



National Health Service Reform and Health Care Professions Act 2002

2002 CHAPTER 17

PART 3

MISCELLANEOUS

38 Regulations and orders

- (1) Any power under this Act to make any order or regulations is (except in the case of orders under section 22(5)) exercisable by statutory instrument or, in the case of an order made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 27, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
 - (2) A statutory instrument containing any order or regulations made by the Secretary of State under this Act, other than [^{F1}regulations under 29(2A) or]^{F2}... an order under section ^{F3}... ^{F4}... 42(3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (3) A statutory instrument containing regulations under section 28 [^{F5}or 29(2A)]^{F6}... or an order of [^{F7}the Privy Council] under section 27, shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- [^{F8}(3A) A statutory instrument containing regulations made by the Privy Council under section 25A shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3B) Regulations made by the Privy Council under section 25A that include provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament shall be subject to the negative procedure in that Parliament (in addition to the statutory instrument containing the regulations being subject to annulment under subsection (3A)).

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- (3C) Sections 28 and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) shall apply in relation to regulations of the description given in subsection (3B) as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) that is subject to the negative procedure, but as if references to a Scottish statutory instrument were references to a statutory instrument.
- (3D) Section 32 of that Act (laying) shall apply in relation to the laying of a statutory instrument containing regulations of the description given in subsection (3B) before the Scottish Parliament as it applies in relation to the laying of a Scottish statutory instrument (within the meaning of Part 2 of that Act) before that Parliament.]
- [^{F9}(3E) A statutory instrument containing regulations made by the Privy Council under section 27 is subject to annulment in pursuance of a resolution of either House of Parliament.]
- [^{F10}(3F) A statutory instrument containing regulations made by the Privy Council under paragraph 6 of Schedule 7 is subject to annulment in pursuance of a resolution of either House of Parliament.]
- (4) No order shall be made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 27 unless a draft of the order has been laid before, and approved by resolution of, the Northern Ireland Assembly.
- [^{F11}(4A) The quorum for the exercise by the Privy Council of the power under section 25A, 27 or 28 or paragraph 6 of Schedule 7 is two; and anything done by the Privy Council under either of those sections or that paragraph is sufficiently signified by an instrument signed by the Clerk of the Council.]
- (5) Any power under this Act to make any order or regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act,
 - (iii) any such provision either unconditionally or subject to any specified condition.
- (6) Where any such power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes.
- (7) Any such power includes power—
- (a) to make such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking enactments) as the authority making the order or regulations considers to be expedient, and
 - (b) to provide for a person to exercise a discretion in dealing with any matter.
- (8) Subsections (5) to (7) do not apply to orders under section 27.

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- (9) Subject to subsection (8), nothing in this Act shall be read as affecting the generality of subsection (7).
- (10) Directions given in pursuance of any provision of this Act are, except where otherwise stated, to be given by instrument in writing.
- (11) Any power conferred by this Act to give directions [^{F12}by instrument in writing] includes power to vary or revoke them by subsequent directions.

Textual Amendments

- F1** Words in s. 38(2) inserted (1.4.2018) by Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 4 para. 16(2)**; S.I. 2018/346, reg. 4(cc)(v)
- F2** Words in s. 38(2) omitted (16.3.2015) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 225(3), 306(4)**; S.I. 2015/409, art. 2
- F3** Word in s. 38(2) omitted (4.6.2018) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 223(11), 306(4)**; S.I. 2018/617, art. 2(a)
- F4** Words in s. 38(2) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)
- F5** Words in s. 38(3) inserted (1.4.2018) by Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 4 para. 16(3)**; S.I. 2018/346, reg. 4(cc)(v)
- F6** Words in s. 38(3) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)
- F7** Words in s. 38(3) substituted (4.6.2018) by Health and Social Care Act 2012 (c. 7), **ss. 223(12), 306(4)**; S.I. 2018/617, art. 2(a)
- F8** S. 38(3A)-(3D) inserted (27.3.2012 for specified purposes, 16.3.2015 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 224(3), 306(1)(d)(4)**; S.I. 2015/409, art. 2
- F9** S. 38(3E) inserted (4.6.2018) by Health and Social Care Act 2012 (c. 7), **ss. 223(13), 306(4)**; S.I. 2018/617, art. 2(a)
- F10** S. 38(3F) inserted (4.6.2018) by Health and Social Care Act 2012 (c. 7), **ss. 226(9), 306(4)**; S.I. 2018/617, art. 2(b) (with art. 3)
- F11** S. 38(4A) inserted (27.3.2012 for specified purposes, 1.8.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 230(5), 306(1)(d)(4)**; S.I. 2012/1319, art. 2(4)
- F12** Words in s. 38(11) omitted (E.W.) (1.3.2007 immediately before the National Health Service Act 2006 comes into force) by virtue of The National Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407), art. 1(1), **Sch. 1 para. 9** (with art. 4)

Changes to legislation:

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