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Health Act 2006

2006 CHAPTER 28

PART 1

SMOKING

CHAPTER 1

SMOKE-FREE PREMISES, PLACES AND VEHICLES

Modifications etc. (not altering text)

C1 Pt. 1 Ch. 1 modified (30.5.2007) by National Assembly for Wales Commission (Crown Status) (No.2) Order 2007 (S.I. 2007/1353), arts. 1(2), **7**

Introduction

1 Introduction

(1) This Chapter makes provision for the prohibition of smoking in certain premises, places and vehicles which are smoke-free by virtue of this Chapter.

(2) In this Chapter—

(a) "smoking" refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and

(b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

(3) In this Chapter, "smoke" and other related expressions are to be read in accordance with subsection (2).

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Commencement Information

I1 S. 1 in force at 2.4.2007 for W. by S.I. 2007/204, **art. 2(a)**

I2 S. 1 in force at 1.7.2007 for E. by S.I. 2007/1375, **art. 2(a)**

Smoke-free premises, etc.

2 Smoke-free premises

(1) Premises are smoke-free if they are open to the public.

But unless the premises also fall within subsection (2), they are smoke-free only when open to the public.

(2) Premises are smoke-free if they are used as a place of work—

(a) by more than one person (even if the persons who work there do so at different times, or only intermittently), or

(b) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).

They are smoke-free all the time.

(3) If only part of the premises is open to the public or (as the case may be) used as a place of work mentioned in subsection (2), the premises are smoke-free only to that extent.

(4) In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed.

(5) The appropriate national authority may specify in regulations what "enclosed" and "substantially enclosed" mean.

(6) Section 3 provides for some premises, or areas of premises, not to be smoke-free despite this section.

(7) Premises are "open to the public" if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.

(8) "Work", in subsection (2), includes voluntary work.

Commencement Information

I3 S. 2 in force for certain purposes at Royal Assent, see s. 83

I4 S. 2 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I5 S. 2 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

3 Smoke-free premises: exemptions

(1) The appropriate national authority may make regulations providing for specified descriptions of premises, or specified areas within specified descriptions of premises, not to be smoke-free despite section 2.

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(2) Descriptions of premises which may be specified under subsection (1) include, in particular, any premises where a person has his home, or is living whether permanently or temporarily (including hotels, care homes, and prisons and other places where a person may be detained).

(3) The power to make regulations under subsection (1) is not exercisable so as to specify any description of—
  (a) premises in respect of which a premises licence under the Licensing Act 2003 (c. 17) authorising the sale by retail of alcohol for consumption on the premises has effect,
  (b) premises in respect of which a club premises certificate (within the meaning of section 60 of that Act) has effect.

(4) But subsection (3) does not prevent the exercise of that power so as to specify any area, within a specified description of premises mentioned in subsection (3), where a person has his home, or is living whether permanently or temporarily.

(5) For the purpose of making provision for those participating as performers in a performance, or in a performance of a specified description, not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for them to smoke—
  (a) the power in subsection (1) also includes power to provide for specified descriptions of premises or specified areas within such premises not to be smoke-free in relation only to such performers, and
  (b) subsection (3) does not prevent the exercise of that power as so extended.

(6) The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that the premises or areas are not smoke-free—
  (a) in specified circumstances,
  (b) if specified conditions are satisfied, or
  (c) at specified times,

  or any combination of those.

(7) The conditions may include conditions requiring the designation in accordance with the regulations, by the person in charge of the premises, of any rooms in which smoking is to be permitted.

(8) For the purposes of subsection (5), the references to a performance—
  (a) include, for example, the performance of a play, or a performance given in connection with the making of a film or television programme, and
  (b) if the regulations so provide, include a rehearsal.

Commencement Information

I6 S. 3 in force for certain purposes at Royal Assent, see s. 83

I7 S. 3 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I8 S. 3 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

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4 Additional smoke-free places

(1) The appropriate national authority may make regulations designating as smoke-free any place or description of place that is not smoke-free under section 2.

(2) The place, or places falling within the description, need not be enclosed or substantially enclosed.

(3) The appropriate national authority may designate a place or description of place under this section only if in the authority's opinion there is a significant risk that, without a designation, persons present there would be exposed to significant quantities of smoke.

(4) The regulations may provide for such places, or places falling within the description, to be smoke-free only—

(a) in specified circumstances,

(b) at specified times,

(c) if specified conditions are satisfied,

(d) in specified areas,

or any combination of those.

Commencement Information

I9 S. 4 in force for certain purposes at Royal Assent, see s. 83

I10 S. 4 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

5 Vehicles

(1) The appropriate national authority may make regulations providing for vehicles to be smoke-free.

(2) The regulations may in particular make provision—

(a) for the descriptions of vehicle which are to be smoke-free,

(b) for the circumstances in which they are to be smoke-free,

(c) for them to be smoke-free only in specified areas, or except in specified areas,

(d) for exemptions.

(3) The power to make regulations under this section is not exercisable in relation to—

(a) any ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c. 21) (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968 (c. 59), or

(b) persons on any such ship or hovercraft.

(4) In section 85 of the Merchant Shipping Act 1995, at the end add—

"(8) Safety regulations which make provision in respect of the prohibition of smoking on any ship ("the smoking provisions") may include provision—

(a) for the appointment by the Secretary of State of persons to enforce the smoking provisions (whether in respect of ships generally or for any particular case or purpose), and for the removal of any person so appointed,

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(b) for such persons (if they are not surveyors of ships appointed under section 256) to have the powers of such surveyors for the purposes of their enforcement functions,

(c) for any such persons to have, for the purposes of their enforcement functions, powers corresponding to those which authorised officers have under paragraphs 2(b) to (e), 3 and 4, as read with paragraphs 5 and 9, of Schedule 2 to the Health Act 2006 (which confers powers of entry, etc., on authorised officers of enforcement authorities in relation to the enforcement of the provisions of that Act in relation to smoking),

(d) in relation to an offence of smoking in a place where smoking is prohibited under the smoking provisions, for purposes corresponding to those of section 9 of and Schedule 1 to the Health Act 2006 (which provide for the giving by authorised officers of penalty notices in respect of such an offence).

In this subsection, "smoking" has the same meaning as in Chapter 1 of Part 1 of the Health Act 2006."

(5) In this Chapter, "vehicle" means every type of vehicle, including train, vessel, aircraft and hovercraft.

Commencement Information

I11 S. 5 in force for certain purposes at Royal Assent, see s. 83

I12 S. 5 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I13 S. 5(1)-(3)(5) in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

I14 S. 5(4) in force at 1.7.2007 for E.S.N.I. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

No-smoking signs

6 No-smoking signs

(1) It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the requirements of this section are displayed in those premises in accordance with the requirements of this section.

(2) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to—

(a) places which are smoke-free by virtue of section 4,

(b) vehicles which are smoke-free by virtue of section 5.

The duty is to be imposed on persons, or on persons of a description, specified in the regulations.

(3) The signs must be displayed in accordance with any requirements contained in regulations made by the appropriate national authority.

(4) The signs must conform to any requirements specified in regulations made by the appropriate national authority (for example, requirements as to content, size, design, colour, or wording).

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(5) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (2), commits an offence.

(6) It is a defence for a person charged with an offence under subsection (5) to show —

(a) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was smoke-free), or

(b) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or

(c) that on other grounds it was reasonable for him not to comply with the duty.

(7) If a person charged with an offence under subsection (5) relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(8) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.

(9) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Chapter (and references to smoke-free premises include premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers).

Commencement Information

I15 S. 6 in force for certain purposes at Royal Assent, see s. 83

I16 S. 6 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I17 S. 6 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

Offences relating to smoking in smoke-free premises, etc.

7 Offence of smoking in smoke-free place

(1) In this section, a "smoke-free place" means any of the following—

(a) premises, so far as they are smoke-free under or by virtue of sections 2 and 3 (including premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers),

(b) a place, so far as it is smoke-free by virtue of section 4,

(c) a vehicle, so far as it is smoke-free by virtue of section 5.

(2) A person who smokes in a smoke-free place commits an offence.

(3) But a person who smokes in premises which are not smoke-free in relation to performers by virtue of regulations under section 3(5) does not commit an offence if he is such a performer.

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(4) It is a defence for a person charged with an offence under subsection (2) to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place.

(5) If a person charged with an offence under this section relies on a defence in subsection (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.

Commencement Information

I18 S. 7 in force for certain purposes at Royal Assent, see s. 83

I19 S. 7 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I20 S. 7 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

8 Offence of failing to prevent smoking in smoke-free place

(1) It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking.

(2) The reference in subsection (1) to a person smoking does not include a performer in relation to whom the premises are not smoke-free by virtue of regulations under section 3(5).

(3) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to—

(a) places which are smoke-free by virtue of section 4,

(b) vehicles which are smoke-free by virtue of section 5.

The duty is to be imposed on persons, or on persons of a description, specified in the regulations.

(4) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (3), commits an offence.

(5) It is a defence for a person charged with an offence under subsection (4) to show—

(a) that he took reasonable steps to cause the person in question to stop smoking, or

(b) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or

(c) that on other grounds it was reasonable for him not to comply with the duty.

(6) If a person charged with an offence under this section relies on a defence in subsection (5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

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(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.

(8) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Chapter (and references to smoke-free premises include premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers).

Commencement Information

I21 S. 8 in force for certain purposes at Royal Assent, see s. 83

I22 S. 8 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I23 S. 8 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

Fixed penalties

9 Fixed penalties

(1) An authorised officer of an enforcement authority (see section 10) who has reason to believe that a person has committed an offence under section 6(5) or 7(2) on premises, or in a place or vehicle, in relation to which the authorised officer has functions may give him a penalty notice in respect of the offence.

(2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Chapter.

(3) Schedule 1 makes further provision about fixed penalties.

Commencement Information

I24 S. 9 in force at 2.4.2007 for W. by S.I. 2007/204, **art. 2(b)**

I25 S. 9 in force at 1.7.2007 for E. by S.I. 2007/1375, **art. 2(a)**

Enforcement

10 Enforcement

(1) The appropriate national authority may make regulations designating the bodies or descriptions of body which are to be enforcement authorities for the purposes of this Chapter.

(2) The regulations—

(a) must specify the descriptions of premises, place or vehicle in relation to which an enforcement authority has enforcement functions,

(b) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred, or transferred back) to, and taken over by, another enforcement authority.

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(3) It is the duty of an enforcement authority to enforce, as respects the premises, places and vehicles in relation to which it has enforcement functions, the provisions of this Chapter and regulations made under it.

(4) The appropriate national authority may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority by subsection (3) is to be discharged instead by the appropriate national authority.

(5) In this Chapter, "authorised officer", in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under this Chapter.

(6) If regulations under this section so provide, no person is to be so authorised unless he has such qualifications as are prescribed by the regulations.

(7) Schedule 2 makes provision about powers of entry, etc.

Commencement Information

I26 S. 10 in force for certain purposes at Royal Assent, see s. 83

I27 S. 10 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I28 S. 10 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

11 Obstruction etc. of officers

(1) Any person who intentionally obstructs an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Chapter, commits an offence.

(2) Any person who without reasonable cause fails to give to an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Chapter, any facilities, assistance or information which the authorised officer reasonably requires of him for the performance of those functions commits an offence.

(3) A person commits an offence if, in purported compliance with any requirement of an authorised officer mentioned in subsection (2)—

(a) he makes a statement which is false or misleading, and

(b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

"False or misleading" means false or misleading in a material particular.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If a direction of the appropriate national authority has effect under section 10(4), this section has effect, in relation to any case or case of a description specified in the direction, as if references to an authorised officer of an enforcement authority were to a person acting on behalf of the appropriate national authority.

Commencement Information

I29 S. 11 in force at 2.4.2007 for W. by S.I. 2007/204, **art. 2(b)**

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I30 S. 11 in force at 1.7.2007 for E. by S.I. 2007/1375, **art. 2(a)**

Interpretation, etc.

12 Interpretation and territorial sea

(1) In this Chapter—

"authorised officer" has the meaning given by section 10(5),

"premises" includes a tent, and (if not a ship within the meaning of the Merchant Shipping Act 1995 (c. 21)) a moveable structure and an offshore installation (as defined in regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738)),

"specified", in relation to regulations, means specified in the regulations,

"vehicle" is to be construed in accordance with section 5(5).

(2) The appropriate national authority may by order provide for the definition of "premises" in subsection (1) to be read as if a reference to another enactment were substituted for the reference to regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995.

(3) This Chapter—

(a) has effect in relation to the territorial sea adjacent to England as it has effect in relation to England, and

(b) has effect in relation to the territorial sea adjacent to Wales as it has effect in relation to Wales.

(4) The following have effect for the purposes of subsection (3) if or in so far as expressed to apply for the general or residual purposes of the Act in question or for the purposes of this section—

(a) an Order in Council under section 126(2) of the Scotland Act 1998 (c. 46),

(b) an order or Order in Council under or by virtue of section **[**[F1]158(3) and (4) of the Government of Wales Act 2006**]**).

Textual Amendments

F1 Words in s. 12(4) substituted (25.5.2007) by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 1(2), **Sch. 1 para. 123**

Commencement Information

I31 S. 12 in force for certain purposes at Royal Assent, see s. 83

I32 S. 12 in force at 2.4.2007 for W. in so far as not already in force by S.I. 2007/204, **art. 2(a)**

I33 S. 12 in force at 1.7.2007 for E. in so far as not already in force by S.I. 2007/1375, **art. 2(a)**

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CHAPTER 2

AGE FOR SALE OF TOBACCO ETC.

13 Power to amend age for sale of tobacco etc.

(1) The Secretary of State may from time to time by order amend the following enactments by substituting, in each place where a person's age is specified, a different age specified in the order—

(a) section 7 of the Children and Young Persons Act 1933 (c. 12) (sale of tobacco etc. to persons under 16),

(b) section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23) (display of warning statements in retail premises and on vending machines).

(2) But the age specified in an order under subsection (1) may not be lower than 16 or higher than 18.

Commencement Information

I34 S. 13 in force for certain purposes at Royal Assent, see s. 83

I35 S. 13 in force at 1.7.2007 by S.I. 2007/1375, **art. 2(a)**

PART 2

PREVENTION AND CONTROL OF HEALTH CARE ASSOCIATED INFECTIONS

14 Code of practice relating to health care associated infections

After section 47 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (referred to in this Act as "the 2003 Act") insert—

"**47A Code of practice relating to health care associated infections**

(1) The Secretary of State may issue a code of practice—

(a) applying to bodies within subsection (2), and

(b) relating to the prevention and control of health care associated infections in connection with health care provided by or for those bodies.

(2) The bodies within this subsection are—

(a) English NHS bodies other than Strategic Health Authorities; and

(b) cross-border SHAs.

(3) The code may provide for provisions of the code to apply to—

(a) such description or descriptions of bodies within subsection (2) as may be specified in the code;

(b) such body or bodies within that subsection as may be so specified.

(4) The code may in particular—

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(a) make such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them;

(b) contain provisions imposing on bodies to which the provisions apply requirements in relation to health care provided for such bodies by other persons as well as in relation to health care provided by such bodies.

(5) The code may—

(a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);

(b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;

(c) make different provision for different cases or circumstances.

(6) Nothing in subsections (3) to (5) is to be read as prejudicing the generality of subsection (1).

(7) The Secretary of State must keep the code under review and may from time to time—

(a) revise the whole or any part of the code, and

(b) issue a revised code.

(8) In this section "health care associated infection" means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where—

(a) health care is being, or has been, provided to that or any other individual, and

(b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of the health care.

(9) But subsection (8) does not include an infection to which the individual is deliberately exposed as part of any health care.

(10) Any reference in this Part to a code of practice issued under this section includes a revised code issued under it.

47B Consultation etc.

(1) Where the Secretary of State proposes to issue a code of practice under section 47A, he must—

(a) prepare a draft of the code, and

(b) consult such persons as he considers appropriate about the draft.

(2) Where the Secretary of State proposes to issue a revised code under section 47A which in his opinion would result in a substantial change in the code, he must—

(a) prepare a draft of the revised code, and

(b) consult such persons as he considers appropriate about the change.

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(3) Where, following consultation under subsection (1) or (2), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as he thinks fit), it comes into force at the time when it is issued by the Secretary of State.

(4) Where—

(a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is a document published by the Secretary of State in connection with his functions relating to health,

(b) the Secretary of State proposes to revise the document, and

(c) in the opinion of the Secretary of State, the revision would result in a substantial change in the code,

the Secretary of State must, before revising the document, consult such persons as he considers appropriate about the change.

(5) Where—

(a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is not one to which subsection (4)(a) above applies,

(b) the document is revised, and

(c) in the opinion of the Secretary of State, the revision results in a substantial change in the code,

the Secretary of State must consult such persons as he considers appropriate about whether the code should be revised in connection with the change.

(6) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

47C Effect of code under section 47A

(1) Where any provisions of a code of practice issued under section 47A apply to an NHS body, the body must observe those provisions in discharging its duty under section 45.

(2) A failure to observe any provision of a code of practice issued under section 47A does not of itself make a person liable to any criminal or civil proceedings.

(3) A code of practice issued under section 47A is admissible in evidence in any criminal or civil proceedings.”

Commencement Information

I36 S. 14 in force at 1.10.2006 by S.I. 2006/2603, **art. 2**

15 Code of practice: effects on existing functions of Commission for Healthcare Audit and Inspection

(1) Sections 50 to 52 and 54 of the 2003 Act are amended as follows.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In section 50 (annual reviews), for subsection (4) substitute—

"(4) In exercising its functions under this section in relation to any health care, the CHAI must take into account—

(a) the standards set out in statements published under section 46, and

(b) any code of practice issued under section 47A.

(4A) In conducting a review under subsection (1) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body."

(3) In section 51 (reviews: England and Wales), in subsection (4)(a) after "section 46" insert " and any code of practice issued under section 47A ".

(4) In section 52 (reviews and investigations: England), for subsection (3) substitute—

"(3) The CHAI has the function of conducting reviews of—

(a) the arrangements made by English NHS bodies and cross-border SHAs for the purpose of discharging their duty under section 45;

(b) the arrangements made by particular bodies within paragraph (a) for the purpose of discharging that duty."

(5) For section 52(5) substitute—

"(5) In exercising its functions under this section in relation to any health care, the CHAI must take into account—

(a) the standards set out in statements published under section 46, and

(b) any code of practice issued under section 47A.

(5A) In conducting a review under subsection (3) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body."

(6) In section 54 (functions relating to Secretary of State and Assembly), in subsection (2) after "section 46 or 47" insert " , or any code of practice issued under section 47A, ".

Commencement Information

I37 S. 15 in force at 1.10.2006 by S.I. 2006/2603, **art. 2**

16 Code of practice: improvement notices

After section 53 of the 2003 Act insert—

"**53A Failings in connection with code under section 47A: improvement notices**

(1) This section applies where, following such a review or investigation as is mentioned in section 53(1), the CHAI—

(a) is of the view that any provisions of a code of practice issued under section 47A and applying to an English NHS body or a cross-border

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SHA are not being observed in any material respect in relation to the provision of health care by or for the body, but

(b) having regard to all the circumstances, is not of the view that it is required to make a report under section 53(2) (or, if relevant, section 53(6)).

(2) The CHAI may serve a notice under this section (an "improvement notice") on the body in respect of the failure to observe the code, if it considers that serving the notice is the most appropriate course of action for it to take with a view to securing that the failure is remedied.

(3) An improvement notice must—

(a) state that the CHAI has formed the view mentioned in subsection (1)(a) in relation to the provision of health care by or for the body, giving particulars of the material respect in which the CHAI considers that the provisions of the code are not being observed as mentioned in that subsection,

(b) state the CHAI's reasons for its view, and

(c) require the body to remedy the failure to observe the code, and to do so within such period as is specified in the notice.

(4) An improvement notice may (but need not) include a recommendation by the CHAI as to the way in which the failure should be remedied.

(5) An improvement notice may relate to more than one failure within subsection (1)(a), and in such a case—

(a) subsections (2) to (4) and section 53B apply separately in relation to each such failure, but

(b) any report required by that section may relate to more than one such failure.

(6) Where the CHAI serves an improvement notice on a body under this section, the CHAI must notify the Secretary of State and—

(a) the regulator, if the body is an NHS foundation trust, and

(b) any relevant Strategic Health Authority, if the body is a Primary Care Trust or an NHS trust.

(7) In this section and section 53B "relevant Strategic Health Authority" means—

(a) in relation to a Primary Care Trust, any Strategic Health Authority whose area includes any part of the Trust's area;

(b) in relation to an NHS Trust (other than one responsible for providing ambulance services), the Strategic Health Authority in whose area all or most of the Trust's hospitals, establishments or facilities are situated;

(c) in relation to an NHS Trust responsible for providing ambulance services, the Strategic Health Authority in whose area the headquarters establishment responsible for the control of those services is situated.

(8) Subsection (9) applies where—

(a) an improvement notice is served on a body in respect of a particular failure to observe a code of practice issued under section 47A, and

(b) a review under section 52(3)(b) is conducted by the CHAI in pursuance of section 53B(4)(a) with a view to assessing the body's compliance with the notice.

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(9) In such a case subsection (1)—

(a) does not apply in relation to that review so as to enable the CHAI to serve a further improvement notice on that body in respect of that failure; but

(b) does apply in relation to that review so as to enable the CHAI (if the conditions in subsections (1) and (2) are satisfied) to serve an improvement notice on that body in respect of a different failure to observe the code.

53B Code of practice: action by CHAI following service of improvement notice

(1) This section applies where the CHAI has served an improvement notice on a body under section 53A.

(2) If, before the end of the specified period—

(a) the body requests the CHAI to extend that period, and

(b) the CHAI considers that there are exceptional circumstances which justify its extending that period by a further period of time,

the CHAI may, by a notice served on the body, extend the specified period by that further period.

(3) In this section "the specified period" means—

(a) the period specified under section 53A(3)(c), or

(b) if that period has been extended under subsection (2) above, that period as so extended.

(4) Where the specified period has ended or the body notifies the CHAI before the end of that period that it has complied with the improvement notice, the CHAI must—

(a) conduct a review under section 52(3)(b) with a view to assessing the body's compliance with the notice, and

(b) then comply with subsection (5) or (6);

and the making of any report in accordance with subsection (5) or (6) is to be taken as satisfying the requirement to publish a report under section 52(7) in respect of the review.

(5) If the CHAI—

(a) remains of the view that the relevant provisions of the code are not being observed in any material respect in relation to the provision of health care by or for the body, and

(b) having regard to all the circumstances, is of the view that it is required to make a report under section 53(2) (and, if relevant, section 53(6)),

the CHAI must accordingly make a report under that provision (or, as the case may be, under each of those provisions).

(6) If the CHAI does not make any such report or reports, it must instead make a report—

(a) to the Secretary of State, and

(b) (if the body is an NHS foundation trust) to the regulator,

setting out the matters mentioned in subsection (7) or (8).

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(7) If the CHAI is of the view that the relevant provisions of the code are being observed in relation to the provision of health care by or for the body, the matters are—
  (a) that the CHAI is of that view, and
  (b) its reasons for that view.

(8) If the CHAI is of the view that the relevant provisions of the code are not being so observed in any respect (material or otherwise), the matters are—
  (a) that the CHAI is of that view,
  (b) its reasons for that view,
  (c) if its view is that those provisions are not being observed in any material respect, its reasons for not forming the view mentioned in subsection (5)(b), and
  (d) (whether or not paragraph (c) applies) any action which it proposes to take in relation to the body in connection with the failure to observe the code.

(9) The CHAI must send a copy of any report made by it in accordance with subsection (5) or (6) in relation to a Primary Care Trust or an NHS trust to the relevant Strategic Health Authority.

(10) In this section "the relevant provisions of the code" means the provisions of the code in relation to which the CHAI formed the view mentioned in section 53A(1)(a)."

Commencement Information
I38 S. 16 in force at 1.10.2006 by S.I. 2006/2603, **art. 2**

PART 3

DRUGS, MEDICINES AND PHARMACIES

CHAPTER 1

SUPERVISION OF MANAGEMENT AND USE OF CONTROLLED DRUGS

17 Accountable officers and their responsibilities as to controlled drugs

(1) The relevant authority may by regulations make provision for or in connection with requiring designated bodies to nominate or appoint persons who are to have prescribed responsibilities in relation to the safe, appropriate and effective management and use of controlled drugs in connection with—
  (a) activities carried on by or on behalf of the designated bodies, and
  (b) activities carried on by or on behalf of bodies or persons providing services under arrangements made with the designated bodies.

(2) The person who is to be so nominated or appointed by a designated body is to be known as its accountable officer.

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This is subject to any regulations made by virtue of subsection (5)(e).

(3) In this Chapter "designated body" means—

(a) a body falling within any description of bodies prescribed as designated bodies for the purposes of this section, or

(b) a body prescribed as a designated body for those purposes.

(4) The descriptions of bodies, or bodies, that may be so prescribed are descriptions of bodies, or bodies, appearing to the relevant authority—

(a) to be directly or indirectly concerned with the provision of health care (whether or not for the purposes of the health service), or

(b) to be otherwise carrying on activities that involve, or may involve, the supply or administration of controlled drugs.

(5) Regulations under this section may make provision—

(a) for conditions that must be satisfied in relation to a person if he is to be nominated or appointed by a designated body as the body's accountable officer;

(b) for a single person to be nominated or appointed as the accountable officer for each of two or more designated bodies where those bodies are satisfied as to the prescribed matters;

(c) requiring a designated body that has an accountable officer to provide the officer with funds and other resources necessary for enabling the officer to discharge his responsibilities as accountable officer for the body;

(d) for ensuring that an accountable officer, in discharging his responsibilities, has regard to best practice in relation to the use of controlled drugs;

(e) for the persons required to be nominated or appointed as mentioned in subsection (1) to be known by such name as is prescribed;

(f) for making such amendments of any enactment as appear to the relevant authority to be required in connection with any provision made in pursuance of paragraph (e);

(g) for creating offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale or for creating other procedures for enforcing any provisions of the regulations.

(6) The responsibilities that may be imposed on a designated body's accountable officer by regulations under this section include responsibilities as to the establishment and operation of arrangements for—

(a) securing the safe management and use of controlled drugs;

(b) monitoring and auditing the management and use of such drugs;

(c) ensuring that relevant individuals receive appropriate training and that their training needs are regularly reviewed;

(d) monitoring and assessing the performance of such individuals in connection with the management or use of such drugs;

(e) making periodic inspections of premises used in connection with the management or use of such drugs;

(f) recording, assessing and investigating concerns expressed about incidents that may have involved improper management or use of such drugs;

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(g) ensuring that appropriate action is taken for the purpose of protecting patients or members of the public in cases where such concerns appear to be well-founded;

(h) where required by regulations under section 18, the sharing of information.

(7) The arrangements mentioned in subsection (6) may be arrangements established (according to the circumstances)—

(a) by the accountable officer,

(b) by the designated body (or any of the designated bodies) for which he is the accountable officer, or

(c) by a body or person acting on behalf of, or providing services under arrangements made with, the designated body (or any of the designated bodies).

(8) In subsection (6)—

(a) references to the management or use of controlled drugs are to the management or use of drugs in connection with activities carried on by a body or person within subsection (7)(b) or (c), and

(b) "relevant individual" means an individual who, whether as—

(i) a health care professional, or

(ii) an employee who is not a health care professional, or

(iii) otherwise,

is engaged in any activity carried on by a body or person within subsection (7)(b) or (c) that involves, or may involve, the management or use of controlled drugs.

(9) A designated body may confer on its accountable officer such powers as it thinks appropriate to enable him to discharge any of the responsibilities imposed on him as accountable officer for the body by regulations under this section.

(10) Nothing in subsections (5) to (7) is to be read as prejudicing the generality of subsection (1).

(11) In this section "prescribed" means prescribed by regulations under this section.

Commencement Information

I39 S. 17 in force for certain purposes at Royal Assent, see s. 83

I40 S. 17 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**

I41 S. 17 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**

18 Co-operation between health bodies and other organisations

(1) The relevant authority may by regulations make provision for or in connection with requiring responsible bodies to co-operate with each other in connection with—

(a) the identification of cases in which action may need to be taken in respect of matters arising in relation to the management or use of controlled drugs by relevant persons (see section 19);

(b) the consideration of issues relating to the taking of action in respect of such matters;

(c) the taking of action in respect of such matters.

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(2) In this Chapter "responsible body" means—
- (a) a body falling within any description of bodies prescribed as responsible bodies for the purposes of this section, or
- (b) a body prescribed as a responsible body for those purposes.

(3) The descriptions of bodies, or bodies, that may be so prescribed are—
- (a) descriptions of bodies, or bodies, which fall within subsection (4); and
- (b) police forces.

(4) Descriptions of bodies, or bodies, fall within this subsection if they appear to the relevant authority—
- (a) to be directly or indirectly concerned with the provision of health care (whether or not for the purposes of the health service),
- (b) to be otherwise carrying on activities that involve, or may involve, the supply or administration of controlled drugs,
- (c) to have powers of inspection in relation to the management or use of controlled drugs,
- (d) to be public or local authorities with responsibilities in relation to social care, or
- (e) to be public or local authorities (not within paragraphs (a) to (d)) whose responsibilities include responsibilities with respect to matters such as are mentioned in subsection (1).

(5) Regulations under this section may make provision—
- (a) for requiring a responsible body to disclose information to any other such body or bodies in prescribed circumstances, or in circumstances where it appears to the responsible body that the prescribed conditions are satisfied, whether or not the disclosure of information has been requested;
- (b) in relation to a responsible body which has an accountable officer, for requiring disclosures to be made by or to that officer instead of by or to the body;
- (c) in relation to a responsible body which is a police force, for imposing duties on the chief officer;
- (d) for requiring a responsible body, in prescribed circumstances, to consult the prescribed accountable officer in connection with any requirement imposed on the body under the regulations;
- (e) for imposing duties on accountable officers in relation to the taking of action for the purpose of protecting the safety of patients or the general public.

(6) The duties that may be imposed on an accountable officer in pursuance of subsection (5)(e) include a duty to make recommendations to a responsible body as to any action which the officer considers that the body should take for the purpose mentioned in that provision.

(7) The action that may be so recommended includes action in relation to the institution of disciplinary proceedings.

(8) Nothing in subsections (5) to (7) is to be read as prejudicing the generality of subsection (1).

(9) In this section—
- (a) "chief officer" means—

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(i) in relation to a police force in England and Wales, the chief officer of police;

(ii) in relation to a police force in Scotland, the chief constable;

(iii) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;

(b) "police force" means—

(i) a police force in England, Wales or Scotland, or

(ii) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;

(c) "prescribed" means prescribed by regulations under this section.

Commencement Information

I42 S. 18 in force for certain purposes at Royal Assent, see s. 83

I43 S. 18 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**

I44 S. 18 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**

19 Meaning of "relevant person" in section 18

(1) In section 18 "relevant person" means—

(a) a person falling within any description of persons prescribed as relevant persons for the purposes of that section, or

(b) an individual to whom subsection (3) applies.

(2) The descriptions of persons that may be prescribed for the purposes of section 18 are descriptions of persons appearing to the relevant authority to be carrying on, or engaged in, activities that involve, or may involve, the supply or administration of controlled drugs.

(3) This subsection applies to an individual who, whether as—

(a) a health care professional, or

(b) an employee who is not a health care professional, or

(c) otherwise,

is engaged in any activity carried on by a designated body, or by a body or person acting on behalf of, or providing services under arrangements made with, a designated body that involves, or may involve, the management or use of controlled drugs.

(4) In this section "prescribed" means prescribed by regulations under section 18.

Commencement Information

I45 S. 19 in force for certain purposes at Royal Assent, see s. 83

I46 S. 19 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**

I47 S. 19 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**

20 Controlled drugs: power to enter and inspect

(1) A constable or an authorised person may, for the purpose of securing the safe, appropriate and effective management and use of controlled drugs—

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(a) enter any relevant premises;
(b) inspect any precautions taken on the premises for the safe custody of controlled drugs;
(c) inspect any stocks of controlled drugs kept on the premises;
(d) require any relevant records kept on the premises to be produced for his inspection.

(2) The powers conferred by subsection (1) may be exercised only—
(a) at a reasonable hour, and
(b) on production (if required) of the written authority of the person exercising them.

(3) The power conferred by subsection (1)(a) may be exercised by an authorised person to enter relevant premises which are or form part of a private dwelling only if he is accompanied by a constable.

But this subsection does not apply in such circumstances as may be prescribed by regulations made by the relevant authority.

(4) The power conferred by subsection (1)(d) includes power—
(a) to take copies of or extracts from relevant records, and
(b) to take possession of any relevant records kept on the premises and retain them for so long as the person exercising the power considers necessary.

(5) In this section "authorised person" means (subject to subsection (6))—
(a) a person authorised by the relevant authority,
(b) an accountable officer, or
(c) where a designated body is required by regulations under section 17 to nominate or appoint an accountable officer, a member of the staff of the designated body authorised by it.

Authorisations given under this subsection may be general or specific.

(6) The accountable officer of a designated body specified, or of a description specified, in directions given by the relevant authority is not an authorised person for the purposes of this section; and such a designated body may not authorise members of its staff under subsection (5)(c).

(7) The relevant authority may by regulations prescribe descriptions of premises which are to be "relevant premises" for the purposes of this section in relation to constables and authorised persons of descriptions prescribed in the regulations.

(8) The descriptions of premises that may be so prescribed are descriptions of premises (or parts thereof) appearing to the relevant authority to be used in connection with—
(a) the provision of health care (whether or not for the purposes of the health service), or
(b) the supply or administration of controlled drugs.

(9) In this Chapter "relevant records" means records kept with respect to controlled drugs in pursuance of regulations under section 10 of the Misuse of Drugs Act 1971 (c. 38).

(10) Directions under subsection (6) are to be given by regulations or in writing; but any such directions which relate to more than one designated body are to be given by regulations.

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(11) Directions under subsection (6) given in writing may be varied or revoked by subsequent directions under that subsection.

Modifications etc. (not altering text)

C2 S. 20(3) excluded (E.S.) (1.1.2007 for E., 1.3.2007 for S.) by The Controlled Drugs (Supervision of Management and Use) Regulations 2006 (S.I. 2006/3148), regs. 1(1), **21**

Commencement Information

I48 S. 20 in force for certain purposes at Royal Assent, see s. 83

I49 S. 20 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**

I50 S. 20 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**

21 Offences in connection with power to enter and inspect

(1) A person commits an offence if he—

(a) intentionally obstructs a person in the exercise of his powers under section 20(1),

(b) conceals from a person acting under section 20(1) anything which that person is entitled to inspect, or

(c) without reasonable excuse fails to produce any relevant records which a person acting under section 20(1) requires to be produced.

(2) A person guilty of an offence under subsection (1) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

(3) In the application of this section to Scotland and Northern Ireland, the reference to 12 months in subsection (2)(b) is to be read as a reference to 6 months.

Commencement Information

I51 S. 21 in force at 1.1.2007 for E. by S.I. 2006/3125, **art. 2(1)**

I52 S. 21 in force at 1.3.2007 for S. by S.I. 2006/3125, **art. 2(2)**

22 Guidance

(1) The relevant authority may issue guidance to designated bodies in connection with—

(a) determining whether conditions specified in regulations under section 17 have been satisfied in relation to the nomination or appointment of a person as a designated body's accountable officer;

(b) the discharge by a designated body's accountable officer of any responsibilities imposed on him by regulations under section 17;

(c) the exercise by designated bodies of their powers under section 17(9);

(d) the exercise by designated bodies of their powers under section 20(5)(c).

(2) The relevant authority may issue guidance to responsible bodies in connection with their discharge of any duties imposed on them by regulations under section 18.

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(3) Guidance under this section may make different provision for different cases or circumstances.

(4) Designated bodies and responsible bodies must have regard to any guidance under this section in exercising any functions to which the guidance relates.

Commencement Information

I53 S. 22 in force at 1.1.2007 for E. by S.I. 2006/3125, **art. 2(1)**

I54 S. 22 in force at 1.3.2007 for S. by S.I. 2006/3125, **art. 2(2)**

23 Crown application

(1) This Chapter binds the Crown.

(2) No contravention by the Crown of any provision of this Chapter shall make the Crown criminally liable; but the High Court (or, in Scotland, the Court of Session) may declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) The provisions of this Chapter apply to persons in the public service of the Crown as they apply to other persons.

Commencement Information

I55 S. 23 in force at 1.1.2007 for E. by S.I. 2006/3125, **art. 2(1)**

I56 S. 23 in force at 1.3.2007 for S. by S.I. 2006/3125, **art. 2(2)**

24 Relevant authorities

(1) This section applies to functions conferred on the relevant authority by this Chapter.

(2) Subject to subsection (4), any functions to which this section applies are exercisable in relation to England by the Secretary of State.

(3) Subject to subsection (4), any functions to which this section applies are exercisable in relation to Wales by the National Assembly for Wales.

(4) Any power of the relevant authority to make regulations under this Chapter is exercisable in relation to cross-border bodies by the Secretary of State after consultation with the Assembly.

(5) A “cross-border body” is a body which—

(a) performs (and only performs) functions in respect of England and Wales, and

(b) does not perform functions mainly in respect of England or mainly in respect of Wales.

(6) Any functions to which this section applies are exercisable in relation to Scotland by the Secretary of State after consultation with the Scottish Ministers.

(7) Any functions to which this section applies are exercisable in relation to Northern Ireland by the Department of Health, Social Services and Public Safety.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I57 S. 24 in force for certain purposes at Royal Assent, see s. 83

I58 S. 24 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**

I59 S. 24 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**

25 Interpretation

(1) In this Chapter—

"accountable officer" is to be read in accordance with section 17(2);

"body" includes an unincorporated association;

"controlled drug" has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38);

"designated body" has the meaning given by section 17(3);

"health care" means—

(a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

(b) the promotion and protection of public health;

"health care professional"—

(a) in relation to England and Wales, has the meaning given by **[**[F2]section 91(2)(a) of the National Health Service Act 2006 (referred to in this Act as "the 2006 Act")**]**,

(b) in relation to Scotland, has the meaning given by section 17D(2) of the National Health Service (Scotland) Act 1978 (c. 29), and

(c) in relation to Northern Ireland, has the meaning given by Article 15C of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));

"illness"—

(a) in relation to England and Wales, has the meaning given by **[**[F3]section 275 of the 2006 Act**]**,

(b) in relation to Scotland, has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978, and

(c) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972;

"relevant authority" is to be read in accordance with section 24;

"relevant records" has the meaning given by section 20(9);

"responsible body" has the meaning given by section 18(2).

(2) In this Chapter any reference to the management or use of controlled drugs includes—

(a) the storage, carriage and safe custody of such drugs,

(b) the prescribing and supply of such drugs,

(c) the administration of such drugs,

(d) the recovery of such drugs when no longer needed, and

(e) the disposal of such drugs.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F2 Words in s. 25(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 282(a)** (with Sch. 3 Pt. 1)

F3 Words in s. 25(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 282(b)** (with Sch. 3 Pt. 1)

Commencement Information

I60 S. 25 in force for certain purposes at Royal Assent, see s. 83

I61 S. 25 in force at 1.1.2007 for E. in so far as not already in force by S.I. 2006/3125, **art. 2(1)**

I62 S. 25 in force at 1.3.2007 for S. in so far as not already in force by S.I. 2006/3125, **art. 2(2)**

CHAPTER 2

MEDICINES AND PHARMACIES

PROSPECTIVE

26 Requirements about supervision

(1) In section 10 of the Medicines Act 1968 (c. 67) (which provides for exemptions for pharmacists in relation to certain dealings with medicinal products), after subsection (7) insert—

"(7A) The Health Ministers may make regulations prescribing conditions which must be complied with if a thing is to be considered for the purposes of this section as done under the supervision of a pharmacist.

(7B) Conditions prescribed under subsection (7A) may relate to supervision in the case where the pharmacist is not at the place where the thing is being done, and in that case the thing is not to be so considered if no such conditions are prescribed.

(7C) In any case, compliance with any applicable conditions is sufficient for the thing to be so considered."

(2) In section 52 of that Act (sale or supply of medicines not on general sale list)—

(a) the existing text is to be subsection (1),

(b) after that subsection insert—

"(2) The Health Ministers may make regulations prescribing conditions which must be complied with if a transaction mentioned in subsection (1)(c) is to be considered for the purposes of this section as done under the supervision of a pharmacist.

(3) Conditions prescribed under subsection (2) may relate to supervision in the case where the pharmacist is not on the premises, and in that case the transaction is not to be so considered if no such conditions are prescribed.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In any case, compliance with any applicable conditions is sufficient for the transaction to be so considered."

VALID FROM 01/10/2009

27 Control of pharmacy premises: individuals and partnerships

(1) For section 70 of the Medicines Act 1968 (pharmacy business carried on by individual pharmacist or by partners) substitute—

"**70 Business carried on by individual pharmacist or by partners**

(1) The conditions referred to in section 69(1)(a) of this Act are that subsections (2) and (3) of this section are both satisfied as respects each of the premises where the retail pharmacy business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail.

(2) This subsection is satisfied if a responsible pharmacist who satisfies the requirements of subsections (4) and (5) of this section is in charge of the business at those premises, so far as concerns—
(a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and
(b) the supply at those premises of such products in circumstances corresponding to retail sale.

(3) This subsection is satisfied if a notice is conspicuously displayed at those premises stating—
(a) the name of the responsible pharmacist for the time being,
(b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and
(c) the fact that he is for the time being in charge of the business at those premises.

(4) The responsible pharmacist must be—
(a) the person carrying on the business, or
(b) if the business is carried on by a partnership, one of the partners or, in Scotland, one of the partners who is a **[**[F4]person registered in Part 1 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007**]**, or
(c) another pharmacist.

(5) In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of section 4A of the Pharmacy Act 1954 (qualification by European diploma) or any corresponding provision applying to Northern Ireland."

(2) In section 78 of the Medicines Act 1968 (c. 67) (restrictions on use of titles, descriptions and emblems), in subsection (7), for the words from "under whose" to the end substitute " who is in charge of the business at those premises (so far

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as concerns the retail sale of medicinal products or the supply of such products in circumstances corresponding to retail sale) is also a pharmacist ".

Textual Amendments

F4 Word in s. 27(1) substituted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **103(a)**

VALID FROM 01/10/2009

28 Control of pharmacy premises: bodies corporate

(1) For section 71 of the Medicines Act 1968 (pharmacy business carried on by body corporate) substitute—

"**71 Business carried on by body corporate**

(1) The conditions referred to in section 69(1)(b) of this Act are—

(a) that the retail pharmacy business, so far as concerns the keeping, preparing and dispensing of medicinal products other than medicinal products on a general sale list, is under the management of a superintendent in respect of whom the requirements specified in subsection (6) of this section are fulfilled, and

(b) that subsections (2) and (3) of this section are both satisfied as respects each of the premises where the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail.

(2) This subsection is satisfied if a responsible pharmacist who satisfies the requirements of subsections (4) and (5) of this section is in charge of the business at the premises mentioned in subsection (1)(b) of this section, so far as concerns—

(a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and

(b) the supply at those premises of such products in circumstances corresponding to retail sale.

(3) This subsection is satisfied if a notice is conspicuously displayed at those premises stating—

(a) the name of the responsible pharmacist for the time being,

(b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and

(c) the fact that he is for the time being in charge of the business at those premises.

(4) The responsible pharmacist must be—

(a) the superintendent mentioned in subsection (1)(a) of this section, or

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) a manager or assistant subject to the directions of the superintendent and who is a pharmacist.

(5) In relation to premises in Great Britain that have been registered pharmacies for less than three years, the responsible pharmacist may not be a person who is a pharmacist by virtue of section 4A of the Pharmacy Act 1954 (qualification by European diploma) or any corresponding provision applying to Northern Ireland.

(6) The requirements referred to in subsection (1)(a) of this section in relation to a superintendent are that—

(a) he is a pharmacist,

(b) a statement in writing signed by him, and signed on behalf of the body corporate, specifying his name and stating whether he is a member of the board of that body or not, has been sent to the registrar, and

(c) he does not act in a similar capacity for any other body corporate.

[[F5](7) In subsection (6)(a) "pharmacist" does not include a person registered in Part 3 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007 (visiting pharmacists from relevant European States)**[**[F6]or a person registered in the register of visiting pharmaceutical chemists from a relevant European State maintained under Article 9 of the Pharmacy (Northern Ireland) Order 1976.**]**."**]**

(2) In section 124 of the Medicines Act 1968 (c. 67) (offences by bodies corporate), in subsection (2)(b), for "subsection (1)(a)" substitute " subsection (4)(b) ".

Textual Amendments

F5 Words in s. 28(1) added (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **103(b)**

F6 Words in s. 28(1) inserted (22.5.2008) by The European Qualifications (Pharmacy) Regulations (Northern Ireland) 2008 (S.R. 2008/192), regs. 1(2), **15**

VALID FROM 01/10/2009

29 Control of pharmacy premises: representative of pharmacist in case of death or disability

In section 72 of the Medicines Act 1968 (representative of pharmacist in case of death or disability), for subsection (2) substitute—

"(2) The conditions referred to in section 69(1)(c) of this Act are—

(a) that the name and address of the representative, and the name of the pharmacist whose representative he is, have been notified to the registrar, and

(b) that subsections (2A) and (2B) of this section are both satisfied as respects each of the premises at which the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2A) This subsection is satisfied if a responsible pharmacist is in charge of the business at the premises mentioned in subsection (2)(b) of this section, so far as concerns—

(a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and

(b) the supply at those premises of such products in circumstances corresponding to retail sale.

(2B) This subsection is satisfied if a notice is conspicuously displayed at those premises stating—

(a) the name of the responsible pharmacist for the time being,

(b) the number of his registration under the Pharmacy Act 1954 or (in relation to Northern Ireland) the Pharmacy (Northern Ireland) Order 1976, and

(c) the fact that he is for the time being in charge of the business at those premises."

VALID FROM 01/10/2009

30 The responsible pharmacist

(1) After section 72 of the Medicines Act 1968 (c. 67) insert—

"**72A The responsible pharmacist**

(1) It is the duty of the responsible pharmacist mentioned in sections 70, 71 and 72 of this Act to secure the safe and effective running of the pharmacy business at the premises in question so far as concerns—

(a) the retail sale at those premises of medicinal products (whether they are on a general sale list or not), and

(b) the supply at those premises of such products in circumstances corresponding to retail sale.

(2) A person may not be the responsible pharmacist in respect of more than one set of premises at the same time, except in circumstances specified by the Health Ministers in regulations, and then only if such conditions as may be so specified are complied with.

(3) The responsible pharmacist must establish (if they are not already established), maintain and keep under review procedures designed to secure the safe and effective running of the business as mentioned in subsection (1) of this section.

(4) The responsible pharmacist must make a record (which must be available at the premises) of—

(a) who the responsible pharmacist is in relation to the premises on any day and at any time, and

(b) such other matters as the Health Ministers specify in regulations.

(5) It is the duty of the person carrying on the business to secure that—

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(a) the record is properly maintained, and
(b) it is preserved for at least as long as is specified in regulations made by the Health Ministers.

(6) The Health Ministers may make further provision in regulations in relation to the responsible pharmacist.

(7) The regulations may, in particular, make further provision about the matters mentioned in subsections (1) to (4) of this section, and make provision about—
(a) the qualifications and experience which a person must have if he is to be a responsible pharmacist,
(b) the responsible pharmacist's absence from the premises,
(c) the supervision by the responsible pharmacist, when he is not present on the premises, of relevant activities there,
(d) circumstances in which the responsible pharmacist may supervise relevant activities at a pharmacy of which he is not the responsible pharmacist,
(e) the form in which the procedures referred to in subsection (3) of this section are to be recorded and matters which must be covered by them,
(f) the form in which the record referred to in subsection (4) of this section is to be kept and particulars which must be included in it.

(8) In subsection (7)(c) and (d), "relevant activities" means things mentioned in section 10 and transactions mentioned in section 52(1)(c) of this Act.

72B Section 72A: supplementary

(1) The failure by a person to comply with any requirements of section 72A of this Act, or of regulations made under that section, may constitute misconduct for the purposes of section 80 of this Act, section 8 of the Pharmacy Act 1954 and Article 20 of the Pharmacy (Northern Ireland) Order 1976; and the Statutory Committee may deal with such a failure accordingly.

(2) A person who does not have the qualifications and experience required by regulations made by virtue of section 72A(7)(a) of this Act is not to be considered as a responsible pharmacist for the purposes of sections 70 to 72 of this Act.

(3) Subsection (4) of this section applies if a person—
(a) fails to comply with the requirements of subsection (2) of section 72A of this Act, or of regulations made under that subsection,
(b) fails to comply with any requirements as to absence from the premises contained in regulations made by virtue of subsection (7)(b) of that section.

(4) If this subsection applies, the person in question is not to be considered while the failure continues as being in charge of the business at the premises in question (or in a subsection (3)(a) case at any of them) for the purposes of sections 70 to 72 of this Act."

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(2) In section 77 of the Medicines Act 1968 (c. 67) (annual return of premises to registrar), omit paragraph (b) and the "and" immediately preceding it.

(3) In section 84 of the Medicines Act 1968 (offences), before subsection (1) insert—

"(A1) A person who fails to comply with either of the following shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale—

(a) subsection (4) of section 72A of this Act (which requires the making of entries in a record relating to the responsible pharmacist),

(b) subsection (5) of that section (which requires the keeping and preservation of the record)."

VALID FROM 01/10/2009

31 Enforcement

(1) In section 108 of the Medicines Act 1968 (c. 67) (enforcement in England and Wales) —

(a) in subsection (1), at the beginning insert " Subject to the provisions of subsection (6C) of this section, ",

(b) after subsection (6) insert—

"(6A) The Pharmaceutical Society shall be under a duty, concurrently with the appropriate Minister, to enforce the provisions of subsections (4) and (5) of section 72A of this Act in their application to England and Wales.

(6B) The Pharmaceutical Society shall be under a duty to enforce the other provisions of section 72A of this Act, and any regulations made under them, in their application to England and Wales.

(6C) The appropriate Minister shall be under no duty to enforce those other provisions, or any regulations made under them, in their application to England and Wales.

(6D) Notwithstanding subsection (6C) of this section the appropriate Minister is to be treated for the purposes of sections 111 to 114 of this Act—

(a) as empowered by this section to enforce those other provisions, or any regulations made under them, in their application to England and Wales, and

(b) to that extent as an enforcement authority in relation to those other provisions or those regulations in their application to England and Wales.",

(c) in subsection (9)(a), after "hospital" insert " (except in relation to so much of the hospital premises as is a registered pharmacy) ",

(d) in subsection (10), for "(4) to (8)" substitute " (4) to (6A), (7) and (8) ".

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(2) In section 109 of the Medicines Act 1968 (enforcement in Scotland), in subsection (1), at the beginning insert " Subject to the provisions of section 108(6C) of this Act as applied by subsection (2) of this section, ".

(3) In section 110 of the Medicines Act 1968 (enforcement in Northern Ireland)—

(a) in subsection (1), for "subsection (4)" substitute " subsections (3C) and (4) ",

(b) after subsection (3) insert—

"(3A) The Pharmaceutical Society shall be under a duty, concurrently with the Minister, to enforce the provisions of subsections (4) and (5) of section 72A of this Act in their application to Northern Ireland.

(3B) The Pharmaceutical Society shall be under a duty to enforce the other provisions of section 72A of this Act, and any regulations made under them, in their application to Northern Ireland.

(3C) The Minister shall be under no duty to enforce those other provisions, or any regulations made under them, in their application to Northern Ireland.

(3D) Notwithstanding subsection (3C) of this section the Minister is to be treated for the purposes of sections 111 to 114 of this Act—

(a) as empowered by this section to enforce those other provisions, or any regulations made under them, in their application to Northern Ireland, and

(b) to that extent as an enforcement authority in relation to those other provisions or those regulations in their application to Northern Ireland.",

(c) in subsection (5)(a), for "and (3)" substitute " to (3D) ",

(d) in subsection (5)(b), for "(4) to (8)" substitute " (4) to (6A), (7) and (8) ".

PROSPECTIVE

32 Order-making powers

In section 129 of the Medicines Act 1968 (c. 67) (orders and regulations), in subsection (5)—

(a) after "power to make" insert " an order or ",

(b) after "making the" insert " order or ".

33 Orders under s.60 of the Health Act 1999

In Schedule 3 to the Health Act 1999 (c. 8) (which makes further provision about orders under section 60 of that Act regulating health care professions), omit paragraph 2(2) (which imposes a limitation on amendment of the Medicines Act 1968).

Commencement Information

I63 S. 33 in force at 1.10.2006 by S.I. 2006/2603, **art. 3**

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 4

THE NATIONAL HEALTH SERVICE

CHAPTER 1

PHARMACEUTICAL SERVICES

[F7]34 Power to charge

. . . . . .

Textual Amendments

F7 S. 34 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I64 S. 34 in force at 28.2.2007 for specified purposes by S.I. 2006/3125, **art. 3(a)**

[F8]35 Applications for provision of pharmaceutical services

. . . . . .

Textual Amendments

F8 S. 35 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I65 S. 35 in force at 28.2.2007 for specified purposes by S.I. 2006/3125, **art. 3(b)**

PROSPECTIVE

36 Arrangements for dispensing of medicines

(1) **[**[F9]In section 43 of the 1977 Act (persons authorised to provide pharmaceutical services), for subsection (2) substitute—

"(2) Except as may be provided for by or under regulations, no arrangements for the dispensing of medicines shall be made under this Part of this Act with persons other than persons who—

(a) are registered pharmacists or persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968; and

(b) undertake that all medicines supplied by them under the arrangements will be dispensed either by or under the supervision of a registered pharmacist."**]**

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In section 17S of the National Health Service (Scotland) Act 1978 (c. 29) (eligibility to be contractor under pharmaceutical care services contract), after subsection (1) insert—

"(1A) In such circumstances, and subject to such conditions, as may be prescribed, subsection (1) has effect with the omission of the words from "who undertakes" to the end."

Textual Amendments

F9 S. 36(1) repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

CHAPTER 2

OPHTHALMIC SERVICES

VALID FROM 01/08/2008

[F10]37 Provision of primary ophthalmic services

After section 16CC of the 1977 Act insert—

"**16CD Primary ophthalmic services**

(1) Each Primary Care Trust must exercise its powers so as to provide or secure the provision, within its area, of the following primary ophthalmic services—
  (a) the sight-testing service mentioned in subsection (2);
  (b) such other primary ophthalmic services as may be prescribed; and
  (c) to the extent that it considers necessary to meet all reasonable requirements, any further primary ophthalmic services.

(2) The sight-testing service mentioned in subsection (1)(a) is a service for testing the sight of all of the following persons (except any such testing which takes place in prescribed circumstances)—
  (a) those aged under 16;
  (b) those aged 16, 17 or 18 who are receiving qualifying full-time education;
  (c) those whose resources are to be treated in accordance with regulations as being less than or equal to their requirements;
  (d) those aged 60 or over;
  (e) those of such other description as may be prescribed.

(3) Regulations may—
  (a) prescribe what "qualifying full-time education" is for the purposes of subsection (2)(b);

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Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) make provision for the purposes of subsection (2)(c) about how a person's resources and requirements are to be calculated.

(4) A Primary Care Trust may (in addition to any other power conferred on it)—
(a) provide primary ophthalmic services itself (whether within or outside its area);
(b) make such arrangements for their provision (whether within or outside its area) as it thinks fit, and may in particular make contractual arrangements with any person.

(5) Each Primary Care Trust must publish information about such matters as may be prescribed in relation to the primary ophthalmic services provided under this Part.

(6) A body on which functions are conferred under this section must co-operate with any other such body in the discharge of their respective functions relating to the provision of primary ophthalmic services under this Part.

(7) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary ophthalmic services for the purposes of this Part (but these regulations may not affect the duty in subsection (1)(a)).

(8) Regulations under subsection (7) may in particular describe services by reference to the manner or circumstances in which they are provided.

(9) Regulations may provide that a person—
(a) whose sight is tested by a person who is a party to a general ophthalmic services contract; and
(b) who is shown during the testing or within a prescribed time after it to fall within any of paragraphs (a) to (d) of subsection (2),

is to be taken for the purposes of the testing to have so fallen immediately before his sight was tested.

(10) In the case mentioned in subsection (9), the testing of his sight is (unless it took place in circumstances prescribed under subsection (2)) to be treated as a testing under the sight-testing service mentioned in subsection (1)(a)—
(a) for the purposes of remuneration in respect of the testing; and
(b) for any such other purpose as may be prescribed.

16CE Regulations under section 16CD: supplementary

(1) Regulations under section 16CD which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
(a) as it has effect at the time when the regulations are made; or
(b) both as it has effect at that time and as amended subsequently.

(2) Descriptions of persons may be prescribed under section 16CD(2)(e) by reference to any criterion, including the following—
(a) their age;
(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;

(d) their receipt of benefit in money or kind under any enactment or their entitlement to receive any such benefit;

(e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.

(3) Regulations under section 16CD(3)(b) may direct that a person's resources and requirements be calculated—

(a) by a method set out in the regulations;

(b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;

(c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or

(d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.”

Textual Amendments

F10 Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

VALID FROM 01/08/2008

F10 38 General ophthalmic services contracts

After section 28W of the 1977 Act insert—

“General ophthalmic services contracts

28WA General ophthalmic services contracts: introductory

(1) A Primary Care Trust may enter into a contract under which primary ophthalmic services are provided in accordance with the following provisions of this Part.

(2) A contract under this section is called in this Act a “general ophthalmic services contract”.

(3) Subject to any provision made by or under this Part, a general ophthalmic services contract may make such provision as may be agreed between the Primary Care Trust and the contractor or contractors in relation to—

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the services to be provided under the contract;
(b) remuneration under the contract; and
(c) any other matters.

(4) The services to be provided under a general ophthalmic services contract may include—
(a) services which are not primary ophthalmic services;
(b) services to be provided outside the area of the Primary Care Trust.

(5) In this Part, "contractor", in relation to a general ophthalmic services contract, means any person entering into the contract with the Primary Care Trust.

28WB Persons eligible to enter into GOS contracts

(1) A Primary Care Trust may, subject to such conditions and exceptions as may be prescribed, enter into a general ophthalmic services contract with any person.

(2) But it may not enter into such a contract with a person who has been disqualified from doing so by an order of disqualification made by virtue of regulations under section 28WC.

28WC Exclusion of contractors

(1) The Secretary of State may make regulations conferring on a Primary Care Trust, or another prescribed person, a right to apply to the FHSAA in prescribed circumstances for an order that a person ("P") be disqualified from entering into a general ophthalmic services contract.

(2) The regulations may in particular provide for—
(a) the review by the FHSAA of an order of disqualification made by virtue of regulations under this section;
(b) what is to happen in relation to general ophthalmic services contracts to which P is a party when the order is made.

28WD GOS contracts: payments

(1) The Secretary of State may give directions as to payments to be made under general ophthalmic services contracts.

(2) A general ophthalmic services contract must require payments to be made under the contract in accordance with directions for the time being in force under this section.

(3) Without prejudice to the generality of the power under subsection (1), a direction under that subsection may—
(a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
(b) provide for payments to be made by reference to—
(i) any scheme or scale specified in the direction; or

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) a determination made by any person in accordance with factors specified in the direction;

(c) provide for the making of payments in respect of individual practitioners;

(d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Primary Care Trust only if it is satisfied as to certain conditions);

(e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(4) Before giving a direction under subsection (1), the Secretary of State—

(a) must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate; and

(b) may consult such other persons as he thinks appropriate.

(5) Section 18(1) and (3)(b) apply in relation to directions under this section.

(6) References in this section to payments include fees, allowances, reimbursements, loans and repayments.

28WE GOS contracts: other required terms

(1) A general ophthalmic services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).

(2) Regulations under subsection (1) may in particular make provision as to—

(a) the manner in which, and standards to which, services are to be provided;

(b) the persons who perform services;

(c) the persons to whom services are to be provided;

(d) the variation of contract terms (other than terms required by or under this Part);

(e) rights of entry and inspection (including inspection of clinical records and other documents);

(f) the circumstances in which, and the manner in which, the contract may be terminated;

(g) enforcement;

(h) the adjudication of disputes.

(3) Regulations under subsection (2)(d) may—

(a) make provision as to the circumstances in which a Primary Care Trust may impose a variation of contract terms;

(b) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description.

(4) Regulations making provision of the kind described in subsection (3)(b) may prescribe services by reference to the manner or circumstances in which they are provided.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Regulations under subsection (1) must make provision as to the right of persons to whom services are to be provided to choose the persons from whom they are to receive them.

28WF GOS contracts: disputes and enforcement

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general ophthalmic services contract.

(2) Regulations under subsection (1) may make provision—
- (a) for the referral of the terms of the proposed contract to the Secretary of State; and
- (b) for the Secretary of State, or a person appointed by him, to determine the terms on which the contract may be entered into.

(3) Regulations may make provision for a person or persons entering into a general ophthalmic services contract to be regarded, in circumstances where he or they so elect, as a health service body for the purposes of section 4 of the National Health Service and Community Care Act 1990, but only so far as concerns the general ophthalmic services contract (and not for any other purpose).

(4) Regulations under subsection (3) may include provision as to the application of section 4 of that Act in cases where—
- (a) persons practising in partnership elect to become a health service body; and
- (b) there is a change in the membership of the partnership.

(5) Where—
- (a) by virtue of regulations under subsection (3), subsection (7) of section 4 of that Act applies in relation to a general ophthalmic services contract; and
- (b) a direction as to payments is made under that provision in relation to the contract,

the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court."

Textual Amendments

F10 Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

VALID FROM 01/08/2008

[F10]39 Persons performing primary ophthalmic services

(1) Section 28X of the 1977 Act (persons performing primary medical and dental services) is amended as follows.

(2) After subsection (2) insert—

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(2A) Regulations may provide that a health care professional of a prescribed description may not perform any primary ophthalmic service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust."

(3) In subsection (3)(b), for "medical or dental" substitute " medical, dental or ophthalmic ".

(4) After subsection (6) insert—

"(6A) Regulations under this section may, in particular, also prescribe the qualifications and experience which a medical practitioner who applies for inclusion in a list mentioned in subsection (2A) must have, and may—

(a) provide for the practitioner to show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications and experience;

(b) confer on a person who is dissatisfied with the determination of such a committee a right of appeal to a committee appointed by the Secretary of State; and

(c) provide for anything which appears to the Secretary of State to be appropriate in connection with that right of appeal."

(5) In the heading, for "medical and dental" substitute " medical, dental and ophthalmic ".

Textual Amendments

F10 Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

VALID FROM 01/08/2008

F10 40 Assistance and support

(1) Section 28Y of the 1977 Act (assistance and support for providers of primary medical and dental services) is amended as follows.

(2) For paragraph (a) of subsection (1) substitute—

"(a) any person providing, or proposing to provide, primary medical services under a general medical services contract, primary dental services under a general dental services contract, or primary ophthalmic services under a general ophthalmic services contract;".

(3) In paragraph (b) of subsection (1), for "such services" substitute " primary medical or dental services ".

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F10 Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

VALID FROM 01/08/2008

F10 41 Local Optical Committees

After section 45B of the 1977 Act insert—

"45C Local Optical Committees: England

(1) A Primary Care Trust may recognise a committee formed for its area, or for its area and that of one or more other Primary Care Trusts, which it is satisfied is representative of—

(a) the persons to whom subsection (2) applies; and

(b) the persons to whom subsection (3) applies.

(2) This subsection applies to every person who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in the area for which the committee is formed.

(3) This subsection applies to every optometrist not falling within subsection (2)—

(a) who is performing primary ophthalmic services in the area for which the committee is formed, whether under section 16CD(4)(a) above, or under a general ophthalmic services contract; and

(b) who has notified the Primary Care Trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).

(4) A committee recognised under this section shall be called the Local Optical Committee for the area for which it is formed.

(5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

(6) Any such committee may co-opt persons not falling within subsection (2) or (3) on such terms as it thinks fit.

(7) Regulations may require a Primary Care Trust, in the exercise of its functions relating to primary ophthalmic services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed.

(8) A committee recognised under this section shall have such other functions as may be prescribed.

(9) A committee recognised under this section shall in respect of each year determine the amount of its administrative expenses for that year.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(10) A Primary Care Trust may—

(a) on the request of a committee recognised by it, allot to that committee such sums as it may determine for defraying the committee's administrative expenses; and

(b) deduct the amount of such sums from the remuneration of persons of whom it is representative under subsection (1)(a) under the general ophthalmic services contracts entered into by them with the Trust.

(11) References in this section to the administrative expenses of a committee include the travelling and subsistence allowances payable to its members."

Textual Amendments

F10 Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

VALID FROM 01/08/2008

F10 42 Payments in respect of optical appliances

(1) Schedule 12 to the 1977 Act (which makes provision about charges and payments) is amended as follows.

(2) In paragraph 2A(1)—

(a) for paragraph (b) substitute—

"(b) for a person whose resources fall to be treated under the regulations as being less than or equal to his requirements;

(ba) for any person falling within section 16CD(2)(d) above; or",

(b) after "paragraph (a), (b)" insert " , (ba) ".

(3) After paragraph 2A insert—

"2B

(1) Regulations under paragraph 2A above providing for payments for meeting or contributing towards the cost incurred for the supply of optical appliances or their replacement or repair may also provide as follows, but in relation to England only.

(2) They may make provision for such payments not to be made to any person falling within a prescribed description.

(3) They may make provision for the Secretary of State to give notice as mentioned in sub-paragraph (4) to a person to whom such payments have been made (whether by the Secretary of State or by an authority established under this Act).

(4) Such a notice is notice that no further such payments in respect of the supply, replacement or repair of optical appliances at a particular location or in a particular area, in either case specified in the notice, will be made to him after a date specified in the notice.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) If such a notice is given, no further payments as mentioned in sub-paragraph (4) are to be made to him after the date specified in the notice, unless the notice is cancelled by the Secretary of State.

(6) The regulations may make provision conferring on the Secretary of State the right, if he has given a notice by virtue of sub-paragraph (3), to apply to the FHSAA for a stop order.

(7) A stop order is an order that no further such payments are to be made (whether by the Secretary of State or by any authority established under this Act) to the person in question in respect of the supply, replacement or repair of optical appliances, wherever the supply, replacement or repair occurred.

(8) If the regulations make the provision mentioned in sub-paragraph (3), they must also make provision conferring prescribed rights of appeal to the FHSAA upon the person to whom the notice was given."

Textual Amendments

F10 Ss. 37-42 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

43 General ophthalmic services: transitional

(1) The Secretary of State shall in regulations make transitional provision in respect of persons who, immediately before the coming into force of section 38 of this Act, are providing services in England under section 38 of the **[**[F11]National Health Service Act 1977 **]** (general ophthalmic services).

(2) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes, enter into a general ophthalmic services contract with him; and the regulations may make provision as to the terms of any such contract.

(3) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes, enter into a contract with him, containing such terms as the regulations may specify, for the provision of ophthalmic services.

(4) Regulations under this section may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under subsection (2) or (3), including provision for the determination of disputes by the Secretary of State or a person appointed by him.

(5) Regulations under this section may make provision in respect of a period beginning before the coming into force of the provision (or of section 38 of this Act), but such provision must not as a whole be detrimental to the remuneration of the persons to whom it relates.

(6) In this section, "general ophthalmic services contract" means a contract under **[**[F12]section 117 of the 2006 Act**]**.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F11 Words in s. 43(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 283(a)** (with Sch. 3 Pt. 1)

F12 Words in s. 43(6) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 283(b)** (with Sch. 3 Pt. 1)

Commencement Information

I66 S. 43 in force for certain purposes at Royal Assent, see s. 83

CHAPTER 3

PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES

Preliminary

F13 44 Compulsory disclosure of documents for purposes of counter fraud or security management functions

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I67 S. 44 in force for certain purposes at Royal Assent, see s. 83

I68 S. 44 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

F13 45 Meaning of "NHS body" etc.

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Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I69 S. 45 in force for certain purposes at Royal Assent, see s. 83

I70 S. 45 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Disclosure notices

F13 46 Notice requiring production of documents

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I71 S. 46 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

F13 47 Production of documents

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I72 S. 47 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

F13 48 Delegation of functions

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I73 S. 48 in force for certain purposes at Royal Assent, see s. 83

I74 S. 48 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(a)**

F13 49 Code of practice relating to delegated functions

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I75 S. 49 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

[F13]50 Disclosure of information

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Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I76 S. 50 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

[F13]51 Protection of personal information disclosed for purposes of proceedings

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I77 S. 51 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

Offences

[F13]52 Offences in connection with production of documents

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I78 S. 52 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

[F13]53 Offences relating to disclosure or use of information

. . . . . .

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I79 S. 53 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

Supplementary

F13 54 Manner in which disclosure notice may be served

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I80 S. 54 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(b)**

F13 55 Interpretation

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Commencement Information

I81 S. 55 in force for certain purposes at Royal Assent, see s. 83

I82 S. 55 in force at 1.2.2007 for W. by S.I. 2007/204, **art. 3(a)**

CHAPTER 4

AUDIT

F13 56 Accounts and audit

. . . . . .

Textual Amendments

F13 Ss. 44-56 repealed (1.3.2007 coming into force in accordance with s. 8(4)-(6)) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I83 S. 56 in force at 1.10.2006 except so far as relating to Welsh NHS bodies by S.I. 2006/2603, **art. 5(a)** (with art. 6)

I84 S. 56 in force at 1.2.2007 in so far as not already in force by S.I. 2007/204, **art. 4(a)** (with art. 5)

PART 5

APPOINTMENTS COMMISSION

The Appointments Commission

57 The Appointments Commission

(1) There is to be a body corporate known as the Appointments Commission.

(2) The Commission is to have the functions conferred on it by or under this or any other Act.

(3) Schedule 4 makes further provision about the Commission.

(4) The National Health Service Appointments Commission is abolished on the appointed day.

(5) "The appointed day" means the day appointed under section 83 for the coming into force of subsection (4).

Commencement Information

I85 S. 57 in force at 1.10.2006 by S.I. 2006/2603, **art. 4(4)(a)**

Delegation of appointment functions

58 Commission to exercise Secretary of State's appointment functions

(1) The Commission is to exercise so much of any function of the Secretary of State relating to the appointment of any persons within subsection (2), (3) or (4) as may be specified in a direction given by the Secretary of State.

(2) The persons within this subsection are—

(a) chairmen and non-executive members of Strategic Health Authorities, Primary Care Trusts, NHS trusts or Special Health Authorities;

(b) trustees for NHS trusts or Primary Care Trusts; and

(c) special trustees to which **[**[F14]section 212 of the 2006 Act or section 160 of the National Health Service (Wales) Act 2006**]** applies (special trustees for university and teaching hospitals).

(3) The persons within this subsection are chairmen and non-executive members of any of the statutory bodies listed in Schedule 5.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The persons within this subsection are chairmen and non-executive members of any other body (however established) which has functions relating to—
  (a) health,
  (b) social care, or
  (c) the regulation of professions associated with health or social care.

(5) For the purposes of subsection (4) it is immaterial—
  (a) that a body has functions relating to matters other than those specified in that subsection, or
  (b) that the body's functions are not exercisable only in relation to England.

Textual Amendments

F14 Words in s. 58(2)(c) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 284** (with Sch. 3 Pt. 1)

Commencement Information

I86 S. 58 in force at 28.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(2)**

59 Cases where appointment functions exercisable jointly etc.

(1) This section applies if a function of the Secretary of State relating to the appointment of any persons within section 58(2), (3) or (4) is exercisable by the Secretary of State jointly or concurrently with—
  (a) a devolved authority, or
  (b) any other person who is not a Minister of the Crown.

(2) A requirement to exercise the function jointly or concurrently does not prevent the Secretary of State from giving a direction under section 58 in respect of the function, but he must not do so unless he first consults the devolved authority or other person.

(3) If the Secretary of State gives such a direction, so much of the functions of the Secretary of State and the devolved authority or other person as is specified in the direction is exercisable by the Commission acting alone.

(4) Subsections (2) and (3) do not apply if the function is exercisable jointly or concurrently with the Scottish Ministers, but the Secretary of State may nevertheless give a direction under section 58 in respect of the exercise of any function that he has.

Commencement Information

I87 S. 59 in force at 28.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(2)**

60 Commission to exercise Privy Council's appointment functions

(1) The Commission is to exercise so much of any function of the Privy Council relating to the appointment of members to any of the regulatory bodies listed in Schedule 6 as may be specified in a direction given by the Privy Council.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The Commission is to exercise so much of any function of the Privy Council relating to the appointment of members to the Council of the Royal Pharmaceutical Society of Great Britain as may be specified in a direction given by the Privy Council.

Commencement Information

I88 S. 60 in force at 28.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(2)**

61 Commission to exercise Assembly's appointment functions

The Commission is to exercise so much of any function of the National Assembly for Wales relating to the appointment of members to the Commission for Healthcare Audit and Inspection or the Health Protection Agency as may be specified in a direction given by the Assembly.

Commencement Information

I89 S. 61 in force at 28.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(2)**

62 Exercise of appointments functions

(1) This section applies where any function is exercisable by the Commission in relation to an appointment by virtue of a direction under section 58, 60 or 61.

(2) Subject to the following provisions of this section, the function is exercisable by the Commission in relation to the appointment in such manner as it thinks fit, having regard to the provisions of any enactment or instrument relating to the making of the appointment (as they have effect in accordance with subsection (3)).

(3) References in any such provisions to things done, or falling to be done, by or in relation to the Secretary of State, the Privy Council or the National Assembly for Wales have effect, so far as necessary in connection with the function being exercisable by the Commission, as references to things done, or falling to be done, by or in relation to the Commission.

(4) The direction mentioned in subsection (1) may contain provisions relating to the manner in which the function is to be exercised.

(5) Those provisions may, in particular, include provisions relating to—
- (a) matters to which the Commission is to have regard,
- (b) any criteria to be used, or
- (c) the procedure to be followed,

in relation to making appointments in exercise of the function.

(6) The Commission must take into account any guidance which—
- (a) is issued by the Commissioner for Public Appointments or any government department, and
- (b) relates to the making of appointments to public bodies.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I90 S. 62 in force at 28.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(2)**

Other functions

63 Commission to assist other bodies with appointments

(1) The Commission may enter into arrangements under subsection (2) with the board of governors of an NHS foundation trust.

(2) Arrangements under this subsection are arrangements providing for the Commission to assist the board in connection with the exercise of their powers relating to—

(a) the appointment of the chairman and non-executive directors under paragraph 17 of Schedule 1 to the 2003 Act; or

(b) the appointment of the initial chairman and the initial non-executive directors in accordance with paragraph 19 of that Schedule.

(3) The Commission may enter into arrangements under subsection (4) with—

(a) any Minister of the Crown exercising functions in relation to England, or

(b) any officer acting on behalf of such a Minister.

(4) Arrangements under this subsection are arrangements providing for the Commission to assist the Minister or officer in connection with the exercise by him of any power relating to—

(a) the appointment of the chairman of any body specified in the arrangements, or

(b) the appointment of non-executive members of such a body.

(5) For the purposes of subsections (3) and (4) it is immaterial that the body's functions are not exercisable only in relation to England.

(6) But arrangements may not be entered into under subsection (4) in relation to any powers that are exercisable by a Minister of the Crown jointly or concurrently with, or after consultation with—

(a) a devolved authority, or

(b) any other person who is not a Minister of the Crown.

(7) In this section—

(a) "arrangements" means arrangements, whether contractual or otherwise;

(b) references to assistance in connection with the exercise of any power of appointment do not include the making of any appointment.

Commencement Information

I91 S. 63 in force at 1.10.2006 by S.I. 2006/2603, **art. 4(5)(a)**

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

64 Functions connected with appointments to bodies to which section 58 or 60 applies

(1) The Commission may provide chairmen and non-executive members of relevant bodies with general advice on matters relating to recruitment, selection, appraisal, training or development and conditions of service (including remuneration).

(2) The Commission may provide persons appointed by it to be chairmen and non-executive members of relevant bodies with mentoring and other assistance in relation to the exercise of their functions.

(3) The Commission may provide chairmen and executive and non-executive members of relevant bodies with training in connection with their respective roles and responsibilities.

(4) Arrangements under section 63(2) or (4) may provide for the Commission to exercise functions corresponding to those in subsection (1), (2) or (3) above in relation to the persons in connection with whose appointments the Commission provides assistance under the arrangements.

(5) In this section "relevant body" means any body in relation to which a direction is in force under section 58 or 60.

Commencement Information

I92 S. 64 in force at 1.10.2006 by S.I. 2006/2603, **art. 4(5)(a)**

65 Prescribed functions

(1) Regulations may make provision for or in connection with conferring functions on the Commission in relation to appointments to applicable bodies and matters relating to such appointments.

(2) The functions which may be so conferred include—

(a) administering schemes relating to the payment, to chairmen and non-executive members of applicable bodies, of remuneration and allowances falling to be determined by the Secretary of State;

(b) publishing or otherwise making available information as to the terms and conditions applying to chairmen and non-executive members of applicable bodies, including information as to such remuneration and allowances;

(c) assisting the Secretary of State in connection with the implementation of decisions as to the payment of such remuneration to such persons;

(d) advising the Secretary of State in connection with the payment of such allowances to such persons;

(e) advising the Secretary of State generally on matters relating to appointments to applicable bodies.

(3) Nothing in subsection (2) is to be read as prejudicing the generality of subsection (1).

Commencement Information

I93 S. 65 partly in force; s. 65 in force for certain purposes at Royal Assent, see s. 83

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

I94 S. 65 in force at 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(4)(a)**

Functions: supplementary

66 Exercise of functions

(1) The Commission must exercise its functions—

(a) efficiently and cost-effectively, and

(b) in such a way as to ensure the maintenance of public confidence in the making of appointments to public bodies.

(2) In connection with the exercise of its functions the Commission may—

(a) engage in or commission research;

(b) obtain and analyse data and other information;

(c) make available to any body or person such persons, materials and facilities as it may determine;

(d) provide information, advice and guidance, whether generally or to such bodies or persons as it may determine.

(3) The information, advice and guidance which may be provided as mentioned in subsection (2)(d) includes—

(a) information relating to appointments to applicable bodies, and

(b) advice and guidance on matters relating to appointments to applicable bodies or the governance of such bodies.

(4) The Commission may do anything which it thinks is—

(a) appropriate for facilitating, or

(b) incidental or conducive to,

the exercise of its functions.

(5) The power under subsection (4) includes power—

(a) to enter into contracts;

(b) to acquire, and dispose of, land and other property;

(c) to form, or participate in the forming of, companies;

(d) to develop and make available for sale (otherwise than for profit) material for use in connection with appointments to applicable bodies;

(e) to provide accommodation.

(6) The power under subsection (4) is not restricted by subsection (2), but—

(a) so far as it relates to functions conferred on the Commission under section 61, is exercisable subject to directions given by the National Assembly for Wales;

(b) so far as it relates to any other functions of the Commission, is exercisable subject to directions given by the Secretary of State.

Commencement Information

I95 S. 66 in force at 1.10.2006 by S.I. 2006/2603, **art. 4(5)(a)**

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Reports etc.

67 Annual reports

(1) The Commission must prepare in respect of each financial year a report relating to its performance of its functions during that year.

(2) The report must in particular—
- (a) set out the practices adopted by the Commission during the year with a view to ensuring equal opportunities,
- (b) contain information about complaints made to the Commission during the year, and about how complaints made to the Commission were resolved during the year, and
- (c) deal with any such other matters as the Secretary of State may direct.

(3) The Commission must—
- (a) send the Secretary of State and the National Assembly for Wales copies of the report as soon as possible after the end of the year, and
- (b) publish the report in such manner as the Commission considers appropriate.

(4) The Secretary of State must lay before each House of Parliament a copy of every report sent to him under subsection (3).

Commencement Information
I96 S. 67 in force at 1.10.2006 by S.I. 2006/2603, **art. 4(5)(a)**

68 Other reports and information

(1) If requested to do so by—
- (a) the Secretary of State,
- (b) the Privy Council,
- (c) a government department, or
- (d) the Commissioner for Public Appointments,

the Commission must provide him or it with such a report or information relating to any aspect of the Commission's performance of its functions as is specified in the request.

(2) If requested to do so by the National Assembly for Wales, the Commission must provide it with such a report or information relating to any aspect of the Commission's performance of its functions under section 61 as is specified in the request.

(3) If requested to do so by a body to which this subsection applies, the Commission must provide the body with such a report or information relating to the Commission's performance of its functions in relation to the body as is specified in the request.

(4) Subsection (3) applies to any body in relation to which—
- (a) functions are exercisable by the Commission by virtue of a direction under section 58, 60 or 61, or
- (b) arrangements are in force under section 63.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I97 S. 68 in force at 1.10.2006 by S.I. 2006/2603, **art. 4(5)(a)**

Miscellaneous and supplementary

69 Transfer of staff and property etc.

Schedule 7 makes provision in relation to the transfer to the Appointments Commission of staff, property, rights and liabilities of the National Health Service Appointments Commission.

Commencement Information

I98 S. 69 in force at 1.10.2006 by S.I. 2006/2603, **art. 4(5)(a)**

70 Directions

(1) Any direction given by the Secretary of State, the Privy Council or the National Assembly for Wales under this Part—

(a) must be given in writing, and

(b) may be varied or revoked by a subsequent such direction.

(2) Where a function of the Secretary of State, the Privy Council or the Assembly is exercisable by the Commission by virtue of a direction under this Part, the direction does not preclude the Secretary of State, the Privy Council or the Assembly (as the case may be) from exercising the function.

[[F15](3) Section 272(7) and (8) of the 2006 Act, and section 203(9) and (10) of the National Health Service (Wales) Act 2006 (supplementary provisions about subordinate legislation) apply in relation to any power to give directions under this Part.**]**

Textual Amendments

F15 S. 70(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 285** (with Sch. 3 Pt. 1)

Commencement Information

I99 S. 70 in force at 28.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(2)**

71 Interpretation

(1) In this Part—

"applicable body" is to be read in accordance with subsections (4) and (5);

"appointment" is to be read in accordance with subsections (2) and (3);

"the Commission" means the Appointments Commission;

"devolved authority" is to be read in accordance with subsection (7);

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Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"financial year", in relation to the Commission, means—

(a) the period starting on the day the Commission is established and ending with the next 31st March, or

(b) any succeeding period of 12 months;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

"the National Health Service Appointments Commission" means the Special Health Authority known by that name;

"NHS trust" has the same meaning as in the **[**[F16]2006 Act**]**;

"non-executive members" is to be read in accordance with subsection (6);

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State.

(2) In this Part "appointment" includes—

(a) any process involving an appointment (whether described as re-appointment or replacement or otherwise) including a temporary appointment; and

(b) nomination for appointment;

and also includes removal or suspension from office.

(3) References in this Part to functions relating to the appointment of a person include functions relating to a person's tenure of office.

(4) In this Part "applicable body" means—

(a) any body in relation to which a direction may be given under section 58, 60 or 61, and

(b) (except in section 65(2)(a) and (b)) any NHS foundation trust and any body which falls within subsection (5).

(5) A body falls within this subsection if arrangements providing for the Commission to assist in the exercise of any power relating to appointment of the body's chairman, or any non-executive member of the body, may be entered into under section 63(4).

(6) In this Part "non-executive members"—

(a) in relation to a body whose members are known as directors, means non-executive directors, and

(b) in relation to a body in the case of which no distinction is made between executive and non-executive members, means members of the body (apart from the chairman).

(7) Each of the following is a "devolved authority" for the purposes of this Part—

(a) the Scottish Ministers,

(b) the National Assembly for Wales, and

(c) any Northern Ireland department.

Textual Amendments

F16 Words in s. 71 substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 286** (with Sch. 3 Pt. 1)

Commencement Information

I100 S. 71 in force for certain purposes at Royal Assent, see s. 83

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

I101 S. 71 in force at 28.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by S.I. 2006/2603, **art. 4(3)**

PART 6

MISCELLANEOUS

VALID FROM 28/04/2008

Social care bursary

72 Exercise by Special Health Authority of social care training functions

After section 67 of the Care Standards Act 2000 (c. 14) insert—

"67A Exercise by Special Health Authority of functions under s. 67(4)(a)

(1) The Secretary of State may direct a Special Health Authority to exercise such of his functions under section 67(4)(a) as may be specified in the directions.

(2) If the Secretary of State gives a direction under subsection (1), **[**[F17]the National Health Service Act 2006**]** shall have effect as if—

(a) the direction were a direction of the Secretary of State under **[**[F18]section 7**]** of that Act, and

(b) the functions were exercisable by the Special Health Authority under **[**[F18]section 7**]**.

(3) Directions under subsection (1)—

(a) shall be given by an instrument in writing, and

(b) may be varied or revoked by subsequent directions."

Textual Amendments

F17 Words in s. 72 substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 287(a)** (with Sch. 3 Pt. 1)

F18 Words in s. 72 substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 287(b)** (with Sch. 3 Pt. 1)

NHS costs recovery

73 NHS costs recovery

In section 153 of the 2003 Act (information contained in certificates relating to recovery of NHS charges in cases of injury requiring NHS services), for subsection (9) substitute—

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
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"(9) For the purposes of subsection (10), a claim made by or on behalf of an injured person is a qualifying claim if—

(a) it does not fall within subsection (3) or within any other description of claim specified in regulations, and

(b) it is settled, and the damages payable under the settlement are to be reduced to reflect the injured person's share in the responsibility for the injury in question."

Commencement Information

I102 S. 73 in force at 29.1.2007 for S. in so far as not already in force by S.S.I. 2007/9, **art. 2(a)**

I103 S. 73 in force at 29.1.2007 except in so far as it extends to S. by S.I. 2006/3125, **art. 4**

Transfer of criminal liabilities

F19 74 Transfer of criminal liabilities of certain NHS bodies

. . . . . .

Textual Amendments

F19 S. 74 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)

Local Health Boards and Welsh health authorities

75 Amendments relating to Local Health Boards and abolition of Welsh health authorities

(1) The Secretary of State or the Assembly may by order make such amendments of any enactment as he or it considers appropriate—

(a) in order to reflect the fact that (by virtue of relevant directions) transferred functions may be exercised by Local Health Boards, or

(b) otherwise in consequence of, or in connection with, the abolition of Welsh health authorities effected under section 27(5) of the Government of Wales Act 1998 (c. 38).

(2) Where a transferred function which became exercisable by a Local Health Board by virtue of relevant directions ceases to be so exercisable, the Secretary of State or the Assembly may by order—

(a) substitute for any reference to a Local Health Board in any enactment relating to the function a reference to the Assembly, and

(b) make such amendments of any enactment as he or it considers appropriate in consequence of any such substitution.

(3) No order may be made under subsection (1)(a) in relation to a transferred function on or after the date on which subsection (4) applies to the function.

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) This subsection applies to a transferred function on the date when either of the following comes into force in relation to the function—

(a) an order made under subsection (1)(b) which amends an enactment so as to provide for the function to be exercisable only by the Assembly, or

(b) an order made under subsection (2).

(5) In this section—

"amendments" includes repeals, revocations and modifications;

"the Assembly" means the National Assembly for Wales;

"relevant directions" means directions given in regulations made under section 16BB of the National Health Service Act 1977 (c. 49) **[**[F20]or section 12 of the National Health Service (Wales) Act 2006**]**;

"transferred function" means a function transferred to the Assembly by the Health Authorities (Transfer of Functions, Staff, Property, Rights and Liabilities and Abolition) (Wales) Order 2003 (S.I. 2003/813 (W. 98));

"Welsh health authority" means a Health Authority for an area in, or consisting of, Wales.

Textual Amendments

F20 Words in s. 75(5) inserted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 288** (with Sch. 3 Pt. 1)

PART 7

FINAL PROVISIONS

Offences

76 Offences by bodies corporate etc.

(1) If an offence committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) "officer", in relation to the body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) If an offence committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on his part,

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the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subsection (4) "partner" includes a person purporting to act as a partner.

(6) If an offence committed by an unincorporated association (other than a partnership) is proved—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In this section and section 77 "offence" means an offence under any provision of this Act.

Commencement Information

I104 S. 76 in force at 1.2.2007 for specified purposes for W. by S.I. 2007/204, **art. 3(c)**

I105 S. 76 in force at 2.4.2007 for specified purposes for W. by S.I. 2007/204, **art. 2(c)**

I106 S. 76 in force at 1.7.2007 for specified purposes for E. by S.I. 2007/1375, **art. 2(b)**

77 Offences committed by partnerships and other unincorporated associations

(1) Proceedings for an offence alleged to have been committed by a partnership shall be brought in the name of the partnership (and not in that of any of the partners).

(2) Proceedings for an offence alleged to have been committed by an unincorporated association (other than a partnership) shall be brought in the name of the association (and not in that of any of its members).

(3) Rules of court relating to the service of documents shall have effect as if the partnership or unincorporated association were a body corporate.

(4) In proceedings for an offence brought against a partnership or an unincorporated association, the following provisions apply as they apply in relation to a body corporate—

(a) section 33 of the Criminal Justice Act 1925 (c. 86) andSchedule 3 to the Magistrates' Courts Act 1980 (c. 43);

(b) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46);

(c) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

(5) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets.

(6) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.

(7) Subsections (1) and (2) are not to be read as prejudicing any liability of a partner, officer or member under section 76(4) or (6).

Status: *Point in time view as at 01/07/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I107 S. 77 in force at 1.2.2007 for specified purposes for W. by S.I. 2007/204, **art. 3(c)**

I108 S. 77 in force at 2.4.2007 for specified purposes for W. by S.I. 2007/204, **art. 2(c)**

I109 S. 77 in force at 1.7.2007 for specified purposes for E. by S.I. 2007/1375, **art. 2(b)**

78 Penalties for offences: transitional modification for England and Wales

(1) This section contains transitional modifications in respect of penalties for certain offences committed in England and Wales.

(2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' courts power to impose imprisonment), the references in **[**[F21]section 21(2)(b)**]** of this Act to periods of imprisonment of 12 months are to be read as references to periods of imprisonment of 6 months.

[F22](3) . . . . . .

Textual Amendments

F21 Words in s. 78(2) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 289** (with Sch. 3 Pt. 1)

F22 S. 78(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)

Commencement Information

I110 S. 78 in force at 1.2.2007 for specified purposes for W. by S.I. 2007/204, **art. 3(c)**

I111 S. 78 in force at 2.4.2007 for specified purposes for W. by S.I. 2007/204, **art. 2(c)**

General

79 Orders and regulations

(1) Subject to subsection (2), any power to make an order or regulations under this Act is exercisable by statutory instrument.

(2) Any power of the Department of Health, Social Services and Public Safety to make an order or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(3) Any power to make an order or regulations under this Act—

(a) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and

(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the authority making the order or regulations considers appropriate.

(4) No statutory instrument containing—

(a) regulations under section 3, 4, 5, 6(8), 7(6) or 8(7),

(b) an order under section 13,

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(c) regulations under section 17 which amend or repeal any provision of an Act or an Act of the Scottish Parliament,

(d) an order under section 45(7),

(e) an order under section 75 or 80(3) which amends or repeals any provision of an Act or an Act of the Scottish Parliament, or

(f) regulations under paragraph 5 or 8 of Schedule 1,

may be made by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(5) Otherwise, a statutory instrument containing any order or regulations made by the Secretary of State under this Act (other than an order under section 83) is to be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) No statutory instrument containing an order under section 80(4) which amends or repeals any provision of an Act or an Act of the Scottish Parliament may be made by the Scottish Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

(7) Otherwise, a statutory instrument containing an order under section 80(4) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(8) A statutory rule containing regulations made by the Department of Health, Social Services and Public Safety under section 17 which amend or repeal any provision of an Act is to be subject to affirmative resolution within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

(9) Otherwise, a statutory rule containing regulations made by the Department of Health, Social Services and Public Safety under Chapter 1 of Part 3 is to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

80 Amendments, repeals and revocations

(1) Schedule 8 contains minor and consequential amendments.

(2) Schedule 9 makes provision for the repeal and revocation of enactments (including enactments which are spent).

(3) The Secretary of State may by order make—

(a) such supplementary, incidental or consequential provision, or

(b) such transitory, transitional or saving provision,

as he considers appropriate for the general purposes, or any particular purposes, of this Act or in consequence of, or for giving full effect to, any provision made by this Act.

(4) The Scottish Ministers may by order make—

(a) such supplementary, incidental or consequential provision, or

(b) such transitory, transitional or saving provision,

as they consider appropriate for the general purposes, or any particular purposes, of the provisions specified in subsection (5) or in consequence of, or for giving full effect to, any of those provisions.

(5) Those provisions are—

(a) section 36(2),

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(b) so far as extending to Scotland, section 73 and paragraph 55 of Schedule 8.

(6) An order under subsection (4) may not include any provision which would be outside the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

(7) An order under subsection (3) may not include any provision which it would be competent for the Scottish Ministers to make in an order under subsection (4).

(8) An order under subsection (3) or (4) may amend, repeal, revoke or otherwise modify any enactment.

Modifications etc. (not altering text)

C3 S. 80 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 1(6)(f)** (with Sch. 3 Pt. 1)

Commencement Information

I112 S. 80(1) in force at Royal Assent for specified purposes and s. 80(3)-(8) in force at Royal Assent, see s. 83

I113 S. 80(1) in force at 1.10.2006 for specified purposes except so far as relating to Welsh NHS bodies by S.I. 2006/2603, **art. 5(b)**

I114 S. 80(1) in force at 1.10.2006 for specified purposes by S.I. 2006/2603, **art. 4(5)(d)**

I115 S. 80(1) in force at 29.1.2007 for specified purposes for S. by S.S.I. 2007/9, **art. 2(c)**

I116 S. 80(1) in force at 1.2.2007 for specified purposes for W. by S.I. 2007/204, **art. 4(b)**

I117 S. 80(2) in force at 1.10.2006 for specified purposes by S.I. 2006/2603, art. 4(5)(e), **Sch.**

I118 S. 80(2) in force at 1.10.2006 for specified purposes except so far as relating to Welsh NHS bodies by S.I. 2006/2603, **art. 5(d)**

I119 S. 80(2) in force at 1.2.2007 for specified purposes for W. by S.I. 2007/204, **art. 4(d)**

81 Expenses

There shall be paid out of money provided by Parliament—

(a) any expenditure incurred by the Secretary of State by virtue of this Act;

(b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

82 Interpretation

(1) In this Act—

[F23]…

"the 2003 Act" means the Health and Social Care (Community Health and Standards) Act 2003 (c. 43);

[[F24]"the 2006 Act" means the National Health Service Act 2006**]**

"the appropriate national authority" means—

(a) in relation to England, the Secretary of State, and

(b) in relation to Wales, the National Assembly for Wales;

"the health service"—

(a) in relation to England and Wales, has the same meaning as in **[**[F25]the 2006 Act**]**,

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(b) in relation to Scotland, has the same meaning as in the National Health Service (Scotland) Act 1978 (c. 29), and

(c) in relation to Northern Ireland, means health services within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).

(2) In this Act "enactment" includes—

(a) any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), and

(b) (in sections 17(5)(f) and 80(8)) any provision made by or under an Act of the Scottish Parliament or Northern Ireland legislation,

and references to enactments include enactments passed or made after the passing of this Act.

(3) Subsection (2) applies except where the context otherwise requires.

Textual Amendments

F23 Words in s. 82(1) omitted (1.3.2007) by virtue of National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 290(a)** (with Sch. 3 Pt. 1)

F24 Words in s. 82(1) inserted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 290(b)** (with Sch. 3 Pt. 1)

F25 Words in s. 82(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 290(c)** (with Sch. 3 Pt. 1)

83 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

(a) sections 74 and 75,

(b) sections 79, 80(3) to (8), 81 and 82, this section and section 84,

(c) paragraphs 36, 53 and 54 of Schedule 8,

(d) section 80(1) so far as relating to those paragraphs, and

(e) (except for section 36(2)) any other provision of this Act so far as it—

(i) confers power to make an order or regulations, or

(ii) defines any expression relevant to the exercise of any such power.

Subsections (2)(b) and (3) to (6) have effect subject to paragraph (e).

(2) The following provisions come into force on such day as the Scottish Ministers may by order appoint—

(a) section 36(2), and

(b) so far as extending to Scotland—

(i) section 73,

(ii) paragraph 55 of Schedule 8, and

(iii) section 80(1) so far as relating to that paragraph.

(3) Part 5 comes into force on such day as the Secretary of State, after consulting the National Assembly for Wales, may by order appoint.

(4) The following provisions come into force in relation to Wales on such day as the National Assembly for Wales may by order appoint—

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(a) Chapter 1 of Part 1 and sections 76 and 77 so far as relating to offences under that Chapter, and

(b) paragraph 24(a) of Schedule 8 and section 80(1) so far as relating to that paragraph.

(5) The following provisions come into force on such day as the National Assembly for Wales may by order appoint—

(a) Chapter 1 of Part 3 and sections 76 to 78 so far as relating to the Assembly's functions under that Chapter (see section 24) or to offences committed in relation to those functions,

(b) Chapter 1 of Part 4 so far as relating to the Assembly's functions under sections 42 and 42B of the 1977 Act,

(c) Chapter 3 of Part 4 and sections 76 to 78 so far as relating to the Assembly's counter fraud functions in relation to the health service in Wales (see section 44) or to offences committed in relation to those functions,

(d) section 56, Schedule 3 and paragraph 44 of Schedule 8 so far as relating to Welsh NHS bodies,

(e) paragraphs 43 and 62 of Schedule 8,

(f) so far as relating to Welsh NHS bodies, any provision of Schedule 9 which repeals or revokes an enactment amending or repealing section 98 of the 1977 Act, and

(g) section 80(1) and (2) so far as relating to the provisions in paragraphs (d), (e) and (f).

In this subsection "Welsh NHS body" has the meaning given by paragraph 2 of the Schedule 12B inserted by Schedule 3.

(6) The following provisions come into force on such day as the Department of Health, Social Services and Public Safety may by order appoint—

(a) Chapter 1 of Part 3 so far as relating to the functions of the Department of Health, Social Services and Public Safety under that Chapter (see section 24), and

(b) sections 76 and 77 so far as relating to offences committed in relation to those functions.

(7) Otherwise, this Act comes into force on such day as the Secretary of State may by order appoint.

(8) Different days may be appointed for different provisions, different purposes or different areas.

84 Short title and extent

(1) This Act may be cited as the Health Act 2006.

(2) Subject to subsections (3) and (4), this Act extends to England and Wales only.

(3) The following provisions extend also to Scotland and Northern Ireland—

(a) Chapter 1 of Part 3,

(b) Part 5, and

(c) sections 75, 76, 77, 79 to 83 and this section.

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(4) Any amendment, repeal or revocation made by this Act has the same extent as the enactment to which it relates.

Status:
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Changes to legislation:
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