 c. 43 s. 177\(10\)](#)
- s. 28E(3E)(3F) inserted by [2003 c. 43 s. 177\(11\)](#)
- s. 28K-28P and heading inserted by [2003 c. 43 s. 172\(1\)](#)
- s. 28M(4) words substituted by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 16](#)
- s. 28Q-28W and heading(s) inserted by [2003 c. 43 s. 175\(1\)](#)
- s. 28W(5) applied by [S.I. 2004/478 reg. 100\(3\)](#)
- s. 28W(5) applied by [S.I. 2004/478 Sch. 6 para. 100\(3\)](#)
- s. 28X applied (with modifications) by [S.I. 2006/552 Sch. 1 para. 4](#)
- s. 28X inserted by [2003 c. 43 s. 179\(1\)](#)
- s. 28X heading words substituted by [2006 c. 28 s. 39\(5\)](#)
- s. 28X(1A) inserted by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 17\(a\)](#)
- s. 28X(2A) inserted by [2006 c. 28 s. 39\(2\)](#)
- s. 28X(3)(b) words substituted by [2006 c. 28 s. 39\(3\)](#)
- s. 28X(3)(c) added by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 17\(b\)](#)
- s. 28X(6A) inserted by [2006 c. 28 s. 39\(4\)](#)
- s. 28Y inserted by [2003 c. 43 s. 180](#)
- s. 28Y(1) applied (with modifications) by [S.I. 2006/552 Sch. 1 para. 5](#)
- s. 28Y(1)(a) substituted by [2006 c. 28 s. 40\(2\)](#)
- s. 28Y(1)(b) words substituted by [2006 c. 28 s. 40\(3\)](#)
- s. 28Y(1)(c) added by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 18](#)
- s. 28WA-28WF and cross-heading inserted by [2006 c. 28 s. 38](#)
- s. 29-34A repealed by [2003 c. 43 s. 175\(2\)Sch. 14 Pt. 4](#)



- s. 34A inserted by [1997 c. 46 s. 25\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 25(1) repealed (1.4.2004) without ever being in force by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1) (4), Sch. 14 Pt. 4 Note; S.I. 2004/288, art. 6(2)(p) (with art. 8) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 5(2)(p) (with arts. 6, 7) (as amended by S.I. 2004/1019 and S.I. 2006/345))
- s. 35(3)-(3B) substituted for s. 35(3) by [S.I. 2005/2011 Sch. 6 para. 1\(2\)\(a\)](#) (This amendment comes into force on a day to be specified in the London, Edinburgh and Belfast Gazettes (see, for example, the London Gazette, issue nos. 57734, 57975, 58050 and 58769, dated respectively 19.8.2005, 5.6.2006, 21.7.2006 and 18.7.2008))
- s. 42(2A) inserted by [2001 c. 15 s. 40\(3\)](#)
- s. 42(2B)(2C) inserted by [2006 c. 28 s. 35](#)
- s. 42A42B inserted by [2006 c. 28 s. 34\(1\)](#)
- s. 43(4)(5) added by [1997 c. 19 Sch. para. 6](#) (This amendment not applied to [legislation.gov.uk](#). 1997 c. 19 repealed (30.3.2007) by S.I. 2007/289, art. 1(2)(3), Sch. 1 para. 6; commencing date as notified in The Gazette, published 23.3.2007)
- s. 43A inserted by [1984 c. 48 s. 7\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 7(1) repealed (1.3.2007 immediately before the National Health Service Act 2006 comes into force) without ever being in force by National Health Service (Pre - consolidation Amendments) Order 2006 (S.I. 2006/1407), art. 1(1), Sch. 2 (with art. 4))
- s. 43A43B substituted by [1999 c. 8 s. 10\(1\)\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 10 repealed (1.3.2007) without ever being in force by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), Sch. 4 (with Sch. 2 Pt. 1))
- s. 43A43B substituted by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 19](#)
- s. 43A(3) repealed by [1997 c. 46 Sch. 2 para. 77](#)[Sch. 3 Pt. 2](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 2 para. 77 repealed (E.W.) (1.3.2007 immediately before the National Health Service Act 2006 comes into force) without ever being in force by The National Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407), art. 1(1), Sch. 2 (with art. 4))
- s. 43B added by [1984 c. 48 s. 7\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 7(3) repealed to the extent that it inserts section 43B of the National Health Service Act 1977 (1.3.2007 immediately before the National Health Service Act 2006 comes into force) without that amendment ever being in force by National Health Service (Pre - consolidation Amendments) Order 2006 (S.I. 2006/1407), art. 1(1), Sch. 2 (with art. 4))
- s. 44(3A) inserted by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 20\(c\)](#)
- s. 45A45B inserted by [2003 c. 43 Sch. 11 para. 23](#)
- s. 45A(3) modified by [S.I. 2004/865 art. 109\(2\)\(a\)](#)
- s. 45A(3)(a) word repealed by [2006 c. 28 Sch. 8 para. 17\(2\)](#)[Sch. 9](#)
- s. 45A(3)(aa) inserted by [2006 c. 28 Sch. 8 para. 17\(2\)](#)
- s. 45A(4) modified by [S.I. 2004/865 art. 109\(2\)\(a\)](#)
- s. 45A(4)(a) substituted by [2006 c. 28 Sch. 8 para. 17\(3\)](#)
- s. 45A(11) modified by [S.I. 2004/865 art. 109\(2\)\(a\)](#)
- s. 45C inserted by [2006 c. 28 s. 41](#)
- s. 46-46C substituted for s. 46 by [1999 c. 8 s. 40\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 40 repealed by 2001 c. 15, ss. 67, 70(2), Sch. 6 Pt. 1 (with ss. 64(a), 65(4)), the repeal coming into force immediately before the coming into force of the National Health Service Act 2006 (c. 41) (as to which see s. 227 of that 2006 Act) by virtue of The National Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407), arts. 1(1), 2, Sch. 1 Pt. 2 para. 8(c))
- s. 54(1)(c) and word(s) inserted by [2003 c. 43 Sch. 11 para. 26\(2\)\(c\)](#)
- s. 54(1)(c) modified by [S.I. 2004/865 art. 109\(2\)\(a\)](#)
- s. 72(5)(d) and word(s) inserted by [2003 c. 43 Sch. 11 para. 27\(2\)](#)
- s. 72(5)(d) modified by [S.I. 2004/865 art. 109\(2\)\(a\)](#)
- s. 72(5)(d) words substituted by [2006 c. 28 Sch. 8 para. 21\(b\)\(i\)](#)
- s. 72(5)(d) words substituted by [2006 c. 28 Sch. 8 para. 21\(b\)\(ii\)](#)



- s. 77(4) inserted by [2003 c. 43 Sch. 11 para. 28](#)
- s. 78A inserted by [1997 c. 46 s. 26\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 26(1) repealed (1.3.2007) without ever being in force by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), Sch. 4 (with Sch. 2 Pt. 1 Sch. 3 Pt. 1))
- s. 79(5)(b) modified by [2003 c. 43 s. 183\(4\)](#)
- s. 96(4) added by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 27](#)
- s. 96A(12) inserted by [2003 c. 43 Sch. 4 para. 37](#)
- s. 98(1A)-(1C) inserted by [S.I. 2003/1324 Sch. 2 para. 1\(2\)](#)
- s. 98(1A) substituted by [S.I. 2004/1714 Sch. 2 para. 1\(2\)](#)
- s. 98(1A)(e) inserted by [S.I. 2006/960 Sch. 2 para. 1\(2\)](#)
- s. 98(1C) words inserted by [S.I. 2004/1714 Sch. 2 para. 1\(4\)](#)
- s. 98(1C) words substituted by [S.I. 2006/960 Sch. 2 para. 1\(4\)](#)
- s. 98(1D) inserted by [2004 c. 23 Sch. 2 para. 2](#)
- s. 98(1BA)(1BB) inserted by [S.I. 2004/1714 Sch. 2 para. 1\(3\)](#)
- s. 98(1BC) inserted by [S.I. 2006/960 Sch. 2 para. 1\(3\)](#)
- s. 98(4A) inserted by [S.I. 2003/1324 Sch. 2 para. 1\(4\)](#)
- s. 98(7)-(10) inserted by [S.I. 2005/1074 art. 2\(2\)](#)
- s. 103(4)(5) inserted by [2001 c. 15 Sch. 5 para. 5\(12\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 5(12)(c) repealed (1.3.2007) without ever being in force by 2006 c. 43, s. 8(2), Sch. 4 (with Sch. 2 Pt. 1, Sch. 3 Pt. 1))
- s. 124A(3)(aa) inserted by [2002 c. 38 Sch. 3 para. 20](#)
- s. 126(1A) inserted by [2003 c. 43 s. 183\(3\)\(b\)](#)
- s. 126(4A) inserted by [2001 c. 15 Sch. 5 para. 5\(13\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 5(13)(c) repealed (1.3.2007) without ever being in force by 2006 c. 43, s. 8(2), Sch. 4 (with Sch. 2 Pt. 1, Sch. 3 Pt. 1))
- s. 126(4A) inserted by [2003 c. 4 s. 1\(2\)](#)
- Sch. 5 para. 12B inserted by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 39\(c\)](#)
- Sch. 5 para. 10(2A)-(2C) substituted for Sch. 5 para. 10(2A) by [S.I. 2005/2011 Sch. 6 para. 1\(4\)](#) (This amendment comes into force on a day to be specified in the London, Edinburgh and Belfast Gazettes (see, for example, the London Gazette, issue nos. 57734, 57975, 58050 and 58769, dated respectively 19.8.2005, 5.6.2006, 21.7.2006 and 18.7.2008))
- Sch. 5A para. 20(1A) inserted by [2006 c. 28 s. 74\(3\)](#)
- Sch. 5B para. 19(1A) inserted by [2006 c. 28 s. 74\(4\)](#)
- Sch. 7A inserted by [2003 c. 4 s. 1\(3\)Sch. 1](#)
- Sch. 7A para. 3(1)(fa) inserted by [2003 c. 43 Sch. 11 para. 40\(2\)\(a\)](#)
- Sch. 7A para. 3(1)(g) words repealed by [2003 c. 43 Sch. 11 para. 40\(2\)\(b\)Sch. 14 Pt. 4](#)
- Sch. 7A para. 3(2) words substituted by [2003 c. 43 Sch. 11 para. 40\(3\)](#)
- Sch. 9A para. 10(a)(aa) substituted for s. Sch. 9A para. 10(a) by [2003 c. 43 Sch. 11 para. 42\(4\)\(b\)](#)
- Sch. 9A para. 6(d)(i)(ii) substituted for words in para. 6(d) by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 40\(b\)](#)
- Sch. 11 para. 5A inserted by [S.I. 2004/3363 art. 7](#)
- Sch. 12 para. 2A(6) added by [S.I. 2006/1407 Sch. 1 Pt. 1 para. 42\(g\)](#)
- Sch. 12 para. 2B amendment to earlier affecting provision 2006 c. 28, s. 41(3) by [S.I. 2006/1407 Sch. 1 Pt. 2 para. 15](#) (The earlier affecting provision cited is incorrect. The correct provision should be s. 42(3).)
- Sch. 12 para. 2B inserted by [2006 c. 28 s. 42\(3\)](#)
- Sch. 12 para. 2A(1)(b)(ba) substituted for Sch. 12 para. 2A(1)(b) by [2006 c. 28 s. 42\(2\)\(a\)](#)
- Sch. 12A para. 7(4) inserted by [2001 c. 15 Sch. 5 para. 5\(17\)\(c\)](#)
- Sch. 12B inserted by [2006 c. 28 s. 56\(2\)Sch. 3](#)
- Sch. 12ZA inserted by [2003 c. 43 s. 183\(2\)](#)

**Commencement Orders yet to be applied to the National Health Service Act 1977**

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2003/53 art. 2-4 commences (2001 c. 15)
- S.I. 2003/713 art. 2 commences (2001 c. 15)
- S.I. 2003/833 art. 23 commences (2002 c. 17)
- S.I. 2003/2245 art. 2 commences (2001 c. 15)
- S.I. 2003/2246 art. 2 commences (2002 c. 17)
- S.I. 2003/2660 art. 2-4 commences (2003 c. 4)
- S.I. 2003/3064 art. 2 commences (2003 c. 4)
- S.I. 2003/3083 art. 2 commences (2002 c. 17)
- S.I. 2003/3346 art. 2-5 commences (2003 c. 43)
- S.I. 2004/103 art. 2-4 commences (2001 c. 15)
- S.I. 2004/287 art. 23 commences (1997 c. 46)
- S.I. 2004/288 art. 2-6 commences (2003 c. 43)
- S.I. 2004/289 art. 2 commences (1998 c. 8)
- S.I. 2004/480 art. 2-5 commences (2003 c. 43)
- S.I. 2004/759 art. 2-13 commences (2003 c. 43)
- S.I. 2004/874 art. 2 commences (2003 c. 42)
- S.I. 2004/1009 art. 2 commences (2003 c. 43)
- S.I. 2004/1019 art. 2 commences (2003 c. 43)
- S.I. 2004/1859 art. 2-6 commences (1999 c. 8)
- S.I. 2004/2626 art. 2 commences (2003 c. 43)
- S.I. 2005/457 art. 2 commences (2003 c. 43)
- S.I. 2005/558 art. 2Sch. 1 commences (2004 c. 23)
- S.I. 2005/1432 art. 2 commences (2005 c. 12)
- S.I. 2005/2213 art. 23 commences (2002 c. 38)
- S.I. 2005/2800 art. 3-5 commences (2005 c. 10)
- S.I. 2005/2897 art. 2 commences (2002 c. 38)
- S.I. 2005/2925 art. 24-11 commences (2003 c. 43)
- S.I. 2005/2926 art. 23 commences (1997 c. 46)
- S.I. 2006/345 art. 2-7 commences (2003 c. 43)
- S.I. 2006/481 art. 23 commences (2001 c. 15)
- S.I. 2006/1014 art. 2Sch. 12 commences (2005 c. 4)
- S.I. 2006/1407 Sch. 1 Pt. 2 para. 3681213 commences (1997 c. 46)
- S.I. 2006/2603 art. 2-5 commences (2006 c. 28)
- S.I. 2006/3125 art. 2-4 commences (2006 c. 28)
- S.I. 2007/204 art. 2-4 commences (2006 c. 28)
- S.I. 2008/1972 art. 2 commences (2006 c. 28)