



# 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 regulations under section 28 or an order under section 27, 36 or 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 or an order under section 36, or an order of the Secretary of State 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.
- (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.
- (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—

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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 by instrument in writing includes power to vary or revoke them by subsequent directions.