Health and Medicines Act 1988

1988 CHAPTER 49

Additional powers for financing Health Service

7 Extension of powers of Secretary of State for financing the Health Service

(1) In order to make more income available for improving the health service (as defined in the National Health Service Act 1977 or the National Health Service (Scotland) Act 1978), the Secretary of State shall have the powers specified in subsection (2) below; but for the avoidance of doubt it is hereby declared that nothing in this section authorises him or any body to which he gives directions under subsection (3) below to disregard any enactment or rule of law or to override any person's contractual or proprietary rights.

(2) The powers mentioned in subsection (1) above are powers—

(a) to acquire, produce, manufacture and supply goods;

(b) to acquire land by agreement and manage and deal with land;

(c) to supply accommodation to any person;

(d) to supply services to any person and to provide new services;

(e) to provide instruction for any person;

(f) to develop and exploit ideas and exploit intellectual property;

(g) to do anything whatsoever which appears to him to be calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred by this subsection; and

(h) to make such charge as he considers appropriate for anything that he does in the exercise of any such power and to calculate any such charge on any basis that he considers to be the appropriate commercial basis.

(3) The Secretary of State may give directions (having regard to the existing work of voluntary bodies)—

(i) for the exercise of any of those powers by any body constituted under the National Health Service Act 1977 or the National Health Service (Scotland) Act 1978; and

(ii) with respect to the manner in which any such body is to exercise any such power;

and it shall be the duty of the body in question to comply with the directions.

(4) The directions may provide that any power to which they relate shall be exercisable subject to any limitations specified in the directions.

(5) The directions may be varied or revoked by subsequent directions.

(6) The Secretary of State shall exercise the powers specified in subsection (2)(c) and (d) above only if and to the extent that he is satisfied that anything which he proposes to do in the exercise of those powers does not fall within section 65 of the National Health Service Act 1977 or section 57 of the National Health Service (Scotland) Act 1978.

(7) The Secretary of State shall exercise the powers specified in subsection (2)(f) above only after consulting (to the extent that it appears to him to be practical) any person who appears to him to have an interest through his own previous research in the ideas or intellectual property in question as to whether he should exercise them and, if so, as to any financial arrangements.

(8) The Secretary of State shall exercise the powers specified in subsection (2) above only if and to the extent that he is satisfied that anything which he proposes to do—

(a) will not to a significant extent interfere with the performance by him of any duty imposed on him by the National Health Service Act 1977 or the National Health Service (Scotland) Act 1978; and

(b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at hospitals vested in the Secretary of State for the purposes of his functions under either of those Acts (whether as resident or non-resident patients) otherwise than under section 65 of the National Health Service Act 1977 or section 57 of the National Health Service (Scotland) Act 1978.

(9) In section 63 of the National Health Service Act 1977 and in section 55 of the National Health Service (Scotland) Act 1978—

(a) in subsection (1), for the words from "to such extent" to "those charges" there shall be substituted the words "for patients to such extent as he may determine, and may recover such charges as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis"; and

(b) subsection (2) shall be omitted.

(10) The following section shall be substituted for sections 65 and 66 of the National Health Service Act 1977—

"**65 Accommodation and services for private patients**

(1) If the Secretary of State is satisfied, in the case of a health service hospital or group of such hospitals, that it is reasonable to do so, he may authorise accommodation and services at the hospital or hospitals in question to be made available, to such extent as he may determine, for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Secretary of State may determine and may make and recover such charges as he may determine in respect of such accommodation and services and calculate them on any basis that he considers to be the appropriate commercial basis; but he shall do so only if and to the extent that he is satisfied that to do so—

(a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and

(b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

(2) The Secretary of State may allow accommodation and services to which an authorisation under subsection (1) above relates to be made available in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital for the treatment of private patients of that practitioner.

(3) The Secretary of State shall revoke an authorisation under this section only if and to the extent that he is satisfied that sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at health service hospitals) to meet the reasonable demand for them in the area or areas served by the hospital or hospitals in question."

(11) The following section shall be substituted for sections 57 and 58 of the National Health Service (Scotland) Act 1978—

"**57 Accommodation and services for private patients**

(1) If the Secretary of State is satisfied, in the case of a health service hospital, that it is reasonable to do so, he may authorise accommodation and services at the hospital in question to be made available, to such extent as he may determine, for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Secretary of State may determine and may make and recover such charges as he may determine in respect of such accommodation and services and calculate them on any basis that he considers to be the appropriate commercial basis; but he shall do so only if and to the extent that he is satisfied that to do so—

(a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and

(b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

(2) The Secretary of State may allow accommodation and services to which an authorisation under subsection (1) above relates to be made available in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital for the treatment of private patients of that practitioner.

(3) The Secretary of State shall revoke an authorisation under this section only if and to the extent that he is satisfied that sufficient accommodation and

facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at health service hospitals) to meet the reasonable demand for them in the area served by the hospital in question."

(12) In section 121 of the National Health Service Act 1977 (charges in respect of non-residents) after the word "charges", in the first place where it occurs, there shall be inserted the words "as the Secretary of State may determine".

(13) In section 98 of the National Health Service (Scotland) Act 1978 (which makes corresponding provision for Scotland) for the words "may be prescribed", in the second place where they occur, there shall be substituted the words "the Secretary of State may determine".

(14) The following paragraph shall be added at the end of the sections mentioned in subsections (12) and (13) above—

"The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.".