



Health and Social Care Act 2001

2001 CHAPTER 15

PART 2

PHARMACEUTICAL SERVICES

CHAPTER 1

LOCAL PHARMACEUTICAL SERVICES

Preparation and making of pilot schemes

28 Pilot schemes

- (1) Health Authorities may establish pilot schemes.
- (2) In this Chapter “pilot scheme” means one or more agreements—
 - (a) made by a Health Authority (“A”) in accordance with this Chapter;
 - (b) under which local pharmaceutical services are to be provided (otherwise than by A); and
 - (c) the parties to which do not include any other Health Authority.
- (3) A pilot scheme may include arrangements—
 - (a) for the provision of services which are not local pharmaceutical services, but which may be provided under Part 1 of the 1977 Act (whether or not of the kind usually provided by pharmacies);
 - (b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).
- (4) A pilot scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of personal medical services or personal dental services under any provision of, or made under, the 1977 Act or the National Health Service (Primary Care) Act 1997.

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- (5) In this Chapter “piloted services” means services provided under a pilot scheme (including any services to which the scheme applies as a result of subsection (3)).
- (6) In determining the arrangements they need to make in order to comply with section 41 of the 1977 Act (arrangements to be made by Health Authorities for the provision of pharmaceutical services), a Health Authority may take into account arrangements under a pilot scheme made by them.
- (7) The functions of an NHS trust or a Primary Care Trust include power to provide any services to which a pilot scheme applies.
- (8) In this Chapter—
 - “pharmaceutical services” means services of a kind which may be provided under section 41 of the 1977 Act, or by virtue of section 41A of that Act; and
 - “local pharmaceutical services” means such pharmaceutical services (other than practitioner dispensing services) as may be prescribed by regulations.
- (9) “Practitioner dispensing services” means the provision of drugs, medicines or listed appliances (within the meaning of section 41 of the 1977 Act) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 43(1) of the 1977 Act.

29 Making pilot schemes

Schedule 2 makes provision with respect to making pilot schemes, including provision with respect to the procedure to be followed.

30 Designation of priority neighbourhoods or premises

- (1) The relevant authority may make regulations allowing a Health Authority to—
 - (a) designate neighbourhoods,
 - (b) designate premises, or
 - (c) designate descriptions of premises,
 for the purposes of this section.
- (2) The regulations may, in particular, make provision—
 - (a) as to the circumstances in which, and the neighbourhoods or premises in relation to which, designations may be made or maintained;
 - (b) allowing a Health Authority to defer consideration of Part 2 applications relating to neighbourhoods, premises or descriptions of premises that have been designated;
 - (c) allowing a designation to be cancelled in prescribed circumstances;
 - (d) requiring a designation to be cancelled—
 - (i) if a relevant authority gives a direction to that effect; or
 - (ii) in prescribed circumstances.
- (3) “Part 2 applications” means applications for inclusion in a list maintained under section 42 of the 1977 Act.
- (4) “Prescribed” means prescribed by the regulations.

Reviews, variation and termination of pilot schemes

31 Reviews of pilot schemes

- (1) At least one review of the operation of each pilot scheme must be conducted by the relevant authority.
- (2) Each pilot scheme must be reviewed under this section before the end of the period of three years beginning with the date on which piloted services are first provided under the scheme.
- (3) When conducting a review of a pilot scheme, the relevant authority must give—
 - (a) the Health Authority concerned, and
 - (b) any person providing services under the scheme,an opportunity to comment on any matter relevant to the review.
- (4) Otherwise, the procedure on any review is to be determined by the relevant authority.

32 Variation and termination of pilot schemes

- (1) The relevant authority may give directions authorising Health Authorities to vary pilot schemes (otherwise than in response to directions given under subsection (2)) in such circumstances, and subject to such conditions, as may be specified in the directions.
- (2) The relevant authority may by directions require a pilot scheme to be varied by the Health Authority concerned in accordance with the directions.
- (3) If satisfied that a pilot scheme is (for any reason) unsatisfactory, the relevant authority may give directions to the Health Authority concerned requiring them to bring the scheme to an end in accordance with the terms of the directions.

NHS contracts and financial provisions

33 NHS contracts

- (1) In the case of a pilot scheme entered into, or to be entered into, by a single individual or body corporate, that individual or body may make an application under this section to become a health service body.
- (2) In the case of any other pilot scheme, all of those providing, or proposing to provide, piloted services under the scheme may together make an application under this section to become a single health service body.
- (3) An application must—
 - (a) be made to the relevant authority in accordance with such provisions as may be made by regulations; and
 - (b) specify the pilot scheme in relation to which it is made.
- (4) Except in such cases as may be prescribed by regulations, the relevant authority may grant an application.
- (5) If an application is granted, the relevant authority must specify a date in relation to that application and, as from that date—
 - (a) in the case of an application under subsection (1), the applicant is, and

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- (b) in the case of an application under subsection (2), the applicants together are, a health service body for the purposes of section 4 of the 1990 Act (NHS contracts).
- (6) That section has effect in relation to such a health service body (“a PHS body”), acting as acquirer, as if the functions referred to in subsection (1) of that section were the provision of piloted services.
- (7) Except in such circumstances as may be prescribed by regulations, a PHS body resulting from an application under subsection (2) is to be treated, at any time, as consisting of those who are providing piloted services under the scheme.
- (8) A direction as to payment made under section 4(7) of the 1990 Act against, or in favour of, a PHS body is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.
- (9) Regulations may provide for a PHS body to cease to be a PHS body in prescribed circumstances.
- (10) The relevant authority must—
 - (a) maintain and publish a list of PHS bodies;
 - (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.
- (11) The list is to be published in such manner as the relevant authority considers appropriate.

34 Funding of preparatory work

- (1) Provision may be made by regulations for Health Authorities to make payments of financial assistance for preparatory work.
- (2) “Preparatory work” means work which it is reasonable for a person to undertake—
 - (a) in connection with preparing proposals for a pilot scheme; or
 - (b) in preparing for the provision by him of any piloted services.
- (3) The regulations may, in particular, include provision—
 - (a) prescribing the circumstances in which payments of financial assistance may be made;
 - (b) imposing a limit on the amount of any payment of financial assistance which a Health Authority may make in any prescribed period in respect of any one person or any one pilot scheme;
 - (c) imposing a limit on the aggregate amount which a Health Authority may pay by way of financial assistance in any one financial year;
 - (d) requiring a person to whom assistance is given under this section to comply with such conditions as may be imposed in accordance with prescribed requirements; and
 - (e) for repayment in the case of a failure to comply with any condition so imposed.

35 Charges, recovery of payments and penalties

- (1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for local pharmaceutical services.
- (2) The regulations may, in particular provide for—

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- (a) exemptions from charges;
 - (b) the liability to pay charges to be disregarded in prescribed circumstances or for prescribed purposes;
 - (c) section 122A of the 1977 Act (recovery of certain charges and payments) to apply also in relation to local pharmaceutical services (with or without modification);
 - (d) section 122B of the 1977 Act (penalties) to apply also in relation to local pharmaceutical services (with or without modification).
- (3) The regulations must secure that the amount charged for any service is the same as the amount that would be charged for that service if it were provided under Part 2 of the 1977 Act.

General

36 Effect of the 1977 Act

- (1) The provisions of the 1977 Act, apart from section 16D (power to direct Health Authority to exercise functions of relevant authority), apply in relation to functions of the relevant authority in relation to pilot schemes as if they were functions under Part 1 of the 1977 Act.
- (2) The 1977 Act (and in particular section 17) has effect in relation to piloted services—
 - (a) subject to any provision of, or made under, this Chapter; but
 - (b) otherwise as if those services were provided as a result of directions given under section 16D of the 1977 Act in relation to functions of the relevant authority under Part 1 of that Act.
- (3) The functions of a Health Authority in relation to piloted services are primary functions of the Authority for the purposes of the 1990 Act.

37 Premises from which piloted services may be provided

The relevant authority may by regulations—

- (a) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both piloted services and pharmaceutical services from the same premises;
- (b) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a list under section 42 of the 1977 Act.

38 Control of entry regulations

The power to make regulations under section 42 of the 1977 Act (regulations as to pharmaceutical services) includes power to prescribe the extent to which the provision of piloted services is to be taken into account in determining whether to grant an application for inclusion in a list referred to in subsection (2) of that section.

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Assessing the result of pilot schemes

39 Assessing pilot schemes

- (1) The relevant authority may not bring section 40 into force unless satisfied that pilot schemes have shown that continuing to provide for the provision of local pharmaceutical services in accordance with provisions of the kind made by pilot schemes would be in the interests of the health service or any part of the health service (within the meaning of section 128(1) of the 1977 Act).
- (2) In determining whether to bring section 40 into force, the relevant authority must have regard, in particular, to the results of the reviews of pilot schemes conducted under section 31.

Provision for local pharmaceutical schemes

40 Provision for LPS schemes

- (1) In the 1977 Act there shall be inserted, after section 28I—

“28J Local pharmaceutical services schemes

- (1) Schedule 8A makes provision with respect to the provision of local pharmaceutical services in accordance with schemes made by Health Authorities.”
- (2) The Schedule set out in Schedule 3 to this Act shall be inserted in the 1977 Act as Schedule 8A to that Act.
- (3) In section 42 of the 1977 Act there shall be inserted after subsection (2)—
 - “(2A) The regulations may prescribe the extent to which the provision of LP services (as defined by paragraph 1 of Schedule 8A to this Act) is to be taken into account in determining whether to grant an application for inclusion in a list.”

Corresponding provision, etc.

41 Corresponding provision and application of enactments

- (1) The relevant authority may by regulations make, in relation to Schedule 8A arrangements or persons providing or assisting in the provision of services under such arrangements, provision corresponding (whether or not exactly) to enactments containing provision relating to—
 - (a) arrangements made under section 28C of the 1977 Act (provision of personal medical or dental services); or
 - (b) pilot schemes made under Part 1 of the National Health Service (Primary Care) Act 1997 (c. 46),
 or relating to persons who provide or perform services under them.
- (2) The regulations may, in particular, provide for the application of any such enactment with such modifications, if any, as the relevant authority considers appropriate.
- (3) “Schedule 8A arrangements” means arrangements made under—

- (a) an LPS scheme made under Schedule 8A to the 1977 Act; or
- (b) a pilot scheme.

CHAPTER 2

CHANGES TO EXISTING ARRANGEMENTS

England and Wales

42 Dispensing of NHS prescriptions and provision of pharmaceutical services

- (1) For section 41 of the 1977 Act (arrangements for pharmaceutical services) there shall be substituted—

“41 Arrangements for pharmaceutical services

- (1) It is the duty of every Health Authority, in accordance with regulations which shall be made for the purpose, to arrange as respects their area for the provision to persons who are in that area of—
- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown;
 - (b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of—
 - (i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)); or
 - (ii) his functions in the armed forces of the Crown;
 - (c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision of general dental services or equivalent services in the Scottish health service or the Northern Ireland health service;
 - (d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown; and
 - (e) such other services as may be prescribed.
- (2) The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 41A, referred to in this Act as “pharmaceutical services”.
- (3) The descriptions of persons which may be prescribed for the purposes of subsection (1)(d) are the following, or any sub-category of such a description—

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- (a) persons who are registered by any board established under the Professions Supplementary to Medicine Act 1960 (c. 66);
 - (b) persons who are registered pharmacists;
 - (c) persons whose names are entered in a roll or record established by the General Dental Council by virtue of section 45 of the Dentists Act 1984 (c. 24) (dental auxiliaries);
 - (d) persons who are ophthalmic opticians;
 - (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);
 - (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);
 - (g) persons who are registered in the register of qualified nurses, midwives and health visitors maintained under section 7 of the Nurses, Midwives and Health Visitors Act 1997 (c. 24);
 - (h) persons who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);
 - (i) any other description of persons which appears to the Secretary of State to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish Parliament or Northern Ireland legislation and which the Secretary of State considers it appropriate to specify.
- (4) A determination under subsection (1)(d) may—
- (a) make different provision for different cases;
 - (b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered;
 - (c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.
- (5) The arrangements which may be made by a Health Authority under subsection (1) include arrangements for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided.
- (6) Where a person with whom a Health Authority makes arrangements under subsection (1) wishes to provide services to persons outside the area of the Health Authority, he may, subject to any provision made by regulations in respect of arrangements under this section, provide such services under the arrangements.
- (7) In this section—
- “armed forces of the Crown” does not include forces of a Commonwealth country or forces raised in a colony;
 - “listed” means included in a list for the time being approved by the Secretary of State for the purposes of this section; and
 - “the Scottish health service” and “the Northern Ireland health service” mean respectively the health service established in pursuance of the National Health Service (Scotland) Act 1947 (c. 27) or any service provided in pursuance of Article 4(1) of the Health

and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).”

- (2) In section 43 of the 1977 Act (persons authorised to provide pharmaceutical services), in subsection (3), for “section 41(d)” there shall be substituted “section 41(1)(e)”.

43 Remote provision of pharmaceutical, etc. services

- (1) In section 41A of the 1977 Act (additional pharmaceutical services)—
- (a) in subsection (1)(a), for “in their area” there shall be substituted “within or outside their area”;
 - (b) after subsection (1) there shall be inserted—

“(1A) Directions under this section may require or authorise a Health Authority to arrange for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided (whether those premises are inside or outside the area of the Health Authority).”
- (2) In section 42 of that Act (regulations as to pharmaceutical services), in subsection (1), for the words from “enable persons” to the end of the subsection there shall be substituted—
- “(a) enable persons for whom drugs, medicines or appliances mentioned in that section are ordered as there mentioned to receive them from persons with whom such arrangements have been made; and
 - (b) ensure the provision of services prescribed under subsection (1)(e) of that section by persons with whom such arrangements have been made.”
- (3) In subsection (2)(c) of that section, after “prescribed cases” there shall be inserted “(which may, in particular, include cases of applications for the provision only of services falling within subsection (3A) below)”.
- (4) After subsection (3) of that section there shall be inserted—
- “(3A) A service falls within this subsection if the means of providing it is such that the person receiving it does so otherwise than at the premises from which it is provided.
- (3B) The regulations may, in respect of services falling within subsection (3A) above, include provision—
- (a) requiring persons to be approved for the purposes of providing such services, by the Secretary of State or such other person as may be specified in the regulations, in accordance with criteria to be specified in or determined under the regulations (whether by the Secretary of State or by another person so specified);
 - (b) requiring the Health Authority to make the grant of an application subject to prescribed conditions.”
- (5) In section 43(2A) of the 1977 Act (list of medical practitioners providing drugs, etc.) for “in the Authority’s area” there shall be substituted “under arrangements with the Authority”.
- (6) In section 44(1) of the 1977 Act (local representative committees), in paragraph (d), after “pharmaceutical services” there shall be inserted “from premises”.

Scotland

44 Dispensing of NHS prescriptions

(1) Section 27 of the National Health Service (Scotland) Act 1978 (c. 29) (arrangements for provision of pharmaceutical services) shall be amended as follows.

(2) In subsection (1), in paragraph (cc)—

- (a) for “listed drugs and medicines and listed appliances” there shall be substituted “such drugs and medicines and such listed appliances as may be determined by the Scottish Ministers for the purposes of this paragraph”; and
- (b) for “registered nurse, midwife or health visitor” there shall be substituted “person in accordance with such conditions, if any, as may be prescribed.”.

(3) After that subsection there shall be inserted—

“(1A) The descriptions of persons which may be prescribed for the purposes of subsection (1)(cc) are the following, or any sub-category of such a description—

- (a) persons who are registered by any board established under the Professions Supplementary to Medicine Act 1960 (c. 66);
- (b) persons who are registered pharmacists;
- (c) persons whose names are entered in a roll or record established by the General Dental Council by virtue of section 45 of the Dentists Act 1984 (c. 24) (dental auxiliaries);
- (d) persons who are ophthalmic opticians;
- (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);
- (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);
- (g) persons who are registered in the register of qualified nurses, midwives and health visitors maintained under section 7 of the Nurses, Midwives and Health Visitors Act 1997 (c. 24);
- (h) persons who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);
- (i) any other description of persons which appears to the Scottish Ministers to be a description of persons whose profession is regulated by or under a provision of, or made under, Northern Ireland legislation and which the Scottish Ministers consider it appropriate to specify.

(1B) A determination under subsection (1)(cc) may—

- (a) make different provision for different cases;
- (b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered;
- (c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.”