

HEALTH AND SOCIAL CARE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: National Health Service

Health Service Funding

Intervention powers

Section 13: Intervention orders

70. Management of the NHS will move to a system of earned autonomy. Good performance will be rewarded and failure tackled swiftly and effectively. *Section 2* provides for the performance payments that will help underpin this new system. *Section 13* provides for new intervention powers to provide a sanction against the most serious and persistent failures. Early identification of poor performance through performance management and the new Traffic light system, backed up by support from the NHS Executive Regional Office and the Modernisation Agency should mean that performance can be improved in most cases without resorting to formal intervention orders.
71. The purpose of this section is to enable the Secretary of State to intervene in an NHS body (Health Authorities, Special Health Authorities, Primary Care Trusts and NHS trusts) where he has concerns about the management of that body, its ability to perform its functions adequately (for example, to deliver health care to the required standard) or where there has been a one off catastrophe. This new power will complement the performance fund in delivering the NHS Plan commitment to drive up performance in the NHS.
72. *Section 13* inserts new sections 84A and 84B into the 1977 Act. Section 84A enables the Secretary of State to make an intervention order in respect of a Health Authority, Special Health Authority, NHS trust or Primary Care Trust. *Subsection (1)* sets out the test that must be satisfied before he may intervene using such an order. The test would enable the Secretary of State to intervene if he was satisfied, for example, that an NHS trust was failing to provide health services to an adequate standard. The Secretary of State would however not be restricted to intervening where there was a failure to provide adequate health services; he might also intervene where the body concerned is not being properly administered or managed. The Secretary of State must also be satisfied that the form of intervention provided for under these new provisions is appropriate; for example, he may be satisfied that temporarily replacing the board of an NHS trust, is the appropriate way to ensure that the body's performance is substantially improved.
73. Section 84B sets out the effect of an intervention order and the different forms the intervention may take. The first form of intervention (*subsections (2) and (3)*) is that members of the body concerned (i.e. the members of Health Authorities, Special Health Authorities and Primary Care Trusts, and the Chairman and directors of NHS trusts) may be suspended or removed from office, and new individuals appointed in their place. The members of a body are responsible for how that body is managed; by replacing

*These notes refer to the Health and Social Care Act 2001
(c.15) which received Royal Assent on 11 May 2001*

existing members with the new members, it will enable changes to be made in the way an individual body is managed. Under these provisions, the Secretary of State has a wide range of options: he may remove all the members, or only some; he may suspend members from all their board duties, or only in respect of some duties.

74. The second form of intervention (*subsection (5)*) will enable the Secretary of State to require an NHS body to make arrangements for some other person or body to perform that NHS body's functions. Alternative expressions of interest will be selected from an approved list. Although the functions were performed by that other person or body, the NHS body would remain legally responsible for that functions – for example, an NHS trust would retain overall responsibility for managing its hospital and providing services. The Secretary of State may also direct how functions are to be performed so as to achieve particular objectives. These two forms of intervention may be combined (see section 84A(3)).
75. Sections 84B(7) and (8) provide that the Secretary of State's intervention order may disapply or modify any legislative provision relating to the membership or procedure of the body subject to intervention. The purpose is to ensure that the intervention can operate effectively where the Secretary of State removes or suspends board members, and substitutes replacements. The replacements need not be the same number as those replaced. The nature of intervention is that it must be prompt and that the Secretary of State must be able to adapt the intervention to the particular local circumstances; it may not be practicable or appropriate to find an identical number of replacements. If the number of members is different, the existing rules which govern the number of members the body must have, or about the numbers of members which must be present at the meetings of the body, may be inconsistent with the new membership arrangements implemented by an intervention order. In addition, as the method of appointing those replacements and the length of time they remain in office are to be determined by the intervention order, the rules about appointment of members and tenure of office may require modification. The Secretary of State will only be able to disapply or modify provisions about membership or procedure, and will be able to do so only where he considers that it is appropriate (for example, in order to ensure the intervention order operates effectively). The provision for disapplying or modifying provisions will be limited to the particular body concerned and to the period during which the intervention order is in force.
76. Section 84B(9) allows the Secretary of State to include in the order supplementary directions to give full effect to an intervention. He may wish to make more specific directions about how the intervention should work. For example, he may wish to ensure that the body makes staff or other assistance available to the replacement members or the third party to which functions have been delegated. These directions are akin to the directions which the Secretary of State may give to NHS bodies under section 17 of the 1977 Act.
77. *Section 20(2)* provides that intervention orders under these provisions are not statutory instruments.