National Health Service Act 2006

2006 CHAPTER 41

An Act to consolidate certain enactments relating to the health service. [8th November 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), Sch. 2 para. 1, **3** (with Sch. 3 Pt. 1)

C2 Act applied (with modifications) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 6 para. 8(6)**; S.I. 2012/1831, art. 2(2)

Commencement Information

I1 Act in force at 1.3.2007 subject to provisions of s. 277

PART 1

PROMOTION AND PROVISION OF THE HEALTH SERVICE IN ENGLAND

The Secretary of State and the health service in England

1 Secretary of State's duty to promote health service

(1) The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement—

(a) in the physical and mental health of the people of England, and

(b) in the prevention, diagnosis and treatment of illness.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Secretary of State must for that purpose provide or secure the provision of services in accordance with this Act.

(3) The services so provided must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.

[F1 1G Secretary of State's duty as to reporting on and reviewing treatment of providers

(1) The Secretary of State must, within one year of the passing of the Health and Social Care Act 2012, lay a report before Parliament on the treatment of NHS health care providers as respects any matter, including taxation, which might affect their ability to provide health care services for the purposes of the NHS or the reward available to them for doing so.

(2) The report must include recommendations as to how any differences in the treatment of NHS health care providers identified in the report could be addressed.

(3) The Secretary of State must keep under review the treatment of NHS health care providers as respects any such matter as is mentioned in subsection (1).

(4) In this section—
- (a) "NHS health care providers" means persons providing or intending to provide health care services for the purposes of the NHS, and
- (b) "health care services for the purposes of the NHS" has the same meaning as in Part 3 of the Health and Social Care Act 2012.**]**

Textual Amendments

F1 S. 1G inserted (1.6.2012) by Health and Social Care Act 2012 (c. 7), **ss. 8**, 306(4); S.I. 2012/1319, art. 2(2)

General power to provide services

2 Secretary of State's general power

(1) The Secretary of State may—
- (a) provide such services as he considers appropriate for the purpose of discharging any duty imposed on him by this Act, and
- (b) do anything else which is calculated to facilitate, or is conducive or incidental to, the discharge of such a duty.

(2) Subsection (1) does not affect—
- (a) the Secretary of State's powers apart from this section,
- (b) Chapter 1 of Part 7 (pharmaceutical services).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[F2 Provision of particular services][F2 Arrangements for the provision of certain health services]

Textual Amendments

F2 S. 3 cross-heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 13(7)**, 306(1)(d)(4)

3 [F3 Secretary of State's duty as to provision of certain services][F3 Duties of clinical commissioning groups as to commissioning certain health services]

(1) The Secretary of State must provide throughout England, to such extent as he considers necessary to meet all reasonable requirements—

(a) hospital accommodation,

(b) other accommodation for the purpose of any service provided under this Act,

(c) medical, dental, ophthalmic, nursing and ambulance services,

(d) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children as he considers are appropriate as part of the health service,

(e) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service,

(f) such other services or facilities as are required for the diagnosis and treatment of illness.

[F4 (1A) For the purposes of this section, a clinical commissioning group has responsibility for—

(a) persons who are provided with primary medical services by a member of the group, and

(b) persons who usually reside in the group's area and are not provided with primary medical services by a member of any clinical commissioning group.

(1B) Regulations may provide that for the purposes of this section a clinical commissioning group also has responsibility (whether generally or in relation to a prescribed service or facility) for persons who—

(a) were provided with primary medical services by a person who is or was a member of the group, or

(b) have a prescribed connection with the group's area.

(1C) The power conferred by subsection (1B)(b) must be exercised so as to provide that, in relation to the provision of services or facilities for emergency care, a clinical commissioning group has responsibility for every person present in its area.

(1D) Regulations may provide that subsection (1A) does not apply—

(a) in relation to persons of a prescribed description (which may include a description framed by reference to the primary medical services with which the persons are provided);

(b) in prescribed circumstances.

(1E) The duty in subsection (1) does not apply in relation to a service or facility if the Board has a duty to arrange for its provision.]

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[[F5](1F) In exercising its functions under this section and section 3A, a clinical commissioning group must act consistently with—

(a) the discharge by the Secretary of State and the Board of their duty under section 1(1) (duty to promote a comprehensive health service), and

(b) the objectives and requirements for the time being specified in the mandate published under section 13A.**]**

(2) **[**[F6]For the purposes of the duty in subsection (1), services provided under—

(a) section 83(2) (primary medical services), section 99(2) (primary dental services) or section 115(4) (primary ophthalmic services), or

(b) a general medical services contract, a general dental services contract or a general ophthalmic services contract,

must be regarded as provided by the Secretary of State.**]**

(3) **[**[F6]This section does not affect Chapter 1 of Part 7 (pharmaceutical services).**]**

Textual Amendments

F3 S. 3 heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 13(6)**, 306(1)(d)(4)

F4 S. 3(1A)-(1E) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 13(3)**, 306(1)(d)(4)

F5 S. 3(1F) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 13(4)**, 306(1)(d)(4)

F6 S. 3(2)(3) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 13(5)**, 306(1)(d)(4)

[[F7]3B Secretary of State's power to require Board to commission services

(1) Regulations may require the Board to arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of—

(a) dental services of a prescribed description;

(b) services or facilities for members of the armed forces or their families;

(c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;

(d) such other services or facilities as may be prescribed.

(2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for the Board (rather than clinical commissioning groups) to arrange for its provision as part of the health service.

(3) In deciding whether it would be so appropriate, the Secretary of State must have regard to—

(a) the number of individuals who require the provision of the service or facility;

(b) the cost of providing the service or facility;

(c) the number of persons able to provide the service or facility;

(d) the financial implications for clinical commissioning groups if they were required to arrange for the provision of the service or facility.

(4) Before deciding whether to make regulations under this section, the Secretary of State must—

(a) obtain advice appropriate for that purpose, and
(b) consult the Board.

(5) The reference in subsection (1)(b) to members of the armed forces is a reference to persons who are members of—
(a) the regular forces within the meaning of the Armed Forces Act 2006, or
(b) the reserve forces within the meaning of that Act.**]**

Textual Amendments

F7 S. 3B inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 15**, 306(1)(d)(4)

4 High security psychiatric services

(1) **[**[F8]The Secretary of State's duty under section 1 includes a duty to provide**]**[F8]The Board must arrange for the provision of**]** hospital accommodation and services for persons who—
(a) are liable to be detained under the Mental Health Act 1983 (c. 20), and
(b) in the opinion of the Secretary of State require treatment under conditions of high security on account of their dangerous, violent or criminal propensities.

(2) The hospital accommodation and services mentioned in subsection (1) are referred to in this section and paragraph 15 of Schedule 4 (NHS trusts) as "high security psychiatric services".

(3) High security psychiatric services may be provided **[**[F9]—
(a)**]** only at hospital premises at which services are provided only for the persons mentioned in subsection (1)**[**[F10], and
(b) only by a person approved by the Secretary of State for the purposes of this subsection.**]**

[[F11](3A) The Secretary of State may—
(a) give directions to a person who provides high security psychiatric services about the provision by that person of those services;
(b) give directions to the Board about the exercise of its functions in relation to high security psychiatric services.**]**

(4) "Hospital premises" means—
(a) a hospital, or
(b) any part of a hospital which is treated as a separate unit.

Textual Amendments

F8 Words in s. 4(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 16(2)**, 306(1)(d)(4)

F9 Words in s. 4(3) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 16(3)(a)**, 306(1)(d)(4)

F10 S. 4(3)(b) and preceding word inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 16(3)(b)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F11 S. 4(3A) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 16(4)**, 306(1)(d)(4)

5 Other services

Schedule 1 makes further provision about the Secretary of State and services under this Act.

Provision of services otherwise than in England

6 Performance of functions outside England

(1) The Secretary of State may provide or secure the provision of anything mentioned in section 3(1) outside England.

(2) The Secretary of State's functions may be performed outside England and Wales, in so far as they relate to—

(a) holidays for patients,

(b) the transfer of patients to or from Scotland, Northern Ireland, the Isle of Man or the Channel Islands, or

(c) the return of patients who have received treatment in England and Wales, to countries or territories outside the British Islands (including for this purpose the Republic of Ireland).

[[F12]6A. Reimbursement of cost of services provided in another EEA state

(1) The Secretary of State must, on an application made by any person, reimburse to that person the amount of any qualifying EEA expenditure incurred by that person on or after 23 August 2010, but this is subject to subsections (5) and (6), to any limit applicable under subsection (8) and to any deduction applicable under subsection (9).

(2) For the purpose of this section, "qualifying EEA expenditure" is expenditure incurred on the provision by an authorised provider, in an EEA state other than the United Kingdom, to a person ordinarily resident in England ("the patient") of a service as respects which condition A or condition B is met.

(3) Condition A is that the service—

(a) was necessary to treat or diagnose a medical condition of the patient,

(b) is the same as or equivalent to a service that the Secretary of State or a responsible authority would make or have made available to the patient under this Act in the circumstances of the patient's case, and

(c) is not a special service.

(4) Condition B is that before the service was provided the Secretary of State had given authorisation under section 6B for the provision of the service to the patient.

(5) The duty in subsection (1) does not apply where the applicant incurred the qualifying expenditure in connection with an arrangement which was entered into by the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 apply.

(7) Subsections (8) and (9) apply where the service is the same as or equivalent to a service that the Secretary of State or a responsible authority would have made available to the patient under this Act in the circumstances of the patient's case.

(8) The Secretary of State may limit the amount of any reimbursement under this section—
  (a) in relation to a service other than a dental service, to the cost that the Secretary of State or a responsible authority would have incurred if the same or an equivalent service had been made available by either of them, and
  (b) in relation to a dental service, to the average cost that the Secretary of State or a responsible authority would have incurred if the same or an equivalent service had been made available by either of them.

(9) The Secretary of State may deduct from any reimbursement under this section the amount of any NHS charge which would have been payable for the same service or an equivalent service if the service had been made available by the Secretary of State or a responsible authority; and in determining for this purpose the amount of any NHS charge regard shall be had to any entitlement the patient would have had—
  (a) to any payment or contribution by virtue of regulations made under section 180(1) or (3), or
  (b) to any remission or repayment by virtue of regulations made under section 182.

(10) The Secretary of State may determine—
  (a) the form in which an application under this section must be made, and
  (b) the information to be provided in support of the application.

(11) In this section and section 6B—

"authorised provider", in relation to any service provided in an EEA state other than the United Kingdom, means a person who is lawfully providing that service;

"NHS charge" means a charge payable under regulations made under section 172(1), 176(1) or 179(1);

"responsible authority" means, in relation to a patient, a Strategic Health Authority or Primary Care Trust responsible under or by virtue of this Act for providing or securing the provision of services for the benefit of the patient;

"special service" means—
  (a) a service that involves a stay in hospital accommodation for at least one night,
  (b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation,
  (c) dental treatment that involves general anaesthesia or intravenously administered sedation, or
  (d) a service whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment;

"service" includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F12 Ss. 6A, 6B inserted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **2**

6B. Prior authorisation for the purposes of section 6A

(1) A person may apply to the Secretary of State under this section for prior authorisation for the purposes of section 6A in relation to the provision of a service ("the requested service") to a person ordinarily resident in England ("the patient").

(2) The requested service must be—
- (a) a special service, or
- (b) a service that is neither the same as nor equivalent to a service that the Secretary of State or a responsible authority would make available to the patient under this Act in the circumstances of the patient's case.

(3) The Secretary of State may determine—
- (a) the form in which an application under this section must be made, and
- (b) the information to be provided in support of the application.

(4) The Secretary of State—
- (a) must authorise the provision of the requested service if it is a special service and the conditions in subsection (5) are met, and
- (b) may authorise the provision of the requested service in any other case where the requested service is necessary to treat or diagnose a medical condition of the patient.

(5) The conditions referred to in subsection (4)(a) are—
- (a) that the requested service is necessary to treat or diagnose a medical condition of the patient,
- (b) that the requested service is the same as or equivalent to a service that the Secretary of State or a responsible authority would make available to the patient in the circumstances of the patient's case, and
- (c) that the Secretary or State or a responsible authority cannot provide to the patient a service that is the same as or equivalent to the requested service within a period of time that is acceptable on the basis of medical evidence as to the patient's clinical needs, taking into account the patient's state of health at the time the decision under this section is made and the probable course of the medical condition to which the service relates.

(6) The matters to which the Secretary of State is to have regard in determining for the purpose of subsection (5)(c) whether the length of any delay is acceptable include—
- (a) the patient's medical history,
- (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate,
- (c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks, and
- (d) the extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(7) Any authorisation under this section must be in writing.**]**

Textual Amendments

F12 Ss. 6A, 6B inserted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **2**

[F13 Regulations as to the exercise of functions

Textual Amendments

F13 S. 6C and cross-heading inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 18(1)**, 306(1)(d)(4)

6C Regulations as to the exercise by local authorities of certain public health functions

(1) Regulations may require a local authority to exercise any of the public health functions of the Secretary of State (so far as relating to the health of the public in the authority's area) by taking such steps as may be prescribed.

(2) Regulations may require a local authority to exercise its public health functions by taking such steps as may be prescribed.

(3) Where regulations under subsection (1) require a local authority to exercise any of the public health functions of the Secretary of State, the regulations may also authorise or require the local authority to exercise any prescribed functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).

(4) The making of regulations under subsection (1) does not prevent the Secretary of State from taking any step that a local authority is required to take under the regulations.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a local authority of any of its functions under regulations under subsection (1) are enforceable by or against the local authority (and no other person).

(6) In this section, "local authority" has the same meaning as in section 2B.**]**

[F14 6D Regulations relating to EU obligations

(1) Regulations may require the Board or a clinical commissioning group to exercise a specified EU health function.

(2) In subsection (1)—

(a) "EU health function" means any function exercisable by the Secretary of State for the purpose of implementing EU obligations that concern, or are connected to, the health service, other than a function of making subordinate legislation (within the meaning of the Interpretation Act 1978), and

(b) "specified" means specified in the regulations.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The Secretary of State may give directions to the Board or a clinical commissioning group about its exercise of any of its functions under regulations under subsection (1).

(4) The making of regulations under subsection (1) does not prevent the Secretary of State from exercising the specified EU health function.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board or a clinical commissioning group of any of its functions under regulations under subsection (1) are enforceable by or against the Board or (as the case may be) the group (and no other person).

(6) The Secretary of State may, for the purpose of securing compliance by the United Kingdom with EU obligations, give directions to the Board or a clinical commissioning group about the exercise of any of its functions.**]**

Textual Amendments

F14 S. 6D inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 19**, 306(1)(d)(4)

[F15 6E Regulations as to the exercise of functions by the Board or clinical commissioning groups

(1) Regulations may impose requirements (to be known as "standing rules") in accordance with this section on the Board or on clinical commissioning groups.

(2) The regulations may, in relation to the commissioning functions of the Board or clinical commissioning groups, make provision—

(a) requiring the Board or clinical commissioning groups to arrange for specified treatments or other specified services to be provided or to be provided in a specified manner or within a specified period;

(b) as to the arrangements that the Board or clinical commissioning groups must make for the purpose of making decisions as to—

(i) the treatments or other services that are to be provided;

(ii) the manner in which or period within which specified treatments or other specified services are to be provided;

(iii) the persons to whom specified treatments or other specified services are to be provided;

(c) as to the arrangements that the Board or clinical commissioning groups must make for enabling persons to whom specified treatments or other specified services are to be provided to make choices with respect to specified aspects of them.

(3) Regulations by virtue of paragraph (b) of subsection (2) may, in particular, make provision—

(a) requiring the Board or a clinical commissioning group to take specified steps before making decisions as to the matters mentioned in that paragraph;

(b) as to reviews of, or appeals from, such decisions.

(4) The regulations may—

(a) specify matters for which provision must be made in commissioning contracts entered into by the Board or clinical commissioning groups;

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) require the Board to draft terms and conditions making provision for those matters;

(c) require the Board or clinical commissioning groups to incorporate the terms and conditions drafted by virtue of paragraph (b) in commissioning contracts entered into by the Board or (as the case may be) clinical commissioning groups.

(5) The regulations must—

(a) require the Board to draft such terms and conditions as the Board considers are, or might be, appropriate for inclusion in commissioning contracts entered into by the Board or clinical commissioning groups (other than terms and conditions that the Board is required to draft by virtue of subsection (4)(a));

(b) authorise the Board to require clinical commissioning groups to incorporate terms and conditions prepared by virtue of paragraph (a) in their commissioning contracts;

(c) authorise the Board to draft model commissioning contracts.

(6) The regulations may require the Board to consult prescribed persons before exercising any of its functions by virtue of subsection (4)(b) or (5).

(7) The regulations may require the Board or clinical commissioning groups in the exercise of any of its or their functions—

(a) to provide information of a specified description to specified persons in a specified manner;

(b) to act in a specified manner for the purpose of securing compliance with EU obligations;

(c) to do such other things as the Secretary of State considers necessary for the purposes of the health service.

(8) The regulations may not impose a requirement on only one clinical commissioning group.

(9) If regulations under this section are made so as to come into force on a day other than 1 April, the Secretary of State must—

(a) publish a statement explaining the reasons for making the regulations so as to come into force on such a day, and

(b) lay the statement before Parliament.

(10) In this section—

(a) "commissioning contracts", in relation to the Board or clinical commissioning groups, means contracts entered into by the Board or (as the case may be) clinical commissioning groups in the exercise of its or their commissioning functions;

(b) "commissioning functions", in relation to the Board or clinical commissioning groups, means the functions of the Board or (as the case may be) clinical commissioning groups in arranging for the provision of services as part of the health service;

(c) "specified" means specified in the regulations.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F15 S. 6E inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 20(1)**, 306(1)(d)(4)

[F16 Distribution of health service functions][F16 Functions of Special Health Authorities]

Textual Amendments

F16 S. 7 cross-heading and heading substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(4)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

7 [F16 Distribution of health service functions][F16 Functions of Special Health Authorities]

[F17 (1) The Secretary of State may direct a Special Health Authority to exercise any functions of the Secretary of State or any other person which relate to the health service in England and are specified in the direction.

(1A) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(1B) Before exercising the power in subsection (1) in relation to a function of a person other than the Secretary of State, the Secretary of State must consult that person.

(1C) Regulations may provide that a Special Health Authority specified in the regulations is to have such additional functions in relation to the health service in England as may be so specified.**]**

(2) **[F18** The Secretary of State may direct a Special Health Authority to exercise any functions of a Strategic Health Authority or a Primary Care Trust which are specified in the directions.**]**

(3) **[F18** The functions which may be specified in directions include functions under enactments relating to mental health and care homes.**]**

Textual Amendments

F17 S. 7(1)-(1C) substituted for s. 7(1) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F18 S. 7(2)(3) omitted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 21(3)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

8 Secretary of State's directions to health service bodies

(1) The Secretary of State may give directions to any of the bodies mentioned in subsection (2) about its exercise of any functions.

(2) The bodies are—

(a) Strategic Health Authorities,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Primary Care Trusts,
(c) NHS trusts, and
(d) Special Health Authorities.

(3) Nothing in provision made by or under this or any other Act affects the generality of subsection (1).

NHS contracts

9 NHS contracts

(1) In this Act, an NHS contract is an arrangement under which one health service body ("the commissioner") arranges for the provision to it by another health service body ("the provider") of goods or services which it reasonably requires for the purposes of its functions.

(2) Section 139(6) (NHS contracts and the provision of local pharmaceutical services under pilot schemes) makes further provision about acting as commissioner for the purposes of subsection (1).

(3) Paragraph 15 of Schedule 4 (NHS trusts and NHS contracts) makes further provision about an NHS trust acting as provider for the purposes of subsection (1).

(4) "Health service body" means any of the following—
(a) a Strategic Health Authority,
(b) a Primary Care Trust,
(c) an NHS trust,
(d) a Special Health Authority,
(e) a Local Health Board,
(f) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
(g) a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),
(h) the Common Services Agency for the Scottish Health Service,
(i) the Wales Centre for Health,
(j) the Health Protection Agency,
[[F19](k) the Care Quality Commission,**]**
(l) the Scottish Dental Practice Board,
(m) the Secretary of State,
(n) the Welsh Ministers,
(o) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972,
(p) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),
(q) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),
(r) the Department of Health, Social Services and Public Safety.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Whether or not an arrangement which constitutes an NHS contract would apart from this subsection be a contract in law, it must not be regarded for any purpose as giving rise to contractual rights or liabilities.

(6) But if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under this section.

(7) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—

(a) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement, or

(b) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,

that health service body may refer the terms of the proposed arrangement to the Secretary of State for determination under this section.

(8) Where a reference is made to the Secretary of State under subsection (6) or (7), he may determine the matter himself or appoint a person to consider and determine it in accordance with regulations.

(9) "The appropriate person" means the Secretary of State or the person appointed under subsection (8).

(10) By the determination of a reference under subsection (7) the appropriate person may specify terms to be included in the proposed arrangement and may direct that it be proceeded with.

(11) A determination of a reference under subsection (6) may contain such directions (including directions as to payment) as the appropriate person considers appropriate to resolve the matter in dispute.

(12) The appropriate person may by the determination in relation to an NHS contract vary the terms of the arrangement or bring it to an end (but this does not affect the generality of the power of determination under subsection (6)).

(13) Where an arrangement is so varied or brought to an end—

(a) subject to paragraph (b), the variation or termination must be treated as being effected by agreement between the parties, and

(b) the directions included in the determination by virtue of subsection (11) may contain such provisions as the appropriate person considers appropriate in order to give effect to the variation or to bring the arrangement to an end.

Textual Amendments

F19 S. 9(4)(k) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 82**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Modifications etc. (not altering text)

C3 S. 9(4) modified (temp.) (1.10.2008) by Health and Social Care Act 2008 (Consequential Amendments and Transitory Provisions) Order 2008 (S.I. 2008/2250), arts. 1(1), **3(14)**

10 Provision for bodies in Northern Ireland

(1) Subsection (2) applies where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) or a body mentioned in paragraph (o), (p), (q) or (r) of section 9(4) is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in section 9(1), and

(b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)).

(2) Subsections (5) to (13) of section 9 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health, Social Services and Public Safety acting jointly.

11 Arrangements to be treated as NHS contracts

(1) This section applies to any arrangement under which a Strategic Health Authority, a Primary Care Trust or such other health service body as may be prescribed arrange for the provision to it—

(a) by a contractor under a general ophthalmic services contract,

(b) by a person on an ophthalmic list,

(c) by a person on a pharmaceutical list, or

(d) by a person who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978 (c. 29),

of the goods or services mentioned in subsection (2).

(2) The goods or services are those that the body reasonably requires for the purposes of its functions, other than functions under—

(a) section 115 (primary ophthalmic services),

(b) Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes), or

(c) Part 6 of, or Chapter 1 or 2 of Part 7 of, the National Health Service (Wales) Act 2006 (c. 42) (general ophthalmic services and pharmaceutical services and local pharmaceutical services under pilot schemes).

(3) Any such arrangement must be treated as an NHS contract for the purposes of section 9 (other than subsections (7) and (10)).

(4) "Health service body" means a body which is a health service body for the purposes of section 9.

(5) "Ophthalmic list" means a list published in accordance with regulations made under—

(a) section 72(1)(a) of the National Health Service (Wales) Act 2006,

(b) section 26(2)(a) of the National Health Service (Scotland) Act 1978, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Article 62(2)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

(6) The reference to a list published in accordance with regulations made under paragraph (a) of section 26(2) of the National Health Service (Scotland) Act 1978 is a reference to the first part of the list (referred to in sub-paragraph (i) of that paragraph) which is published in accordance with regulations under that paragraph.

(7) "Pharmaceutical list" includes a list published in accordance with regulations made under—

(a) section 83(2)(a) of the National Health Service (Wales) Act 2006, or

(b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

Modifications etc. (not altering text)

C4 S. 11 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), Sch. 3 paras. 2, **3** (with Sch. 3 Pt. 1)

Provision of services otherwise than by the Secretary of State

12 Secretary of State's arrangements with other bodies

(1) The Secretary of State may arrange with any person or body to provide, or assist in providing, any service under this Act.

(2) Arrangements may be made under subsection (1) with voluntary organisations.

(3) The Secretary of State may make available any facilities provided by him for any service under this Act—

(a) to any person or body carrying out any arrangements under subsection (1), or

(b) to any voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968 (c. 46).

(4) Where facilities are made available under subsection (3), the Secretary of State may make available the services of any person employed in connection with the facilities by—

(a) the Secretary of State,

(b) a Strategic Health Authority,

(c) a Primary Care Trust,

(d) a Special Health Authority, or

(e) a Local Health Board.

(5) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Secretary of State.

(6) Goods or materials may be made available either temporarily or permanently.

(7) Any power to supply goods or materials under this section includes—

(a) a power to purchase and store them, and

(b) a power to arrange with third parties for the supply of goods or materials by those third parties.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[F20 Direct payments for health care

Textual Amendments

F20 Ss. 12A-12D and cross-heading inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 11**, 40(1); S.I. 2010/30, art. 2(b)

12A Direct payments for health care

(1) The Secretary of State may, for the purpose of securing the provision to a patient of anything to which this subsection applies, make payments, with the patient's consent, to the patient or to a person nominated by the patient.

(2) Subsection (1) applies to—

(a) anything that the Secretary of State may or must provide under section 2(1) or 3(1);

(b) anything for which the Secretary of State must arrange under paragraph 8 of Schedule 1;

(c) vehicles that the Secretary of State may provide under paragraph 9 of that Schedule.

(3) Subsection (1) is subject to any provision made by regulations under section 12B.

(4) If regulations so provide, a Primary Care Trust may, for the purpose of securing the provision for a patient of services that the trust must provide under section 117 of the Mental Health Act 1983 (after-care), make payments, with the patient's consent, to the patient or to a person nominated by the patient.

(5) A payment under subsection (1) or under regulations under subsection (4) is referred to in this Part as a “direct payment”.

(6) A direct payment may be made only in accordance with a pilot scheme under regulations made by virtue of section 12C.

12B Regulations about direct payments

(1) The Secretary of State may make regulations about direct payments.

(2) The regulations may in particular make provision—

(a) as to circumstances in which, and descriptions of persons and services in respect of which, direct payments may or must be made;

(b) as to circumstances in which direct payments may or must be made to a person nominated by the patient;

(c) as to the making of direct payments (and, in particular, as to persons to whom payments may or must be made) where the patient lacks capacity to consent to the making of the payments;

(d) as to conditions that the Secretary of State or the Primary Care Trust must comply with before, after or at the time of making a direct payment;

(e) as to conditions that the patient or (if different) the payee may or must be required to comply with before, after, or at the time when a direct payment is made;

(f) as to the amount of any direct payment or how it is to be calculated;

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(g) as to circumstances in which the Secretary of State or the Primary Care Trust may or must stop making direct payments;

(h) as to circumstances in which the Secretary of State or the Primary Care Trust may or must require all or part of a direct payment to be repaid, by the payee or otherwise;

(i) as to monitoring of the making of direct payments, of their use by the payee, or of services which they are used to secure;

(j) as to arrangements to be made by the Secretary of State or the Primary Care Trust for providing patients, payees or their representatives with information, advice or other support in connection with direct payments;

(k) for such support to be treated to any prescribed extent as a service in respect of which direct payments may be made.

(3) If the regulations make provision in the case of a person who lacks capacity to consent to direct payments being made, they may apply that provision, or make corresponding provision, with or without modifications, in the case of a person who has lacked that capacity but no longer does so (whether because of fluctuating capacity, or regaining or gaining capacity).

(4) The regulations may provide for a sum which must be repaid to the Secretary of State or the Primary Care Trust by virtue of a condition or other requirement imposed by or under the regulations to be recoverable as a debt due to the Secretary of State or the Primary Care Trust.

(5) The regulations may make provision—

(a) for a service in respect of which a direct payment has been made under section 12A(1) to be regarded, only to such extent and subject to such conditions as may be prescribed, as provided or arranged for by the Secretary of State under an enactment mentioned in section 12A(2);

(b) displacing functions or obligations of a Primary Care Trust with respect to the provision of after-care services under section 117 of the Mental Health Act 1983, only to such extent and subject to such conditions as may be prescribed.

(6) In this section—

(a) "service" includes anything in respect of which direct payments may be made;

(b) references to a person lacking capacity are references to a person lacking capacity within the meaning of the Mental Capacity Act 2005.

12C Direct payments pilot schemes

(1) Regulations under section 12B may provide for the Secretary of State to have power—

(a) to make pilot schemes in accordance with which direct payments may be made;

(b) to include in a pilot scheme, as respects payments to which the scheme applies, any provision within section 12B(2), subject to any provision made by the regulations.

(2) The regulations may in particular make provision, or provide for the pilot scheme to make provision, as to—

(a) the geographical area in which a pilot scheme operates;

(b) the revocation or amendment of a pilot scheme.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) A pilot scheme must, in accordance with the regulations, specify the period for which it has effect, subject to the extension of that period by the Secretary of State in accordance with the regulations.

(4) The regulations must make provision as to the review of a pilot scheme, or require the pilot scheme to include such provision.

(5) Provision as to the review of a pilot scheme may in particular include provision—
- (a) for a review to be carried out by an independent person;
- (b) for publication of the findings of a review;
- (c) as to matters to be considered on a review.

(6) Those matters may in particular include any of the following—
- (a) the administration of the scheme;
- (b) the effect of direct payments on the cost or quality of care received by patients;
- (c) the effect of direct payments on the behaviour of patients, carers or persons providing services in respect of which direct payments are made.

(7) After any review of one or more pilot schemes, the Secretary of State may make an order under subsection (8) or (10).

(8) An order under this subsection is an order making provision for either or both of the following—
- (a) repealing section 12A(6) and subsections (1) to (4) of this section;
- (b) amending, repealing, or otherwise modifying any other provision of this Act.

(9) An order may make provision within subsection (8)(b) only if it appears to the Secretary of State to be necessary or expedient for the purpose of facilitating the exercise of the powers conferred by section 12A(1) or by regulations under section 12A(4).

(10) An order under this subsection is an order repealing sections 12A, 12B, 12D and this section.

12D Arrangements with other bodies relating to direct payments

(1) The Secretary of State may arrange with any person or body to give assistance in connection with direct payments.

(2) Arrangements may be made under subsection (1) with voluntary organisations.

(3) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by the Secretary of State.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 2

HEALTH SERVICE BODIES

[F21 CHAPTER A1

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Textual Amendments

F21 Pt. 2 Ch. A1 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 23(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Secretary of State's mandate to the Board

13A Mandate to Board

(1) Before the start of each financial year, the Secretary of State must publish and lay before Parliament a document to be known as "the mandate".

(2) The Secretary of State must specify in the mandate—

(a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Secretary of State considers appropriate, and

(b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives.

(3) The Secretary of State must also specify in the mandate the amounts that the Secretary of State has decided to specify in relation to the financial year for the purposes of section 223D(2) and (3) (limits on capital and revenue resource use).

(4) The Secretary of State may specify in the mandate any proposals that the Secretary of State has as to the amounts that the Secretary of State will specify in relation to subsequent financial years for the purposes of section 223D(2) and (3).

(5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board's performance in relation to the first financial year to which the mandate relates.

(6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board's functions in relation to only one clinical commissioning group.

(7) The Board must—

(a) seek to achieve the objectives specified in the mandate, and

(b) comply with any requirements so specified.

(8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—

(a) the Board,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) the Healthwatch England committee of the Care Quality Commission, and
(c) such other persons as the Secretary of State considers appropriate.

(9) Requirements included in the mandate have effect only if regulations so provide.

13B The mandate: supplemental provision

(1) The Secretary of State must keep the Board's performance in achieving any objectives or requirements specified in the mandate under review.

(2) If the Secretary of State varies the amount specified for the purposes of section 223D(2) or (3), the Secretary of State must revise the mandate accordingly.

(3) The Secretary of State may make any other revision to the mandate only if—
(a) the Board agrees to the revision,
(b) a parliamentary general election takes place, or
(c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.

(4) Revisions to the mandate which consist of adding, omitting or modifying requirements have effect only if regulations so provide.

(5) If the Secretary of State revises the mandate, the Secretary of State must—
(a) publish the mandate (as so revised), and
(b) lay it before Parliament, together with an explanation of the reasons for making the revision.

General duties of the Board

13C Duty to promote NHS Constitution

(1) The Board must, in the exercise of its functions—
(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

13D Duty as to effectiveness, efficiency etc.

The Board must exercise its functions effectively, efficiently and economically.

13E Duty as to improvement in quality of services

(1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
(a) the prevention, diagnosis or treatment of illness, or
(b) the protection or improvement of public health.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  (a) the effectiveness of the services,
  (b) the safety of the services, and
  (c) the quality of the experience undergone by patients.

(4) In discharging its duty under subsection (1), the Board must have regard to—
  (a) any document published by the Secretary of State for the purposes of this section, and
  (b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

13F Duty as to promoting autonomy

(1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service—
  (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and
  (b) that unnecessary burdens are not imposed on any such person.

(2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

13G Duty as to reducing inequalities

The Board must, in the exercise of its functions, have regard to the need to—
  (a) reduce inequalities between patients with respect to their ability to access health services, and
  (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

13H Duty to promote involvement of each patient

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—
  (a) the prevention or diagnosis of illness in the patients, or
  (b) their care or treatment.

13I Duty as to patient choice

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

13J Duty to obtain appropriate advice

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness, and

(b) the protection or improvement of public health.

13K Duty to promote innovation

(1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

(2) The Board may make payments as prizes to promote innovation in the provision of health services.

(3) A prize may relate to—

(a) work at any stage of innovation (including research);

(b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

13L Duty in respect of research

The Board must, in the exercise of its functions, promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research.

13M Duty as to promoting education and training

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

13N Duty as to promoting integration

(1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes that are achieved from their provision),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),

(b) reduce inequalities between persons with respect to their ability to access those services, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—

(a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or

(b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).

(4) In this section—

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

13O Duty to have regard to impact on services in certain areas

(1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.

(2) In this section, "commissioning decisions", in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

13P Duty as respects variation in provision of health services

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

(a) whether the persons in question are in the public or (as the case may be) private sector, or

(b) some other aspect of their status.

Public involvement

13Q Public involvement and consultation by the Board

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions ("commissioning arrangements").

(2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the Board,

(b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Functions in relation to information

13R Information on safety of services provided by the health service

(1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.

(2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.

(3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).

(4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.

(5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4).

(6) A clinical commissioning group must have regard to any advice or guidance given to it under subsection (4).

(7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board's functions under this section.

(8) Arrangements made under subsection (7) do not affect the liability of the Board for the exercise of any of its functions.

13S Guidance in relation to processing of information

(1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—

(a) patient information, and

(b) any other information obtained or generated in the course of the provision of the health service.

(2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.

(3) In this section, “patient information”, “processing” and “registered person” have the same meaning as in section 20A of the Health and Social Care Act 2008.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Business plan and report

13T Business plan

(1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.

(2) The business plan must, in particular, explain how the Board proposes to discharge its duties under—
  (a) sections 13E, 13G and 13Q, and
  (b) sections 223C to 223E.

(3) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates.

(4) The Board may revise the plan.

(5) The Board must publish any revised plan.

13U Annual report

(1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.

(2) The annual report must, in particular, contain an assessment of—
  (a) the extent to which it met any objectives or requirements specified in the mandate for that year,
  (b) the extent to which it gave effect to the proposals for that year in its business plan, and
  (c) how effectively it discharged its duties under sections 13E, 13G and 13Q.

(3) The Board must—
  (a) lay the annual report before Parliament, and
  (b) once it has done so, send a copy of it to the Secretary of State.

(4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State's assessment of the Board's performance of its functions in the financial year in question.

(5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).

(6) The Secretary of State must—
  (a) publish the letter to the Board, and
  (b) lay it before Parliament.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Additional powers

13V Establishment of pooled funds

(1) The Board and one or more clinical commissioning groups may establish and maintain a pooled fund.

(2) A pooled fund is a fund—
  (a) which is made up of contributions by the bodies which established it, and
  (b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.

(3) In this section, "commissioning functions" means functions in arranging for the provision of services as part of the health service.

13W Board's power to generate income, etc.

(1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.

(2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions.

13X Power to make grants etc.

(1) The Board may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the Board has functions.

(2) The payments may be made subject to such terms and conditions as the Board considers appropriate.

13Y Board's incidental powers: further provision

The power conferred on the Board by section 2 includes, in particular, power to—
  (a) enter into agreements,
  (b) acquire and dispose of property, and
  (c) accept gifts (including property to be held on trust for the purposes of the Board).

Exercise of functions of Board

13Z Exercise of functions

(1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act.

(2) The Board may arrange for any such function to be exercised by or jointly with—
  (a) a Special Health Authority,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 clinical commissioning group, or

(c) such other body as may be prescribed.

(3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.

(4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body.

(5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.

(6) Arrangements made under this section do not affect the liability of the Board for the exercise of any of its functions.

Power to confer additional functions

13Z1 Power to confer additional functions on the Board

(1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.

(2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board.

Intervention powers

13Z2 Failure by the Board to discharge any of its functions

(1) The Secretary of State may give a direction to the Board if the Secretary of State considers that—

(a) the Board—

(i) is failing or has failed to discharge any of its functions, or

(ii) is failing or has failed properly to discharge any of its functions, and

(b) the failure is significant.

(2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may—

(a) discharge the functions to which it relates, or

(b) make arrangements for any other person to discharge them on the Secretary of State's behalf.

(4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

Disclosure of information

13Z3 Permitted disclosures of information

(1) The Board may disclose information obtained by it in the exercise of its functions if—

(a) the information has previously been lawfully disclosed to the public,

(b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),

(c) the disclosure is made in accordance with any enactment or court order,

(d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,

(e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,

(f) the disclosure is made for the purpose of facilitating the exercise of any of the Board's functions,

(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

13Z4 Interpretation

(1) In this Chapter—

"the health service" means the health service in England;

"health services" means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.

(2) Any reference (however expressed) in the following provisions of this Act to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),
section 13A(2),
section 13C(1),
section 13D,
section 13E(1),
section 13F,
section 13G,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

section 13H,
section 13I,
section 13J,
section 13K(1),
section 13L,
section 13M,
section 13N(1) and (2),
section 13O(2),
section 13Q(1),
section 13T(1),
section 13U(1) and (4),
section 13W(2),
section 13X(1),
section 13Z2(1),
section 13Z3(1),
section 72(1),
section 75(1)(a) and (2),
section 82,
section 223C(2)(a),
in Schedule A1, paragraph 13.

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),

section 197(6) of the Health and Social Care Act 2012 (participation of the Board in work of Health and Wellbeing Boards),

section 199(4) of that Act (supply of information to Health and Wellbeing Boards),

section 290(1) and (2) of that Act (duties to co-operate),

section 291(2)(d) of that Act (breaches of duties to co-operate).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).**]**

[[F22]CHAPTER A2

CLINICAL COMMISSIONING GROUPS

Textual Amendments

F22 Pt. 2 Ch. A2 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 25(1)**, 306(1)(d)(4) (with Sch. 6 paras. 7-13); S.I. 2012/1831, art. 2(2) (with art. 5); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Establishment of clinical commissioning groups

14A General duties of Board in relation to clinical commissioning groups

(1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the purposes of this section each provider of primary medical services is a member of a clinical commissioning group.

(2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—
- (a) together cover the whole of England, and
- (b) do not coincide or overlap.

(3) For the purposes of this Chapter, "provider of primary medical services" means a person who is a party to an arrangement mentioned in subsection (4).

(4) The arrangements mentioned in this subsection are—
- (a) a general medical services contract to provide primary medical services of a prescribed description,
- (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,
- (c) section 92 arrangements for the provision of primary medical services of a prescribed description.

(5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.

(6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

(7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

14B Applications for the establishment of clinical commissioning groups

(1) An application for the establishment of a clinical commissioning group may be made to the Board.

(2) The application may be made by any two or more persons each of whom—
- (a) is or wishes to be a provider of primary medical services, and
- (b) wishes to be a member of the clinical commissioning group.

(3) The application must be accompanied by—
- (a) a copy of the proposed constitution of the clinical commissioning group,
- (b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) such other information as the Board may specify in a document published for the purposes of this section.

(4) At any time before the Board determines the application—

(a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;

(b) any of the applicants may withdraw.

(5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.

(6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

14C Determination of applications

(1) The Board must grant an application under section 14B if it is satisfied as to the following matters.

(2) Those matters are—

(a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,

(b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,

(c) that the area specified in the constitution is appropriate,

(d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),

(e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,

(f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and

(g) such other matters as may be prescribed.

(3) Regulations may make provision—

(a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);

(b) as to the procedure for the making and determination of applications under section 14B.

14D Effect of grant of application

(1) If the Board grants an application under section 14B—

(a) a clinical commissioning group is established, and

(b) the proposed constitution has effect as the clinical commissioning group's constitution.

(2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Variation of constitution

14E Applications for variation of constitution

(1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).

(2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.

(3) Regulations may make provision—
- (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
- (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
- (c) as to the procedure for the making and determination of such applications.

14F Variation of constitution otherwise than on application

(1) The Board may vary the area specified in the constitution of a clinical commissioning group.

(2) The Board may—
- (a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;
- (b) remove any person from such a list.

(3) The power conferred by subsection (1) or (2) is exercisable if—
- (a) the clinical commissioning group consents to the variation, or
- (b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.

(4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—
- (a) that group, and
- (b) any other clinical commissioning group that the Board thinks might be affected by the variation.

(5) Regulations may—
- (a) confer powers on the Board to vary the constitution of a clinical commissioning group;
- (b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

Mergers, dissolution etc.

14G Mergers

(1) Two or more clinical commissioning groups may apply to the Board for—
- (a) those groups to be dissolved, and
- (b) another clinical commissioning group to be established under this section.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) An application under this section must be accompanied by—
  (a) a copy of the proposed constitution of the clinical commissioning group,
  (b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and
  (c) such other information as the Board may specify in a document published for the purposes of this section.

(3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.

(4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

14H Dissolution

(1) A clinical commissioning group may apply to the Board for the group to be dissolved.

(2) Regulations may make provision—
  (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
  (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
  (c) as to the procedure for the making and determination of such applications.

Supplemental provision about applications, variation, mergers etc.

14I Transfers in connection with variation, merger, dissolution etc.

(1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—
  (a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or
  (b) the dissolution of a clinical commissioning group under section 14G or 14H.

(2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.

(3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.

(4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

14J Publication of constitution of clinical commissioning groups

(1) A clinical commissioning group must publish its constitution.

(2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

14K Guidance about the establishment of clinical commissioning groups etc.

The Board may publish guidance as to—

(a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;

(b) the making of applications under section 14E, 14G or 14H;

(c) the publication of the constitutions of clinical commissioning groups under section 14J.

Governing bodies of clinical commissioning groups

14L Governing bodies of clinical commissioning groups

(1) A clinical commissioning group must have a governing body.

(2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—

(a) its obligations under section 14Q, and

(b) such generally accepted principles of good governance as are relevant to it.

(3) The governing body also has—

(a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,

(b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and

(c) such other functions connected with the exercise of its main function as may be specified in the group's constitution or by regulations.

(4) Only the following may be members of the governing body—

(a) a member of the group who is an individual;

(b) an individual appointed by virtue of regulations under section 14N(2);

(c) an individual of a description specified in the constitution of the group.

(5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.

(6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3)(a) or (b).

(7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

14M Audit and remuneration committees of governing bodies

(1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.

(2) The audit committee has—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

(3) The remuneration committee has—

(a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

14N Regulations as to governing bodies of clinical commissioning groups

(1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.

(2) Regulations may—

(a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;

(b) provide that the members of governing bodies, or their audit or remuneration committees, must include—

(i) individuals who are health care professionals of a prescribed description;

(ii) individuals who are lay persons;

(iii) individuals of any other description which is prescribed;

(c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—

(i) the minimum number of individuals of that description who must be appointed;

(ii) the maximum number of such individuals who may be appointed;

(d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.

(3) Regulations may make provision as to—

(a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;

(b) how members are to be appointed;

(c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);

(d) eligibility for re-appointment.

(4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—

(a) qualification and disqualification for appointment;

(b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);

(c) eligibility for re-appointment.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 may—

(a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;

(b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.

(6) In this section—

"health care professional" means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;

"lay person" means an individual who is not—

(a) a member of the clinical commissioning group,

(b) a health care professional, or

(c) an individual of a prescribed description.

Conflicts of interest

14O Registers of interests and management of conflicts of interest

(1) Each clinical commissioning group must maintain one or more registers of the interests of—

(a) the members of the group,

(b) the members of its governing body,

(c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and

(d) its employees.

(2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.

(3) Each clinical commissioning group must make arrangements to ensure—

(a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,

(b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and

(c) that any such declaration is included in the registers maintained under subsection (1).

(4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.

(5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(6) Each clinical commissioning group must have regard to guidance published under subsection (5).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service.**]**

[F23 General duties of clinical commissioning groups

Textual Amendments

F23 Ss. 14P-14Z24 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 26**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 6); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

14P Duty to promote NHS Constitution

(1) Each clinical commissioning group must, in the exercise of its functions—
  (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
  (b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, "patients" and "staff" have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

14Q Duty as to effectiveness, efficiency etc.

Each clinical commissioning group must exercise its functions effectively, efficiently and economically.

14R Duty as to improvement in quality of services

(1) Each clinical commissioning group must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.

(2) In discharging its duty under subsection (1), a clinical commissioning group must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  (a) the effectiveness of the services,
  (b) the safety of the services, and
  (c) the quality of the experience undergone by patients.

(4) In discharging its duty under subsection (1), a clinical commissioning group must have regard to any guidance published under section 14Z8.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

14S Duty in relation to quality of primary medical services

Each clinical commissioning group must assist and support the Board in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services.

14T Duties as to reducing inequalities

Each clinical commissioning group must, in the exercise of its functions, have regard to the need to—

(a) reduce inequalities between patients with respect to their ability to access health services, and

(b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

14U Duty to promote involvement of each patient

(1) Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

(a) the prevention or diagnosis of illness in the patients, or

(b) their care or treatment.

(2) The Board must publish guidance for clinical commissioning groups on the discharge of their duties under this section.

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

14V Duty as to patient choice

Each clinical commissioning group must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

14W Duty to obtain appropriate advice

(1) Each clinical commissioning group must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness, and

(b) the protection or improvement of public health.

(2) The Board may publish guidance for clinical commissioning groups on the discharge of their duties under subsection (1).

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

14X Duty to promote innovation

Each clinical commissioning group must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

14Y Duty in respect of research

Each clinical commissioning group must, in the exercise of its functions, promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research.

14Z Duty as to promoting education and training

Each clinical commissioning group must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

14Z1 Duty as to promoting integration

(1) Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes that are achieved from their provision),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(2) Each clinical commissioning group must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) In this section—

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Public involvement

14Z2 Public involvement and consultation by clinical commissioning groups

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions ("commissioning arrangements").

(2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—
- (a) in the planning of the commissioning arrangements by the group,
- (b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
- (c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The clinical commissioning group must include in its constitution—
- (a) a description of the arrangements made by it under subsection (2), and
- (b) a statement of the principles which it will follow in implementing those arrangements.

(4) The Board may publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(5) A clinical commissioning group must have regard to any guidance published by the Board under subsection (4).

(6) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Arrangements with others

14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions

(1) Any two or more clinical commissioning groups may make arrangements under this section.

(2) The arrangements may provide for—
- (a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or
- (b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.

(3) For the purposes of the arrangements a clinical commissioning group may—
- (a) make payments to another clinical commissioning group, or
- (b) make the services of its employees or any other resources available to another clinical commissioning group.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) For the purposes of the arrangements, all the clinical commissioning groups may establish and maintain a pooled fund.

(5) A pooled fund is a fund—
  (a) which is made up of contributions by all the groups, and
  (b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

(6) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

(7) In this section, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9).

14Z4 Joint exercise of functions with Local Health Boards

(1) Regulations may provide for any prescribed functions of a clinical commissioning group to be exercised jointly with a Local Health Board.

(2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a clinical commissioning group and a Local Health Board to be exercised by a joint committee of the group and the Local Health Board.

(3) Arrangements made by virtue of this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

Additional powers of clinical commissioning groups

14Z5 Raising additional income

(1) A clinical commissioning group has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.

(2) A clinical commissioning group may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the group of its functions.

14Z6 Power to make grants

(1) A clinical commissioning group may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the group has functions.

(2) The payments may be made subject to such terms and conditions as the group considers appropriate.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Board's functions in relation to clinical commissioning groups

14Z7 Responsibility for payments to providers

(1) The Board may publish a document specifying—
  (a) circumstances in which a clinical commissioning group is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another clinical commissioning group in the discharge of its commissioning functions, and
  (b) how the amount of any such payment is to be determined.

(2) A clinical commissioning group is required to make payments in accordance with any document published under subsection (1).

(3) Where a clinical commissioning group is required to make a payment by virtue of subsection (2), no other clinical commissioning group is liable to make it.

(4) Accordingly, any obligation of another clinical commissioning group to make the payment ceases to have effect.

(5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

(6) The Board may publish guidance for clinical commissioning groups for the purpose of assisting them in understanding and applying any document published under subsection (1).

(7) In this section and section 14Z8, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service.

14Z8 Guidance on commissioning by the Board

(1) The Board must publish guidance for clinical commissioning groups on the discharge of their commissioning functions.

(2) Each clinical commissioning group must have regard to guidance under this section.

(3) The Board must consult the Healthwatch England committee of the Care Quality Commission—
  (a) before it first publishes guidance under this section, and
  (b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.

14Z9 Exercise of functions by the Board

(1) The Board may, at the request of a clinical commissioning group, exercise on behalf of the group—
  (a) any of its functions under section 3 or 3A which are specified in the request, and
  (b) any other functions of the group which are related to the exercise of those functions.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Regulations may provide that the power in subsection (1) does not apply in relation to functions of a prescribed description.

(3) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the clinical commissioning group.

(4) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

14Z10 Power of Board to provide assistance or support

(1) The Board may provide assistance or support to a clinical commissioning group.

(2) The assistance that may be provided includes—
  (a) financial assistance, and
  (b) making the services of the Board's employees or any other resources of the Board available to the clinical commissioning group.

(3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate.

(4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.

(5) A clinical commissioning group must comply with any restrictions imposed under subsection (4).

Commissioning plans and reports

14Z11 Commissioning plan

(1) Before the start of each relevant period, a clinical commissioning group must prepare a plan setting out how it proposes to exercise its functions in that period.

(2) In subsection (1), "relevant period", in relation to a clinical commissioning group, means—
  (a) the period which —
    (i) begins on such day during the first financial year of the group as the Board may direct, and
    (ii) ends at the end of that financial year, and
  (b) each subsequent financial year.

(3) The plan must, in particular, explain how the group proposes to discharge its duties under—
  (a) sections 14R, 14T and 14Z2, and
  (b) sections 223H to 223J.

(4) The clinical commissioning group must publish the plan.

(5) The clinical commissioning group must give a copy of the plan to the Board before the date specified by the Board in a direction.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) The clinical commissioning group must give a copy of the plan to each relevant Health and Wellbeing Board.

(7) The Board may publish guidance for clinical commissioning groups on the discharge of their functions by virtue of this section and sections 14Z12 and 14Z13.

(8) A clinical commissioning group must have regard to any guidance published by the Board under subsection (7).

(9) In this Chapter, "relevant Health and Wellbeing Board", in relation to a clinical commissioning group, means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the group.

14Z12 Revision of commissioning plans

(1) A clinical commissioning group may revise a plan published by it under section 14Z11.

(2) If the clinical commissioning group revises the plan in a way which it considers to be significant—
   (a) the group must publish the revised plan, and
   (b) subsections (5) and (6) of section 14Z11 apply in relation to the revised plan as they apply in relation to the original plan.

(3) If the clinical commissioning group revises the plan in any other way, the group must—
   (a) publish a document setting out the changes it has made to the plan, and
   (b) give a copy of the document to the Board and each relevant Health and Wellbeing Board.

14Z13 Consultation about commissioning plans

(1) This section applies where a clinical commissioning group is—
   (a) preparing a plan under section 14Z11, or
   (b) revising a plan under section 14Z12 in a way which it considers to be significant.

(2) The clinical commissioning group must consult individuals for whom it has responsibility for the purposes of section 3.

(3) The clinical commissioning group must involve each relevant Health and Wellbeing Board in preparing or revising the plan.

(4) The clinical commissioning group must, in particular—
   (a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and
   (b) consult each such Board on whether the draft takes proper account of each joint health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.

(5) Where a Health and Wellbeing Board is consulted under subsection (4)(b), the Health and Wellbeing Board must give the clinical commissioning group its opinion on the matter mentioned in that subsection.

(6) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) it may also give the Board its opinion on the matter mentioned in that subsection, and
(b) if it does so, it must give the clinical commissioning group a copy of its opinion.

(7) If a clinical commissioning group revises or further revises a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) to (6) apply in relation to the revised draft as they apply in relation to the original draft.

(8) A clinical commissioning group must include in a plan published under section 14Z11(4) or 14Z12(2)—
(a) a summary of the views expressed by individuals consulted under subsection (2),
(b) an explanation of how the group took account of those views, and
(c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).

(9) In this section, "joint health and wellbeing strategy" means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007 which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the Health and Social Care Act 2012.

14Z14 Opinion of Health and Wellbeing Boards on commissioning plans

(1) A relevant Health and Wellbeing Board—
(a) may give the Board its opinion on whether a plan published by a clinical commissioning group under section 14Z11(4) or 14Z12(2) takes proper account of each joint health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and
(b) if it does so, must give the clinical commissioning group a copy of its opinion.

(2) In this section, "joint health and wellbeing strategy" has the same meaning as in section 14Z13.

14Z15 Reports by clinical commissioning groups

(1) In each financial year other than its first financial year, a clinical commissioning group must prepare a report (an "annual report") on how it has discharged its functions in the previous financial year.

(2) An annual report must, in particular—
(a) explain how the clinical commissioning group has discharged its duties under sections 14R, 14T and 14Z2, and
(b) review the extent to which the group has contributed to the delivery of any joint health and wellbeing strategy to which it was required to have regard under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007.

(3) In preparing the review required by subsection (2)(b), the clinical commissioning group must consult each relevant Health and Wellbeing Board.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Board may give directions to clinical commissioning groups as to the form and content of an annual report.

(5) A clinical commissioning group must give a copy of its annual report to the Board before the date specified by the Board in a direction.

(6) A clinical commissioning group must—
  (a) publish its annual report, and
  (b) hold a meeting for the purpose of presenting the report to members of the public.

Performance assessment of clinical commissioning groups

14Z16 Performance assessment of clinical commissioning groups

(1) The Board must conduct a performance assessment of each clinical commissioning group in respect of each financial year.

(2) A performance assessment is an assessment of how well the clinical commissioning group has discharged its functions during that year.

(3) The assessment must, in particular, include an assessment of how well the group has discharged its duties under—
  (a) sections 14R, 14T, 14W and 14Z2,
  (b) sections 223H to 223J, and
  (c) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).

(4) In conducting a performance assessment, the Board must consult each relevant Health and Wellbeing Board as to its views on the clinical commissioning group's contribution to the delivery of any joint health and wellbeing strategy to which the group was required to have regard under section 116B(1)(b) of that Act of 2007.

(5) The Board must, in particular, have regard to—
  (a) any document published by the Secretary of State for the purposes of this section, and
  (b) any guidance published under section 14Z8.

(6) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year.

Powers to require information etc.

14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply

(1) Sections 14Z18 and 14Z19 apply where the Board has reason to believe—
  (a) that the area of a clinical commissioning group is no longer appropriate, or
  (b) that a clinical commissioning group might have failed, might be failing or might fail to discharge any of its functions.

(2) For the purposes of this section—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) a failure to discharge a function includes a failure to discharge it properly, and
(b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

14Z18 Power to require documents and information etc.

(1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or expedient to have for the purposes of any of its functions in relation to the clinical commissioning group.

(2) The persons mentioned in this subsection are—
(a) the clinical commissioning group if it has possession or control of the item in question;
(b) any member or employee of the group who has possession or control of the item in question.

(3) A person must comply with a requirement imposed under subsection (1).

(4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form.

(5) The power conferred by subsection (1) does not include power to require the provision of personal records.

(6) In subsection (5), "personal records" has the meaning given by section 12 of the Police and Criminal Evidence Act 1984.

14Z19 Power to require explanation

(1) Where this section applies, the Board may require the clinical commissioning group to provide it with an explanation of any matter which relates to the exercise by the group of any of its functions, including an explanation of how the group is proposing to exercise any of its functions.

(2) The Board may require the explanation to be given—
(a) orally at such time and place as the Board may specify, or
(b) in writing.

(3) The clinical commissioning group must comply with a requirement imposed under subsection (1).

14Z20 Use of information

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z18 or 14Z19 may be used by the Board in connection with any of its functions in relation to clinical commissioning groups.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Intervention powers

14Z21 Power to give directions, dissolve clinical commissioning groups etc.

(1) This section applies if the Board is satisfied that—
- (a) a clinical commissioning group is failing or has failed to discharge any of its functions, or
- (b) there is a significant risk that a clinical commissioning group will fail to do so.

(2) The Board may direct the clinical commissioning group to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) The Board may direct—
- (a) the clinical commissioning group, or
- (b) the accountable officer of the group,

to cease to perform any functions for such period or periods as may be specified in the direction.

(4) The Board may—
- (a) terminate the appointment of the clinical commissioning group's accountable officer, and
- (b) appoint another person to be its accountable officer.

(5) Paragraph 12(4) of Schedule 1A does not apply to an appointment under subsection (4)(b).

(6) The Board may vary the constitution of the clinical commissioning group, including doing so by—
- (a) varying its area,
- (b) adding any person who is a provider of primary medical services to the list of members, or
- (c) removing any person from that list.

(7) The Board may dissolve the clinical commissioning group.

(8) Where a direction is given under subsection (3) the Board may—
- (a) exercise any of the functions that are the subject of the direction on behalf of the clinical commissioning group or (as the case may be) the accountable officer;
- (b) direct another clinical commissioning group or (as the case may be) the accountable officer of another clinical commissioning group to perform any of those functions on behalf of the group or (as the case may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions.

(9) A clinical commissioning group to which a direction is given under subsection (3) must—
- (a) where the Board exercises a function of the group under subsection (8)(a), co-operate with the Board, and
- (b) where a direction is given under subsection (8)(b) to another clinical commissioning group or to the accountable officer of another clinical

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

commissioning group, co-operate with the other group or (as the case may be) the accountable officer.

(10) Before exercising the power conferred by subsection (8)(b) the Board must consult the clinical commissioning group to which it is proposing to give the direction.

(11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme.

(12) In subsection (11), "property transfer scheme" and "staff transfer scheme" have the same meaning as in section 14I.

(13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1).

(14) For the purposes of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
- (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

Procedural requirements in connection with certain powers

14Z22 Procedural requirements in connection with certain powers

(1) Before exercising the power to dissolve a clinical commissioning group under section 14Z21(7) the Board must consult the following persons—
- (a) the clinical commissioning group,
- (b) relevant local authorities, and
- (c) any other persons the Board considers it appropriate to consult.

(2) For that purpose, the Board must provide those persons with a statement—
- (a) explaining that it is proposing to exercise the power, and
- (b) giving its reasons for doing so.

(3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation.

(4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.

(5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z18, 14Z19 and 14Z21.

(6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.

(7) For the purposes of subsection (1) a local authority is a relevant local authority if its area coincides with, or includes the whole or any part of, the area of the clinical commissioning group.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Disclosure of information

14Z23 Permitted disclosures of information

(1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if—

(a) the information has previously been lawfully disclosed to the public,

(b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),

(c) the disclosure is made in accordance with any enactment or court order,

(d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,

(e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,

(f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,

(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

14Z24 Interpretation

(1) In this Chapter—

"financial year", in relation to a clinical commissioning group, includes the period which begins on the day the group is established and ends on the following 31 March;

"the health service" means the health service in England;

"health services" means services provided as part of the health service and, in section 14Z2, also includes services that are to be provided as part of the health service;

"relevant Health and Wellbeing Board", in relation to a clinical commissioning group, has the meaning given by section 14Z11(9).

(2) Any reference (however expressed) in the following provisions of this Act to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),

section 14C(2)(e),

section 14P,

section 14Q,

section 14T,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

section 14U(1),
section 14V,
section 14W(1),
section 14X,
section 14Y,
section 14Z,
section 14Z1(1) and (2),
section 14Z2(1),
section 14Z4(1),
section 14Z5(2),
section 14Z6(1),
section 14Z7(7),
section 14Z11(1),
section 14Z15(1),
section 14Z16(2),
sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),
section 14Z23(1),
section 72(1),
section 75(1)(a) and (2),
section 77(1)(b),
section 82,
section 89(1A)(d),
section 94(3A)(d),
section 223C(2)(b),
section 223H(1),
in Schedule 1A, paragraphs 3(1) and (3), 6, 12(9)(b) and 16(3).

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),

section 199(4) of the Health and Social Care Act 2012 (supply of information to Health and Wellbeing Boards),

section 291(2)(d) of that Act (breaches of duties to co-operate),

in Schedule 6 to that Act, paragraph 8(4).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

CHAPTER 1

STRATEGIC HEALTH AUTHORITIES

13 Strategic Health Authorities

(1) The Strategic Health Authorities established by the Secretary of State continue in existence.

(2) But the Secretary of State may by order—
- (a) vary the area in England for which a Strategic Health Authority is established,
- (b) abolish a Strategic Health Authority,
- (c) establish a new Strategic Health Authority for an area in England,
- (d) change the name by which a Strategic Health Authority is known.

(3) A Strategic Health Authority is called such name, in addition to the title "Strategic Health Authority", as—
- (a) appears to the Secretary of State appropriately to signify the connection of the authority with the area for which it is established, and
- (b) is specified in the order establishing the authority or in an order changing the name by which the authority is known.

(4) No order may be made under this section until after the completion of such consultation as may be prescribed.

(5) Consultation requirements in regulations under subsection (4) are in addition to, and not in substitution for, any other consultation requirements which may apply.

(6) The Secretary of State must act under this section so as to ensure that the areas for which Strategic Health Authorities are at any time established together comprise the whole of England.

(7) The power under section 272(8) to make incidental or supplemental provision includes, in particular, in its application to orders made under this section, power to make provision for the transfer of staff, property and liabilities.

(8) The liabilities which may be transferred by virtue of this section and section 272(8) to a relevant transferee on the abolition of a Strategic Health Authority include criminal liabilities.

(9) "Relevant transferee" means—
- (a) another Strategic Health Authority,
- (b) a Primary Care Trust,
- (c) an NHS trust,
- (d) a Special Health Authority, or
- (e) an NHS foundation trust.

(10) Schedule 2 makes further provision about Strategic Health Authorities.

14 Exercise of Strategic Health Authority functions

(1) This section applies to functions exercisable by a Strategic Health Authority under or by virtue of this Act (including this section) or any prescribed provision of any other Act.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Regulations may provide for any of the functions to be exercised—
- (a) by another Strategic Health Authority,
- (b) by a Special Health Authority, or
- (c) jointly with any one or more of the bodies mentioned in subsection (3).

(3) The bodies are—
- (a) Primary Care Trusts,
- (b) Local Health Boards,
- (c) other Strategic Health Authorities.

(4) Regulations may provide—
- (a) for any functions to which this section applies to be exercised, on behalf of the Strategic Health Authority by whom they are exercisable, by a committee, sub-committee or officer of the Strategic Health Authority,
- (b) for any functions exercisable jointly under subsection (2)(c) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.

15 Strategic Health Authorities' directions

(1) A Strategic Health Authority may, in relation to any specified function of the Strategic Health Authority, direct a Primary Care Trust any part of whose area falls within the Strategic Health Authority's area to exercise the function.

(2) But a Strategic Health Authority may not so direct a Primary Care Trust in relation to any functions of the Strategic Health Authority arising under section 92 arrangements or section 107 arrangements **[**[F24]or LPS schemes **]** if the Primary Care Trust is providing any services in accordance with those arrangements.

(3) The Secretary of State may direct Strategic Health Authorities that specified functions of theirs—
- (a) are exercisable, or exercisable to (or only to) any specified extent, by Primary Care Trusts, or
- (b) are not exercisable by Primary Care Trusts,

and that the power in subsection (1) must be exercised accordingly.

(4) Directions under subsection (3)(a) may include directions that any of the specified functions must be exercised (or exercised to, or only to, any specified extent) jointly with the Strategic Health Authority, or jointly by two or more Primary Care Trusts.

(5) But such directions may be given only if regulations providing for the joint exercise of those functions have been made under section 14 or 19.

(6) "Specified" means specified in the directions.

Textual Amendments

F24 Words in s. 15(2) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(2)**, 40(1); S.I. 2012/1902, art. 2(d)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

16 Section 92 arrangements and section 107 arrangements [F25and LPS schemes]

(1) Each Strategic Health Authority must, in accordance with regulations, perform such functions in relation to section 92 arrangements and section 107 arrangements **[**F26and LPS schemes**]** as may be prescribed.

(2) The regulations may, in particular—
- (a) prescribe functions in relation to training,
- (b) provide for appeals to the Secretary of State or a prescribed body in relation to prescribed functions.

Textual Amendments

F25 Words in s. 16 heading inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(3)(b)**, 40(1); S.I. 2012/1902, art. 2(d)

F26 Words in s. 16(1) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(3)(a)**, 40(1); S.I. 2012/1902, art. 2(d)

17 Advice for Strategic Health Authorities

Each Strategic Health Authority must make arrangements with a view to securing that it receives advice appropriate for enabling it effectively to exercise the functions exercisable by it from persons with professional expertise relating to the physical or mental health of individuals.

[F27 17A Reports on consultation

(1) Each Strategic Health Authority must, at such times as the Secretary of State may direct, prepare a report—
- (a) on the consultation it has carried out, or proposes to carry out, before making commissioning decisions, and
- (b) on the influence that the results of consultation have on its commissioning decisions.

(2) In subsection (1) "commissioning decisions", in relation to a Strategic Health Authority, means (subject to any directions under subsection (5)(e)) decisions as to the carrying-out of functions exercisable by it for the purpose of securing, by arrangement with any person or body, the provision of services as part of the health service.

(3) Each Strategic Health Authority must also, at such times as the Secretary of State may direct, prepare a report—
- (a) on any relevant consultation carried out by the authority, and
- (b) on the influence that the results of any relevant consultation have had on such matters as may be specified in the direction.

(4) In subsection (3) "relevant consultation" means consultation in relation to matters specified by the direction under that subsection.

(5) The Secretary of State may give directions as to—
- (a) the periods to be covered by reports under this section;
- (b) the matters to be dealt with by reports under this section;
- (c) the form and content of reports under this section;

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) the publication of reports under this section;

(e) decisions that are to be treated as being, or that are to be treated as not being, commissioning decisions for the purposes of subsection (1).**]**

Textual Amendments

F27 S. 17A inserted (3.11.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 234(1)**, 245(5); S.I. 2008/2434, art. 2(2)(c)

CHAPTER 2

PRIMARY CARE TRUSTS

18 Primary Care Trusts

(1) The Primary Care Trusts established by the Secretary of State continue in existence.

(2) But the Secretary of State may by order (a "PCT order")—

(a) vary the area in England for which a Primary Care Trust is established,

(b) abolish a Primary Care Trust,

(c) establish a new Primary Care Trust for the area in England specified in the order with a view to it exercising functions in relation to the health service.

(3) The Secretary of State must act under this section so as to ensure that the areas for which Primary Care Trusts are at any time established together comprise the whole of England.

(4) A Primary Care Trust must exercise its functions in accordance with any prohibitions or restrictions in a PCT order relating to it.

(5) If any consultation requirements apply, they must be complied with before a PCT order is made.

(6) "Consultation requirements" means requirements about consultation contained in regulations.

(7) Regulations must impose requirements about consultation where a PCT order establishes a Primary Care Trust.

(8) Schedule 3 makes further provision about Primary Care Trusts.

19 Exercise of Primary Care Trust functions

(1) This section applies to functions exercisable by a Primary Care Trust under or by virtue of this Act (including this section) or any prescribed provision of any other Act.

(2) Regulations may provide for any functions to which this section applies to be exercised—

(a) by another Primary Care Trust,

(b) by a Special Health Authority, or

(c) jointly with any one or more of the bodies mentioned in subsection (3).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The bodies are—
- (a) Strategic Health Authorities,
- (b) NHS trusts,
- (c) Local Health Boards, and
- (d) other Primary Care Trusts.

(4) Regulations may provide—
- (a) for any functions to which this section applies to be exercised, on behalf of the Primary Care Trust by whom they are exercisable, by a committee, sub-committee or officer of the Primary Care Trust,
- (b) for any functions which, under this section, are exercisable by a Primary Care Trust jointly with one or more Strategic Health Authorities or other Primary Care Trusts (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.

(5) Subsection (6) applies where, by virtue of subsection (2)(b), a Special Health Authority exercises functions of a Primary Care Trust in relation to a general dental services contract.

(6) The Secretary of State may by order make provision for the transfer to the Special Health Authority of the rights and liabilities of the Primary Care Trust under the contract (and for their transfer back to the Primary Care Trust where the Special Health Authority ceases to exercise the functions).

20 Strategic Health Authority directions to Primary Care Trusts

(1) A Strategic Health Authority may give directions to a Primary Care Trust about its exercise of any function.

(2) Directions under this section are subject to any directions given under section 8.

21 Provision of services etc

(1) A Primary Care Trust may provide services under an agreement under—
- (a) section 92 (primary medical services), or
- (b) section 107 (primary dental services),

and may do so as a member of a qualifying body (within the meaning given by section 93 or section 108).

(2) A Primary Care Trust may arrange for the provision by it to another health service body of goods or services which are of the same description as those which, at the time of making the arrangement, the Primary Care Trust has power to provide in carrying out its other functions.

(3) A Primary Care Trust may provide premises for the use of persons—
- (a) providing pharmaceutical services, or
- (b) providing or performing primary medical services, primary dental services or primary ophthalmic services,

on any terms it considers appropriate.

(4) A Primary Care Trust which manages any health service hospital may make accommodation or services available there for patients who give undertakings (or for

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

whom undertakings are given) to pay any charges imposed by the Primary Care Trust in respect of the accommodation or services.

(5) A Primary Care Trust has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (c. 49) (provision of goods, services etc), other than make accommodation or services available for patients at any health service hospital it manages, for the purpose of making additional income available for improving the health service.

(6) A Primary Care Trust may exercise a power conferred by subsection (4) or (5) only—

(a) to the extent that its exercise does not to any significant extent interfere with the performance by the Primary Care Trust of its functions or of its obligations under NHS contracts or under agreements or arrangements made with NHS foundation trusts, and

(b) in circumstances specified in directions under section 8, with the Secretary of State's consent.

(7) In this section—

"health service body" means a body which is a health service body for the purposes of section 9,

"hospital" includes any establishment or facility managed for the purposes of the health service.

22 Administration and management of services

Each Primary Care Trust must, in accordance with regulations—

(a) administer the arrangements made in pursuance of this Act for the provision for its area of primary medical services, primary dental services, primary ophthalmic services, pharmaceutical services and local pharmaceutical services, and

(b) perform such management and other functions relating to those services as may be prescribed.

23 Advice for Primary Care Trusts

Each Primary Care Trust must make arrangements with a view to securing that it receives advice appropriate for enabling it effectively to exercise the functions exercisable by it from persons with professional expertise relating to the physical or mental health of individuals.

[F28 23A Arrangements for improving quality of health care

(1) Each Primary Care Trust must make arrangements to secure continuous improvement in the quality of health care provided by it and by other persons pursuant to arrangements made by it.

(2) In discharging its duty under subsection (1) a Primary Care Trust must have regard to the standards set out in statements under section 45 of the Health and Social Care Act 2008.

(3) "Health care" means—

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

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) the promotion and protection of public health.**]**

Textual Amendments

F28 S. 23A inserted (1.4.2010) by Health and Social Care Act 2008 (c. 14), **ss. 139**, 170(3)(4); S.I. 2010/708, art. 13(c)

24 Plans for improving health etc

(1) Each Primary Care Trust must, at such times as the Secretary of State may direct, prepare a plan which sets out a strategy for improving—
- (a) the health of the people for whom it is responsible, and
- (b) the provision of health care to such people.

(2) Each Primary Care Trust must keep under review any plan prepared by it under this section.

(3) Each local authority whose area falls wholly or partly within the area of a Primary Care Trust must participate in the preparation or review by the Primary Care Trust of any plan under this section.

(4) In preparing or reviewing any plan under this section, a Primary Care Trust—
- (a) must consult, or seek the participation of, such persons as the Secretary of State may direct, and
- (b) may consult, or seek the participation of, such other persons as it considers appropriate.

(5) The Secretary of State may give directions as to—
- (a) the periods to be covered by plans under this section,
- (b) the action to be taken by Strategic Health Authorities, Primary Care Trusts and local authorities in connection with the preparation or review of plans under this section,
- (c) the matters to be taken into account in connection with the preparation or review of plans under this section,
- (d) the matters to be dealt with by plans under this section,
- (e) the form and content of plans under this section,
- (f) the publication of plans prepared or reviewed under this section,
- (g) the sharing of information between Strategic Health Authorities, Primary Care Trusts, Local Health Boards and local authorities in connection with the preparation or review of plans under this section or section 17 of the National Health Service (Wales) Act 2006 (c. 42),
- (h) the provision by Strategic Health Authorities, Primary Care Trusts and Local Health Boards of reports or other information to the Secretary of State in connection with plans under this section or section 17 of the National Health Service (Wales) Act 2006 (c. 42).

(6) In exercising its functions—
- (a) a Primary Care Trust must have regard to any plan prepared or reviewed by it, and to any plan in relation to which it has participated by virtue of subsection (4).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Strategic Health Authority must have regard to any plan prepared or reviewed by a Primary Care Trust any part of whose area falls within its area, and

(c) a local authority must have regard to any plan in relation to which it has participated.

(7) For the purposes of this section, the persons for whom a Primary Care Trust is responsible are—

(a) the people in the area of the Primary Care Trust, and

(b) such of the people outside the area as may be specified in directions given by the Secretary of State.

(8) "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.

[F29 24A Report on consultation

(1) Each Primary Care Trust must, at such times as the Secretary of State may direct, prepare a report—

(a) on the consultation carried out, or proposed to be carried out, before the making by the Primary Care Trust of commissioning decisions, and

(b) on the influence that the results of consultation have on its commissioning decisions.

(2) In subsection (1) "commissioning decisions", in relation to a Primary Care Trust, means (subject to any directions under subsection (3)(e)) decisions as to the carrying out of its functions under Parts 4 to 7.

(3) The Secretary of State may give directions as to—

(a) the periods to be covered by reports under this section;

(b) the matters to be dealt with by reports under this section;

(c) the form and content of reports under this section;

(d) the publication of reports under this section;

(e) decisions that are to be treated as being, or that are to be treated as not being, commissioning decisions for the purposes of subsection (1).**]**

Textual Amendments

F29 S. 24A inserted (3.11.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 234(2)**, 245(5); S.I. 2008/2434, art. 2(2)(c)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

CHAPTER 3

NHS TRUSTS

25 NHS trusts

(1) The Secretary of State may by order establish bodies, called National Health Service trusts ("NHS trusts"), to provide goods and services for the purposes of the health service.

(2) An order under subsection (1) is referred to in this Act as "an NHS trust order".

(3) No NHS trust order may be made until after the completion of such consultation as may be prescribed.

(4) Schedule 4 makes further provision about NHS trusts.

26 General duty of NHS trusts

An NHS trust must exercise its functions effectively, efficiently and economically.

27 Financial provisions relating to NHS trusts

Schedule 5 makes provision about the financing of NHS trusts.

CHAPTER 4

SPECIAL HEALTH AUTHORITIES

28 Special Health Authorities

(1) The Secretary of State may by order establish special bodies for the purpose of exercising any functions which may be conferred on them by or under this Act.

(2) The Secretary of State may make such further provision relating to a body established under subsection (1) as he considers appropriate.

(3) A body established under this section is called a Special Health Authority.

(4) An order may, in particular, contain provisions as to—
- (a) the membership of the body established by the order,
- (b) the transfer to the body of officers, property and liabilities, and
- (c) the name of the body.

(5) The liabilities which may be transferred by virtue of this section, section 272(8) and section 273(1) to an NHS body on the abolition of a Special Health Authority include criminal liabilities.

(6) In this Act (apart from in Schedule 15) "NHS body" means—
- (a) a Strategic Health Authority,
- (b) a Primary Care Trust,
- (c) an NHS trust,
- (d) a Special Health Authority,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(e) an NHS foundation trust, and

(f) a Local Health Board.

(7) The Secretary of State must, before he makes an order under this section, consult with respect to the order such bodies as he may recognise as representing officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the order.

(8) Schedule 6 makes further provision about Special Health Authorities.

[F30 28A Special Health Authorities: further provision

(1) This section applies in relation to an order under section 28 which is made after the coming into force of section 48 of the Health and Social Care Act 2012.

(2) The order must include—

(a) provision for the abolition of the Special Health Authority on a day specified in the order, and

(b) provision as to the transfer of officers, property and liabilities of the Authority on its abolition.

(3) The day specified in accordance with subsection (2)(a) must be within the period of 3 years beginning with the day on which the Special Health Authority is established.

(4) The power (by virtue of section 273(1)) to vary an order under section 28 includes power to vary the provision mentioned in subsection (2) by—

(a) providing for the abolition of the Special Health Authority on a day which is earlier or later than the day for the time being specified in the order;

(b) making different provision as to the matters mentioned in subsection (2)(b).

(5) If an order is varied to provide for the abolition of the Special Health Authority on a later day, that day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished.**]**

Textual Amendments

F30 S. 28A inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 48(1)**, 306(1)(d)(4)

29 Exercise of Special Health Authority functions

(1) Regulations may provide for any functions which are exercisable by a Special Health Authority under section 7 to be exercised—

(a) by another Special Health Authority, or

(b) jointly with one or more other Special Health Authorities.

(2) Regulations may provide—

(a) for any functions which are exercisable by a Special Health Authority under section 7, section 14, section 19 or this section to be exercised on behalf of that Special Health Authority by a committee, sub-committee or officer of the Special Health Authority,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) for any functions exercisable jointly under subsection (1)(b) to be exercised, on behalf of the Special Health Authorities in question, by a joint committee or joint sub-committee.

CHAPTER 5

NHS FOUNDATION TRUSTS

Introductory

30 NHS foundation trusts

(1) An NHS foundation trust is a public benefit corporation which is authorised under this Chapter to provide goods and services for the purposes of the health service in England.

(2) A public benefit corporation is a body corporate which, in pursuance of an application under this Chapter, is constituted in accordance with Schedule 7.

31 Independent Regulator of NHS Foundation Trusts

[[F31](1) There continues to be a body corporate known as the Independent Regulator of NHS Foundation Trusts (referred to in this Act as "the regulator").

(2) Schedule 8 makes further provision about the regulator.**]**

Textual Amendments

F31 S. 31 omitted (1.7.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 9(1)**; S.I. 2012/1319, art. 2(3); S.I. 2012/2657, art. 2(2)

32 General duty of regulator

The regulator must exercise its functions in a manner consistent with the performance by the Secretary of State of his duties under sections 1, 3 and 258.

Authorisation

33 Applications by NHS trusts

(1) An NHS trust may make an application to the regulator for authorisation to become an NHS foundation trust, if the application is supported by the Secretary of State.

(2) The application must—

(a) describe the goods and services which the applicant proposes should be provided by the NHS foundation trust, and

(b) be accompanied by a copy of the proposed constitution of the NHS foundation trust,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

and must give any further information which the regulator requires the applicant to give.

(3) The applicant may modify the application with the agreement of the regulator at any time before authorisation is given under section 35.

(4) Once an NHS trust has made the application—

(a) the provisions of the proposed constitution which give effect to paragraphs 3 to 19 of Schedule 7 have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust and of the board of governors, and the initial directors, and enabling the board of governors and board of directors to make preparations for the performance of their functions,

(b) the NHS trust may do anything (including the things mentioned in paragraph 14 of Schedule 4) which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status.

[F32]34 Other applications

. . . . . .

Textual Amendments

F32 S. 34 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 160(1)**, 306(4) (with s. 160(4)(7)); S.I. 2012/1319, art. 2(3)

35 Authorisation of NHS foundation trusts

(1) The regulator may give an authorisation under this section—

(a) to an NHS trust which has applied under section 33, [F33]...

[F33](b) . . . . . .

if the regulator is satisfied as to the following matters.

(2) The matters are that—

(a) the applicant's constitution will be in accordance with Schedule 7 and will otherwise be appropriate,

(b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,

(c) there will be a board of governors, and a board of directors, constituted in accordance with the constitution,

(d) the steps necessary to prepare for NHS foundation trust status have been taken,

(e) the applicant will be able to provide the goods and services which the authorisation will require it to provide, and

(f) any other requirements which the regulator considers appropriate are met.

(3) In deciding whether it is satisfied as to the matters referred to in subsection (2)(e), the regulator must consider (among other things)—

(a) any report or recommendation in respect of the applicant made by **[**[F34]the Care Quality Commission**]** ,

(b) the financial position of the applicant.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 authorisation may be given on any terms the regulator considers appropriate.

(5) The regulator must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following—

[F35](a) . . . . . .

(b) individuals who live in any area specified in the proposed constitution as the area for a public constituency,

(c) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors,

(d) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,

(e) any prescribed persons.

(6) If regulations make provision about consultation, the regulator may not give an authorisation unless it is satisfied that the applicant has complied with the regulations.

(7) The generality of the power in subsection (4) is not affected by the following provisions of this Chapter.

Textual Amendments

F33 S. 35(1)(b) and word omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 160(2)**, 306(4) (with s. 160(5)); S.I. 2012/1319, art. 2(3)

F34 Words in s. 35(3)(a) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 83**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

F35 S. 35(5)(a) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

36 Effect of authorisation

(1) On an authorisation being given to a body corporate which is an NHS trust—

(a) it ceases to be an NHS trust and becomes an NHS foundation trust,

(b) the proposed constitution has effect, and

(c) any order under section 25(1) is revoked.

[F36](2) . . . . . .

(3) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.

(4) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities (including its criminal liabilities).

(5) The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

(6) An NHS foundation trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and an NHS foundation trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F36 S. 36(2) omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 160(3)**, 306(4) (with s. 160(6)(7)); S.I. 2012/1319, art. 2(3)

37 Amendments of constitution

An NHS foundation trust may make amendments of its constitution with the approval of the regulator.

38 Variation of authorisation

(1) The regulator may vary an authorisation.

(2) In deciding whether or not to vary an authorisation, the regulator must have regard (among other things) to—

(a) any report or recommendation made to it by virtue of section 21(2)(f) of the Local Government Act 2000 (c. 22) (overview and scrutiny committees),

[F37](b) . . . . . .

Textual Amendments

F37 S. 38(2)(b) repealed (30.6.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 4(b)(c)

39 Register of NHS foundation trusts

(1) The regulator must continue to maintain a register of NHS foundation trusts.

(2) The register must contain in relation to each NHS foundation trust—

(a) a copy of the current constitution,

(b) a copy of the current authorisation,

(c) a copy of the latest annual accounts and of any report of the auditor on them,

(d) a copy of the latest annual report,

(e) **[**[F38]a copy of the latest document sent to the regulator under paragraph 27 of Schedule 7 (forward planning), **]**

(f) a copy of any notice given under section 52 (failing NHS foundation trusts).

(3) In relation to any time before an NHS foundation trust is first required to send an annual report to the regulator, the register must contain a list of the persons who were first elected or appointed as—

(a) the members of the board of governors,

(b) the directors.

(4) Members of the public may inspect the register at any reasonable time.

(5) Any person who requests it must be provided with a copy of, or extract from, any document contained in the register on payment of a reasonable charge.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F38 S. 39(2)(e) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 156(5)**, 306(1)(d)(4)

[F39 39A Panel for advising governors

(1) The regulator may appoint a panel of persons to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
  (a) to act in accordance with its constitution, or
  (b) to act in accordance with provision made by or under this Chapter.

(2) A governor may refer a question to the panel only if more than half of the members of the council of governors voting approve the referral.

(3) The panel—
  (a) may regulate its own procedure, and
  (b) may establish such procedures, and make such other arrangements, as it considers appropriate for the purpose of determining questions referred to it under this section.

(4) The panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.

(5) The panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice.

(6) Where the panel has carried out such an investigation, it must publish a report of its determination of the question referred to it.

(7) If a person refuses to comply with a request made under subsection (5), the report under subsection (6) may refer to the refusal.

(8) On any proceedings before a court or tribunal relating to a question referred to the panel under this section, the court may take the panel's report of its determination of the question into account.

(9) The regulator—
  (a) must pay expenses properly incurred by the panel, and
  (b) must make administrative support available to the panel.

(10) Regulations may make provision as to—
  (a) eligibility for membership of the panel;
  (b) the number of persons that may be appointed as members;
  (c) the terms of appointment of members;
  (d) circumstances in which a person ceases to be a member or may be suspended.]

Textual Amendments

F39 S. 39A inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 162**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 matters

40 Power of Secretary of State to give financial assistance

(1) The Secretary of State may give financial assistance to any NHS foundation trust.

(2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.

(3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.

(4) "Externally financed development agreement" has the same meaning as in paragraph 23 of Schedule 4, reading references in sub-paragraphs (3) and (5) of that paragraph to the NHS trust as references to the NHS foundation trust.

41 Prudential borrowing code

(1) The regulator may revise the code made under section 12(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) for determining the limit on the total amount of the borrowing of any NHS foundation trust.

(2) In revising the code the regulator must have regard (among other things) to any generally accepted principles used by financial institutions to determine the amounts of loans to non profit making bodies.

(3) A body is non profit making if it does not carry on activities for the purpose of making profits for distribution to its members or others.

(4) Before revising the code, the regulator must consult—
   (a) the Secretary of State,
   (b) each NHS foundation trust,
   (c) each NHS trust intending to make an application to become an NHS foundation trust,
   (d) such other persons as the regulator considers appropriate.

(5) The regulator must lay a copy of the revised code before Parliament.

42 Public dividend capital

(1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the NHS trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions ("initial public dividend capital"), but subject to this section.

(2) Any amount issued to an NHS foundation trust as public dividend capital under section 40 is (like initial public dividend capital) an asset of the Consolidated Fund.

(3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust must be treated as having been issued.

(4) But the dividend to be paid by the trust must be the same as that payable by NHS trusts in England under paragraph 1(6) of Schedule 5.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Before exercising the power in subsection (3), the Secretary of State must consult the regulator.

(6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital must be paid into the Consolidated Fund.

Functions

43 Authorised services

(1) An authorisation must authorise the NHS foundation trust to provide goods and services for purposes related to the provision of health care.

(2) But the authorisation must secure that the principal purpose of the NHS foundation trust is the provision of goods and services for the purposes of the health service in England.

(3) The NHS foundation trust may also carry on activities other than those mentioned in subsection (1), subject to any restrictions in the authorisation, for the purpose of making additional income available in order better to carry on its principal purpose.

(4) The authorisation may require the provision, wholly or partly for the purposes of the health service in England, of goods and services by the NHS foundation trust.

(5) The authorisation must authorise and may require the NHS foundation trust—
   (a) to carry out research in connection with the provision of health care,
   (b) to make facilities and staff available for the purposes of education, training or research carried on by others,

   and, in deciding how to exercise its functions under this subsection in a case where any of the corporation's hospitals includes a medical or dental school provided by a university, the regulator must have regard to the need to establish and maintain appropriate arrangements within the university.

(6) In deciding whether or not to require the NHS foundation trust to provide, wholly or partly for the purposes of the health service in England, any goods or services the regulator must have regard (among other things) to—
   (a) the need for the provision of goods or services in the area in question,
   (b) any provision of goods or services by other health service bodies in the area in question,
   (c) any other provision by the NHS foundation trust with which the provision of the goods or services is connected,
   (d) any agreement or arrangement to which the body corporate which is the NHS foundation trust is or was a party.

(7) Such a requirement as is mentioned in subsection (4) may be framed by reference (among other things) to—
   (a) goods or services in general or of a particular description,
   (b) goods or services required to meet the needs of health service bodies in general or those of a particular description,
   (c) goods or services required to meet the needs of other persons of a particular description,
   (d) the volume of goods or services provided,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(e) the place where goods or services are provided,

(f) the period within which goods or services are provided.

44 Private health care

(1) An authorisation may restrict the provision, for purposes other than those of the health service in England, of goods and services by an NHS foundation trust.

(2) The power must be exercised, in particular, with a view to securing that the proportion of the total income of an NHS foundation trust which was an NHS trust in any financial year derived from private charges is not greater than **[**[F40] —

(a)**]** the proportion of the total income of the NHS trust derived from such charges in the base financial year**[**[F41], or

(b) in the case of a mental health foundation trust designated under subsection (2A), that proportion or 1.5% if greater.**]**

[[F42](2A) An authorisation of an NHS foundation trust which was an NHS trust must designate it as a mental health foundation trust for the purposes of this section if it appears to the regulator that it provides goods or services only or mainly for the prevention, diagnosis or treatment of any disorder or disability of the mind or for the benefit in any other way of people suffering from a disorder or disability of the mind.**]**

(3) "Base financial year" means the first financial year throughout which the body corporate was an NHS trust or, if it was an NHS trust throughout the financial year ending with 31st March 2003, that year.

(4) "Private charges" means charges imposed in respect of goods and services provided to patients other than patients being provided with goods and services for the purposes of the health service.

(5) Section 43(7) applies for the purposes of this section.

(6) According to the nature of its functions, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services.

(7) An NHS foundation trust may exercise the power conferred by subsection (6) only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS foundation trust of its functions.

Textual Amendments

F40 Word in s. 44(2) inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 33(2)(a)**, 40(1); S.I. 2010/30, art. 2(g)

F41 S. 44(2)(b) and word inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 33(2)(b)**, 40(1); S.I. 2010/30, art. 2(g)

F42 S. 44(2A) inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 33(3)**, 40(1); S.I. 2010/30, art. 2(g)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

45 Protection of property

(1) An NHS foundation trust may not dispose of any protected property without the approval of the regulator.

(2) Disposing of property includes disposing of part of it or granting an interest in it.

(3) Protected property is property of the trust designated as protected in its authorisation.

(4) The regulator may designate property as protected if it considers it is needed—
- (a) for the purposes of any goods or services which the authorisation requires the trust to provide wholly or partly for the purposes of the health service in England, or
- (b) for the purpose of doing anything which the trust is required to do under section 43(5).

(5) The regulator may give approval under subsection (1) on any terms it considers appropriate.

(6) An NHS foundation trust may not create a floating charge on its property.

46 Financial powers

(1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.

(2) But the total amount of the NHS foundation trust's borrowing is subject to the limit imposed by its authorisation.

(3) The limit must be reviewed annually by the regulator.

(4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.

(5) The investment may include investment by—
- (a) forming, or participating in forming, bodies corporate,
- (b) otherwise acquiring membership of bodies corporate.

(6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

47 General powers

(1) An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions.

(2) In particular it may—
- (a) acquire and dispose of property,
- (b) enter into contracts,
- (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),
- (d) employ staff.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

(4) "The purposes of the NHS foundation trust" means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

48 Information

(1) An authorisation—
- (a) must require an NHS foundation trust to disclose such information to the regulator as the Secretary of State specifies,
- (b) may require an NHS foundation trust to disclose other information to the regulator.

(2) The regulator may require any other health service body to disclose any information which the regulator requires for the purposes of its functions.

49 Entry and inspection of premises

An authorisation may require an NHS foundation trust to allow the regulator to enter and inspect premises owned or controlled by the trust.

50 Fees

An authorisation may require an NHS foundation trust to pay a reasonable annual fee to the regulator.

51 Trust funds and trustees

(1) The Secretary of State may by order provide for the appointment of trustees for an NHS foundation trust to hold property on trust—
- (a) for the purposes of the NHS foundation trust, or
- (b) for any purposes relating to the health service.

(2) The order may—
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
- (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
- (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate,
- (d) make provision with respect to the term of office of any trustee and his removal from office.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Where trustees have been appointed for an NHS foundation trust under this section, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees.

(4) Where an NHS trust for which trustees have been appointed under paragraph 10 of Schedule 4 is given an authorisation, the order appointing the trustees has effect as an order under this section.

(5) "The purposes of the NHS foundation trust" means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

Failure

52 Failing NHS foundation trusts

(1) If the regulator is satisfied—

(a) that an NHS foundation trust is contravening, or failing to comply with, any term of its authorisation or any requirement imposed on it under any enactment and that the contravention or failure is significant, or

(b) that an NHS foundation trust has contravened, or failed to comply with, any such term or requirement and is likely to do so again and that the contravention or failure was significant,

the regulator may by a notice to the trust exercise one or more of the powers in subsections (3) and (4).

(2) The regulator may also by a notice to the trust exercise one or more of those powers if the regulator is satisfied that the trust has contravened or failed to comply with a previous notice.

(3) The regulator may require the trust, the directors or the board of governors to do, or not to do, specified things or things of a specified description within a specified period.

(4) The regulator may remove any or all of the directors or members of the board of governors and appoint interim directors or members of the board.

(5) The regulator's power to remove a director, or member of the board of governors, of the trust includes power to suspend him from office, or to disqualify him from holding office, as a director or member of the board of governors of the trust for a specified period.

[F43 52A Application of sections 52B to 52E

(1) Sections 52B to 52E apply to—

(a) an NHS foundation trust authorised under section 35 on an application under section 33;

(b) an NHS foundation trust established under section 56 to which subsection (2) applies.

(2) This subsection applies to an NHS foundation trust if—

(a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS foundation trust within subsection (1)(a), or was an

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

NHS trust all or most of whose hospitals, establishments and facilities were in England, or

(b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS foundation trust within subsection (1)(a) or an NHS trust all or most of whose hospitals, establishments and facilities were in England.

Textual Amendments

F43 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 15**, 40(1); S.I. 2010/30, art. 2(c)

52B De-authorisation: regulator's notice

(1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—

(a) an NHS foundation trust to which this section applies is contravening or failing to comply with, or has contravened or failed to comply with, any term of its authorisation or any requirement imposed on it under any enactment, and

(b) the seriousness of the contravention or failure, or, if there has been more than one, of any of them taken together, is such that it would justify the Secretary of State making an order under section 52D.

(2) The notice must be in writing.

(3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).

(4) Before giving a notice under this section, the regulator must consult first the Secretary of State (unless the notice follows a request by the Secretary of State under section 52E) and then—

(a) the trust,

(b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and

(c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

Textual Amendments

F43 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 15**, 40(1); S.I. 2010/30, art. 2(c)

52C Grounds for de-authorisation notice

(1) In determining under section 52B(1)(b) whether the making of an order would be justified, and in determining whether to give a notice under that section, the regulator must consider these matters (among others)—

(a) the health and safety of patients;

(b) the quality of the provision by the trust of goods and services;

(c) the financial position of the trust;

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) the way it is being run.

(2) The regulator must publish guidance as to the matters (including those mentioned in subsection (1)) that it proposes to consider in making those determinations.

(3) Before publishing any guidance under this section, including any revised guidance, the regulator must consult—

(a) the Secretary of State,

(b) each NHS foundation trust to which this section applies,

(c) each NHS trust intending to make an application to become an NHS foundation trust, and

(d) such other persons as the regulator considers appropriate.

Textual Amendments

F43 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 15**, 40(1); S.I. 2010/30, art. 2(c)

52D De-authorisation

(1) If the regulator gives notice under section 52B in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.

(2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.

(3) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.

(4) The order must specify, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).

(5) The order may provide for any provision under subsection (4) specifying the number of executive directors and non-executive directors to take effect at the end of a period specified in the order.

(6) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).

(7) If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—

(a) terminate the office of any executive or non-executive director of the trust;

(b) appoint a person to be an executive or non-executive director of the trust.

(8) Within seven days after the day on which the Secretary of State makes an order under subsection (1) the regulator must publish its report under section 52B(3).

(9) In this section "working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F43 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 15**, 40(1); S.I. 2010/30, art. 2(c)

52E Secretary of State's request

(1) If it appears to the Secretary of State that there are grounds for the regulator to be satisfied as mentioned in section 52B(1), the Secretary of State may request the regulator in writing to consider exercising its power to give a notice under that section.

(2) A request under this section must—
  (a) specify the NHS foundation trust to which it relates, and
  (b) state the grounds relied on by the Secretary of State.

(3) The Secretary of State must lay before Parliament any request under this section.

(4) If within the required period the regulator does not give a notice under section 52B in response to a request under this section, it must, within that period, publish its reasons for not doing so with a statement as to how it has complied with section 52C(1).

(5) The required period is—
  (a) 14 days beginning with the day after the regulator receives the request, or
  (b) any longer period specified in the request.

(6) The Secretary of State may by order extend or further extend the required period.**]**

Textual Amendments

F43 Ss. 52A-52E inserted (19.1.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 15**, 40(1); S.I. 2010/30, art. 2(c)

53 Voluntary arrangements

(1) If the regulator is satisfied that it is necessary or expedient to do so, it may by a notice to an NHS foundation trust **[**[F44]to which this section applies**]** require the directors—
  (a) to take steps to obtain a moratorium, or
  (b) to make a proposal for a voluntary arrangement.

(2) An order may provide for Part 1 of the Insolvency Act 1986 (c. 45) (company voluntary arrangements), including any related provision of that Act, to apply with modifications in relation to NHS foundation trusts **[**[F45]to which this section applies**]** .

(3) References in this Chapter to a moratorium are to a moratorium under section 1A of that Act as modified by the order.

(4) References in this Chapter to a voluntary arrangement are to a voluntary arrangement under Part 1 of that Act as modified by the order.

[[F46](4A) This section applies to an NHS foundation trust to which sections 52B to 52E and Chapter 5A do not apply.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F44 Words in s. 53(1) inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(3)**, 40(1); S.I. 2010/30, art. 3(b)

F45 Words in s. 53(2) inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(4)**, 40(1); S.I. 2010/30, art. 3(b)

F46 S. 53(4A) inserted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(5)**, 40(1); S.I. 2010/30, art. 3(b)

54 Dissolution etc

(1) The powers conferred by this section are exercisable where—

(a) an NHS foundation trust **[**[F47]to which section 53 applies**]** contravenes or fails to comply with a notice under section 52 or 53 or the trust's compliance with a notice under section 53 does not result in the implementation of a voluntary arrangement, and

(b) the regulator considers that further exercise of any of the powers conferred by those sections would not be likely to secure the provision of the goods and services which the authorisation requires the trust to provide.

(2) Before the powers conferred by this section are exercised, the regulator must consult specified persons about specified matters.

(3) "Specified" means specified in an order.

(4) An order may transfer, or provide for the transfer of, any property or liabilities of the trust to—

(a) another NHS foundation trust,

(b) a Primary Care Trust,

(c) an NHS trust,

(d) the Secretary of State.

(5) The liabilities which may be transferred by virtue of subsection (4) to any of the bodies mentioned in paragraphs (a) to (c) of that subsection include criminal liabilities.

(6) Schedule 9 makes provision for the transfer of employees.

(7) An order may provide for the dissolution of the trust.

(8) An order may apply any provision of Part 4 of the Insolvency Act 1986 (c. 45) (winding up of companies), including any related provision of that Act, with modifications.

(9) Where the regulator refuses to give an authorisation to a public benefit corporation—

(a) the powers conferred by this section are also exercisable, and

(b) references in this section and Schedule 9 to an NHS foundation trust are references to the corporation.

Textual Amendments

F47 Words in s. 54(1)(a) inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(6)**, 40(1); S.I. 2010/30, art. 3(b)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

55 Sections 53 and 54: supplementary

(1) In sections 53 and 54, an order means an order made by the Secretary of State.

(2) The modifications of the Insolvency Act 1986 that may be made by an order include—
- (a) provision for securing that the goods and services which the trust is required by the authorisation to provide continue to be provided (whether by the trust or another),
- (b) provision for securing the protection of property needed for the purposes of those goods and services.

(3) The power conferred by section 54(3) must be exercised with a view to securing the provision of the goods and services which the authorisation requires the trust to provide.

(4) That power must also be exercised (together, if required, with the power conferred by section 40(2)) with a view to securing that any transfer of property in pursuance of the exercise of the power does not result in a net loss of value to the trust; and the question whether a transfer would result in a net loss of value must be determined in accordance with regulations.

(5) The Insolvency Act 1986 may not be modified under section 54(8) so as to alter the priority of debts or the ranking of debts between themselves.

Mergers

56 Mergers

(1) An application may be made jointly by—
- (a) an NHS foundation trust, and
- (b) another NHS foundation trust or an NHS trust,

to the regulator for authorisation of the dissolution of the trusts and the transfer of some or all of their property and liabilities to a new NHS foundation trust established under this section.

(2) The application must—
- (a) be supported by the Secretary of State if one of the parties to it is an NHS trust,
- (b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,
- (c) describe the goods and services which it is proposed should be provided by the new trust, and
- (d) be accompanied by a copy of the proposed constitution of the new trust,

and must give any further information which the regulator requires the applicants to give.

(3) The applicants may modify the application with the agreement of the regulator at any time before authorisation is given under this section.

(4) The regulator may—
- (a) issue a certificate incorporating the directors of the applicants as a public benefit corporation, and
- (b) give an authorisation under this section to the corporation to become an NHS foundation trust,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

if the regulator is satisfied as to the following matters.

(5) The matters are that—

(a) the constitution of the new trust will be in accordance with Schedule 7 and will otherwise be appropriate,

(b) the applicants have taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,

(c) the new trust will be able to provide the goods and services which the authorisation will require it to provide, and

(d) any other requirements which the regulator considers appropriate are met.

(6) In deciding whether it is satisfied as to the matters referred to in subsection (5)(c), the regulator must consider (among other things)—

(a) any report or recommendation in respect of either of the applicants made by **[**[F48]the Care Quality Commission**]** ,

(b) the financial position of the applicants.

(7) The applicants must consult about the application in accordance with regulations.

(8) In the course of the consultation the applicants must seek the views of—

[F49](a) . . . . . .

(b) the staff employed by the applicants,

(c) individuals who live in any area specified in the proposed constitution as the area for a public constituency,

(d) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors,

(e) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,

(f) any prescribed persons.

(9) The regulator may not give an authorisation under this section unless it is satisfied that the applicants have complied with the regulations.

(10) The certificate is conclusive evidence of incorporation; and the authorisation is conclusive evidence that the corporation is an NHS foundation trust.

(11) On an authorisation being given under this section, the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

Textual Amendments

F48 Words in s. 56(6)(a) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 84**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

F49 S. 56(8)(a) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

57 Section 56: supplementary

(1) Where an authorisation is given under section 56, the regulator must specify the property and liabilities to be transferred to the new NHS foundation trust.

(2) Where such an authorisation is given, the Secretary of State must make an order—
- (a) dissolving the trusts in question, and
- (b) transferring, or providing for the transfer of, the property and liabilities specified by the regulator to the new NHS foundation trust.

(3) The order may—
- (a) transfer, or provide for the transfer of, any of the remaining property or liabilities to the persons mentioned in section 54(3),
- (b) include provisions corresponding to those of Schedule 9.

(4) In section 56(1) and (2), and subsections (1) and (2) of this section, "liabilities" includes criminal liabilities; and an order under subsection (3) of this section may transfer any remaining criminal liabilities to any of the bodies mentioned in section 54(4)(a) to (c).

(5) Where one of the parties to an application under section 56 is an NHS trust, the powers conferred on the Secretary of State by Part 3 of Schedule 4 are not exercisable in relation to the trust.

(6) Section 35(4) applies to an authorisation under section 56 as it does in relation to an authorisation under that section.

Miscellaneous

F50 58 Taxation

. . . . . .

Textual Amendments

F50 S. 58 repealed (with effect in accordance with s. 216(3)(4) of the amending Act) by Finance Act 2012 (c. 14), **s. 216(2)(b)**

59 Conduct of elections

(1) Regulations may make provision as to the conduct of elections for membership of the board of governors of an NHS foundation trust.

(2) The regulations may in particular provide for—
- (a) nomination of candidates and obligations to declare their interests,
- (b) systems and methods of voting, and the allocation of places on the board of governors, at contested elections,
- (c) filling of vacancies,
- (d) supervision of elections,
- (e) elections expenses and publicity,
- (f) questioning of elections and the consequences of irregularities.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.

(4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.

(5) Pending the coming into force of regulations under this section, elections for membership of the board of governors of an NHS foundation trust, if contested, must be by secret ballot.

60 Voting and standing for election

(1) A person may not vote at an election for the board of governors of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.

(2) A person may not stand for election to the board unless—
- (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and
- (b) he is not prevented from being a member of the board by paragraph 8 of Schedule 7.

(3) A person elected to the board may not vote at a meeting of the board unless—
- (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust, and
- (b) he is not prevented from being a member of the board by paragraph 8 of Schedule 7.

(4) This section does not apply to an election held for the staff constituency.

(5) “Specified” means specified in the trust's constitution.

(6) A person is guilty of an offence if he—
- (a) makes a declaration under this section which he knows to be false in a material particular, or
- (b) recklessly makes such a declaration which is false in a material particular.

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

61 Representative membership

An authorisation may require an NHS foundation trust to take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.

62 Audit

Schedule 10 makes provision in relation to the audit of accounts of NHS foundation trusts.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

63 General duty of NHS foundation trusts

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

Supplementary

64 Orders and regulations under this Chapter

(1) Any power under this Chapter to make an order or regulations is exercisable by statutory instrument.

(2) Subject to subsections (3) and (4), a statutory instrument made by virtue of this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A statutory instrument containing—

(a) the first regulations under section 55(4) or 59,

[[F51](aa) regulations under paragraph 30(1) of Schedule 7,**]** or

(b) an order or regulations under this Chapter making, by virtue of subsection (5)(b), provision which amends or repeals any part of the text of an Act,

may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(4) Subsection (2) does not apply to a statutory instrument containing an order under—

(a) section 51,

(b) section 54(4), or

(c) section 57.

(5) Any order or regulations under this Chapter—

(a) may make different provision for different purposes, and

(b) may make incidental, supplementary, consequential, transitory or transitional or saving provision.

(6) Any power under this Chapter to make an order or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.

Textual Amendments

F51 S. 64(3)(aa) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 158(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

65 Interpretation of this Chapter

(1) In this Chapter—

"authorisation" means an authorisation under section 35 or 56,

"health service body" means a Strategic Health Authority, a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust.

(2) Any references in this Chapter to goods and services include, in particular, facilities, education and training.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[F52 CHAPTER 5A

TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

Textual Amendments

F52 Pt. 2 Ch. 5A inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 16**, 40(1); S.I. 2010/30, art. 3(a)

Application

65A Application

(1) This Chapter applies to—

(a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;

(b) an NHS foundation trust authorised under section 35 on an application under section 33;

(c) an NHS foundation trust established under section 56 to which subsection (2) applies.

(2) This subsection applies to an NHS foundation trust if—

(a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b), or

(b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b).

Appointment

65B Appointment of trust special administrator

(1) The Secretary of State may make an order authorising the appointment of a trust special administrator to exercise the functions of the chairman and directors of an NHS trust to which this Chapter applies.

(2) An order may be made under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.

(3) The order must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.

(4) Before making the order the Secretary of State must consult—

(a) the trust,

(b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and

(c) any other person to which the trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.

(5) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) If an order is made under subsection (1), the Secretary of State must—
  (a) appoint a person as the trust special administrator with effect from the day specified in the order, and
  (b) publish the name of the person appointed.

(7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.

(8) The Secretary of State may pay remuneration and expenses to a trust special administrator.

65C Suspension of directors

(1) When the appointment of a trust special administrator takes effect, the trust's chairman and executive and non-executive directors are suspended from office.

(2) Subsection (1) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.

De-authorisation of NHS foundation trusts

65D NHS foundation trusts: regulator's notice

(1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—
  (a) an NHS foundation trust to which this Chapter applies is failing to comply with a notice under section 52, and
  (b) further exercise of the powers conferred by section 52 would not be likely to secure the provision of the goods and services which the trust's authorisation requires it to provide.

(2) The notice must be in writing.

(3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).

(4) Before giving a notice under this section, the regulator must consult first the Secretary of State and then—
  (a) the trust,
  (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
  (c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

65E NHS foundation trusts: de-authorisation and appointment of trust special administrator

(1) If the regulator gives notice under section 65D in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.

(3) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) the regulator's report under section 65D(3).

(4) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.

(5) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).

(6) Where an order is made under subsection (1) in relation to a trust, the Secretary of State must also make an order under section 65B(1) authorising the appointment of a trust special administrator in relation to the trust.

(7) The order under section 65B(1) must provide for the appointment to take effect at the same time as the order under this section.

(8) Section 65B(2), (4) and (5) do not apply in relation to the order under section 65B(1).

Consultation and report

65F Draft report

(1) Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the trust.

(2) When preparing the draft report, the administrator must consult—

[F53(za) **[** the Board,**]**

(a) **[**[F54]any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities,**]** and

(b) any other person to which the trust provides goods or services under this Act and which the Secretary of State directs the administrator to consult.

(3) After receiving the draft report, the Secretary of State must lay it before Parliament.

[F55(4) **[** For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.

(5) In the case of an NHS foundation trust, the administrator may not provide the draft report to the regulator under subsection (1)—

(a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report would achieve the objective set out in section 65DA, or

(b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
  (a) give a notice of the reasons for its decision to the administrator and to the regulator;
  (b) publish the notice;
  (c) lay a copy of it before Parliament.

(7) In subsection (5), "commissioner" means a person to which the trust provides services under this Act.**]**

Textual Amendments

F53 S. 65F(2)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(1)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F54 S. 65F(2)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(1)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F55 S. 65F(4)-(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65G Consultation plan

(1) At the same time as publishing a draft report under section 65F, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.

(2) The statement must specify a period of 30 working days within which the administrator seeks responses (the "consultation period").

(3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.

[In the case of an NHS foundation trust, the administrator may not make a variation to
F56(4) the draft report following the consultation period—
  (a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report as so varied would achieve the objective set out in section 65DA, or
  (b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

(5) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
  (a) give a notice of the reasons for its decision to the administrator and to the regulator;
  (b) publish the notice;
  (c) lay a copy of it before Parliament.

(6) In subsection (4), "commissioner" means a person to which the trust provides services under this Act.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F56 S. 65G(4)-(6) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(3)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65H Consultation requirements

(1) The following duties apply during the consultation period.

(2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.

(3) A notice under subsection (2) must include details of how responses can be given in writing.

(4) The trust special administrator must hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust.

(5) The trust special administrator must hold at least one other meeting to seek responses from any person who wishes to attend, after publishing notice of the date, time and place of the meeting.

(6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.

(7) The trust special administrator must request a written response from—

[F57(za) **[** the Board,**]**

(a) **[**[F58]any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities;**]**

(b) any other person to which the trust provides goods or services under this Act **[**[F59], if required by directions given by the Secretary of State**]**;

(c) any person within subsection (8), if required by directions given by the Secretary of State **[**[F60];

(d) any other person specified in a direction given by the Secretary of State**]**.

(8) The persons within this subsection are—

(a) **[**[F61]an overview and scrutiny committee of any authority to which section 244 applies;**]**

(b) **[**[F61]a committee of a local authority operating alternative arrangements under Part 2 of the Local Government Act 2000 which exercises functions corresponding to those of an overview and scrutiny committee under section 21(2)(f) of that Act;**]**

(c) **[**[F61]a joint overview and scrutiny committee;**]**

(d) **[**[F61]a committee established under section 247(1);**]**

(e) a person carrying on, in pursuance of arrangements made by any local authority under subsection (1) of section 221 of the Local Government and Public Involvement in Health Act 2007, activities specified in subsection (2) of that section (local involvement networks);

(f) the member of Parliament for any constituency.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(9) The trust special administrator must hold at least one meeting to seek responses from representatives of **[**[F62]the Board and**]** each of the persons from whom the administrator must request a written response under subsection **[**[F63](7)(a) or (b)**][**[F63](7)(b), (c) or (d)**]**.

(10) The Secretary of State may direct an administrator to—

(a) request a written response from any person;

(b) hold a meeting to seek a response from any person.

(11) In subsection (4) "staff of the trust" means persons employed by the trust or otherwise working for the trust (whether as or on behalf of a contractor, as a volunteer or otherwise).

[F64](12) **[** For the purposes of this section in its application to the case of an NHS foundation trust—

(a) in subsection (7)(b), the words "goods or" are to be ignored, and

(b) in subsections (7)(c) and (d) and (10), the references to the Secretary of State are to be read as references to the regulator.

(13) In the case of an NHS foundation trust, the Secretary of State may direct the regulator as to persons from whom it should direct the administrator under subsection (10) to request or seek a response.**]**

Textual Amendments

F57 S. 65H(7)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(4)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F58 S. 65H(7)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(4)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F59 Words in s. 65H(7)(b) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(4)(c)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F60 S. 65H(7)(d) and punctuation inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(4)(d)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F61 S. 65H(8)(a)-(d) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 176(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F62 Words in s. 65H(9) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(6)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F63 Words in s. 65H(9) substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(6)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F64 S. 65H(12)(13) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(7)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65I Final report

(1) Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 administrator must attach to the final report a summary of all responses to the draft report which were received by the administrator in the period beginning with the publication of the draft report and ending with the last day of the consultation period.

(3) After receiving the administrator's final report, the Secretary of State must publish it and lay it before Parliament.

F65 **[** (4) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.**]**

Textual Amendments

F65 S. 65I(4) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(8)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65J Power to extend time

(1) This section applies to—

(a) the duty of a trust special administrator to provide a draft report within the period specified in section 65F(1);

(b) the duty of a trust special administrator to consult in the consultation period specified under section 65G(2);

(c) the duty of a trust special administrator to provide a final report within the period specified in section 65I(1).

(2) If the Secretary of State thinks it is not reasonable in the circumstances for the administrator to be required to carry out the duty within the specified period, the Secretary of State may by order extend the period.

(3) If an order is made extending the period mentioned in subsection (1)(a) or (c) the trust special administrator must publish a notice stating the new date on which the period will expire.

(4) If an order is made extending the period mentioned in subsection (1)(b) the trust special administrator must—

(a) publish a notice stating the new date on which the period will expire, and

(b) publish a statement setting out the means by which the administrator will seek responses to the draft report during the extended consultation period.

F66 **[** (5) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.**]**

Textual Amendments

F66 S. 65J(5) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(9)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[F67 Action by the Secretary of State and the regulator]

Textual Amendments

F67 S. 65K cross-heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 177(7), 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65K [F68Secretary of State's decision][F68Secretary of State's decision in case of NHS trust]

(1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I [F69relating to an NHS trust], the Secretary of State must decide what action to take in relation to the trust.

(2) The Secretary of State must as soon as reasonably practicable—
- (a) publish a notice of the decision and of the reasons for it;
- (b) lay a copy of the notice before Parliament.

Textual Amendments

F68 S. 65K heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(1)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F69 Words in s. 65K(1) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(1)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

[F70 65KA Regulator's decision in case of NHS foundation trust

(1) Within the period of 20 working days beginning with the day on which the regulator receives a final report under section 65I relating to an NHS foundation trust, the regulator must decide whether it is satisfied—
- (a) that the action recommended in the final report would achieve the objective set out in section 65DA, and
- (b) that the trust special administrator has carried out the administration duties.

(2) In subsection (1)(b), "administration duties" means the duties imposed on the administrator by—
- (a) this Chapter,
- (b) a direction under this Chapter, or
- (c) the administrator's terms of appointment.

(3) If the regulator is satisfied as mentioned in subsection (1), it must as soon as reasonably practicable provide to the Secretary of State—
- (a) the final report, and
- (b) the report provided to the regulator by the Care Quality Commission under section 65D(3).

(4) If the regulator is not satisfied as mentioned in subsection (1), it must as soon as reasonably practicable give a notice of that decision to the administrator.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Where the regulator gives a notice under subsection (4), sections 65F to 65J apply in relation to the trust to such extent, and with such modifications, as the regulator may specify in the notice.

(6) The regulator must as soon as reasonably practicable after giving a notice under subsection (4)—
  (a) publish the notice;
  (b) lay a copy of it before Parliament.

Textual Amendments

F70 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65KB Secretary of State's response to regulator's decision

(1) Within the period of 30 working days beginning with the day on which the Secretary of State receives the reports referred to in section 65KA(3), the Secretary of State must decide whether the Secretary of State is satisfied—
  (a) that the persons to which the NHS foundation trust in question provides services under this Act have discharged their functions for the purposes of this Chapter,
  (b) that the trust special administrator has carried out the administration duties (within the meaning of section 65KA(1)(b)),
  (c) that the regulator has discharged its functions for the purposes of this Chapter,
  (d) that the action recommended in the final report would secure the continued provision of the services provided by the trust to which the objective set out in section 65DA applies,
  (e) that the recommended action would secure the provision of services that are of sufficient safety and quality to be provided under this Act, and
  (f) that the recommended action would provide good value for money.

(2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—
  (a) give the trust special administrator a notice of the decision and of the reasons for it;
  (b) give a copy of the notice to the regulator;
  (c) publish the notice;
  (d) lay a copy of it before Parliament.

Textual Amendments

F70 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65KC Action following Secretary of State's rejection of final report

(1) Within the period of 20 working days beginning with the day on which the trust special administrator receives a notice under section 65KB(2), the administrator must provide

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

to the regulator the final report varied so far as the administrator considers necessary to secure that the Secretary of State is satisfied as mentioned in section 65KB(1).

(2) Where the administrator provides to the regulator a final report under subsection (1), section 65KA applies in relation to the report as it applies in relation to a final report under section 65I; and for that purpose, that section has effect as if—
  (a) in subsection (1), for "20 working days" there were substituted "10 working days", and
  (b) subsection (3)(b) were omitted.

(3) If the Secretary of State thinks that, in the circumstances, it is not reasonable for the administrator to be required to carry out the duty under subsection (1) within the period mentioned in that subsection, the Secretary of State may by order extend the period.

(4) If an order is made under subsection (3), the administrator must—
  (a) publish a notice stating the date on which the period will expire, and
  (b) where the administrator is proposing to carry out consultation in response to the notice under section 65KB(2), publish a statement setting out the means by which the administrator will consult during the extended period.

Textual Amendments

F70 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65KD Secretary of State's response to re-submitted final report

(1) Within the period of 30 working days beginning with the day on which the Secretary of State receives a final report under section 65KA(3) as applied by section 65KC(2), the Secretary of State must decide whether the Secretary of State is, in relation to the report, satisfied as to the matters in section 65KB(1)(a) to (f).

(2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—
  (a) publish a notice of the decision and the reasons for it;
  (b) lay a copy of the notice before Parliament.

(3) Where the Secretary of State publishes a notice under subsection (2)(a), subsections (4) to (8) apply.

(4) If the notice states that the Board has failed to discharge a function—
  (a) the Board is to be treated for the purposes of this Act as having failed to discharge the function, and
  (b) the failure is to be treated for those purposes as significant (and section 13Z2 applies accordingly).

(5) If the notice states that a clinical commissioning group has failed to discharge a function—
  (a) the group is to be treated for the purposes of this Act as having failed to discharge the function,
  (b) the Secretary of State may exercise the functions of the Board under section 14Z21(2), (3)(a) and (8)(a), and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Board may not exercise any of its functions under section 14Z21.

(6) Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of the Board under subsection (3)(a) of section 14Z21, subsection (9)(a) of that section applies but with the substitution for the references to the Board of references to the Secretary of State.

(7) If the notice states that the trust special administrator has failed to discharge the administration duties (within the meaning of section 65KA(1)(b))—

(a) the administration duties are to be treated for the purposes of this Act as functions of the regulator,

(b) the regulator is to be treated for the purposes of this Act as having failed to discharge those functions, and

(c) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).

(8) If the notice states that the regulator has failed to discharge a function—

(a) the regulator is to be treated for the purposes of this Act as having failed to discharge the function, and

(b) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).

(9) Within the period of 60 working days beginning with the day on which the Secretary of State publishes a notice under subsection (2)(a), the Secretary of State must decide what action to take in relation to the trust.

(10) The Secretary of State must as soon as reasonably practicable—

(a) publish a notice of the decision and the reasons for it;

(b) lay a copy of the notice before Parliament.**]**

Textual Amendments

F70 Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

65L Trusts coming out of administration

(1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.

(2) The Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end.

[F71(2A) For the purposes of subsection (1) in its application to the case of an NHS foundation trust, the reference to section 65K is to be read as a reference to section 65KD(9); and this section also applies in the case of an NHS foundation trust if—

(a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) in relation to the trust, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) the action recommended in the final report is to do something other than dissolve the trust.

(2B) For the purposes of subsection (2) in its application to the case of an NHS foundation trust—

(a) the reference to the Secretary of State is to be read as a reference to the regulator, and

(b) the reference to the chairman and directors of the trust is to be read as including a reference to the governors.**]**

(3) **[**[F72]Subsections (4) and (5) apply in the case of a trust which is an NHS trust by virtue of an order made under section 65E(1).**]**

(4) **[**[F72]The Secretary of State must make an order specifying, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).**]**

(5) **[**[F72]If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—

(a) terminate the office of any executive or non-executive director of the trust;

(b) appoint a person to be an executive or non-executive director of the trust.**]**

[Subsection (7) applies in the case of an NHS foundation trust.

[F73](6)

(7) If it appears to the regulator to be necessary in order to comply with Schedule 7, the regulator may by order—

(a) terminate the office of any governor or of any executive or non-executive director of the trust;

(b) appoint a person to be a governor or an executive or non-executive director of the trust.**]**

Textual Amendments

F71 S. 65L(2A)(2B) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(3)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F72 S. 65L(3)-(5) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 177(4)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

F73 S. 65L(6)(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

[[F74]65LATrusts to be dissolved

(1) This section applies if—

(a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1), and

(b) the action recommended in the final report is to dissolve the NHS foundation trust in question.

(2) This section also applies if the Secretary of State decides under section 65KD(9) to dissolve the NHS foundation trust in question.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The regulator may make an order—
  (a) dissolving the trust, and
  (b) transferring, or providing for the transfer of, the property and liabilities of the trust—
    (i) to another NHS foundation trust or the Secretary of State, or
    (ii) between another NHS foundation trust and the Secretary of State.

(4) An order under subsection (3) may include provision for the transfer of employees of the trust.

(5) The liabilities that may be transferred to an NHS foundation trust by virtue of subsection (3)(b) include criminal liabilities.**]**

Textual Amendments

F74 S. 65LA inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(6)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

Supplementary

65M Replacement of trust special administrator

(1) If a trust special administrator ceases to hold office for any reason before the Secretary of State has made either an order under section 65L(2) or an order dissolving the trust, the Secretary of State must—
  (a) appoint another person as the trust special administrator, and
  (b) publish the name of the person appointed.

(2) Where a person is appointed under subsection (1) in relation to a trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

65N Guidance

(1) The Secretary of State must publish guidance for trust special administrators.

(2) It must include guidance about the publication of notices under sections 65H and 65J.

(3) It must include guidance about the preparation of draft reports, as to—
  (a) persons to be consulted;
  (b) factors to be taken into account;
  (c) relevant publications.

65O Interpretation of this Chapter

In this Chapter—

"trust special administrator" means a person appointed under section 65B(6)(a) or section 65M(1)(a);

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

"working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.**]**

[[F75]CHAPTER 5B

TRUST SPECIAL ADMINISTRATORS: PRIMARY CARE TRUSTS

Textual Amendments

F75 Pt. 2 Ch. 5B inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 17**, 40(1); S.I. 2010/30, art. 3(a)

Appointment

65P Appointment of trust special administrator

(1) The Secretary of State may give directions to a Primary Care Trust requiring the Primary Care Trust to appoint a trust special administrator to exercise on its behalf, to the extent, and subject to any conditions, specified in the directions, such provider functions of the Primary Care Trust as are specified in the directions.

(2) Directions may be given under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.

(3) The directions must specify—
- (a) the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the directions are given, and
- (b) the name of the person to be appointed.

(4) Before giving directions under subsection (1) the Secretary of State must consult—
- (a) the Primary Care Trust,
- (b) any Strategic Health Authority whose area includes any part of the Primary Care Trust's area, and
- (c) any other person to which the Primary Care Trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.

(5) The Secretary of State must lay before Parliament (with the instrument containing the directions) a report stating the reasons for giving the directions.

(6) Where a person is appointed pursuant to directions under subsection (1), the Secretary of State must publish the name of the person appointed.

(7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.

(8) Directions under subsection (1) may require the appointment to be on terms specified in the directions.

(9) The Primary Care Trust may pay the trust special administrator remuneration and expenses in accordance with the terms of the appointment.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) In this section "provider function" means—

(a) any function of providing goods or services except to the extent that at the time of the appointment there are arrangements between the Primary Care Trust and another person or body under which the goods or services are, or are to be, provided by that person or body, and

(b) any function that is not a function of providing goods or services but that may be exercised for the purposes of a function within paragraph (a).

65Q Displacement of functions

(1) When the appointment of a trust special administrator takes effect, the relevant functions cease to be exercisable by any committee, sub-committee or officer of the Primary Care Trust by whom they were previously exercisable.

(2) Subsection (1) does not affect the employment of any officer of the Primary Care Trust.

(3) In this Chapter "relevant functions" means the functions of the Primary Care Trust exercisable by the trust special administrator.**]**

CHAPTER 6

MISCELLANEOUS

Intervention orders and default powers

66 Intervention orders

(1) This section applies to NHS bodies other than NHS foundation trusts.

(2) If the Secretary of State—

(a) considers that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and

(b) is satisfied that it is appropriate for him to intervene under this section,

he may make an order under this section in respect of the body (an "intervention order").

(3) An intervention order may make any provision authorised by section 67 (including any combination of such provisions).

Modifications etc. (not altering text)

C5 S. 66 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

67 Effect of intervention orders

(1) In this section—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) "member" means a member of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board, or a member of the board of directors of an NHS trust,

(b) "employee member" means a member of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board who is an officer of the body, or an executive director of an NHS trust.

(2) An intervention order may provide for the removal from office of—

(a) all the members, or

(b) those specified in the order,

and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).

(3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—

(a) all the members, or

(b) those specified in the order,

and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).

(4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.

(5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—

(a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and

(b) is so performed in such a way as to achieve such objectives as are so specified,

and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.

(6) If the person referred to in subsection (5)(a) is a body to which section 66 applies, the functions of that body include the performance of the functions specified in the directions under subsection (5).

(7) Subsection (8) applies in relation to any provision in this Act, or in any order or regulations made, or directions given, under this Act, relating to—

(a) the membership of the body to which an intervention order relates (or in the case of an NHS trust to the membership of its board of directors), or

(b) the procedure of the body.

(8) The intervention order may provide in relation to any provision specified in the order—

(a) that it does not apply in relation to the body while the order remains in force, or

(b) that it applies in relation to the body, while the order remains in force, with modifications specified in the order.

(9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

68 Default powers

(1) This section applies to NHS bodies other than NHS foundation trusts.

(2) If the Secretary of State considers that a body to which this section applies—

(a) has failed to carry out any functions conferred or imposed on it by or under this Act, or

(b) has in carrying out those functions failed to comply with any regulations or directions relating to those functions,

he may after such inquiry as he considers appropriate make an order declaring it to be in default.

(3) The members of the body in default must immediately vacate their office, and the order—

(a) must provide for the appointment, in accordance with the provisions of this Act, of new members of the body, and

(b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body pending the appointment of new members.

(4) An order under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including—

(a) provision for the transfer to the Secretary of State of property and liabilities of the body in default, and

(b) where any such order is varied or revoked by a subsequent order, provision in the subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him.

Modifications etc. (not altering text)

C6 S. 68 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

Protection of members and officers of health service bodies

69 Protection from personal liability

(1) Section 265 of the Public Health Act 1875 (c. 55) (which relates to the protection of members and officers of certain authorities) has effect as if there were included in the authorities referred to in that section a reference to an NHS body.

(2) Any reference in that section to the Public Health Act 1875 has effect as if it included a reference to this Act and the National Health Service (Wales) Act 2006 (c. 42).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Transfer of residual liabilities

70 Transfer of residual liabilities

(1) If a Strategic Health Authority, a Primary Care Trust, an NHS trust or a Special Health Authority ceases to exist, the Secretary of State must exercise his functions so as to secure that all of the body's liabilities (other than any criminal liabilities) are dealt with.

(2) A liability is dealt with by being transferred to an NHS body, the Secretary of State or the Welsh Ministers.

Losses and liabilities of certain health service bodies

71 Schemes for meeting losses and liabilities etc of certain health service bodies

(1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies **[**[F76]or other persons**]** specified in subsection (2) may make provision to meet—

(a) expenses arising from any loss of or damage to their property, and

(b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies **[**[F76]or other persons**]** concerned.

(2) The bodies **[**[F77] and other persons **]** referred to in subsection (1) are—

(a) Strategic Health Authorities,

(b) Primary Care Trusts,

(c) NHS trusts,

(d) Special Health Authorities,

(e) NHS foundation trusts,

(f) **[**[F78]the Care Quality Commission**]** , and

(g) the Health Protection Agency,

[[F79](h) the Secretary of State, and

(i) a body or other person (other than a body or other person within any of paragraphs (a) to (h)) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h),**]**

but a scheme under this section may limit the class or description of bodies which **[**[F80], or other persons who, **]** are eligible to participate in it.

[[F81](2A) In subsection (1)(b) "functions"—

(a) in relation to the Secretary of State, means the Secretary of State's functions in connection with the health service;

(b) in relation to a body or other person within paragraph (i) of subsection (2), means the body's or person's functions of providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h) of that subsection.**]**

(3) A scheme under this section may, in particular—

(a) provide for the scheme to be administered by the Secretary of State or by a Strategic Health Authority, Primary Care Trust, NHS trust, Special Health Authority or NHS foundation trust specified in the scheme,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) require any body which **[**[F82], or other person who,**]** participates in the scheme to make payments in accordance with the scheme, and

(c) provide for the making of payments for the purposes of the scheme by the Secretary of State **[**[F83] (whether or not a participator in the scheme and, if a participator, whether or not required to make payments as a participator) **]**.

(4) If the Secretary of State so directs, a body which is eligible to participate in a scheme must do so.

[[F84](5) The Secretary of State may make a direction under subsection (4) in respect of a body only if the body is within any of paragraphs (a) to (d), (f) and (g) of subsection (2).**]**

(6) Where a scheme provides for the scheme to be administered by the Secretary of State, a Strategic Health Authority, Primary Care Trust, NHS trust, Special Health Authority or NHS foundation trust must carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct.

(7) Subsections (4) and (6) do not affect any other power of direction of the Secretary of State.

(8) A person or body administering a scheme under this section does not require permission under any provision of the Financial Services and Markets Act 2000 (c. 8) as respects activities carried out under the scheme.

[[F85](9) In subsection (2)(i), the reference to a person providing health services does not include a person providing health services under a contract of employment.

(10) In this section " health services " means services provided as part of the health service. **]**

Textual Amendments

F76 Words in s. 71(1) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(2)**, 170(3)(4); S.I. 2008/2497, art. 5

F77 Words in s. 71(2) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(a)**, 170(3)(4); S.I. 2008/2497, art. 5

F78 Words in s. 71(2)(f) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 85**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

F79 S. 71(2)(h)(i) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(b)**, 170(3)(4); S.I. 2008/2497, art. 5

F80 Words in s. 71(2) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(c)**, 170(3)(4); S.I. 2008/2497, art. 5

F81 S. 71(2A) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(4)**, 170(3)(4); S.I. 2008/2497, art. 5

F82 Words in s. 71(3)(b) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(a)**, 170(3)(4); S.I. 2008/2497, art. 5

F83 Words in s. 71(3)(c) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(b)**, 170(3)(4); S.I. 2008/2497, art. 5

F84 S. 71(5) substituted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(6)**, 170(3)(4); S.I. 2008/2497, art. 5

F85 S. 71(9)(10) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(7)**, 170(3)(4); S.I. 2008/2497, art. 5

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Modifications etc. (not altering text)

C7 S. 71(2) modified (temp.) (1.10.2008) by Health and Social Care Act 2008 (Consequential Amendments and Transitory Provisions) Order 2008 (S.I. 2008/2250), arts. 1(1), **3(15)**

Co-operation between NHS bodies

72 Co-operation between NHS bodies

It is the duty of NHS bodies to co-operate with each other in exercising their functions.

Directions and regulations under this Part

73 Directions and regulations under this Part

(1) This section applies to directions and regulations under any of—
- (a) section 7,
- (b) section 8,
- (c) section 14,
- (d) section 15,
- (e) section 19,
- (f) section 20,
- (g) section 29.

(2) Except in prescribed cases, the directions and regulations must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function.

PART 3

LOCAL AUTHORITIES AND THE NHS

[F86 73A Appointment of directors of public health

(1) Each local authority must, acting jointly with the Secretary of State, appoint an individual to have responsibility for —
- (a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,
- (b) the exercise by the authority of its functions by virtue of section 6C(1) or (3),
- (c) anything done by the authority in pursuance of arrangements under section 7A,
- (d) the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health,
- (e) the functions of the authority under section 325 of the Criminal Justice Act 2003, and
- (f) such other functions relating to public health as may be prescribed.

(2) The individual so appointed is to be an officer of the local authority and is to be known as its director of public health.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Subsection (4) applies if the Secretary of State—
- (a) considers that the director has failed or might have failed to discharge (or to discharge properly) the responsibilities of the director under—
  - (i) subsection (1)(b), or
  - (ii) subsection (1)(c) where the arrangements relate to the Secretary of State's functions under section 2A, and
- (b) has consulted the local authority.

(4) The Secretary of State may direct the local authority to—
- (a) review how the director has discharged the responsibilities mentioned in subsection (3)(a);
- (b) investigate whether the director has failed to discharge (or to discharge properly) those responsibilities;
- (c) consider taking any steps specified in the direction;
- (d) report to the Secretary of State on the action it has taken in pursuance of a direction given under any of the preceding paragraphs.

(5) A local authority may terminate the appointment of its director of public health.

(6) Before terminating the appointment of its director of public health, a local authority must consult the Secretary of State.

(7) A local authority must have regard to any guidance given by the Secretary of State in relation to its director of public health, including guidance as to appointment and termination of appointment, terms and conditions and management.

(8) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F86 S. 73A inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 30**, 306(1)(d)(4)

[F87 73C Complaints about exercise of public health functions by local authorities

(1) Regulations may make provision about the handling and consideration of complaints made under the regulations about —
- (a) the exercise by a local authority of any of its public health functions;
- (b) the exercise by a local authority of its functions by virtue of section 6C(1) or (3);
- (c) anything done by a local authority in pursuance of arrangements made under section 7A;
- (d) the exercise by a local authority of any of its other functions—
  - (i) which relate to public health, and
  - (ii) for which its director of public health has responsibility;
- (e) the provision of services by another person in pursuance of arrangements made by a local authority in the exercise of any function mentioned in paragraphs (a) to (d).

(2) The regulations may provide for a complaint to be considered by one or more of the following—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 local authority in respect of whose functions the complaint is made;
(b) an independent panel established under the regulations;
(c) any other person or body.

(3) The regulations may provide for a complaint or any matter raised by a complaint—
(a) to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 for the Commissioner to consider whether to investigate the complaint or matter under that Part;
(b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

(4) Where the regulations make provision under subsection (3)(a) they may also provide for the complaint to be treated as satisfying sections 26A and 26B of the Act of 1974.

(5) Section 115 of the Health and Social Care (Community Health and Standards) Act 2003 (health care and social services complaints regulations: supplementary) applies in relation to regulations under this section as it applies in relation to regulations under subsection (1) of section 113 of that Act.

(6) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F87 S. 73C inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 32**, 306(1)(d)(4)

74 Supply of goods and services by local authorities

(1) In the Local Authorities (Goods and Services) Act 1970 (c. 39) the expression "public body" includes—
(a) any Strategic Health Authority, Special Health Authority or Primary Care Trust, and
(b) so far as relates to his functions under this Act, the Secretary of State.

(2) Subsection (1) has effect as if made by an order under section 1(5) of the Local Authorities (Goods and Services) Act 1970 and may be varied or revoked by such an order.

(3) Each local authority must make services available to each NHS body acting in its area, so far as is reasonably necessary and practicable to enable the NHS body to discharge its functions under this Act.

(4) "Services" means the services of persons employed by the local authority for the purposes of its functions under the Local Authority Social Services Act 1970 (c. 42).

75 Arrangements between NHS bodies and local authorities

(1) The Secretary of State may by regulations make provision for or in connection with enabling prescribed NHS bodies (on the one hand) and prescribed local authorities (on the other) to enter into prescribed arrangements in relation to the exercise of—
(a) prescribed functions of the NHS bodies, and
(b) prescribed health-related functions of the local authorities,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

if the arrangements are likely to lead to an improvement in the way in which those functions are exercised.

(2) The arrangements which may be prescribed include arrangements—

(a) for or in connection with the establishment and maintenance of a fund—

(i) which is made up of contributions by one or more NHS bodies and one or more local authorities, and

(ii) out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the authority or authorities,

(b) for or in connection with the exercise by an NHS body on behalf of a local authority of prescribed health-related functions of the authority in conjunction with the exercise by the NHS body of prescribed functions of the NHS body,

(c) for or in connection with the exercise by a local authority on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the local authority of prescribed health-related functions of the local authority,

(d) as to the provision of staff, goods or services in connection with any arrangements mentioned in paragraph (a), (b) or (c),

(e) as to the making of payments by a local authority to an NHS body in connection with any arrangements mentioned in paragraph (b),

(f) as to the making of payments by an NHS body to a local authority in connection with any arrangements mentioned in paragraph (c).

(3) Regulations under this section may make provision—

(a) as to the cases in which NHS bodies and local authorities may enter into prescribed arrangements,

(b) as to the conditions which must be satisfied in relation to prescribed arrangements (including conditions in relation to consultation),

(c) for or in connection with requiring the consent of the Secretary of State to the operation of prescribed arrangements (including provision in relation to applications for consent, the approval or refusal of such applications and the variation or withdrawal of approval),

(d) in relation to the duration of prescribed arrangements,

(e) for or in connection with the variation or termination of prescribed arrangements,

(f) as to the responsibility for, and the operation and management of, prescribed arrangements,

(g) as to the sharing of information between NHS bodies and local authorities.

(4) The provision which may be made by virtue of subsection (3)(f) includes provision in relation to—

(a) the formation and operation of joint committees of NHS bodies and local authorities,

(b) the exercise of functions which are the subject of prescribed arrangements (including provision in relation to the exercise of such functions by joint committees or employees of NHS bodies and local authorities),

(c) the drawing up and implementation of plans in respect of prescribed arrangements,

(d) the monitoring of prescribed arrangements,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(e) the provision of reports on, and information about, prescribed arrangements,
(f) complaints and disputes about prescribed arrangements,
(g) accounts and audit in respect of prescribed arrangements.

(5) Arrangements made by virtue of this section do not affect—
(a) the liability of NHS bodies for the exercise of any of their functions,
(b) the liability of local authorities for the exercise of any of their functions, or
(c) any power or duty to recover charges in respect of services provided in the exercise of any local authority functions.

(6) The Secretary of State may issue guidance to NHS bodies and local authorities in relation to consultation or applications for consent in respect of prescribed arrangements.

(7) The reference in subsection (1) to an improvement in the way in which functions are exercised includes an improvement in the provision to any individuals of any services to which those functions relate.

(8) In this section—

"health-related functions", in relation to a local authority, means functions of the authority which, in the opinion of the Secretary of State—
(a) have an effect on the health of any individuals,
(b) have an effect on, or are affected by, any functions of NHS bodies, or
(c) are connected with any functions of NHS bodies,

"NHS body" does not include a Special Health Authority.

(9) Schedule 18 makes provision with respect to the transfer of staff in connection with arrangements made by virtue of this section.

Modifications etc. (not altering text)
C8 S. 75(8) modified by 2004 c. 17, **s. 4(5)(c)** (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), Sch. 1 para. 258(c) (with **Sch. 3 Pt. 1**))

76 Power of local authorities to make payments

(1) A local authority may make payments to a Strategic Health Authority, a Primary Care Trust or a Local Health Board towards expenditure incurred or to be incurred by the body in connection with the performance by it of prescribed functions.

(2) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.

(3) The Secretary of State may by directions prescribe conditions relating to payments under this section.

(4) The power under subsection (3) may in particular be exercised so as to require, in such circumstances as may be specified—
(a) repayment of the whole or part of a payment under this section, or
(b) in respect of property acquired with payments under this section, payment of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) No payment may be made under this section in respect of any expenditure unless the conditions relating to it conform with the conditions prescribed for payments of that description under subsection (3).

Modifications etc. (not altering text)

C9 S. 76(1) modified by 2004 c. 17, s. 4(5)(b) (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 258(b)** (with Sch. 3 Pt. 1))

77 Care Trusts

(1) Where—

(a) a Primary Care Trust or an NHS trust **[**[F88]or a clinical commissioning group or an NHS foundation trust**]** is, or will be, a party to any existing or proposed LA delegation arrangements, **[**[F89]and**]**

(b) **[**[F90]the Secretary of State considers**][**[F90]the body and the local authority concerned consider**]** that designation of the body as a Care Trust would be likely to promote the effective exercise by the body of prescribed health-related functions of **[**[F91]a local authority**][**[F91]the local authority**]** (in accordance with the arrangements) in conjunction with prescribed NHS functions of the body**[**[F92], and

(c) the requirements in subsection (1A) are satisfied,**]**

[[F93]the Secretary of State may**][**[F93]the body and the local authority may jointly**]** designate the body as a Care Trust.

[[F94](1A) The body and the local authority must, before designating the body as a Care Trust under this section—

(a) publish in the prescribed form and manner—

(i) the reasons why they consider that the proposed designation would be likely to have the result mentioned in subsection (1)(b), and

(ii) information about the proposed governance arrangements of the Care Trust, and

(b) consult on the proposed designation in accordance with regulations.

(1B) Where a body has been designated as a Care Trust under this section, the body and the local authority must notify prescribed persons of the designation.**]**

(2) **[**[F95]A Primary Care Trust or NHS trust may, however, be designated only in pursuance of an application made to the Secretary of State jointly by each prescribed body.**]**

(3) **[**[F95]If the application under subsection (2) requests the Secretary of State to do so, he may when designating a body as a Care Trust make a direction under subsection (4).**]**

(4) **[**[F96]The direction is that while the body is designated it**][**[F96]A body designated as a Care Trust under this section**]** may (in addition to exercising health-related functions of the local authority as mentioned in subsection (1)(b)) exercise such prescribed health-related functions of the local authority as are **[**[F97]specified in the direction**][**[F97]agreed**]** in relation to persons in any area **[**[F98]so specified**][**[F98]so agreed**]**, even though it does not exercise any NHS functions in relation to persons in that area**[**[F99]; and "agreed" means agreed by the body and the local authority**]**.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[[F100](5) Where a body is designated as a Care Trust under this section, the body and the local authority may jointly revoke that designation.

(5A) Before revoking a designation as a Care Trust under this section, the body and the local authority must consult on the proposed revocation of the designation in accordance with regulations.

(5B) Where the designation of a body as a Care Trust under this section has been revoked, the body and the local authority must notify prescribed persons of the revocation.**]**

[[F101](5C) Regulations under subsection (1A)(b) or (5A) may include provision requiring a body and a local authority to publish prescribed information following a consultation.**]**

[[F102](5D) Where a duty is imposed by or by virtue of this section on a body and a local authority, they may make arrangements for the function to be discharged—

(a) by both of them acting jointly,

(b) by each of them acting separately, or

(c) by one of them acting on behalf of both of them.**]**

(6) **[**[F103]The designation of a body as a Care Trust under this section must be effected by an order under section 18 or 25 which—

(a) (in the case of an existing body) amends the order establishing the body so as to change its name to one that includes the words "Care Trust", or

(b) (in the case of a new body) establishes the body with a name that includes those words,

and any revocation of its designation must be effected by a further order under section 18 or 25 which makes such provision for changing the name of the body as the Secretary of State considers expedient.**]**

(7) **[**[F104]The power of the Secretary of State to dissolve a Primary Care Trust or an NHS trust includes power to dissolve such a Primary Care Trust or NHS trust where he considers that it is appropriate to do so in connection with the designation of any other such body (whether existing or otherwise) as a Care Trust.**]**

(8) Regulations may make such incidental, supplementary or consequential provision (including provision amending, repealing or revoking enactments) as the Secretary of State considers expedient in connection with the preceding provisions of this section.

(9) Regulations under subsection (8) may, in particular, make provision—

(a) **[**[F105]prescribing—

(i) the manner and circumstances in which, and

(ii) any conditions which must be satisfied before,

an application may be made for a body to be designated as a Care Trust under this section, or to cease to be so designated, and the information to be supplied with such an application,**]**

(b) **[**[F106]enabling the Secretary of State to terminate appointments of persons as members of a Primary Care Trust or of the board of directors of an NHS trust (or of a committee of such a Primary Care Trust or NHS trust) where he considers that it is appropriate to do so in connection with the designation of the Primary Care Trust or NHS trust as a Care Trust,**]**

(c) **[**[F107]requiring the consent of the Secretary of State to be obtained before any prescribed change is made with respect to the governance of a body so designated,**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) for supplementing or modifying, in connection with the operation of **[**[F108]subsection (3)**][**[F108]subsection (4)**]**, any provision made by regulations under section 75.

(10) The designation of a body as a Care Trust under this section does not affect any of the functions, rights or liabilities of that body in its capacity as a Primary Care Trust or NHS trust **[**[F109]or clinical commissioning group or NHS foundation trust**]**.

(11) In connection with the exercise by a body so designated of any relevant social services functions under LA delegation arrangements—

(a) section 7 of the Local Authority Social Services Act 1970 (c. 42) (authorities to exercise social services functions under guidance), and

(b) section 7A of that Act (directions as to exercise of such functions),

apply to the body as if it were a local authority within the meaning of that Act.

(12) In this section—

"health-related functions" has the meaning given by section 75(8),

"LA delegation arrangements" means arrangements falling within section 75(2)(b), whether or not made in conjunction with any pooled fund arrangements,

"NHS functions" means functions exercisable by a Primary Care Trust or NHS trust **[**[F110]or clinical commissioning group or NHS foundation trust**]** in its capacity as such,

"pooled fund arrangements" means arrangements falling within section 75(2)(a),

"relevant social services functions" means health-related functions which are social services functions within the meaning of the Local Authority Social Services Act 1970.

Textual Amendments

F88 Words in s. 77(1)(a) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(a)**, 306(1)(d)(4)

F89 Word in s. 77(1) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **s. 200(1)(b)**(f), 306(1)(d)(4)

F90 Words in s. 77(1)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(c)**, 306(1)(d)(4)

F91 Words in s. 77(1)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(d)**, 306(1)(d)(4)

F92 S. 77(1)(c) and preceding word inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(e)**, 306(1)(d)(4) (with s. 200(13))

F93 Words in s. 77(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(1)(f)**, 306(1)(d)(4)

F94 S. 77(1A)(1B) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(2)**, 306(1)(d)(4) (with s. 200(13))

F95 S. 77(2)(3) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(3)**, 306(1)(d)(4)

F96 Words in s. 77(4) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(a)**, 306(1)(d)(4)

F97 Word in s. 77(4) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(b)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F98 Words in s. 77(4) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(c)**, 306(1)(d)(4)

F99 Words in s. 77(4) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(4)(d)**, 306(1)(d)(4)

F100 S. 77(5)-(5B) substituted for s. 77(5) (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(5)**, 306(1)(d)(4) (with s. 200(14))

F101 S. 77(5C) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(6)**, 306(1)(d)(4)

F102 S. 77(5D) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(7)**, 306(1)(d)(4)

F103 S. 77(6) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(8)**, 306(1)(d)(4) (with s. 200(15))

F104 S. 77(7) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(9)**, 306(1)(d)(4)

F105 S. 77(9)(a) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(10)(a)**, 306(1)(d)(4)

F106 S. 77(9)(b) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(10)(b)**, 306(1)(d)(4)

F107 S. 77(9)(c) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 200(10)(c)**, 306(1)(d)(4)

F108 Words in s. 77(9)(d) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(10)(d)**, 306(1)(d)(4)

F109 Words in s. 77(10) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(11)**, 306(1)(d)(4)

F110 Words in s. 77(12) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 200(12)**, 306(1)(d)(4)

78 Directed partnership arrangements

(1) If the Secretary of State is of the opinion—

(a) that a body to which this section applies ("the failing body") is not exercising any of its functions adequately, and

(b) that it would be likely to lead to an improvement in the way in which that function is exercised if it were to be exercised—

(i) by another body to which this section applies under delegation arrangements, or

(ii) in accordance with pooled fund arrangements made with another such body,

the Secretary of State may direct those bodies to enter into such delegation arrangements or pooled fund arrangements in relation to the exercise of the appropriate function or functions as are specified in the direction.

(2) In subsection (1) "the appropriate function or functions" means—

(a) the function of the failing body mentioned in that subsection, and

(b) such other function of that body (if any) as the Secretary of State considers would, if exercised under or in accordance with the arrangements in question, be likely to contribute to an improvement in the exercise of the function referred to in paragraph (a).

(3) The bodies to which this section applies are—

(a) Strategic Health Authorities,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Primary Care Trusts,
(c) NHS trusts,
(d) Local Health Boards, and
(e) local authorities,

but in subsections (1) and (2) any reference to functions is, in relation to a local authority, a reference only to relevant social services functions of the authority.

(4) In this section any reference to an improvement in the way in which any function is exercised includes an improvement in the provision to any individuals of any services to which that function relates.

(5) In this section—

"delegation arrangements" means arrangements falling within section 75(2)(b) or (c), whether or not made in conjunction with any pooled fund arrangements,

"health-related functions" has the meaning given by section 75(8),

"pooled fund arrangements" means arrangements falling within section 75(2)(a),

"relevant social services functions" means health-related functions which are social services functions within the meaning of the Local Authority Social Services Act 1970 (c. 42).

79 Further provision about directions and directed partnership arrangements

(1) A direction under section 78(1) (a "principal direction") may make provision with respect to—
(a) any of the matters with respect to which provision is required to be made by the specified arrangements by virtue of regulations under section 75, and
(b) such other matters as the Secretary of State considers appropriate.

(2) The Secretary of State may in particular (either in a principal direction or in any subsequent direction) make provision—
(a) for the determination, whether—
(i) by agreement, or
(ii) (in default of agreement) by the Secretary of State or an arbitrator appointed by him,

of the amount of any payments which need to be made by one body to another for the purposes of the effective operation of the specified arrangements, and for the variation of any such determination,
(b) specifying the manner in which the amount of any such payments must be so determined (or varied),
(c) requiring a body specified in the direction to supply to the Secretary of State or an arbitrator, for the purpose of enabling any such amount to be so determined (or varied), such information or documents as may be so specified,
(d) requiring any amount so determined (or varied) to be paid by and to such bodies as are specified in the direction,
(e) requiring capital assets specified in the direction to be made available by and to such bodies as are so specified.

(3) The Secretary of State may, when giving a principal direction to any bodies to which section 78 applies, give such directions to any other such body as he considers

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

appropriate for or in connection with securing that full effect is given to the principal direction.

(4) Before giving a principal direction to any bodies to which section 78 applies, the Secretary of State may—
   (a) direct either or both of the bodies in question to take such steps specified in the direction, or
   (b) give such other directions,

   as he considers appropriate with a view to enabling him to determine whether the principal direction should be given.

(5) The revocation of a principal direction does not affect the continued operation of the specified arrangements.

(6) "The specified arrangements", in relation to a principal direction, means the arrangements specified in the direction in pursuance of section 78(1).

80 Supply of goods and services by the Secretary of State

(1) The Secretary of State may supply to—
   (a) local authorities, and
   (b) such public bodies or classes of public bodies as he may determine,

   any goods or materials of a kind used in the health service.

(2) In subsection (1) "public bodies" includes public bodies in Northern Ireland.

(3) The Secretary of State may make available to persons falling within subsection (1)—
   (a) any facilities provided by him or by a Primary Care Trust for any service under this Act, and
   (b) the services of persons employed by the Secretary of State or by a Strategic Health Authority, a Primary Care Trust, a Special Health Authority or a Local Health Board.

(4) The Secretary of State may carry out maintenance work (including minor renewals, minor improvements and minor extensions) in connection with any land or building for the maintenance of which a local authority is responsible.

(5) The Secretary of State may supply or make available to persons—
   (a) providing pharmaceutical services,
   (b) providing services under a general medical services contract, a general dental services contract or a general ophthalmic services contract,
   (c) providing services in accordance with section 92 arrangements or section 107 arrangements, or
   (d) providing services under a pilot scheme **[**[F11]established under section 134(1) of this Act**]** or an LPS scheme,

   such goods, materials or other facilities as may be prescribed.

(6) The Secretary of State must make available to local authorities—
   (a) any services (other than the services of any person) or other facilities provided under this Act,
   (b) the services provided as part of the health service by any person employed by the Secretary of State, a Strategic Health Authority, a Primary Care Trust, a Special Health Authority or a Local Health Board, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 services of any medical practitioner, dental practitioner or nurse employed by the Secretary of State, a Strategic Health Authority, a Primary Care Trust, a Special Health Authority or a Local Health Board otherwise than to provide services which are part of the health service,

so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

(7) The Secretary of State may arrange to make available to local authorities the services of persons—

(a) providing pharmaceutical services,

(b) performing services under a general medical services contract, a general dental services contract or a general ophthalmic services contract,

(c) providing services in accordance with section 92 arrangements or section 107 arrangements,

(d) performing services under a pilot scheme **[**[F112]established under section 134(1) of this Act**]** or an LPS scheme, or

(e) providing Strategic Health Authorities, Primary Care Trusts, Special Health Authorities or Local Health Boards with services of a kind provided as part of the health service,

so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

Textual Amendments

F111 Words in s. 80(5)(d) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(a)**; S.I. 2010/30, art. 2(b)

F112 Words in s. 80(7)(d) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(b)**; S.I. 2010/30, art. 2(b)

Modifications etc. (not altering text)

C10 S. 80 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 10** (with Sch. 3 Pt. 1)

81 Conditions of supply under section 80

(1) The Secretary of State must, before he makes available the services of any officer under subsection (3)(b) of section 80, or subsection (6)(b) or (c) of that section—

(a) consult the officer or a body recognised by the Secretary of State as representing the officer, or

(b) satisfy himself that the body who employs the officer has consulted the officer about the matter.

(2) The Secretary of State may disregard the provisions of subsection (1) in a case where he—

(a) considers it necessary to make the services of an officer available for the purpose of dealing temporarily with an emergency, and

(b) has previously consulted a body such as is mentioned in subsection (1)(b) about making services available in an emergency.

(3) The Secretary of State may, for the purposes of subsection (3)(b) of section 80, or subsection (6)(b) or (c) of that section, give such directions to Strategic Health

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Authorities, Primary Care Trusts, Special Health Authorities and Local Health Boards to make the services of their officers available as he considers appropriate.

(4) Powers under this section and section 80 may be exercised on such terms as may be agreed, including terms as to the making of payments to the Secretary of State.

(5) The Secretary of State may make such charges in respect of services or facilities provided under section 80(6) as may be agreed between the Secretary of State and the local authority or, in default of agreement, as may be determined by arbitration.

(6) Any power to supply goods or materials under section 80 includes—
  (a) a power to purchase and store them, and
  (b) a power to arrange with third parties for the supply of goods or materials by those third parties.

82 Co-operation between NHS bodies and local authorities

In exercising their respective functions NHS bodies (on the one hand) and local authorities (on the other) must co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

PART 4

MEDICAL SERVICES

Duty of Primary Care Trusts in relation to primary medical services

83 Primary medical services

(1) Each Primary Care Trust must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary medical services within its area, or secure their provision within its area.

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

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

(4) Each Primary Care Trust must co-operate with each other Primary Care Trust and each Local Health Board in the discharge of their respective functions relating to the provision of primary medical services under this Act and the National Health Service (Wales) Act 2006 (c. 42).

(5) Regulations may provide that services of a prescribed description must, or must not, be regarded as primary medical services for the purposes of this Act.

(6) Regulations under this section may in particular describe services by reference to the manner or circumstances in which they are provided.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

General medical services contracts

84 General medical services contracts: introductory

(1) A Primary Care Trust may enter into a contract under which primary medical 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 medical services contract".

(3) A general medical services contract may make such provision as may be agreed between the Primary Care Trust and the contractor or contractors in relation to—
- (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 medical services contract may include—
- (a) services which are not primary medical services,
- (b) services to be provided outside the area of the Primary Care Trust.

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

85 Requirement to provide certain primary medical services

(1) A general medical services contract must require the contractor or contractors to provide, for his or their patients, primary medical services of such descriptions as may be prescribed.

(2) Regulations under subsection (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

86 Persons eligible to enter into GMS contracts

(1) A Primary Care Trust may, subject to such conditions as may be prescribed, enter into a general medical services contract with—
- (a) a medical practitioner,
- (b) two or more individuals practising in partnership where the conditions in subsection (2) are satisfied, or
- (c) a company limited by shares where the conditions in subsection (3) are satisfied.

(2) The conditions referred to in subsection (1)(b) are that—
- (a) at least one partner is a medical practitioner, and
- (b) any partner who is not a medical practitioner is either—
  - (i) an NHS employee,
  - (ii) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee,
  - (iii) a health care professional who is engaged in the provision of services under this Act or the National Health Service (Wales) Act 2006 (c. 42), or
  - (iv) an individual falling within section 93(1)(d).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The conditions referred to in subsection (1)(c) are that—
  (a) at least one share in the company is legally and beneficially owned by a medical practitioner, and
  (b) any share which is not so owned is legally and beneficially owned by a person referred to in subsection (2)(b).

(4) Regulations may make provision as to the effect, in relation to a general medical services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

(5) In this section—
"health care professional", "NHS employee", "section 92 employee", "section 107 employee", "section 50 employee", "section 64 employee", "section 17C employee" and "Article 15B employee" have the meaning given by section 93.

87 GMS contracts: payments

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

(2) A general medical services contract must require payments to be made under the contract in accordance with directions under this section.

(3) Directions under subsection (1) may in particular—
  (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
    (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 considers appropriate.

(5) "Payments" includes fees, allowances, reimbursements, loans and repayments.

88 GMS contracts: prescription of drugs, etc

(1) A general medical services contract must contain provision requiring the contractor or contractors to comply with any directions given by the Secretary of State for the purposes of this section as to the drugs, medicines or other substances which may or may not be ordered for patients in the provision of medical services under the contract.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) A direction under this section must, subject to subsection (3), be given by regulations.

(3) A direction under this section may be given by an instrument in writing where it gives effect to a request made in writing to the Secretary of State by a person who is a holder of a Community marketing authorization or United Kingdom marketing authorisation in respect of the drug, medicine or other substance to which the request relates.

(4) "Community marketing authorization" and "United Kingdom marketing authorisation" have the meaning given by regulation 1 of the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994 (S.I. 1994/3144).

89 GMS contracts: other required terms

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

[[F113](1A) Regulations under subsection (1) may, in particular, make provision—

(a) for requiring a contractor who provides services of a prescribed description (a "relevant contractor") to be a member of a clinical commissioning group;

(b) as to arrangements for securing that a relevant contractor appoints one individual to act on its behalf in the dealings between it and the clinical commissioning group to which it belongs;

(c) for imposing requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) for requiring a relevant contractor, in doing anything pursuant to the contract, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

(1B) Provision by virtue of subsection (1A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(1C) In the case of a contract entered into by two or more individuals practising in partnership—

(a) regulations making provision under subsection (1A)(a) may make provision for requiring each partner to secure that the partnership is a member of the clinical commissioning group;

(b) regulations making provision under subsection (1A)(b) may make provision as to arrangements for securing that the partners make the appointment;

(c) regulations making provision under subsection (1A)(d) may make provision for requiring each partner to act as mentioned there.

(1D) Regulations making provision under subsection (1A) for the case of a contract entered into by two or more individuals practising in partnership may make provision as to the effect of a change in the membership of the partnership.

(1E) The regulations may require an individual appointed for the purposes of subsection (1A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Regulations under subsection (1) may in particular make provision as to—
- (a) the manner in which, and standards to which, services must be provided,
- (b) the persons who perform services,
- (c) the persons to whom services will 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 making provision under subsection (2)(c) may make provision as to the circumstances in which a contractor or contractors—
- (a) must or may accept a person as a patient to whom services are provided under the contract,
- (b) may decline to accept a person as such a patient, or
- (c) may terminate his or their responsibility for a patient.

(4) 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.

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

(6) Regulations under subsection (1) must make provision as to the right of patients to choose the persons from whom they receive services.

Textual Amendments

F113 S. 89(1A)-(1E) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 28(1)**, 306(1)(d)(4)

90 GMS contracts: disputes and enforcement

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical 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 medical services contract to be regarded as a health service body for any purposes of section 9, in circumstances where he or they so elect.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Regulations under subsection (3) may include provision as to the application of section 9 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), section 9(11) applies in relation to a general medical services contract, and
  (b) a direction as to payments is made under that subsection in relation to the contract,

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

Performance of primary medical services

91 Persons performing primary medical services

(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical 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.

(2) For the purposes of this section—
  (a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),
  (b) a Primary Care Trust is responsible for a medical service if it provides the service, or secures its provision, by or under any enactment.

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—
  (a) the preparation, maintenance and publication of a list,
  (b) eligibility for inclusion in a list,
  (c) applications for inclusion (including provision as to the Primary Care Trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application),
  (d) the grounds on which an application for inclusion may or must be granted or refused,
  (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),
  (f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),
  (g) circumstances in which a person included in a list may not withdraw from it,
  (h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),
  (i) the criteria to be applied in making decisions under the regulations,
  (j) appeals against decisions made by a Primary Care Trust under the regulations, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by a Primary Care Trust,

(b) a Primary Care Trust to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from a list),

(d) the review by a Primary Care Trust of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing fraud.

(6) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by a Primary Care Trust to the Secretary of State, and

(b) by the Secretary of State to a Primary Care Trust.

Other arrangements for the provision of primary medical services

92 [F114Arrangements by Strategic Health Authorities for the provision of primary medical services][F114Arrangements by the Board for the provision of primary medical services]

(1) **[**F115The Board may make agreements, other than arrangements pursuant to section 83(2) or general medical services contracts, under which primary medical services are provided.**]**

(2) An agreement must be in accordance with regulations under section 94.

(3) An agreement may not combine arrangements for the provision of primary medical services with arrangements for the provision of primary dental services.

(4) An agreement may not combine arrangements for the provision of primary medical services with arrangements for the provision of local pharmaceutical services.

(5) But an agreement may include arrangements for the provision of services which are not primary medical services but which may be provided under this Act, other than under Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes).

(6) **[**F116This Act has effect, in relation to primary medical services provided under an agreement, as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under section 7).**]**

(7) **[**F117Regulations may provide—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) for functions which are exercisable by a Strategic Health Authority in relation to an agreement to be exercisable on behalf of the Strategic Health Authority by a Health Board, and

(b) for functions which are exercisable by a Health Board in relation to an agreement made under section 17C of the National Health Service (Scotland) Act 1978 (c. 29) to be exercisable on behalf of the Board by a Strategic Health Authority.**]**

(8) In this Act, arrangements for the provision of services made under this section are called "section 92 arrangements".

Textual Amendments

F114 S. 92 heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(5)**

F115 S. 92(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(2)**

F116 S. 92(6) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(3)**

F117 S. 92(7) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 36(4)**

93 Persons with whom agreements may be made under section 92

(1) A Strategic Health Authority may make an agreement under section 92 only with one or more of the following—

(a) an NHS trust or an NHS foundation trust,

(b) a medical practitioner who meets the prescribed conditions,

(c) a health care professional who meets the prescribed conditions,

(d) an individual who is providing services—

(i) under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(ii) in accordance with section 92 arrangements, section 107 arrangements, section 50 arrangements, section 64 arrangements, section 17C arrangements or Article 15B arrangements, or

(iii) under section 17J or 25 of the 1978 Act or Article 57 or 61 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

or has so provided them within such period as may be prescribed,

(e) an NHS employee, a section 92 employee, a section 107 employee, a section 50 employee, a section 64 employee, a section 17C employee or an Article 15B employee,

(f) a qualifying body,

(g) a Primary Care Trust or Local Health Board.

(2) The power under subsection (1) to make an agreement with a person falling within paragraph (d) or (e) of that subsection is subject to such conditions as may be prescribed.

(3) In this section—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

"the 1978 Act" means the National Health Service (Scotland) Act 1978 (c. 29),

"Article 15B arrangements" means arrangements for the provision of services made under Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

"Article 15B employee" means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing or performing those services,

"health care professional" means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

"NHS employee" means an individual who, in connection with the provision of services in the health service, the Scottish health service or the Northern Ireland health service, is employed by—

(a) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust,

(b) a Primary Care Trust or Local Health Board,

(c) a person who is providing services under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(d) an individual who is providing services as specified in subsection (1)(d)(iii),

"the Northern Ireland health service" means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972,

"qualifying body" means a company which is limited by shares all of which are legally and beneficially owned by persons falling within paragraph (a), (b), (c), (d), (e) or (g) of subsection (1),

"the Scottish health service" means the health service within the meaning of the National Health Service (Scotland) Act 1978,

"section 17C arrangements" means arrangements for the provision of services made under section 17C of the 1978 Act,

"section 17C employee" means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by a person providing or performing those services,

"section 50 arrangements" means arrangements for the provision of services made under section 50 of the National Health Service (Wales) Act 2006 (c. 42),

"section 64 arrangements" means arrangements for the provision of services made under section 64 of that Act,

"section 107 employee" means an individual who, in connection with the provision of services in accordance with section 107 arrangements, is employed by a person providing or performing those services,

"section 92 employee" means an individual who, in connection with the provision of services in accordance with section 92 arrangements, is employed by a person providing or performing those services,

"section 50 employee" means an individual who, in connection with the provision of services in accordance with section 50 arrangements, is employed by a person providing or performing those services,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

"section 64 employee" means an individual who, in connection with the provision of services in accordance with section 64 arrangements, is employed by a person providing or performing those services,

"Welsh general medical services contract" means a contract under section 42(2) of the National Health Service (Wales) Act 2006 (c. 42), and

"Welsh general dental services contract" means a contract under section 57(2) of that Act.

94 Regulations about section 92 arrangements

(1) The Secretary of State may make regulations about the provision of services in accordance with section 92 arrangements.

(2) The regulations must include provision for participants other than Strategic Health Authorities to withdraw from section 92 arrangements if they wish to do so.

(3) The regulations may, in particular—

(a) provide that section 92 arrangements may be made only in prescribed circumstances,

(b) provide that section 92 arrangements may be made only in prescribed areas,

(c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with section 92 arrangements,

(d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing services in accordance with section 92 arrangements,

(e) require details of section 92 arrangements to be published,

(f) make provision with respect to the variation and termination of section 92 arrangements,

(g) provide for parties to section 92 arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 9,

(h) provide for directions, as to payments, made under section 9(11) (as it has effect as a result of regulations made by virtue of paragraph (g)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court.

[[F118](3A) Regulations under subsection (3)(d) may—

(a) require a person who provides services of a prescribed description in accordance with section 92 arrangements (a "relevant provider") to be a member of a clinical commissioning group;

(b) make provision as to arrangements for securing that a relevant provider appoints one individual to act on its behalf in dealings between it and the clinical commissioning group to which it belongs;

(c) impose requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) require a relevant provider, in doing anything pursuant to section 92 arrangements, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3B) Provision by virtue of subsection (3A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(3C) In the case of an agreement made with two or more persons—

(a) regulations making provision under subsection (3A)(a) may require each person to secure that the persons collectively are a member of the clinical commissioning group;

(b) regulations making provision under subsection (3A)(b) may make provision as to arrangements for securing that the persons collectively make the appointment;

(c) regulations making provision under subsection (3A)(d) may require each person to act as mentioned there.

(3D) Regulations making provision under subsection (3A) for the case of an agreement made with two or more persons may make provision as to the effect of a change in the composition of the group of persons involved.

(3E) The regulations may require an individual appointed for the purposes of subsection (3A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed.**]**

(4) The regulations may also require payments to be made under the arrangements in accordance with directions given for the purpose by the Secretary of State.

(5) A direction may 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.

(6) The regulations may also include provision requiring a Primary Care Trust, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract on prescribed terms with any person who is providing services under section 92 arrangements and who so requests.

(7) The regulations may also include provision for the resolution of disputes as to the terms of any proposed section 92 arrangements, and in particular may make provision—

(a) for the referral of the terms of the proposed arrangements 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 arrangements may be entered into.

(8) The regulations must provide for the circumstances in which a person providing primary medical services under section 92 arrangements—

(a) must or may accept a person as a patient to whom such services are so provided,

(b) may decline to accept a person as such a patient,

(c) may terminate his responsibility for a patient.

(9) The regulations must make provision as to the right of patients to choose the persons from whom they receive services under section 92 arrangements.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F118 S. 94(3A)-(3E) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 28(2)**, 306(1)(d)(4)

95 Transfer of liabilities relating to section 92 arrangements

(1) The Secretary of State may by order make provision for any rights and liabilities arising under an agreement to provide primary medical services under section 92 to be transferred from Strategic Health Authorities to Primary Care Trusts and from Primary Care Trusts to Strategic Health Authorities.

(2) Subsection (1) does not affect any other power of the Secretary of State to transfer rights and liabilities under this Act.

Assistance and support

96 Assistance and support: primary medical services

(1) A Primary Care Trust may provide assistance or support to any person providing or proposing to provide—
  (a) primary medical services under a general medical services contract, or
  (b) primary medical services in accordance with section 92 arrangements.

(2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.

(3) "Assistance" includes financial assistance.

Local Medical Committees

97 Local Medical Committees

(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—
  (a) each medical practitioner who, under a general medical services contract entered into by him, is providing primary medical services in the area for which the committee is formed, and
  (b) each medical practitioner who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in that area.

(3) This subsection applies to each other medical practitioner—
  (a) who is performing primary medical services or primary ophthalmic services in the area for which the committee is formed—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(i) pursuant to section 83(2)(a) or section 115(4)(a),

(ii) in accordance with section 92 arrangements, or

(iii) under a general medical services contract or 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 is called the Local Medical 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) Regulations may require a Primary Care Trust, in the exercise of its functions relating to primary medical services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed.

(7) Regulations may require a Strategic Health Authority, in the exercise of any of its functions which relate to section 92 arrangements, to consult, on such occasions and to such extent as may be prescribed, any committee—

(a) which is recognised by a Primary Care Trust under this section for the area where the services are (or will be) provided under those arrangements, and

(b) which is representative of persons providing or performing those services under those arrangements.

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

(9) A committee recognised under this section must in respect of each year determine—

(a) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(a), and

(b) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(b).

(10) A Primary Care Trust may—

(a) on the request of a committee recognised by it, allot to that committee such sums for defraying the expenses referred to in subsection (9)(a) as the Primary Care Trust may determine, and

(b) deduct the amount of such sums from the remuneration of persons of whom the committee is representative under subsection (1)(a) under the general medical services contracts entered into by those persons with the Primary Care Trust.

(11) A committee recognised under this section must apportion the amount determined by it under subsection (9)(b) among the persons of whom it is representative under subsection (1)(b); and each such person must pay in accordance with the committee's directions the amount so apportioned to him.

(12) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Provision of accommodation by the Secretary of State

98 Use of accommodation: provision of primary medical services

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of primary medical services, he may make the accommodation available on such terms as he considers appropriate to persons providing those services.

[F119 Directions

Textual Amendments

F119 S. 98A and cross-heading inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 49(1)**, 306(1)(d)(4)

98A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary medical services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary medical services (including functions which the Board has been directed to exercise under subsection (1)).

(4) The Board may direct a clinical commissioning group to exercise any of the Board's functions relating to the provision of primary medical services.

(5) The Board may give directions to a clinical commissioning group about the exercise by it of any functions relating to the provision of primary medical services (including functions which the group has been directed to exercise under subsection (4)).

(6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.

(7) Where the Board gives a direction under subsection (4) or (5), it may disclose to the clinical commissioning group information it has about the provision of the primary medical services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the group to exercise the function specified in the direction.

(8) A clinical commissioning group exercising a function specified in a direction under subsection (4) or (5) must report to the Board on matters arising out of the group's exercise of the function.

(9) A report under subsection (8) must be made in such form and manner as the Board may specify.

(10) The Board may, in exercising its functions relating to the provision of the primary medical services in question, have regard to a report under subsection (8).**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 5

DENTAL SERVICES

Duty of Primary Care Trusts in relation to primary dental services

99 Primary dental services

(1) Each Primary Care Trust must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary dental services within its area, or secure their provision within its area.

(2) A Primary Care Trust may (in addition to any other power conferred on it) provide primary dental services itself (whether within or outside its area).

(3) Each Primary Care Trust must publish information about such matters as may be prescribed in relation to the primary dental services for which it makes provision under this Act.

(4) Each Primary Care Trust must co-operate with each other Primary Care Trust and each Local Health Board in the discharge of their respective functions relating to the provision of primary dental services under this Act and the National Health Service (Wales) Act 2006 (c. 42).

(5) Regulations may provide that services of a prescribed description must, or must not, be regarded as primary dental services for the purposes of this Act.

(6) Regulations under subsection (5) may in particular describe services by reference to the manner or circumstances in which they are provided.

General dental services contracts

100 General dental services contracts: introductory

(1) A Primary Care Trust may enter into a contract under which primary dental 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 dental services contract".

(3) A general dental services contract may make such provision as may be agreed between the Primary Care Trust and the contractor in relation to—
   (a) the services to be provided under the contract (which may include services which are not primary dental services),
   (b) remuneration under the contract, and
   (c) any other matters.

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

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

101 Requirement to provide certain primary dental services

(1) A general dental services contract must require the contractor or contractors to provide, for his or their patients, primary dental services of such descriptions as may be prescribed.

(2) Regulations under subsection (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

102 Persons eligible to enter into GDS contracts

(1) A Primary Care Trust may, subject to such conditions as may be prescribed, enter into a general dental services contract with—
- (a) a dental practitioner,
- (b) a dental corporation,
- (c) two or more individuals practising in partnership where the conditions in subsection (2) are satisfied.

(2) The conditions referred to in subsection (1)(c) are that—
- (a) at least one partner is a dental practitioner, and
- (b) any partner who is not a dental practitioner is either—
  - (i) an NHS employee,
  - (ii) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee,
  - (iii) a health care professional who is engaged in the provision of services under this Act or the National Health Service (Wales) Act 2006 (c. 42), or
  - (iv) an individual falling within section 108(1)(d).

(3) Regulations may make provision as to the effect, in relation to a general dental services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

(4) In this section—

"dental corporation" means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984 (c. 24)

"health care professional", "NHS employee", "section 92 employee", "section 107 employee", "section 50 employee", "section 64 employee", "section 17C employee" and "Article 15B employee" have the meaning given by section 108.

103 GDS contracts: payments

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

(2) A general dental services contract must require payments to be made under the contract in accordance with directions under this section.

(3) A direction under subsection (1) may in particular—
- (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—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(i) any scheme or scale specified in the direction, or

(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 considers appropriate.

(5) "Payments" includes fees, allowances, reimbursements, loans and repayments.

104 GDS contracts: other required terms

(1) A general dental 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 must be provided,

(b) the persons who perform services,

(c) the persons to whom services will 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 make provision as to the circumstances in which a Primary Care Trust may impose a variation of contract terms.

(4) Regulations under subsection (1) must make provision as to the right of patients to choose the persons from whom they receive services.

105 GDS contracts: disputes and enforcement

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

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Regulations may make provision for a person or persons entering into a general dental services contract to be regarded as a health service body for any purposes of section 9, in circumstances where he or they so elect.

(4) Regulations under subsection (3) may include provision as to the application of section 9 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), section 9(11) applies in relation to a general dental services contract, and
  (b) a direction as to payments is made under that provision in relation to the contract,

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

Performance of primary dental services

106 Persons performing primary dental services

(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary dental 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.

(2) For the purposes of this section—
  (a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),
  (b) a Primary Care Trust is responsible for a dental service if it provides the service, or secures its provision, by or under any enactment.

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—
  (a) the preparation, maintenance and publication of a list,
  (b) eligibility for inclusion in a list,
  (c) applications for inclusion (including provision as to the Primary Care Trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application),
  (d) the grounds on which an application for inclusion may or must be granted or refused,
  (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),
  (f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),
  (g) circumstances in which a person included in a list may not withdraw from it,
  (h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

payment, to be determined by the Secretary of State or a person appointed by him),

(i) the criteria to be applied in making decisions under the regulations,

(j) appeals against decisions made by a Primary Care Trust under the regulations, and

(k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by a Primary Care Trust,

(b) a Primary Care Trust to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from a list),

(d) the review by a Primary Care Trust of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing fraud.

(6) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by a Primary Care Trust to the Secretary of State, and

(b) by the Secretary of State to a Primary Care Trust.

Other arrangements for the provision of primary dental services

107 [F120Arrangements by Strategic Health Authorities for the provision of primary dental services][F120Arrangements by the Board for the provision of primary dental services]

(1) **[**F121The Board may make agreements, other than general dental services contracts, under which primary dental services are provided.**]**

(2) An agreement must be in accordance with regulations under section 109.

(3) An agreement may not combine arrangements for the provision of primary dental services with arrangements for the provision of primary medical services.

(4) An agreement may not combine arrangements for the provision of primary dental services with arrangements for the provision of local pharmaceutical services.

(5) But an agreement may include arrangements for the provision of services which are not primary dental services but which may be provided under this Act, other than under Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes).

(6) This Act has effect, in relation to primary dental services provided under an agreement, as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under section 7).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(7) **[**[F122]Regulations may provide—

(a) for functions which are exercisable by a Strategic Health Authority in relation to an agreement to be exercisable on behalf of the Authority by a Health Board, and

(b) for functions which are exercisable by a Health Board in relation to an agreement made under section 17C of the National Health Service (Scotland) Act 1978 (c. 29) to be exercisable on behalf of the Board by a Strategic Health Authority.**]**

(8) In this Act, arrangements for the provision of services made under this section are called "section 107 arrangements".

Textual Amendments

F120 S. 107 heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 48(4)** (with Sch. 4 para. 48(5))

F121 S. 107(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 48(2)** (with Sch. 4 para. 48(5))

F122 S. 107(7) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 48(3)** (with Sch. 4 para. 48(5))

108 Persons with whom agreements may be made under section 107

(1) A Strategic Health Authority **[**[F123], subject to such conditions as may be prescribed,**]** may make an agreement under section 107 only with one or more of the following—

(a) an NHS trust or an NHS foundation trust,

(b) a dental practitioner **[**[F124]who meets the prescribed conditions**]**,

(c) a health care professional **[**[F124]who meets the prescribed conditions**]**,

(d) an individual who is providing services—

(i) under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(ii) in accordance with section 107 arrangements, section 92 arrangements, section 50 arrangements, section 64 arrangements, section 17C arrangements or Article 15B arrangements, or

(iii) under section 17J or 25 of the 1978 Act or Article 57 or 61 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

or has so provided them within such period as may be prescribed,

(e) an NHS employee, a section 107 employee, a section 92 employee, a section 50 employee, a section 64 employee, a section 17C employee or an Article 15B employee,

(f) **[**[F125]a dental corporation,**]**

[[F126](fa) a company limited by shares where the conditions in subsection (1A) are satisfied,

(fb) a limited liability partnership where subsection (1B) or (1C) applies,**]**

(g) a Primary Care Trust or Local Health Board.

[[F127](1A) The conditions referred to in subsection (1)(fa) are that—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) every person who owns a share in the company owns it both legally and beneficially, and

(b) it is not possible for two or more members of the company who are not persons who fall within subsection (1)(a) to (e) to hold the majority of the voting rights conferred by shares in the company on any matter on which members have such rights.**]**

[[F128](1B) This subsection applies if a member of the partnership who falls within subsection (1)(a) to (e) has the power to secure that the partnership's affairs are conducted in accordance with that member's wishes.

(1C) This subsection applies if, in any combination of members of the partnership who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them falls within subsection (1)(a) to (e).**]**

(2) **[**[F129]The power under subsection (1) to make an agreement with a person falling within paragraph (d) or (e) of that subsection is subject to such conditions as may be prescribed.**]**

(3) In this section—

"the 1978 Act" means the National Health Service (Scotland) Act 1978 (c. 29),

"Article 15B arrangements" means arrangements for the provision of services made under Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972,

"Article 15B employee" means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing or performing those services,

[[F130]" dental corporation " means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984,**]**

"health care professional" means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

"NHS employee" means an individual who, in connection with the provision of services in the health service, the Scottish health service or the Northern Ireland health service, is employed by—

(a) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust,

(b) a Primary Care Trust or Local Health Board,

(c) a person who is providing services under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,

(d) an individual who is providing services as specified in subsection (1)(d)(iii),

"the Northern Ireland health service" means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972,

[[F131]"qualifying body" means—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) a company which is limited by shares all of which are legally and beneficially owned by persons falling within paragraph (a), (b), (c), (d), (e) or (g) of subsection (1), and

(b) a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984 (c. 24),**]**

"the Scottish health service" means the health service within the meaning of the National Health Service (Scotland) Act 1978,

"section 17C arrangements" means arrangements for the provision of services made under section 17C of the 1978 Act,

"section 17C employee" means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by a person providing or performing those services,

"section 50 arrangements" means arrangements for the provision of services made under section 50 of the National Health Service (Wales) Act 2006 (c. 42),

"section 64 arrangements" means arrangements for the provision of services made under section 64 of that Act,

"section 107 employee" means an individual who, in connection with the provision of services in accordance with section 107 arrangements, is employed by a person providing or performing those services,

"section 92 employee" means an individual who, in connection with the provision of services in accordance with section 92 arrangements, is employed by a person providing or performing those services,

"section 50 employee" means an individual who, in connection with the provision of services in accordance with section 50 arrangements, is employed by a person providing or performing those services,

"section 64 employee" means an individual who, in connection with the provision of services in accordance with section 64 arrangements, is employed by a person providing or performing those services,

"Welsh general medical services contract" means a contract under section 42(2) of the National Health Service (Wales) Act 2006, and

"Welsh general dental services contract" means a contract under section 57(2) of that Act.

Textual Amendments

F123 Words in s. 108(1) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 204(2)(a)**, 306(1)(d)(4)

F124 Words in s. 108(1)(b)(c) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 204(2)(b)**, 306(1)(d)(4)

F125 S. 108(1)(f) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 204(2)(c)**, 306(1)(d)(4)

F126 S. 108(1)(fa)(fb) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 204(2)(d)**, 306(1)(d)(4)

F127 S. 108(1A) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 204(3)**, 306(1)(d)(4)

F128 S. 108(1B)(1C) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 204(4)**, 306(1)(d)(4)

F129 S. 108(2) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 204(5)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F130 Words in s. 108(3) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 204(6)(a)**, 306(1)(d)(4)

F131 Words in s. 108(3) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 204(6)(b)**, 306(1)(d)(4)

109 Regulations about section 107 arrangements

(1) The Secretary of State may make regulations about the provision of services in accordance with section 107 arrangements.

(2) The regulations must include provision for participants other than Strategic Health Authorities to withdraw from section 107 arrangements if they wish to do so.

(3) The regulations may, in particular—

(a) provide that section 107 arrangements may be made only in prescribed circumstances,

(b) provide that section 107 arrangements may be made only in prescribed areas,

(c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with section 107 arrangements,

(d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing services in accordance with section 107 arrangements,

(e) require details of section 107 arrangements to be published,

(f) make provision with respect to the variation and termination of section 107 arrangements,

(g) provide for parties to section 107 arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 9,

(h) provide for directions, as to payments, made under section 9(11) (as it has effect as a result of regulations made by virtue of paragraph (g)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court.

(4) The regulations may also require payments to be made under the arrangements in accordance with directions given for the purpose by the Secretary of State.

(5) A direction may 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.

(6) The regulations may also include provision requiring a Primary Care Trust, in prescribed circumstances and subject to prescribed conditions, to enter into a general dental services contract on prescribed terms with any person who is providing services under section 107 arrangements and who so requests.

(7) The regulations may also include provision for the resolution of disputes as to the terms of any proposed section 107 arrangements, and in particular may make provision—

(a) for the referral of the terms of the proposed arrangements 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 arrangements may be entered into.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(8) The regulations must provide for the circumstances in which a person providing primary dental services under section 107 arrangements—
  (a) must or may accept a person as a patient to whom such services are so provided,
  (b) may decline to accept a person as such a patient,
  (c) may terminate his responsibility for a patient.

(9) The regulations must make provision as to the right of patients to choose the persons from whom they receive services under section 107 arrangements.

110 Transfer of liabilities relating to section 107 arrangements

(1) The Secretary of State may by order make provision for any rights and liabilities arising under an agreement to provide primary dental services under section 107 to be transferred from Strategic Health Authorities to Primary Care Trusts and from Primary Care Trusts to Strategic Health Authorities.

(2) Subsection (1) does not affect any other power of the Secretary of State to transfer rights and liabilities under this Act.

Dental public health

111 Dental public health

(1) A Primary Care Trust has such functions in relation to dental public health in England as may be prescribed.

(2) The functions of a Primary Care Trust under this section may be discharged—
  (a) by the Primary Care Trust itself,
  (b) by the Primary Care Trust and one or more other Primary Care Trusts acting jointly, or
  (c) by any other person or body in accordance with arrangements made by the Primary Care Trust.

Assistance and support

112 Assistance and support: primary dental services

(1) A Primary Care Trust may provide assistance or support to any person providing or proposing to provide—
  (a) primary dental services under a general dental services contract, or
  (b) primary dental services in accordance with section 107 arrangements.

(2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.

(3) “Assistance” includes financial assistance.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Local Dental Committees

113 Local Dental Committees

(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 each dental practitioner who, under a general dental services contract entered into by him, is providing primary dental services in the area for which the committee is formed.

(3) This subsection applies to each other dental practitioner—

(a) who is performing primary dental services in the area for which the committee is formed—

(i) pursuant to section 99(2),

(ii) in accordance with section 107 arrangements, or

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

(7) Regulations may require a Strategic Health Authority, in the exercise of any of its functions which relate to section 107 arrangements, to consult, on such occasions and to such extent as may be prescribed, any committee—

(a) which is recognised by a Primary Care Trust under this section for the area where the services are (or will be) provided under those arrangements, and

(b) which is representative of persons providing or performing those services under those arrangements.

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

(9) A committee recognised under this section must in respect of each year determine—

(a) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(a), and

(b) the amount of its administrative expenses for that year attributable to persons of whom it is representative under subsection (1)(b).

(10) A Primary Care Trust may—

(a) on the request of a committee recognised by it, allot to that committee such sums for defraying the expenses referred to in subsection (9)(a) as the Primary Care Trust may determine, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) deduct the amount of such sums from the remuneration of persons of whom it is representative under subsection (1)(a) under the general dental services contracts entered into by them with the Primary Care Trust.

(11) A committee recognised under this section must apportion the amount determined by it under subsection (9)(b) among the persons of whom it is representative under subsection (1)(b); and each such person must pay in accordance with the committee's directions the amount so apportioned to him.

(12) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

Provision of accommodation by the Secretary of State

114 Use of accommodation: provision of primary dental services

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of primary dental services, he may make the accommodation available on such terms as he considers appropriate to persons providing those services.

[F132 Directions

Textual Amendments

F132 S. 114A and cross-heading inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 49(2)**, 306(1)(d)(4)

114A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary dental services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary dental services (including functions which the Board has been directed to exercise under subsection (1)).**]**

PART 6

OPHTHALMIC SERVICES

Duty of Primary Care Trusts in relation to primary ophthalmic services

115 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—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 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 must 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),
(b) make provision for the purposes of subsection (2)(c) about how a person's resources and requirements must 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 considers appropriate, 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 Act.

(6) A Primary Care Trust must co-operate with each other Primary Care Trust in the discharge of their respective functions relating to the provision of primary ophthalmic services under this Act.

(7) Regulations may provide that services of a prescribed description must, or must not, be regarded as primary ophthalmic services for the purposes of this Act (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),

must 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 must (unless it took place in circumstances prescribed under subsection (2)) 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

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) for any such other purpose as may be prescribed.

116 Regulations under section 115: supplementary

(1) Regulations under section 115 which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must 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 115(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,
  (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 115(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.

General ophthalmic services contracts

117 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) 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—
  (a) the services to be provided under the contract,
  (b) remuneration under the contract, and
  (c) any other matters.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 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.

118 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 119.

119 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 **[**[F133]First-tier Tribunal**]** 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 **[**[F134]First-tier Tribunal**]** of an order of disqualification made by virtue of regulations under this section,

(b) what will happen in relation to general ophthalmic services contracts to which P is a party when the order is made.

Textual Amendments

F133 Words in s. 119(1) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 110** (with Sch. 5)

F134 Words in s. 119(2)(a) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 110** (with Sch. 5)

120 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 under this section.

(3) A direction under subsection (1) may in particular—

(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 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 considers appropriate.

(5) "Payments" includes fees, allowances, reimbursements, loans and repayments.

121 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 must be provided,

(b) the persons who perform services,

(c) the persons to whom services will 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.

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

122 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.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) 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 9, 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 9 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 section 9(11) 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 enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.

Performance of primary ophthalmic services

123 Persons performing primary ophthalmic services

(1) 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.

(2) For the purposes of this section—
  (a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),
  (b) a Primary Care Trust is responsible for an ophthalmic service if it provides the service, or secures its provision, by or under any enactment.

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—
  (a) the preparation, maintenance and publication of a list,
  (b) eligibility for inclusion in a list,
  (c) applications for inclusion (including provision as to the Primary Care Trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application),
  (d) the grounds on which an application for inclusion may or must be granted or refused,
  (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),

(g) circumstances in which a person included in a list may not withdraw from it,

(h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),

(i) the criteria to be applied in making decisions under the regulations,

(j) appeals against decisions made by a Primary Care Trust under the regulations, and

(k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by a Primary Care Trust,

(b) a Primary Care Trust to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from a list),

(d) the review by a Primary Care Trust of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing fraud.

(6) Regulations under this section may, in particular, also prescribe the qualifications and experience which a medical practitioner who applies for inclusion in a list under this section 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.

(7) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by a Primary Care Trust to the Secretary of State, and

(b) by the Secretary of State to a Primary Care Trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Assistance and support

124 Assistance and support: primary ophthalmic services

(1) A Primary Care Trust may provide assistance or support to any person providing or proposing to provide primary ophthalmic services under a general ophthalmic services contract.

(2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.

(3) "Assistance" includes financial assistance.

Local Optical Committees

125 Local Optical Committees

(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 each 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 each 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 115(4)(a), 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 is 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 considers appropriate.

(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 has such other functions as may be prescribed.

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

(10) A Primary Care Trust may—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) on the request of a committee recognised by it, allot to that committee such sums as the Primary Care Trust may determine for defraying the committee's administrative expenses, and

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

(11) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

[F135 Directions

Textual Amendments

F135 S. 125A and cross-heading inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 49(3)**, 306(1)(d)(4)

125A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary ophthalmic services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary ophthalmic services (including functions which the Board has been directed to exercise under subsection (1)).

(4) The Board may direct a clinical commissioning group, a Special Health Authority or such other body as may be prescribed to exercise any of the Board's functions relating to the provision of primary ophthalmic services.

(5) The Board may give directions to a clinical commissioning group, a Special Health Authority or such other body as may be prescribed about the exercise by the body of any functions relating to the provision of primary ophthalmic services (including functions which it has been directed to exercise under subsection (4)).

(6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.

(7) Where the Board gives a direction to a body under subsection (4) or (5), it may disclose to the body the information it has about the provision of the primary ophthalmic services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the body to exercise the function specified in the direction.

(8) A body which is given a direction under subsection (4) or (5) must report to the Board on matters arising out of the exercise of the function to which the direction relates.

(9) A report under subsection (8) must be made in such form and manner as the Board may specify.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) The Board may, in exercising its functions relating to the provision of the primary ophthalmic services in question, have regard to a report under subsection (8).**]**

PART 7

PHARMACEUTICAL SERVICES AND LOCAL PHARMACEUTICAL SERVICES

CHAPTER 1

PROVISION OF PHARMACEUTICAL SERVICES

126 Arrangements for pharmaceutical services

(1) Each Primary Care Trust must, in accordance with regulations, make the arrangements mentioned in subsection (3).

(2) The Secretary of State must make regulations for the purpose of subsection (1).

(3) The arrangements are arrangements as respects the area of the Primary Care Trust for the provision to persons who are in that area of—

(a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,

(b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—

(i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or

(ii) his functions in the armed forces of the Crown,

(c) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent services in the Scottish health service or the Northern Ireland health service,

(d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and

(e) such other services as may be prescribed.

(4) The descriptions of persons which may be prescribed for the purposes of subsection (3)(d) are the following, or any sub-category of such a description—

(a) persons who are registered in the register maintained under article 5 of **[**[F136]the Health and Social Work Professions Order 2001**]**,

(b) persons who are registered pharmacists,

(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (c. 24),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) persons who are optometrists,

(e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21),

(f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17),

(g) persons who are registered nurses or registered midwives,

(h) persons not mentioned above who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8),

(i) any other description of persons which appears to the Secretary of State to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish Parliament or Northern Ireland legislation and which the Secretary of State considers it appropriate to specify.

[[F137](4A) Paragraphs (a) and (h) of subsection (4) do not apply to persons in so far as they are registered as members of the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999).**]**

(5) A determination under subsection (3)(d) may—

(a) make different provision for different cases,

(b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered,

(c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.

(6) The arrangements which may be made by a Primary Care Trust under subsection (1) include arrangements for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided.

(7) Where a person with whom a Primary Care Trust makes arrangements under subsection (1) wishes to provide services to persons outside the area of the Primary Care Trust he may, subject to any provision made by regulations in respect of arrangements under this section, provide such services under the arrangements.

(8) The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 127, referred to in this Act as "pharmaceutical services".

(9) In this section—

"armed forces of the Crown" does not include forces of a Commonwealth country or forces raised in a colony,

"listed" means included in a list approved by the Secretary of State for the purposes of this section,

"the Scottish health service" means the health service within the meaning of the National Health Service (Scotland) Act 1978 (c. 29), and

"the Northern Ireland health service" means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F136 Words in s. 126(4)(a) substituted (1.8.2012) by Health and Social Care Act 2012 (c. 7), **ss. 213(7)(k)**, 306(4) (with s. 230(6)); S.I. 2012/1319, art. 2(4)

F137 S. 126(4A) inserted (1.8.2012) by Health and Social Care Act 2012 (c. 7), **ss. 220(7)**, 306(4); S.I. 2012/1319, art. 2(4)

Modifications etc. (not altering text)

C11 S. 126 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 4** (with Sch. 3 Pt. 1)

C12 S. 126(9) modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 9** (with Sch. 3 Pt. 1)

127 Arrangements for additional pharmaceutical services

(1) The Secretary of State may—

(a) give directions to a Primary Care Trust requiring it to arrange for the provision to persons within or outside its area of additional pharmaceutical services, or

(b) by giving directions to a Primary Care Trust authorise it to arrange for such provision if it wishes to do so.

(2) Directions under this section may require or authorise a Primary Care Trust to arrange for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided (whether those premises are inside or outside the area of the Primary Care Trust).

(3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he considers appropriate.

(4) In this section—

"additional pharmaceutical services", in relation to directions, means the services (of a kind that do not fall within section 126) which are specified in the directions, and

"Drug Tariff" means the Drug Tariff published under regulation 18 of the National Health Service (Pharmaceutical Services) Regulations 1992 (S.I. 1992/662) or under any corresponding provision replacing, or otherwise derived from, that regulation.

128 Terms and conditions, etc

(1) Directions under section 127 may require the Primary Care Trust to which they apply, when making arrangements—

(a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions,

(b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.

(2) The arrangements must secure that any service to which they apply is provided only by a person—

(a) whose name is included in a pharmaceutical list, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978.

(3) Different arrangements may be made with respect to—
(a) the provision of the same service by the same person but in different circumstances, or
(b) the provision of the same service by different persons.

(4) A Primary Care Trust must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.

(5) After making any arrangements, a Primary Care Trust must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.

(6) "Pharmaceutical list" includes, subject to any provision of the directions in question, a list published in accordance with regulations made under—
(a) section 83(2)(a) of the National Health Service (Wales) Act 2006 (c. 42), or
(b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)).

[F138 128A Pharmaceutical needs assessments

(1) Each Primary Care Trust must in accordance with regulations—
(a) assess needs for pharmaceutical services in its area, and
(b) publish a statement of its first assessment and of any revised assessment.

(2) The regulations must make provision—
(a) as to information which must be contained in a statement;
(b) as to the extent to which an assessment must take account of likely future needs;
(c) specifying the date by which a Primary Care Trust must publish the statement of its first assessment;
(d) as to the circumstances in which a Primary Care Trust must make a new assessment.

(3) The regulations may in particular make provision—
(a) as to the pharmaceutical services to which an assessment must relate;
(b) requiring a Primary Care Trust to consult specified persons about specified matters when making an assessment;
(c) as to the manner in which an assessment is to be made;
(d) as to matters to which a Primary Care Trust must have regard when making an assessment.**]**

Textual Amendments

F138 S. 128A inserted (18.3.2010 for specified purposes, 24.5.2010 in so far as not already in force) by Health Act 2009 (c. 21), **ss. 25**, 40(1); S.I. 2010/779, art. 2(1)(2)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

129 Regulations as to pharmaceutical services

(1) Regulations must provide for securing that arrangements made by **[**[F139]a Primary Care Trust**][**[F139]the Board**]** under section 126 will—

(a) enable persons for whom drugs, medicines or appliances mentioned in that section are ordered as there mentioned to receive them from persons with whom such arrangements have been made, and

(b) ensure the provision of services prescribed under subsection (3)(e) of that section by persons with whom such arrangements have been made.

(2) The regulations must include provision—

(a) for the preparation and publication by **[**[F140]a Primary Care Trust**][**[F140]the Board**]** of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in **[**[F141]the area of the Primary Care Trust**][**[F141]England**]**,

(b) that an application to **[**[F142]a Primary Care Trust**][**[F142]the Board**]** for inclusion in a pharmaceutical list must be made in the prescribed manner and must state—

(i) the services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply, and

(ii) the premises from which he will undertake to provide those services,

(c) that, except in prescribed cases (which may, in particular, include cases of applications for the provision only of services falling within subsection (7))—

(i) an application for inclusion in a pharmaceutical list by a person not already included, and

(ii) an application by a person already included in a pharmaceutical list for inclusion also in respect of services or premises other than those already listed in relation to him,

[[F143]must be granted if the Primary Care Trust is satisfied as mentioned in subsection (2A), and may otherwise be granted only if the Primary Care Trust is satisfied as mentioned in subsection (2B), **]** and

(d) for the removal of an entry in respect of premises from a pharmaceutical list if it has been determined in the prescribed manner that the person to whom the entry relates—

(i) has never provided from those premises, or

(ii) has ceased to provide from them,

the services, or any of the services, which he is listed as undertaking to provide from them.

[[F144](2A) The Primary Care Trust is satisfied as mentioned in this subsection if, having regard to its needs statement and to any matters prescribed by the Secretary of State in the regulations, it is satisfied that it is necessary to grant the application in order to meet a need in its area for the services or some of the services specified in the application.

(2B) The Primary Care Trust is satisfied as mentioned in this subsection if, having regard to its needs statement and to any matters prescribed by the Secretary of State in the regulations, it is satisfied that to grant the application would secure improvements, or better access, to pharmaceutical services in its area.

(2C) In relation to cases where the Primary Care Trust is satisfied as mentioned in subsection (2B), the regulations may make provision as to—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 manner in which the Primary Care Trust is to determine whether to grant the application,

(b) matters which the Primary Care Trust must or must not take into account for the purpose of determining whether to grant the application.**]**

[[F145](2ZA) The Board may not include the Secretary of State, or such other persons as the regulations may prescribe, in a list prepared for the purposes of provision under subsection (2)(a).**]**

[[F146](2ZB) Regulations under subsection (2)(a) may, in particular, require a list of persons to be prepared by reference to the area in which the premises from which the services are provided are situated (and regulations imposing that requirement must prescribe the description of area by reference to which the list is to be prepared).**]**

(3) The regulations may prescribe the extent to which the provision of LP services (within the meaning given by paragraph 1 of Schedule 12) must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list.

[[F147](3A) The regulations may prescribe circumstances in which two or more applications referred to in subsection (2)(c)(i) or (ii) may be considered together by the Primary Care Trust.**]**

(4) The regulations may **[**[F148]make provision for the Primary Care Trust to take into account prescribed matters in**]** the case where—

[F149](a) . . . . . .

(b) **[**[F150]two or more applications referred to in subsection (2)(c)(i) or (ii)**]** are considered together by **[**[F151]the Primary Care Trust**][**[F151]the Board**]**, and

(c) **[**[F151]the Primary Care Trust**][**[F151]the Board**]** would be satisfied as mentioned in **[**[F152]subsection (2A) or (2B) **]** in relation to each application taken on its own, but is not so satisfied in relation to all of them taken together.

[[F153](4A) Regulations under subsection (4) may in particular make the provision mentioned in subsection (5), with or without modifications.**]**

(5) The provision mentioned in this subsection is provision for **[**[F154]the Primary Care Trust**][**[F154]the Board**]**, in determining which application (or applications) to grant, to take into account any proposals specified in the applications in relation to the sale or supply at the premises in question, otherwise than by way of pharmaceutical services or in accordance with a private prescription, of—

(a) drugs and medicines, and

(b) other products for, or advice in relation to, the prevention, diagnosis, monitoring or treatment of illness or handicap, or the promotion or protection of health.

(6) The regulations may include provision—

[[F155](za) for the circumstances and manner in which a Primary Care Trust may invite applications for inclusion in a pharmaceutical list,**]**

(a) that an application to **[**[F156]a Primary Care Trust**][**[F156]the Board**]** may be granted in respect of some only of the services specified in it,

(b) that an application to **[**[F157]a Primary Care Trust**][**[F157]the Board**]** relating to services of a prescribed description may be granted only if it appears to **[**[F158]the Primary Care Trust**][**[F158]the Board**]** that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) that an application to **[**[F159]a Primary Care Trust**]**[F159]the Board**]** by a person who qualified to have his name registered **[**[F160]as a pharmacist in the Register maintained under article 19 of the Pharmacy Order 2010 by virtue of a qualification in pharmacy awarded in an EEA State other than the United Kingdom, or in Switzerland**]**, may not be granted unless the applicant satisfies **[**[F161]the Primary Care Trust**]**[F161]the Board**]** that he has the knowledge of English which, in the interest of himself and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services **[**[F162]in the area of the Primary Care Trust**]**,

(d) that the inclusion of a person in a pharmaceutical list [F163]... **[**[F164]an application to a Primary Care Trust**]** may be for a fixed period,

(e) that, where the premises from which an application states that the applicant will undertake to provide services are in an area of a prescribed description, the applicant may not be included in the pharmaceutical list unless his inclusion is approved by reference to prescribed criteria by **[**[F165]the Primary Care Trust**]**[F165]the Board**]** in whose area those premises are situated,

(f) that **[**[F166]that Primary Care Trust**]**[F166]the Board**]** may give its approval subject to conditions,

(g) as to other grounds on which **[**[F167]or circumstances in which**]**[F168]a Primary Care Trust**]**[F168]the Board**]**[F169]—

(i)**]** may, or must, refuse to grant an application (including grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153)**[**[F170],

(ii) may, or must, remove a person or an entry in respect of premises from a pharmaceutical list**]**,

(h) as to information which must be supplied to **[**[F171]a Primary Care Trust**]**[F171]the Board**]** by a person included, or seeking inclusion, in a pharmaceutical list (or by arrangement with him),

(i) for the supply to **[**[F172]a Primary Care Trust**]**[F172]the Board**]** by an individual—

(i) who is included, or seeking inclusion, in a pharmaceutical list, or

(ii) who is a member of the body of persons controlling a body corporate included, or seeking inclusion, in a pharmaceutical list,

of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,

(j) for grounds on which **[**[F173]a Primary Care Trust**]**[F173]the Board**]** may defer a decision whether or not to grant an application,

(k) for the disclosure by **[**[F174]a Primary Care Trust**]**[F174]the Board**]**, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a pharmaceutical list, and refusals by **[**[F175]the Primary Care Trust**]**[F175]the Board**]** to grant such applications,

(l) as to criteria to be applied in making decisions under the regulations (other than decisions required by virtue of paragraph (e)),

(m) as to the making of declarations about—

(i) financial interests,

(ii) gifts above a prescribed value, and

(iii) other benefits received.

(7) A service falls within this subsection if the means of providing it is such that the person receiving it does so otherwise than at the premises from which it is provided.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(8) The regulations may, in respect of services falling within subsection (7), include provision—

(a) requiring persons to be approved for the purposes of providing such services, or

(b) requiring **[**[F176]the Primary Care Trust**][**[F176]the Board**]** to make the grant of an application subject to prescribed conditions.

(9) The approval mentioned in subsection (8)(a) is approval by the Secretary of State or such other person as may be specified in the regulations, in accordance with criteria to be specified in or determined under the regulations (whether by the Secretary of State or by another person so specified).

(10) Before making regulations by virtue of subsection (6)(m), the Secretary of State must consult such organisations as he considers appropriate appearing to him to represent persons providing pharmaceutical services.

[[F177](10A) Primary Care Trusts must give reasons for decisions made by virtue of this section.

(10B) In this section a "needs statement" means the statement required by section 128A(1)(b) as most recently published by the relevant Primary Care Trust.**]**

(11) In this Act a "pharmaceutical list" means a list published in accordance with regulations made under subsection (2)(a).

Textual Amendments

F139 Words in s. 129(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(2)**

F140 Words in s. 129(2)(a) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(3)(a)(i)**

F141 Words in s. 129(2)(a) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(3)(a)(ii)**

F142 Words in s. 129(2)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(3)(b)**

F143 Words in s. 129(2)(c) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(2)**, 40(1); S.I. 2012/1902, art. 2(a)

F144 S. 129(2A)-(2C) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(3)**, 40(1); S.I. 2012/1902, art. 2(a)

F145 S. 129(2ZA) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 207(3)**, 306(1)(d)(4)

F146 S. 129(2ZB) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(4)**

F147 S. 129(3A) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(4)**, 40(1); S.I. 2012/1902, art. 2(a)

F148 Words in s. 129(4) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(5)(a)**, 40(1); S.I. 2012/1902, art. 2(a)

F149 S. 129(4)(a) repealed (1.9.2012) by Health Act 2009 (c. 21), ss. 26(5)(b), 40(1), **Sch. 6**; S.I. 2012/1902, art. 2(a)

F150 Words in s. 129(4)(b) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(5)(c)**, 40(1); S.I. 2012/1902, art. 2(a)

F151 Words in s. 129(4) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**

F152 Words in s. 129(4)(c) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(5)(d)**, 40(1); S.I. 2012/1902, art. 2(a)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F153 S. 129(4A) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(6)**, 40(1); S.I. 2012/1902, art. 2(a)

F154 Words in s. 129(5) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**

F155 S. 129(6)(za) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(7)**, 40(1); S.I. 2012/1902, art. 2(a)

F156 Words in s. 129(6)(a) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F157 Words in s. 129(6)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F158 Words in s. 129(6)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(b)**

F159 Words in s. 129(6)(c) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F160 Words in s. 129(6)(c) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), art. 1(5), **Sch. 4 para. 13(2)**; S.I. 2010/1621, art. 2(1), Sch.

F161 Words in s. 129(6)(c) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(8)(a)**

F162 Words in s. 129(6)(c) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(8)(b)**

F163 Words in s. 129(6)(d) repealed (1.9.2012) by virtue of Health Act 2009 (c. 21), s. 40(1), **Sch. 6**; S.I. 2012/1902, art. 2(f)

F164 Words in s. 129(6)(d) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 27**, 40(1); S.I. 2012/1902, art. 2(b)

F165 Words in s. 129(6)(e) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(b)**

F166 Words in s. 129(6)(f) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(c)**

F167 Words in s. 129(6)(g) inserted (27.3.2012 for specified purposes, 1.7.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(8)(a)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3)

F168 Words in s. 129(6)(g) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F169 Words in s. 129(6)(g) inserted (27.3.2012 for specified purposes, 1.7.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(8)(b)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3)

F170 S. 129(6)(g)(ii) inserted (27.3.2012 for specified purposes, 1.7.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(8)(c)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3)

F171 Words in s. 129(6)(h) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F172 Words in s. 129(6)(i) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F173 Words in s. 129(6)(j) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F174 Words in s. 129(6)(k) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(a)**

F175 Words in s. 129(6)(k) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(7)(b)**

F176 Words in s. 129(8) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 66(6)**

F177 S. 129(10A)(10B) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 26(8)**, 40(1); S.I. 2012/1902, art. 2(a)

Modifications etc. (not altering text)

C13 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **23**

C14 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **24(1)**(2)

C15 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **25(1)**

C16 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **26(1)**(2)

C17 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **27(1)**

C18 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **28(1)**

C19 S. 129(2A)(2B) excluded (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **29(1)**

C20 S. 129 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 6** (with Sch. 3 Pt. 1)

130 Regulations under section 129: appeals, etc

(1) Regulations under section 129 must include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of that section.

(2) If regulations made by virtue of section 129(6)(g) provide that a Primary Care Trust may refuse to grant an application **[**[F178]on grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153**]**, they must also provide for an appeal **[**[F179](by way of redetermination)**]** to the **[**[F180]First-tier Tribunal**]** against the decision of the Primary Care Trust.

(3) Regulations under section 129 must be so framed as to preclude—

(a) a person included in a pharmaceutical list, and

(b) an employee of such a person,

from taking part in the decision whether an application such as is mentioned in section 129(2)(c) should be granted or an appeal against such a decision brought by virtue of subsection (1) of this section should be allowed.

Textual Amendments

F178 Words in s. 130(2) inserted (27.3.2012 for specified purposes, 1.7.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 207(10)(a)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3)

F179 Words in s. 130(2) omitted (27.3.2012 for specified purposes, 1.7.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 207(10)(b)**, 306(1)(d)(4); S.I. 2012/1319, art. 2(3)

F180 Words in s. 130(2) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 111** (with Sch. 5)

131 Power to charge

(1) The Secretary of State may give directions to a Primary Care Trust requiring it to charge a fee in cases or descriptions of case specified in the directions to persons who make an application referred to in section 129(2)(c)(i) or (ii).

(2) The Secretary of State may in the directions—

(a) specify the fee himself, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) require the Primary Care Trust to determine the amount of the fee in accordance with any requirements set out in the directions.

(3) Before determining the amount of the fee-

(a) in a subsection (2)(a) case, the Secretary of State must consult such organisations as he considers appropriate that appear to him to represent persons providing pharmaceutical services and such organisations as he considers appropriate that appear to him to represent Primary Care Trusts,

(b) in a subsection (2)(b) case, the Primary Care Trust must undertake any consultation required by the directions.

(4) The Secretary of State must publish in such manner as he considers appropriate any directions he gives under this section.

(5) In a subsection (2)(b) case, the Primary Care Trust must publish in such manner as it considers appropriate the fee which it determines.

132 Persons authorised to provide pharmaceutical services

(1) Except as may be provided for by or under regulations, no arrangements may be made by a Primary Care Trust with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering primary medical services or primary dental services.

(2) Except as may be provided for by or under regulations, no arrangements for the dispensing of medicines may be made under this Chapter 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 (c. 67), 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.

(3) Regulations must provide for the preparation and publication by each Primary Care Trust of one or more lists of medical practitioners who undertake to provide drugs, medicines or listed appliances (within the meaning given by section 126) under arrangements with the Primary Care Trust.

(4) The regulations may, in particular, include provision—

(a) as to grounds on which a Primary Care Trust may, or must, refuse to grant an application for inclusion in a list of medical practitioners referred to in subsection (3) (including grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153(2)),

(b) as to information which must be supplied to a Primary Care Trust by a medical practitioner included, or seeking inclusion, in such a list (or by arrangement with him),

(c) for the supply to a Primary Care Trust by a medical practitioner who is included, or seeking inclusion, in such a list of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,

(d) for grounds on which a Primary Care Trust may defer a decision whether or not to grant an application for inclusion in such a list,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(e) for the disclosure by a Primary Care Trust to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Primary Care Trust to grant such applications,

(f) as to criteria to be applied in making decisions under the regulations.

(5) If regulations made by virtue of subsection (4)(a) provide that a Primary Care Trust may refuse to grant an application for inclusion in such a list, they must also provide for an appeal (by way of redetermination) to the **[**[F181]First-tier Tribunal**]** against the decision of the Primary Care Trust.

(6) The regulations must include provision for the removal of an entry from a list in prescribed circumstances.

(7) No arrangements for the provision of—

(a) pharmaceutical services falling within section 126(3)(e), or

(b) additional pharmaceutical services provided in accordance with a direction under section 127,

may be made with persons other than those who are registered pharmacists or are of a prescribed description.

(8) Where—

(a) arrangements for the provision of pharmaceutical services have been made with a registered pharmacist, and

[[F182](b) his registration is suspended by virtue of any direction or order under the Pharmacy Order 2010,**]**

he may not provide pharmaceutical services in person during the period of suspension.

[F183](9) . . . . . .

Textual Amendments

F181 Words in s. 132(5) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 112** (with Sch. 5)

F182 S. 132(8)(b) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), art. 1(5), **Sch. 4 para. 13(3)**; S.I. 2010/1621, art. 2(1), Sch.

F183 S. 132(9) omitted (30.3.2007) by virtue of Pharmacists and Pharmacy Technicians Order 2007 (S.I. 2007/289), art. 1(2)(3), **Sch. 1 para. 10(3)(b)**

Modifications etc. (not altering text)

C21 S. 132 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 7** (with Sch. 3 Pt. 1)

133 Inadequate provision of pharmaceutical services

(1) Subsection (2) applies if the Secretary of State is satisfied, after such inquiry as he considers appropriate, that—

(a) as respects the area, or part of the area, of a Primary Care Trust, the persons whose names are included in any pharmaceutical list are not such as to secure the adequate provision of pharmaceutical services in that area or part, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force under this Chapter.

(2) Where this subsection applies, the Secretary of State—

(a) may authorise the Primary Care Trust to make such other arrangements as he may approve, or may himself make such other arrangements, and

(b) may dispense with any of the requirements of regulations made under this Part (other than Chapters 2 to 4) so far as appears to him necessary to meet exceptional circumstances and enable such arrangements to be made.

CHAPTER 2

LOCAL PHARMACEUTICAL SERVICES: PILOT SCHEMES

134 Pilot schemes

(1) Primary Care Trusts may establish pilot schemes.

(2) In this **[**[F184]Part**]** , a "pilot scheme" means one or more agreements—

(a) made by a Primary Care Trust in accordance with this Chapter,

(b) under which local pharmaceutical services will be provided (otherwise than by the Primary Care Trust), and

(c) the parties to which do not include any other Primary Care Trust.

(3) A pilot scheme may include arrangements—

(a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Act, other than under Chapter 1 of this Part, and whether or not of the kind usually provided by pharmacies,

(b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).

(4) A pilot scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services or primary dental services.

(5) In determining the arrangements it needs to make in order to comply with section 126, a Primary Care Trust may take into account arrangements under a pilot scheme made by it.

(6) The functions of an NHS trust and an NHS foundation trust include power to provide any services to which a pilot scheme applies.

(7) In this Chapter—

"local pharmaceutical services" means such services of a kind which may be provided under section 126, or by virtue of section 127 (other than practitioner dispensing services) as may be prescribed for the purposes of this Chapter, and

"piloted services" means services provided under a pilot scheme (including any services to which the scheme applies as a result of subsection (3)).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(8) "Practitioner dispensing services" means the provision of drugs, medicines or listed appliances (within the meaning given by section 126) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 132(1).

Textual Amendments

F184 Word in s. 134(2) substituted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 8**; S.I. 2010/30, art. 2(b)

135 Making pilot schemes

Schedule 11 makes provision with respect to making pilot schemes, including provision with respect to the procedure to be followed.

136 Designation of priority neighbourhoods or premises

(1) The Secretary of State may make regulations allowing a Primary Care Trust to designate—

(a) **[**[F185]neighbourhoods**][**[F185]relevant areas**]**,

(b) premises, or

(c) descriptions of premises,

for the purposes of this section.

(2) The regulations may, in particular, make provision—

(a) as to the circumstances in which, and the **[**[F186]neighbourhoods**][**[F186]relevant areas**]** or premises in relation to which, designations may be made or maintained,

(b) allowing a Primary Care Trust to defer consideration of pharmaceutical list applications relating to **[**[F186]neighbourhoods**][**[F186]relevant areas**]**, premises or descriptions of premises that have been designated,

(c) allowing a designation to be cancelled in prescribed circumstances,

(d) requiring a designation to be cancelled—

(i) if the Secretary of State gives a direction to that effect, or

(ii) in prescribed circumstances.

(3) "Pharmaceutical list applications" means applications for inclusion in a pharmaceutical list.

[[F187](4) "Relevant area" has the same meaning as in section 129(2A).**]**

Textual Amendments

F185 Words in s. 136(1)(a) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 207(11)(a)**, 306(1)(d)(4)

F186 Words in s. 136(2)(a)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 207(11)(a)**, 306(1)(d)(4)

F187 S. 136(4) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 207(11)(b)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

137 Reviews of pilot schemes

(1) At least one review of the operation of each pilot scheme must be conducted by the Secretary of State.

(2) Each pilot scheme must be reviewed under this section before the end of the period of three years beginning with the date on which piloted services are first provided under the scheme.

(3) When conducting a review of a pilot scheme, the Secretary of State must give—
  (a) the Primary Care Trust concerned, and
  (b) any person providing services under the scheme,
  an opportunity to comment on any matter relevant to the review.

(4) Otherwise, the procedure on any review must be determined by the Secretary of State.

138 Variation and termination of pilot schemes

(1) The Secretary of State may give directions authorising Primary Care Trusts to vary pilot schemes (otherwise than in response to directions given under subsection (2)) in such circumstances, and subject to such conditions, as may be specified in the directions.

(2) The Secretary of State may by directions require a pilot scheme to be varied by the Primary Care Trust concerned in accordance with the directions.

(3) If satisfied that a pilot scheme is (for any reason) unsatisfactory, the Secretary of State may give directions to the Primary Care Trust concerned requiring it to bring the scheme to an end in accordance with the terms of the directions.

139 NHS contracts and the provision of piloted services

(1) In the case of a pilot scheme entered into, or to be entered into, by a single individual or body corporate (other than an NHS foundation trust), that individual or body may make an application under this section to become a health service body.

(2) In the case of any other pilot scheme, all of those providing, or proposing to provide, piloted services under the scheme may together make an application under this section to become a single health service body.

(3) An application must—
  (a) be made to the Secretary of State in accordance with such provisions as may be made by regulations, and
  (b) specify the pilot scheme in relation to which it is made.

(4) Except in such cases as may be prescribed, the Secretary of State may grant an application.

(5) If an application is granted, the Secretary of State must specify a date in relation to that application and, as from that date—
  (a) in the case of an application under subsection (1), the applicant is, and
  (b) in the case of an application under subsection (2), the applicants together are,
  a health service body for the purposes of section 9.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) That section has effect in relation to such a health service body ("a PHS body"), acting as commissioner, as if the functions referred to in section 9(1) were the provision of piloted services.

(7) Except in such circumstances as may be prescribed, a PHS body resulting from an application under subsection (2) must be treated, at any time, as consisting of those who are providing piloted services under the scheme.

(8) A direction as to payment made under section 9(11) against, or in favour of, a PHS body is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.

(9) Regulations may provide for a PHS body to cease to be a PHS body in prescribed circumstances.

(10) The Secretary of State must—
- (a) maintain and publish a list of PHS bodies,
- (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(11) The list must be published in such manner as the Secretary of State considers appropriate.

140 Funding of preparatory work

(1) Provision may be made by regulations for Primary Care Trusts to make payments of financial assistance for preparatory work.

(2) "Preparatory work" means work which it is reasonable for a person to undertake—
- (a) in connection with preparing proposals for a pilot scheme, or
- (b) in preparing for the provision by him of any piloted services.

(3) The regulations may, in particular, include provision—
- (a) prescribing the circumstances in which payments of financial assistance may be made,
- (b) imposing a limit on the amount of any payment of financial assistance which a Primary Care Trust may make in any prescribed period in respect of any one person or any one pilot scheme,
- (c) imposing a limit on the aggregate amount which a Primary Care Trust may pay by way of financial assistance in any one financial year,
- (d) requiring a person to whom assistance is given under this section to comply with such conditions as may be imposed in accordance with prescribed requirements, and
- (e) for repayment in the case of a failure to comply with any condition so imposed.

141 Application of this Act

This Act has effect in relation to piloted services—
- (a) subject to any provision of, or made under, this Chapter, section 145 (application of enactments) or section 178 (charges for local pharmaceutical services), but

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) otherwise as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under section 7).

142 Premises from which piloted services may be provided

The Secretary of State may by regulations—

(a) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both piloted services and pharmaceutical services from the same premises,

(b) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list.

143 Control of entry regulations

The power to make regulations under section 129 includes power to prescribe the extent to which the provision of piloted services must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list.

CHAPTER 3

LOCAL PHARMACEUTICAL SERVICES: LPS SCHEMES

144 Local pharmaceutical services schemes

Schedule 12 makes provision with respect to the provision of local pharmaceutical services in accordance with schemes made by Primary Care Trusts **[**[F188]or Strategic Health Authorities **]**.

Textual Amendments

F188 Words in s. 144 inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(4)**, 40(1); S.I. 2012/1902, art. 2(d)

CHAPTER 4

LOCAL PHARMACEUTICAL SERVICES: MISCELLANEOUS

Application of enactments

145 Application of enactments

(1) The Secretary of State may by regulations make, in relation to local pharmaceutical services arrangements or persons providing or assisting in the provision of services under such arrangements, provision corresponding (whether or not exactly) to enactments containing provision relating to—

(a) section 92 arrangements or section 107 arrangements, or

(b) persons who provide or perform services under section 92 or section 107.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 regulations may, in particular, provide for the application of any such enactment with such modifications, if any, as the Secretary of State considers appropriate.

(3) The provision which may be made under this section includes provision amending, repealing or revoking enactments.

(4) "Local pharmaceutical services arrangements" means arrangements made under an LPS scheme or a pilot scheme.

Performance of local pharmaceutical services

146 Persons performing local pharmaceutical services

[F189(1) Regulations may provide that a health care professional of a prescribed description may not perform any local pharmaceutical 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.

(2) For the purposes of this section—
- (a) "health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),
- (b) a Primary Care Trust is responsible for a local pharmaceutical service if it secures its provision by or under any enactment.

(3) Regulations under this section may make provision in relation to lists under this section and in particular as to—
- (a) the preparation, maintenance and publication of a list,
- (b) eligibility for inclusion in a list,
- (c) applications for inclusion (including provision as to the Primary Care Trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application),
- (d) the grounds on which an application for inclusion may or must be granted or refused,
- (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),
- (f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),
- (g) circumstances in which a person included in a list may not withdraw from it,
- (h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),
- (i) the criteria to be applied in making decisions under the regulations,
- (j) appeals against decisions made by a Primary Care Trust under the regulations, and
- (k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide for—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) a person's inclusion in a list to be subject to conditions determined by a Primary Care Trust,
(b) a Primary Care Trust to vary the conditions or impose different ones,
(c) the consequences of failing to comply with a condition (including removal from a list),
(d) the review by a Primary Care Trust of decisions made by it by virtue of the regulations.

(5) The imposition of such conditions must be with a view to—
(a) preventing any prejudice to the efficiency of the services to which a list relates, or
(b) preventing fraud.

(6) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—
(a) by a Primary Care Trust to the Secretary of State, and
(b) by the Secretary of State to a Primary Care Trust.**]**

Textual Amendments
F189 S. 146 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(1)(a)**, 306(1)(d)(4) (with s. 208(7))

Assistance and support

147 Assistance and support: local pharmaceutical services

(1) A Primary Care Trust may provide assistance or support to any person providing local pharmaceutical services.

(2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.

(3) "Assistance" includes financial assistance.

[F190CHAPTER 4A

LISTS OF PERFORMERS OF PHARMACEUTICAL SERVICES AND ASSISTANTS

Textual Amendments
F190 Pt. 7 Ch. 4A inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(2)**, 306(1)(d)(4)

147A Performers of pharmaceutical services and assistants

(1) Regulations may make provision for the preparation, maintenance and publication by the Board of one or more lists of—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) persons approved by the Board for the purpose of assisting in the provision of pharmaceutical services which the Board arranges;
(b) persons approved by the Board for the purpose of performing local pharmaceutical services.

(2) The regulations may, in particular, provide that—
(a) a person of a prescribed description may not assist in the provision of pharmaceutical services which the Board arranges unless the person is included in a list prepared by virtue of subsection (1)(a),
(b) a person of a prescribed description may not perform local pharmaceutical services unless the person is included in a list prepared by virtue of subsection (1)(b).

(3) The regulations may, in particular, also include provision as to—
(a) the preparation, maintenance and publication of a list,
(b) eligibility for inclusion in a list,
(c) applications for inclusion (including provision for the procedure for applications and the documents to be supplied on application, whether by the applicant or by arrangement with the applicant),
(d) the grounds on which an application for inclusion may or must be granted or refused or on which a decision on such an application may be deferred,
(e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),
(f) the grounds on which the Board may or must suspend or remove a person from a list, the procedure for doing so, and the consequences of doing so,
(g) circumstances in which a person included in a list may not withdraw from it,
(h) payments to or in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating it, to be determined by the Secretary of State or a person appointed by the Secretary of State),
(i) the supply to the Board by an applicant for inclusion in a list, or by a person included in a list, of a criminal conviction certificate under section 112 of the Police Act 1997, a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
(j) the criteria to be applied in making decisions under the regulations,
(k) appeals against decisions made by the Board under the regulations, and
(l) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide that approval for the purposes of either paragraph (a) or paragraph (b) of subsection (1) is to be treated for the purposes of this section as approval for the purposes of the other paragraph (and for lists prepared by virtue of that subsection to be read accordingly).

(5) Regulations under this section may, in particular, also provide for—
(a) a person's inclusion in a list to be subject to conditions determined by the Board,
(b) the Board to vary the conditions or impose different ones,
(c) the consequences of failing to comply with a condition (including suspension or removal from a list),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) the review by the Board of decisions made by it by virtue of the regulations.

(6) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing any acts or omissions of the type described in section 151(3)(a).

(7) If the regulations provide under subsection (3)(f) or (5) that the Board may suspend or remove a person (P) from a list, they must include provision—

(a) requiring P to be given notice of any allegation against P,

(b) giving P the opportunity of putting P's case at a hearing before the Board makes any decision as to P's suspension or removal, and

(c) requiring P to be given notice of the decision of the Board, the reasons for it and any right of appeal under subsection (8) or (9).

(8) If the regulations provide under subsection (3)(d) or (f) that the Board may refuse a person's application for inclusion in a list, or remove a person from one, the regulations must provide for an appeal to the First-tier Tribunal against the decision of the Board.

(9) If the regulations make provision under subsection (5), they must provide for an appeal by the person in question to the First-tier tribunal against the decision of the Board—

(a) to impose conditions, or any particular condition,

(b) to vary a condition,

(c) to remove the person from the list for breach of condition,

(d) on any review of an earlier such decision of the Board.

(10) Regulations making provision as to the matters referred to in subsection (3)(l) may, in particular, authorise the disclosure of information—

(a) by the Board to the Secretary of State, and

(b) by the Secretary of State to the Board.

147B Further provision about regulations under section 147A

(1) Regulations under section 147A may require a person (A) included in—

(a) a pharmaceutical list, or

(b) a list under section 132(3) (provision of drugs, medicines or listed appliances),

not to employ or engage a person (B) to assist A in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2).

(2) The lists are—

(a) a list referred to in subsection (1),

(b) a list under section 147A,

(c) a list under section 91, 106 or 123,

(d) a list corresponding to a list under section 91 prepared by the Board by virtue of regulations made under section 145,

(e) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by a Local Health Board under or by virtue of the National Health Service (Wales) Act 2006,

or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) If regulations do so require, they may, in particular, require that both A and B be included in lists prepared by the Board.**]**

CHAPTER 5

[[F191]CONDITIONAL INCLUSION IN PHARMACEUTICAL LISTS, AND SUPPLEMENTARY LISTS][[F191]CONDITIONAL INCLUSION IN PHARMACEUTICAL LISTS]

Textual Amendments

F191 Pt. 7 Ch. 5 heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(3)**, 306(1)(d)(4)

148 Conditional inclusion in pharmaceutical lists

(1) Regulations may provide—

(a) that if a person is included in a pharmaceutical list he is subject, while he remains included in the list, to conditions determined by the Primary Care Trust in whose list he is included,

(b) for the Primary Care Trust to vary that person's terms of service for the purpose of or in connection with the imposition of any such conditions,

(c) for the Primary Care Trust to vary the conditions or impose different ones,

(d) for the consequences of failing to comply with a condition (including removal from the list), and

(e) for the review by the Primary Care Trust of any decision made by virtue of the regulations.

(2) The imposition of conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services in question, or

(b) preventing any acts or omissions within section 151(3)(a).

(3) If regulations provide for a practitioner's removal from the list for breach of condition—

(a) the regulations may provide that he may not withdraw from the list while the Primary Care Trust is investigating whether there are grounds for exercising their power to remove him, or after the Primary Care Trust has decided to remove him but before it has given effect to that decision, and

(b) the regulations must include provision—

(i) requiring the practitioner to be given notice of any allegation against him,

(ii) giving him the opportunity of putting his case at a hearing before the Primary Care Trust makes any decision as to his removal from the list, and

(iii) requiring him to be given notice of the decision of the Primary Care Trust and the reasons for it and of his right of appeal under subsection (4).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the **[**[F192]First-tier Tribunal**]** against the decision of the Primary Care Trust—

(a) to impose conditions, or any particular condition,

(b) to vary a condition,

(c) to vary his terms of service,

(d) on any review of an earlier such decision of the Primary Care Trust,

(e) to remove him from the list for breach of condition,

and the appeal must be by way of redetermination of the decision of the Primary Care Trust.

(5) The regulations may provide for any such decision not to have effect until the determination by the **[**[F193]First-tier Tribunal**]** of any appeal against it, and must so provide in relation to a decision referred to in subsection (4)(e).

(6) Regulations under this section may provide for the disclosure by a Primary Care Trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description—

(a) about persons whose inclusion in a pharmaceutical list is subject to conditions imposed under this section, and

(b) about the removal of such persons from a pharmaceutical list for breach of condition.

(7) In this Part, "terms of service" means the terms upon which, by virtue of regulations, a person undertakes to provide pharmaceutical services.

Textual Amendments

F192 Words in s. 148(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 113** (with Sch. 5)

F193 Words in s. 148(5) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 113** (with Sch. 5)

149 Supplementary lists

[[F194](1) The Secretary of State may make regulations providing for the preparation and publication by each Primary Care Trust of one or more lists of persons approved by the Primary Care Trust for the purpose of assisting in the provision of pharmaceutical services.

(2) Such a list is referred to in this section, section 150 and section 159 as a "supplementary list".

(3) The regulations may, in particular, include provision as to—

(a) the Primary Care Trust to which an application for inclusion in a supplementary list must be made,

(b) the procedure for applying for inclusion, including any information to be supplied to the Primary Care Trust (whether by the applicant or by arrangement with him),

(c) grounds on which the Primary Care Trust may, or must, refuse a person's application for inclusion in a supplementary list (including his unsuitability

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

for inclusion in such a list), or on which it may defer its decision on the application,

(d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),

(e) grounds on which a Primary Care Trust may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,

(f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),

(g) the supply to the Primary Care Trust by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,

(h) circumstances in which a person included in a supplementary list may not withdraw from it,

(i) criteria to be applied in making decisions under the regulations,

(j) appeals against decisions of Primary Care Trusts under the regulations,

(k) the disclosure by a Primary Care Trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list.

(4) The regulations may, in particular, also provide for—

(a) a person's inclusion in a supplementary list to be subject to conditions determined by the Primary Care Trust,

(b) the Primary Care Trust to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including removal from the list), and

(d) the review by the Primary Care Trust of its decisions made by virtue of regulations under this subsection.

(5) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which the supplementary list relates, or

(b) preventing any acts or omissions of the type described in section 151(3)(a).

(6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 151 to 159.

(7) If the regulations provide under subsection (3)(e) or (4) that a Primary Care Trust may suspend or remove a person from a supplementary list, they must include provision—

(a) requiring him to be given notice of any allegation against him,

(b) giving him the opportunity of putting his case at a hearing before the Primary Care Trust makes any decision as to his suspension or removal, and

(c) requiring him to be given notice of the decision of the Primary Care Trust and the reasons for it and of any right of appeal under subsection (8) or (9).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(8) If the regulations provide under subsection (3)(c) or (e) that a Primary Care Trust may refuse a person's application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the **[**[F195]First-tier Tribunal**]** against the decision of the Primary Care Trust.

(9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the **[**[F196]First-tier Tribunal**]** against the decision of the Primary Care Trust—

(a) to impose conditions, or any particular condition,

(b) to vary a condition,

(c) to remove him from the supplementary list for breach of condition,

(d) on any review of an earlier such decision of the Primary Care Trust.**]**

Textual Amendments

F194 S. 149 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(1)(b)**, 306(1)(d)(4) (with s. 208(7))

F195 Words in s. 149(8) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 114** (with Sch. 5)

F196 Words in s. 149(9) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 114** (with Sch. 5)

150 Further provision about regulations under section 149

[[F197](1) Regulations under section 149 may require a person ("A") included in—

(a) a pharmaceutical list, or

(b) a list under section 132(3) (provision of drugs, medicines or listed appliances),

not to employ or engage a person ("B") to assist him in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2).

(2) The lists are—

(a) a list referred to in subsection (1),

(b) a supplementary list,

(c) a list under section 91, 106 or 123,

(d) a list under section 146 or a list corresponding to a list under section 91 prepared by a Primary Care Trust by virtue of regulations made under section 145,

(e) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by a Local Health Board under or by virtue of the National Health Service (Wales) Act 2006 (c. 42),

or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description.

(3) If regulations do so require, they—

(a) need not require both A and B to be included in lists prepared by the same Primary Care Trust, but

(b) may, in particular, require that both A and B be included in lists prepared by Primary Care Trusts.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F197 S. 150 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(1)(c)**, 306(1)(d)(4)

[F198 CHAPTER 5A

NOTICES AND PENALTIES

Textual Amendments

F198 Pt. 7 Ch. 5A inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 28**, 40(1); S.I. 2012/1902, art. 2(c)

150A Notices and penalties

(1) The Secretary of State may by regulations provide that where a practitioner who provides pharmaceutical services under arrangements with a Primary Care Trust breaches a term of those arrangements, the Primary Care Trust may—

(a) by a notice require the practitioner to do, or not do, specified things or things of a specified description within a specified period, or

(b) in prescribed circumstances or for a prescribed period, withhold all or part of a payment due to the practitioner under the arrangements.

(2) Regulations under this section must include provision conferring on such persons as may be prescribed rights of appeal from decisions of Primary Care Trusts made by virtue of this section.

(3) In this section—

"practitioner" means a person included in a pharmaceutical list, and

"specified" means specified in a notice under paragraph (a) of subsection (1).]

CHAPTER 6

DISQUALIFICATION

151 Disqualification of practitioners

(1) If it appears to a Primary Care Trust that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in a pharmaceutical list it may (or, in cases falling within subsection (5), must) decide to remove him from that list.

(2) The first condition is that the continued inclusion of the practitioner in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this Chapter as an "efficiency case").

(3) The second condition is that the practitioner—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and

(b) knew that he or the other was not entitled to the benefit,

(and such a case is referred to in this Chapter as a "fraud case").

(4) The third condition is that the practitioner is unsuitable to be included in the list (and such a case is referred to in this Chapter as an "unsuitability case").

(5) In unsuitability cases, the Primary Care Trust must remove the practitioner from the list in prescribed circumstances.

(6) The Primary Care Trust must state which condition (or conditions) it is relying on when removing a practitioner from a list.

(7) "Health scheme" means—

(a) any of the health services under section 1(1) of this Act, section 1(1) of the National Health Service (Wales) Act 2006 (c. 42), or any enactment corresponding to section 1(1) of this Act and extending to Scotland or Northern Ireland, and

(b) any prescribed scheme,

and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.

(8) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.

(9) In this Chapter a "practitioner" means a person included in a pharmaceutical list.

152 Contingent removal

(1) In an efficiency case or a fraud case, the Primary Care Trust may, instead of deciding to remove a practitioner from its list, decide to remove him contingently.

(2) If it so decides, it must impose such conditions as it may decide on his inclusion in the list with a view to—

(a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or

(b) preventing further acts or omissions within section 151(3)(a) (in a fraud case).

(3) If the Primary Care Trust determines that the practitioner has failed to comply with a condition, it may decide to—

(a) vary the conditions, or impose different conditions, or

(b) remove him from its list.

(4) The Primary Care Trust may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

153 Fraud and unsuitability cases: supplementary

(1) Where the practitioner is a body corporate providing pharmaceutical services, the body corporate must be treated for the purposes of this Chapter as meeting a condition referred to in section 151(3) or (4) if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).

(2) A practitioner must be treated for the purposes of this Chapter as meeting the condition referred to in section 151(3) if—
- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 151(1) on the practitioner's behalf, meets that condition, and
- (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 151(3)(a) occurring in the course of the provision of those services on his behalf.

154 Suspension

(1) If the Primary Care Trust is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a practitioner from its list—
- (a) while it decides whether or not to exercise its powers under section 151 or 152 (other than in circumstances falling within paragraph (b)), or
- (b) while it waits for a decision affecting the practitioner of a court or of a body which regulates—
  - (i) the practitioner's profession,
  - (ii) the profession of a person providing any of the services mentioned in section 151(1) on the practitioner's behalf, or
  - (iii) if the practitioner is a body corporate, the profession of one of its directors, or one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,

  or one of that regulatory body's committees.

(2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.

(3) In a case falling within subsection (1)(a), the Primary Care Trust must specify the length of the period of suspension.

(4) In a case falling within subsection (1)(b), the Primary Care Trust may specify that the practitioner remains suspended after the decision referred to there for an additional period which the Primary Care Trust must specify.

(5) In either case—
- (a) before that period expires it may extend, or further extend, the suspension for a further specified period, or
- (b) if that period has expired, it may impose a further suspension, for a period which it must specify.

(6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),

(b) if, on the application of the Primary Care Trust, the **[**[F199]First-tier Tribunal**]** orders accordingly before the expiry of the period of suspension, or

(c) if the Primary Care Trust has applied under paragraph (b) before the expiry of the period of suspension, but the **[**[F200]First-tier Tribunal**]** has not made an order by the time it expires, in which case it continues until the **[**[F200]First-tier Tribunal**]** has made an order.

(7) If the **[**[F201]First-tier Tribunal**]** does so order, it must specify—

(a) the date on which the period of suspension will end, or

(b) an event beyond which it will not continue.

(8) The **[**[F202]First-tier Tribunal**]** may, on the application of the Primary Care Trust, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.

(9) The Secretary of State may make regulations providing for payments to practitioners who are suspended.

(10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

Textual Amendments

F199 Words in s. 154(6)(b) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

F200 Words in s. 154(6)(c) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

F201 Words in s. 154(7) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

F202 Words in s. 154(8) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 115** (with Sch. 5)

155 Suspension pending appeal

(1) This section applies if the Primary Care Trust decides to remove a practitioner from a list under section 151.

(2) In such a case it may also decide to suspend the practitioner from the list pending any appeal by him, if it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

(3) If it does suspend the practitioner under this section, the suspension has effect from the date when the Primary Care Trust gave him notice of the suspension.

(4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 158(1), or, if the practitioner appeals under section 158, until the **[**[F203]First-tier Tribunal**]** has disposed of the appeal.

(5) The Primary Care Trust may revoke a suspension imposed under this section.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) If the practitioner appeals under section 158 against the decision of the Primary Care Trust to remove him from the list, the **[**[F204]First-tier Tribunal**]** may also revoke a suspension imposed on him under this section.

(7) Subsections (9) and (10) of section 154 apply for the purposes of this section as they apply for the purposes of that.

Textual Amendments

F203 Words in s. 155(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 116** (with Sch. 5)

F204 Words in s. 155(6) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 116** (with Sch. 5)

156 Effect of suspension

While a practitioner is suspended (whether under section 154 or under section 155) he must be treated as not being included in the list from which he has been suspended even though his name appears in it.

157 Review of decisions

(1) The Primary Care Trust may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the **[**[F205]First-tier Tribunal**]** , or a suspension imposed under section 155).

(2) The practitioner may not request a review before the expiry of the period of—

(a) three months beginning with the date of the decision of the Primary Care Trust to suspend or contingently remove him, or (as appropriate),

(b) six months beginning with the date of its decision on the previous review.

(3) On such a review, the Primary Care Trust may—

(a) confirm the contingent removal or the suspension,

(b) in the case of a suspension, terminate it,

(c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.

Textual Amendments

F205 Words in s. 157(1) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 117** (with Sch. 5)

158 Appeals

(1) A practitioner may appeal to the **[**[F206]First-tier Tribunal**]** against a decision of a Primary Care Trust mentioned in subsection (2) [F207]....

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Primary Care Trust decisions in question are—

(a) to remove the practitioner from a list (under section 151 or 152(3) or under subsection (5)(b) of this section),

(b) to remove him contingently (under section 152),

(c) to impose any particular condition under section 152, or to vary any condition or to impose any different condition under that section,

(d) to vary his terms of service (under section 152(4)),

(e) any decision on a review of a contingent removal under section 157.

(3) The appeal must be way of redetermination of the decision of the Primary Care Trust.

(4) On an appeal, the **[**[F208]First-tier Tribunal**]** may make any decision which the Primary Care Trust could have made.

(5) If the **[**[F209]First-tier Tribunal**]** decides to remove the practitioner contingently—

(a) the Primary Care Trust and the practitioner may each apply to the **[**[F209]First-tier Tribunal**]** for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked, and

(b) the Primary Care Trust may remove him from its list if it determines that he has failed to comply with a condition.

(6) The Primary Care Trust may not remove a person from a list, or impose a contingent removal—

(a) until the expiry of the period of 28 days referred to in subsection (1), or

(b) if the practitioner appeals within that period, until the **[**[F210]First-tier Tribunal**]** has disposed of the appeal.

(7) Regulations may provide for payments by Primary Care Trusts to practitioners who are removed from lists pursuant to decisions of the **[**[F211]First-tier Tribunal**]** under this section, but whose appeals against those decisions are successful.

(8) Regulations under subsection (7) may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

Textual Amendments

F206 Words in s. 158(1) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(a)(i)** (with Sch. 5)

F207 Words in s. 158(1) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(a)(ii)** (with Sch. 5)

F208 Words in s. 158(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

F209 Words in s. 158(5) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

F210 Words in s. 158(6)(b) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

F211 Words in s. 158(7) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 118(b)** (with Sch. 5)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

159 National disqualification

(1) If the **[**[F212]First-tier Tribunal**]** removes the practitioner from a list, it may also decide to disqualify him from inclusion in—

(a) the pharmaceutical lists prepared by each Primary Care Trust,

(b) **[**[F213]the supplementary lists prepared by each Primary Care Trust,**]**

(c) the lists under section 91, 106, or 123 prepared by each Primary Care Trust,

(d) the lists under **[**[F214]section 146**]**[[F214]section 147A**]** prepared by each Primary Care Trust, or the lists corresponding to the lists under section 91 prepared by each Primary Care Trust by virtue of regulations made under section 145,

(e) the lists corresponding to the lists mentioned in paragraphs (a) to (d) prepared by each Local Health Board under or by virtue of the National Health Service (Wales) Act 2006 (c. 42),

or only from inclusion in one or more descriptions of such lists prepared by each Primary Care Trust and each Local Health Board, the description being specified by the **[**[F212]First-tier Tribunal**]** in its decision.

(2) A decision by the **[**[F212]First-tier Tribunal**]** to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.

(3) The **[**[F212]First-tier Tribunal**]** may also impose a national disqualification on a practitioner if it dismisses an appeal by him against the refusal by a Primary Care Trust to include him in such a list.

(4) The Primary Care Trust may apply to the **[**[F212]First-tier Tribunal**]** for a national disqualification to be imposed on a person after the Primary Care Trust has—

(a) removed him from a list prepared by it of any of the kinds referred to in subsection (1)(a) to (d), or

(b) refused to include him in such a list.

(5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of the Primary Care Trust's refusal.

(6) If the **[**[F215]First-tier Tribunal**]** imposes a national disqualification on a person—

(a) no Primary Care Trust or Local Health Board may include him in a list of any of the kinds prepared by it from which he has been disqualified from inclusion, and

(b) if he is included in such a list, each Primary Care Trust and each Local Health Board in whose list he is included must remove him from it.

(7) The **[**[F216]First-tier Tribunal**]** may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.

(8) Subject to subsection (9), the person may not request such a review before the end of the period of—

(a) two years beginning with the date on which the national disqualification was imposed, or

(b) one year beginning with the date of the **[**[F217]First-tier Tribunal's**]** decision on the last such review.

(9) The Secretary of State may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to “two years” or “one year” were a reference to a different period specified in the regulations.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F212 Words in s. 159(1)-(4) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(a)** (with Sch. 5)

F213 S. 159(1)(b) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(4)(a)**, 306(1)(d)(4)

F214 Words in s. 159(1)(d) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(4)(b)**, 306(1)(d)(4)

F215 Words in s. 159(6) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(a)** (with Sch. 5)

F216 Words in s. 159(7) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(a)** (with Sch. 5)

F217 Words in s. 159(8)(b) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 119(b)** (with Sch. 5)

Modifications etc. (not altering text)

C22 S. 159(8) modified (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **87(3)**

C23 S. 159(8)(a) modified (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **87(1)**

C24 S. 159(8)(b) modified (E.) (1.9.2012) by The National Health Service (Pharmaceutical Services) Regulations 2012 (S.I. 2012/1909), regs. 1, **87(2)**

160 Notification of decisions

Regulations may require a Primary Care Trust to notify prescribed persons, or persons of prescribed descriptions, of any decision it makes under this Chapter, and of any information relevant to the decision which it considers appropriate to include in the notification.

161 Withdrawal from lists

Regulations may provide for circumstances in which a practitioner—

(a) whom a Primary Care Trust is investigating in order to see whether there are grounds for exercising its powers under section 151, 152 or 154,

(b) whom a Primary Care Trust has decided to remove from a list under section 151 or 152, or contingently remove under section 152, but who has not yet been removed or contingently removed, or

(c) who has been suspended under section 154,

may not withdraw from a list in which he is included.

162 Regulations about decisions under this Chapter

(1) Any decision by a Primary Care Trust referred to in this Chapter must be reached in accordance with regulations about such decisions.

(2) The regulations must include provision—

(a) requiring the practitioner to be given notice of any allegation against him,

(b) giving him the opportunity of putting his case at a hearing before a Primary Care Trust makes any decision affecting him under this Chapter,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) requiring him to be given notice of the decision of the Primary Care Trust and the reasons for it and of any right of appeal which he may have.

(3) The regulations may, in particular, make provision as to criteria which the Primary Care Trust must apply when making decisions in unsuitability cases.

163 Corresponding provisions in Scotland and Northern Ireland

(1) This section applies where it appears to the Secretary of State that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this Chapter.

(2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a "corresponding decision".

(3) If this section applies, the Secretary of State may make regulations providing for the effect to be given in England to a corresponding decision.

(4) That effect need not be the same as the effect of the decision in the place where it was made.

(5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England.

CHAPTER 7

MISCELLANEOUS

Remuneration

164 Remuneration for persons providing pharmaceutical services

(1) The remuneration to be paid to persons who provide pharmaceutical services under this Part must be determined by determining authorities.

(2) Determining authorities may also determine the remuneration to be paid to persons who provide those services in respect of the instruction of any person in matters relating to those services.

(3) For the purposes of this section and section 165 determining authorities are—
(a) the Secretary of State, and
(b) so far as authorised by him to exercise the functions of determining authorities, any Primary Care Trust or other person appointed by him in an instrument.

(4) The instrument mentioned in subsection (3)(b) is called in this section an "instrument of appointment".

(5) An instrument of appointment—
(a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations, and
(b) may be contained in regulations.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Subject to this section and section 165, regulations may make provision about determining remuneration under this section and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).

(7) Regulations may provide that determinations may be made by reference to any of—
- (a) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or will be fixed or determined, otherwise than by way of a determination under this section,
- (b) scales, indices or other data of any description specified in the regulations.

(8) Where regulations provide as mentioned in subsection (7)(b), they may provide that any determination which falls to be made by reference to a scale, index or other data may be made by reference to the scale, index or data—
- (a) in the form current at the time of the determination, and
- (b) in any subsequent form taking effect after that time.

(9) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates,
- (b) provide that any determination which does not specify such a date has effect in relation to remuneration in respect of a period beginning—
  - (i) if it is required to be published, on the date of publication,
  - (ii) if it is not so required, on the date on which it is made.

(10) A reference in this section or section 165 to a determination is to a determination of remuneration under this section.

165 Section 164: supplementary

(1) Before a determination is made by the Secretary of State which relates to all persons who provide pharmaceutical services, or a category of such services, he—
- (a) must consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
- (b) may consult such other persons as he considers appropriate.

(2) Determinations may make different provision for different cases, including different provision for any particular case, class of case or area.

(3) Determinations may be—
- (a) made in more than one stage,
- (b) made by more than one determining authority,
- (c) varied or revoked by subsequent determinations.

(4) A determination may be varied—
- (a) to correct an error, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.

(5) Determinations may, in particular, provide that the whole or any part of the remuneration—

(a) is payable only if the determining authority is satisfied as to certain conditions, or

(b) must be applied for certain purposes or is otherwise subject to certain conditions.

(6) Remuneration under section 164 may be determined from time to time and may consist of payments by way of—

(a) salary,

(b) fees,

(c) allowances,

(d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction.

(7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time.

(8) The matters which may be reserved include in particular—

(a) the amount of remuneration to be paid in particular cases,

(b) whether any remuneration is to be paid in particular cases.

(9) Any determination may be made only after taking into account all the matters which are considered to be relevant by the determining authority.

(10) Such matters may include in particular—

(a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of pharmaceutical services or of any category of pharmaceutical services,

(b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services,

(c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons,

(d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of pharmaceutical services or the category of pharmaceutical services to which the determination will relate,

(e) the desirability of promoting pharmaceutical services which are—

(i) economic and efficient, and

(ii) of an appropriate standard.

(11) If the determination is of remuneration for a category of pharmaceutical services, the reference in subsection (10)(a) to a category of pharmaceutical services is a reference to the same category of pharmaceutical services or to any other category of pharmaceutical services falling within the same description.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Indemnity cover

166 Indemnity cover

(1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed persons included in a pharmaceutical list hold approved indemnity cover.

(2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

(a) for securing that a person must not be added to a pharmaceutical list unless he holds approved indemnity cover,

(b) for the removal from a pharmaceutical list prepared by a Primary Care Trust of a person who does not within a prescribed period after the making of a request by the Primary Care Trust in the prescribed manner satisfy the Primary Care Trust that he holds approved indemnity cover.

(3) For the purposes of this section—

"approved body" means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed,

"approved indemnity cover" means indemnity cover made—

(a) on prescribed terms, and

(b) with an approved body,

"indemnity cover", in relation to a person included in a pharmaceutical list (or a person who proposes to provide pharmaceutical services), means a contract of insurance or other arrangement made for the purpose of indemnifying him, and any person prescribed in relation to him, to any prescribed extent against any liability which—

(a) arises out of the provision of pharmaceutical services in accordance with arrangements made by him with a Primary Care Trust, and

(b) is incurred by him or any such person in respect of the death or personal injury of a person,

"personal injury" means any disease or impairment of a person's physical or mental condition and includes the prolongation of any disease or such impairment,

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

(a) in a form identified in accordance with the regulations in relation to persons of that description, and

(b) made with a person or persons so identified,

must be treated as holding approved indemnity cover for the purposes of the regulations.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Local Pharmaceutical Committees

167 Local Pharmaceutical Committees

(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 providing pharmaceutical services from premises in the area for which the committee is formed ("pharmaceutical services providers"),

(b) pharmaceutical services providers and the persons to whom subsections (2) and (3) apply,

(c) pharmaceutical services providers and the persons to whom subsection (2) applies, or

(d) pharmaceutical services providers and the persons to whom subsection (3) applies.

(2) This subsection applies to each person who—

(a) is providing local pharmaceutical services in the Primary Care Trust's area under an LPS scheme made (whether with himself or another person) by the Primary Care Trust, and

(b) 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).

(3) This subsection applies to each person who—

(a) is providing local pharmaceutical services in the Primary Care Trust's area under a pilot scheme made (whether with himself or another person) by the Primary Care Trust, and

(b) 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 is called the Local Pharmaceutical 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) Regulations may require a Primary Care Trust, in the exercise of functions relating to pharmaceutical services or local pharmaceutical services, to consult committees recognised by it under this section on such occasions and to such extent as may be prescribed.

(7) Subsection (6) does not affect any other power to require a Primary Care Trust to consult committees recognised by it under this section.

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

(9) A Primary Care Trust may, on the request of any committee recognised by it under this section, allot to that committee such sums for defraying the committee's administrative expenses (other than any determined under subsection (12)) as may be determined by the Primary Care Trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Any sums so allotted must be out of the moneys available to the Primary Care Trust for the remuneration of persons of whom the committee is representative under subsection (1)(a).

(11) The amount of any such sums must be deducted from the remuneration of those persons in such manner as may be determined by the Primary Care Trust.

(12) A committee recognised under subsection (1)(b), (c) or (d) must, in respect of each year, determine the amount of its administrative expenses for that year attributable to the persons of whom it is representative under subsection (2) or (3).

(13) The committee must apportion the amount determined under subsection (12) among the persons of whom it is representative under subsection (2) or (3), and each such person must pay in accordance with the committee's directions the amount so apportioned to him.

(14) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

Provision of accommodation by the Secretary of State

168 Use of accommodation: provision of pharmaceutical services and local pharmaceutical services

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of pharmaceutical services or local pharmaceutical services, he may make the accommodation available on such terms as he considers appropriate to persons providing those services.

[F218 Directions

Textual Amendments

F218 S. 168A and cross-heading inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 49(4)**, 306(1)(d)(4)

168A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to services that may be provided as pharmaceutical services, or as local pharmaceutical services, under this Part.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to pharmaceutical services or to local pharmaceutical services (including functions which the Board has been directed to exercise under subsection (1)).**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 8

[[F219]APPEALS TO FIRST-TIER TRIBUNAL]

Textual Amendments

F219 Pt. 8 heading substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 120** (with Sch. 5)

169 [[F220]Appeals to the First-tier Tribunal]

[F221](1) . . . . . .

[F221](2) . . . . . .

(3) The Secretary of State may direct the [[F222]First-tier Tribunal] to exercise any of his functions relating to the determination of appeals to him which are specified in the directions.

[F223](4) . . . . . .

[F223](5) . . . . . .

Textual Amendments

F220 S. 169 heading substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(a)** (with Sch. 5)

F221 S. 169(1)(2) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(b)** (with Sch. 5)

F222 Words in s. 169(3) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(c)** (with Sch. 5)

F223 S. 169(4)(5) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 121(d)** (with Sch. 5)

[F224]170 FHSAA: financial provisions

. . . . . .

Textual Amendments

F224 S. 170 omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 122** (with Sch. 5)

[F225]171 Conditions of use of services of persons under section 169

. . . . . .

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F225 S. 171 omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 123** (with Sch. 5)

PART 9

CHARGING

Power to charge generally

172 Charges for drugs, medicines or appliances, or pharmaceutical services

(1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—

(a) the supply under this Act (otherwise than under Chapter 1 of Part 7) of drugs, medicines or appliances (including the replacement and repair of those appliances), and

(b) such of the pharmaceutical services referred to in that Chapter as may be prescribed.

(2) Regulations under this section may in particular make provision in relation to the supply of contraceptive substances and appliances under paragraph 8 of Schedule 1.

(3) This section does not apply in relation to the provision of any relevant dental service (within the meaning of section 176).

173 Exemptions from general charging

(1) No charge may be made under regulations under section 172(1) in respect of—

(a) the supply of any drug, medicine or appliance for a patient who is resident in hospital,

(b) the supply of any drug or medicine for the treatment of sexually transmitted disease (otherwise than in the provision of primary medical services or in accordance with a pilot scheme **[**[F226]established under section 134(1) of this Act**]** or an LPS scheme),

(c) the supply of any appliance (otherwise than in pursuance of paragraph 8(d) of Schedule 1) for a person who is under 16 years of age or is under 19 years of age and receiving qualifying full-time education, or

(d) the replacement or repair of any appliance in consequence of a defect in the appliance as supplied.

(2) In subsection (1)(c) "qualifying full-time education" means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State.

(3) For the purposes of subsection (2)—

(a) "recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction.

Textual Amendments

F226 Words in s. 173(1)(b) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(c)**; S.I. 2010/30, art. 2(b)

174 Pre-payment certificates

(1) Regulations under section 172(1) may provide for the grant, on payment of such sums as may be prescribed, of a pre-payment certificate.

(2) A pre-payment certificate is a certificate which confers on the person to whom it is granted exemption from charges otherwise chargeable under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed.

(3) Different sums may be prescribed in relation to different periods.

175 Charges in respect of non-residents

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of such charges as the Secretary of State may determine in respect of the services mentioned in subsection (2).

(2) The services are such services as may be prescribed which are—
- (a) provided under this Act, and
- (b) provided in respect of such persons not ordinarily resident in Great Britain as may be prescribed.

(3) Regulations under this section may provide that the charges may be made only in such cases as may be determined in accordance with the regulations.

(4) The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.

Charging for dental services

176 Dental charging

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for relevant dental services.

(2) Regulations under subsection (1) may in particular include provision—
- (a) specifying the amount, or maximum amount, of any charge (or aggregate charge in respect of the provision for two or more relevant dental services),
- (b) for calculating the amount of any charge,
- (c) for the variation of the amount, or maximum amount, of any charge in cases of a prescribed description,
- (d) for any charge not to be payable in cases of a prescribed description,
- (e) for power to direct that a charge is not payable in any particular case,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(f) for the repayment of any charge (including provision as to the persons by whom, and manner in which, repayments must be made).

(3) Regulations under subsection (1) may provide for sums which would otherwise be payable by a Primary Care Trust or Special Health Authority to persons providing relevant dental services to be reduced by the amount of the charges authorised by the regulations.

(4) In this section and section 177 "relevant dental services" means—
(a) dental treatment provided—
(i) under section 99(2),
(ii) under a general dental services contract, or
(iii) in accordance with section 107 arrangements, and
(b) the supply of dentures and other dental appliances under this Act.

(5) Any reference in this section or 177 to the supply of an appliance includes a reference to its repair, adjustment, refitting or replacement and, in the case of dentures, to their being relined or having additions made to them.

177 Exemptions from dental charging

(1) No charge may be made under regulations under section 176(1) in respect of a relevant dental service provided for any person who at the prescribed time—
(a) was under 18,
(b) was under 19 and receiving qualifying full-time education,
(c) was pregnant, or
(d) had given birth to a child within the previous 12 months.

(2) No charge may be made under regulations under section 176(1) in respect of—
(a) the repair or replacement of any appliance,
(b) any appliance supplied to a patient who is resident in a hospital,
(c) the arrest of bleeding.

(3) Subsections (1) and (2)(a) do not apply in relation to—
(a) the repair or replacement of any appliance of a prescribed description,
(b) the repair or replacement of any appliance where it is determined in the prescribed manner—
(i) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied, or
(ii) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.

(4) Subsection (2)(b) does not apply where an appliance is supplied—
(a) under section 99(2),
(b) under a general dental services contract, or
(c) in accordance with section 107 arrangements.

(5) Regulations may provide, with respect to any exemption under this section, that it must be a condition of the exemption that—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) a declaration of the prescribed kind is made in the prescribed form and manner,
(b) a certificate or other evidence of the prescribed kind is supplied in the prescribed form and manner.

(6) In subsection (1)(b) "qualifying full-time education" means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State.

(7) For the purposes of subsection (6)—
(a) "recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university, and
(b) regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction.

(8) In subsection (1)(d), "child" includes a still-born child (within the meaning of the Births and Deaths Registration Act 1953 (c. 20).

Charging for local pharmaceutical services

178 Charges, recovery of payments and penalties

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for—
(a) local pharmaceutical services provided under pilot schemes, or
(b) local pharmaceutical services provided under LPS schemes.

(2) The regulations may in particular provide for—
(a) exemptions from charges,
(b) the liability to pay charges to be disregarded in prescribed circumstances or for prescribed purposes,
(c) section 192 (recovery of certain charges and payments) to apply also in relation to local pharmaceutical services (with or without modification),
(d) section 193 (penalties) to apply also in relation to local pharmaceutical services (with or without modification).

(3) The regulations must secure that the amount charged for any service is the same as the amount that would be charged for that service if it were provided under Chapter 1 of Part 7.

Charging for optical appliances

179 Charges for optical appliances

(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges in respect of the supply under this Act of optical appliances.

(2) The amount of the charges may be determined—
(a) in regulations, or
(b) by or in accordance with directions given by the Secretary of State.

(3) Regulations or directions may—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) vary the amount or maximum amount of charges, or
(b) provide that the charges are not payable.

(4) A reference to supply includes a reference to replacement.

(5) In this Act "optical appliances" means glasses and contact lenses, but regulations may provide for a different definition of optical appliances to have effect for the purposes of this Act.

180 [F227Payments in respect of costs of optical appliances][F227Payments in respect of costs of optical appliances and sight tests]

(1) The Secretary of State must provide by regulations for payments to be made by **[**F228him or a relevant body**][**F228the Board**]** to meet, or to contribute towards, the cost incurred (whether by way of charge under this Act or otherwise) for the supply of optical appliances for which—
(a) a prescription has been given for a person mentioned in subsection (2) in consequence of a sight test under this Act, or
(b) a prescription has been given for a person mentioned in subsection (2) in consequence of a sight test otherwise than under this Act which took place in prescribed circumstances.

(2) The persons are—
(a) a child,
(b) a person whose resources fall to be treated under the regulations as being less than or equal to his requirements,
F229(c) . . . . . .
(d) a person of such other description as may be prescribed.

(3) The Secretary of State may by regulations—
(a) provide for **[**F230himself or such relevant body as may be prescribed**][**F230the Board**]** to contribute to the cost of a sight test which **[**F231he or the prescribed body**][**F231the Board**]** accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations, and
(b) provide for payments to be made by **[**F232him or by such relevant body as may be prescribed**][**F232the Board**]** to meet, or to contribute towards, any cost accepted by **[**F233him or by the prescribed body**][**F233the Board**]** as having been incurred (whether by way of charge under this Act or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a sight test of a person of a prescribed description.

(4) Regulations under this section may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must 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

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(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.

(5) Descriptions of persons may be prescribed for the purposes of this section by reference to any criterion and, in particular, by reference to any of the following criteria—

(a) their age,

(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition,

(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 in 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, and

(f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(6) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must 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.

[[F234](6A) The Board may direct a Special Health Authority, or such other body as may be prescribed, to exercise any of the Board's functions under regulations under this section.**]**

(7) In subsection (2)(a) "child" means—

(a) a person who is under the age of 16 years, or

(b) a person who is under the age of 19 years and receiving qualifying full-time education.

(8) In subsection (7)(b) "qualifying full-time education" means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State.

(9) For the purposes of subsection (8)—

(a) "recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university, and

(b) regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction.

(10) **[**[F235]If regulations under this section provide for payments to be made by a relevant body, the Secretary of State must pay to the body, in respect of each financial year, the sum attributable to the body's disbursements under the regulations.**]**

(11) Sums falling to be paid in pursuance of regulations under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine **[**[F236]in accordance with the regulations**]**.

(12) **[**[F237]"Relevant body" means a Strategic Health Authority, a Primary Care Trust or a Special Health Authority.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F227 S. 180 title substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(9)**

F228 Words in s. 180(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(2)**

F229 S. 180(2)(c) repealed (1.9.2012, 12.1.2010) by Health Act 2009 (c. 21), ss. 34, 40(7)(a), **Sch. 6**; S.I. 2012/1902, art. 2(f)

F230 Words in s. 180(3)(a) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(3)(a)**

F231 Words in s. 180(3)(a) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(3)(b)**

F232 Words in s. 180(3)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(4)(a)**

F233 Words in s. 180(3)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(4)(b)**

F234 S. 180(6A) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(5)**

F235 S. 180(10) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(6)**

F236 Words in s. 180(11) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(7)**

F237 S. 180(12) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 96(8)**

Modifications etc. (not altering text)

C25 S. 180 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 8(2)(a)** (with Sch. 3 Pt. 1)

181 Section 180: supplementary

(1) Regulations under section 180 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.

(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 subsection (4) to a person to whom such payments have been made (whether by the Secretary of State or by a relevant body).

(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.

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

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) The regulations may make provision conferring on the Secretary of State the right, if he has given a notice by virtue of subsection (3), to apply to the **[**[F238]First-tier Tribunal**]** for a stop order.

(7) A stop order is an order that no further such payments may be made (whether by the Secretary of State or by any relevant body) 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 subsection (3), they must also make provision conferring prescribed rights of appeal to the **[**[F239]First-tier Tribunal**]** upon the person to whom the notice was given.

(9) "Relevant body" means a Strategic Health Authority, a Primary Care Trust or a Special Health Authority.

Textual Amendments

F238 Words in s. 181(6) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 124** (with Sch. 5)

F239 Words in s. 181(8) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 124** (with Sch. 5)

Exemptions, etc

182 Remission and repayment of charges

Regulations may provide in relation to prescribed descriptions of person for the remission or repayment of the whole or any part of any charges which would otherwise be payable by virtue of section 172, 176 or 179.

183 Payment of travelling expenses

Regulations may provide in relation to prescribed descriptions of persons—

[[F240](a) for the payment by the Secretary of State, a Primary Care Trust, an NHS trust or an NHS foundation trust, in such cases as may be prescribed, of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their obtaining—

(i) any services provided under this Act,

(ii) any services in respect of which the costs are reimbursable under section 6A, or

(iii) any services authorised to be received in another EEA state or Switzerland under Article 20 or Article 27(3) of Regulation (EC) No. 883/2004,**]**

(b) for the reimbursement by a Primary Care Trust to an NHS trust or an NHS foundation trust and, in such cases as may be prescribed, to another Primary Care Trust, of such payments,

(c) for the reimbursement by a Primary Care Trust to an NHS trust and, in such cases as may be prescribed, to a Local Health Board, of payments made by

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

virtue of section 131(a) of the National Health Service (Wales) Act 2006 (c. 42).

Textual Amendments

F240 S. 183(a) substituted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **3**

184 Sections 182 and 183: supplementary

(1) Descriptions of persons may be prescribed for the purposes of section 182 or 183 by reference to any criterion and, in particular, by reference to any of the following criteria—

(a) their age,

(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition,

(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 in 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, and

(f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(2) Regulations under section 182 or 183 may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must 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.

(3) Regulations under section 182 or 183 which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must 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.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Other provisions relating to charging

185 Charges for more expensive supplies

(1) Regulations may provide for the making and recovery of such charges falling within subsection (2) as may be prescribed.

(2) The charges are charges by the Secretary of State, a Primary Care Trust, an NHS trust or an NHS foundation trust—

(a) in respect of the supply of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or

(b) in respect of the repair or replacement of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in paragraph 10(2) of Schedule 1.

186 Charges for repairs and replacements in certain cases

(1) Regulations may provide for the making and recovery of such charges falling within subsection (2) as may be prescribed.

(2) The charges are charges by the Secretary of State, a Primary Care Trust, an NHS trust or an NHS foundation trust, in respect of the repair or replacement of any appliance or vehicle, where it is determined in the prescribed manner—

(a) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied, or

(b) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.

[F241 186A Charges in respect of public health functions

(1) The Secretary of State may make charges under this subsection in respect of any step taken under section 2A.

(2) The power conferred by subsection (1) does not apply in respect of the provision of a service or facility to an individual, or the taking of any other step in relation to an individual, for the purpose of protecting the individual's health.

(3) Charges under subsection (1) may be calculated on such basis as the Secretary of State considers appropriate.

(4) Regulations may provide for the making and recovery of charges in respect of—

(a) the taking of prescribed steps by a local authority under section 2A (by virtue of regulations under section 6C(1)), and

(b) the taking of prescribed steps by a local authority under section 2B.

(5) Regulations under subsection (4) may make provision as to the calculation of charges authorised by the regulations, including provision prescribing the amount or the maximum amount that may be charged.

(6) Nothing in this section affects any other power conferred by or under this Act to make charges.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F241 S. 186A inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 50(1)**, 306(1)(d)(4)

187 Charges for designated services or facilities

Regulations may provide for the making and recovery of charges in respect of services or facilities designated by the regulations as services or facilities provided in pursuance of section 3(1)(d) or (e).

188 Sums otherwise payable to those providing services

(1) Subsection (2) applies to regulations under—

(a) section 172 (charges for drugs, medicines or appliances, or pharmaceutical service),

(b) section 179 (charges for optical appliances),

(c) section 185 (charges for more expensive supplies), or

(d) section 186 (charges for repairs and replacements in certain cases),

which provide for the making and recovery of charges in respect of any services.

(2) The regulations may provide for the sums which would otherwise be payable by a Primary Care Trust or Special Health Authority to the persons by whom the services are provided, to be reduced by the amount of the charges authorised by the regulations in respect of the services.

189 Hospital accommodation on part payment

(1) The Secretary of State—

(a) may authorise accommodation to be made available for patients to such extent as he may determine, and

(b) may recover such charges as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis.

(2) Accommodation means—

(a) accommodation in single rooms or small wards which is not needed by any patient on medical grounds,

(b) accommodation at any health service hospital or group of hospitals, or a hospital in which patients are treated under arrangements made by virtue of section 12, or at the health service hospitals in a particular area or a hospital in which patients are so treated.

(3) References in subsection (2) to a health service hospital include references to such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

190 Expenses payable by employed patients

(1) The Secretary of State may require any person—

(a) who is a resident patient for whom the Secretary of State provides services under this Act, and

(b) who is absent during the day from the hospital where he is a patient for the purpose of engaging in remunerative employment,

to pay such part of the cost of his maintenance in the hospital and any incidental cost as may seem reasonable to the Secretary of State having regard to the amount of that person's remuneration.

(2) The Secretary of State may recover the amount required under subsection (1).

Recovery, etc

191 Recovery of charges

(1) All charges recoverable under this Act by—

(a) the Secretary of State,

(b) a local social services authority, or

(c) any body established under this Act,

may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

(2) If any person, for the purpose of evading the payment of any charge under this Act, or of reducing the amount of any such charge—

(a) knowingly makes any false statement or false representation, or

(b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

the charge or the balance of the charge, may be recovered from him by the person by whom the cost of the service in question was defrayed.

192 Recovery of charges and payments in relation to goods and services

(1) Where goods or services to which this section applies are provided and—

(a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment, or

(b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in subsection (2) is recoverable summarily as a civil debt from the person in question by the responsible authority.

(2) That amount—

(a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction,

(b) in a case within subsection (1)(b), is the amount of the payment.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Where two or more persons are liable under section 191(1) or this section to pay an amount in respect of the same charge or payment, those persons are jointly and severally liable.

(4) For the purposes of this section, the circumstances in which a person is treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

(a) on the ground that he or another is a person of a particular description, where the person in question is not of that description,

(b) on the ground that he or another holds a particular certificate, when the person in question does not hold such a certificate or does hold such a certificate but is not entitled to it,

(c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this section and section 193, "responsible authority" means—

(a) in relation to the recovery of any charge under section 191(1) in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable,

(b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable,

(c) in a case within subsection (1)(b), the person who made the payment.

(6) But the Secretary of State may by directions provide for—

(a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies,

(b) the functions of any responsible authority under this section and section 193,

to be exercised on behalf of the authority by another health service body.

(7) This section applies to the following goods and services—

(a) dental treatment and appliances provided in pursuance of this Act,

(b) drugs and medicines provided in pursuance of this Act,

(c) sight tests,

(d) optical appliances,

(e) any other appliances provided in pursuance of this Act.

(8) "Health service body" means a body which is a health service body for the purposes of section 9.

193 Penalties relating to charges

(1) Regulations may provide that, where a person fails to pay—

(a) any amount recoverable from him under section 191(1) in respect of the provision of goods or services to which section 192 applies, or

(b) any amount recoverable from him under section 192,

a notice (referred to in this section as a penalty notice) may be served on the person by the responsible authority.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) A penalty notice is a notice requiring the person on whom it is served to pay the amount to the authority within a prescribed period, together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.

(3) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
  (a) £100,
  (b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.

(4) The Secretary of State may by order provide for subsection (3) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or multiplier specified in the order.

(5) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.

(6) The further sum must not exceed 50 per cent of the amount of the penalty charge.

(7) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority summarily as a civil debt.

(8) But a person is not liable by virtue of a penalty notice—
  (a) to pay at any time so much of any amount referred to in subsection (1)(a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other, or
  (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

194 Offences relating to charges

(1) A person is guilty of an offence if he does any act mentioned in subsection (2) with a view to securing for himself or another—
  (a) the evasion of the whole or part of any charge under this Act in respect of the provision of goods or services to which section 192 applies,
  (b) the reduction, remission or repayment of any such charge, where he or the other is not entitled to the reduction, remission or repayment,
  (c) a payment under this Act (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or the other is not entitled to, or to the benefit of, the payment.

(2) The acts referred to in subsection (1) are—
  (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation, or
  (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

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

(4) A person [F242]... may conduct any proceedings under this section before a magistrates' court if he is authorised to do so by the Secretary of State.

(5) Proceedings for an offence under this section may be begun within—
  (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Secretary of State to justify a prosecution for the offence, comes to his knowledge, or
  (b) the period of 12 months beginning with the commission of the offence.

(6) For the purposes of subsection (5), a certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to his knowledge, is conclusive evidence of that date.

(7) Where a person is convicted of an offence under this section in respect of any charge or payment under this Act, he is not liable in respect of the charge or payment to pay any penalty charge or further sum by way of penalty which would otherwise be recoverable from him under section 193.

(8) Where a person pays any penalty charge, or further charge by way of penalty, recoverable under section 193 in respect of any charge or payment under this Act, he must not be convicted of an offence under this section in respect of the charge or payment.

(9) Subsection (4) of section 192 applies for the purposes of this section as it applies for the purposes of that.

Textual Amendments

F242 Words in s. 194(4) repealed (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), Sch. 21 para. 154, **Sch. 23** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)(i)(xii)

PART 10

PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES

Preliminary

195 Compulsory disclosure of documents

(1) This Part confers power to require the production of documents in connection with the exercise of the Secretary of State's counter fraud functions or security management functions in relation to the health service.

(2) The Secretary of State's "counter fraud functions" in relation to the health service means his power (by virtue of section 2(1)(b)) to take action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities carried out against or otherwise affecting—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 health service, or
(b) the Secretary of State in relation to his responsibilities for the health service.

(3) The Secretary of State's "security management functions" in relation to the health service means his power (by virtue of section 2(1)(b)) to take action for the purpose of protecting and improving the security of—
(a) persons employed by the Secretary of State or an NHS body in the provision of services for the purposes of the health service ("NHS services"),
(b) health service providers and persons employed by them so far as they or persons so employed are engaged in any activity directly related to the provision of NHS services,
(c) NHS contractors and persons employed by them so far as they or persons so employed are engaged in any activity directly related to the provision of NHS services,
(d) persons not within paragraphs (a) to (c) who work in any capacity on premises used by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of NHS services,
(e) persons on such premises—
(i) who are there for the purpose of receiving, or are receiving or have received, treatment or other services as patients, or
(ii) who are accompanying persons within sub-paragraph (i),
(f) property and information used or held by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of NHS services.

(4) In this Part, the Secretary of State's counter fraud functions and security management functions in relation to the health service are collectively referred to as functions to which this Part applies.

(5) "Investigating" means investigating in relation to civil or criminal proceedings.

196 Persons and bodies about which provision is made by this Part

(1) This section applies for the purposes of this Part.

(2) Subject to subsection (3), and any provision made under subsection (7), "NHS body" has the meaning given by section 28(6).

(3) In section 195(3), and in section 197(1) so far as having effect in relation to the Secretary of State's security management functions referred to in section 195(3), an "NHS body" means—
(a) a Strategic Health Authority,
(b) a Special Health Authority, so far as performing functions in respect of England,
(c) a Primary Care Trust,
(d) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England, or
(e) an NHS foundation trust.

(4) A "health service provider" means any person (other than an NHS body) providing—
(a) primary medical services, primary dental services or pharmaceutical services under this Act or the National Health Service (Wales) Act 2006 (c. 42),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) general ophthalmic services under that Act, or
(c) primary ophthalmic services.

(5) An "NHS contractor" means any person (other than an NHS body or a person within subsection (4)) providing services of any description under arrangements made with an NHS body.

(6) A "statutory health body" means any body (other than an NHS body, or a person within subsection (4) or (5)) established by or under an enactment and—
(a) providing services in connection with the provision of, or
(b) exercising functions in relation to,
the health service in either England or Wales or both.

(7) The Secretary of State may by order—
(a) make such amendments of any of subsections (2) to (6) as he considers appropriate,
(b) make such consequential amendments of this Part as he considers appropriate.

Disclosure notices

197 Notice requiring production of documents

(1) This section applies if it appears to the Secretary of State that there are reasonable grounds for suspecting—
(a) that any documents containing information relevant to the exercise of any of his functions to which this Part applies are in the possession or under the control of any NHS body, statutory health body, health service provider or NHS contractor ("the relevant organisation"), and
(b) that a person within subsection (3) is accountable for the documents.

(2) The Secretary of State may serve on that person a notice requiring him to produce the documents to an authorised officer.

(3) The persons within this subsection are—
(a) any member, officer or director of the relevant organisation,
(b) any other person who takes part in the management of the affairs of that organisation,
(c) any person employed by that organisation, and
(d) (in the case of a health service provider or NHS contractor who is an individual) that individual.

(4) A notice under this section must specify or describe the documents to which it relates.

(5) Subject to subsections (6) and (7), the notice may require those documents to be produced—
(a) at or by such time as is specified in the notice, or at once, and
(b) at such place, and in such manner, as is so specified.

(6) When specifying a time at or by which the documents must be produced, the notice must not require them to be produced otherwise than at a reasonable hour.

(7) If the notice requires documents to be produced at once, it may only be served at a reasonable hour.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(8) An authorised officer may, by agreement with the person served with a notice within subsection (6) or (7), vary the notice so as to extend the time for compliance with it.

(9) Any notice under this section, and any variation of such a notice under subsection (8), must be in writing.

(10) An individual is "accountable" for any documents if he has either day-to-day, or an overall, responsibility for the custody or control of the documents.

198 Production of documents

(1) This section applies where a notice has been served under section 197.

(2) An authorised officer may—
- (a) take away any documents produced in compliance with the notice,
- (b) take copies of or extracts from any documents so produced,
- (c) require the person producing any such documents to provide an explanation of any of them.

(3) If—
- (a) the officer takes away any such document,
- (b) the person producing it requests the officer to provide him with a copy of it, and
- (c) the request appears to the officer to be reasonable in the circumstances,

the officer must, as soon as is reasonably practicable, provide that person with a copy of the document (in such form as the officer considers appropriate).

(4) Documents produced in compliance with a notice under section 197 may be retained for so long as the Secretary of State considers that it is necessary to retain them (rather than copies of them) in connection with the exercise of any of his functions to which this Part applies.

(5) If the Secretary of State has reasonable grounds for believing—
- (a) that any such documents may have to be produced for the purposes of any legal proceedings, and
- (b) that they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(6) If a person who is required by a notice under section 197 to produce any documents does not produce the documents in compliance with the notice, an authorised officer may require that person to state, to the best of his knowledge and belief, where they are.

(7) A person is not bound to comply with any requirement imposed by a notice under section 197 or any requirement under subsection (6) unless evidence of authority is given—
- (a) at the time when the notice is served, or
- (b) at the time when the requirement is imposed under subsection (6).

(8) In addition, a person may not be required under section 197 or subsection (6) to produce any document or disclose any information which he would be entitled to refuse to produce or disclose in proceedings in the High Court on grounds of legal professional privilege.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

199 Delegation of functions

(1) This section applies if the Secretary of State gives a direction under section 7 directing a Special Health Authority to exercise so much of his functions under sections 197 and 198 as is specified in the directions ("the delegated functions").

(2) The Secretary of State may give directions providing for senior officers of the Special Health Authority to exercise the delegated functions on behalf of the Special Health Authority.

(3) "Senior officer" means an officer of or above a level specified in the directions.

(4) The Secretary of State may by regulations make such provision as he considers appropriate in connection with the exercise of the delegated functions.

(5) The regulations may, in particular, make provision—
- (a) specifying conditions as to training that must be satisfied in relation to officers of the Special Health Authority involved in the exercise of the delegated functions,
- (b) for requiring officers to obtain specific authorisation before the delegated functions are exercised in relation to personal records,
- (c) providing for the designation of officers for the purpose of giving such authorisations,
- (d) otherwise prescribing the manner in which the delegated functions may be exercised.

200 Code of practice relating to delegated functions

(1) The Secretary of State may issue a code of practice relating to—
- (a) the exercise of functions under section 197 or 198 by or on behalf of a Special Health Authority,
- (b) procedures to be followed in relation to the disclosure (in accordance with sections 201 and 202) of information obtained by or on behalf of a Special Health Authority in the exercise of such functions.

(2) 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.

(3) Where the Secretary of State proposes to issue a code of practice under this section he must—
- (a) prepare a draft of the code, and
- (b) consult such persons as he considers appropriate about the draft.

(4) Where the Secretary of State proposes to issue a revised code under this section 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.

(5) Where, following consultation under subsection (3) or (4), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as he considers appropriate), it comes into force at the time when it is issued by the Secretary of State.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

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

(7) A code or revised code issued under this section is admissible in evidence in any criminal or civil proceedings.

(8) 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.

201 Disclosure of information

(1) This section applies to information which—
- (a) is held by or on behalf of the Secretary of State, and
- (b) was obtained by virtue of section 197 or 198.

(2) The information must not be disclosed except in accordance with subsection (3).

(3) A disclosure is made in accordance with this subsection if it is made—
- (a) for the purposes of the exercise of any of the Secretary of State's functions in relation to the health service in England,
- (b) for the purposes of the exercise of any of the Welsh Ministers' functions in relation to the health service in Wales,
- (c) for the purposes of any civil proceedings brought in the exercise of any of the functions mentioned in paragraph (a) or (b),
- (d) for the purposes of any criminal investigation or proceedings,
- (e) for the purposes of any relevant disciplinary proceedings, or
- (f) in accordance with an enactment or order of a court or tribunal.

(4) In subsection (3)—
"relevant disciplinary proceedings" means disciplinary proceedings conducted in relation to an individual by—
- (a) an NHS body, statutory health body or health service provider, or
- (b) any of the regulatory bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (bodies within remit of **[**[F243]Council for Healthcare Regulatory Excellence**]**).

(5) Where information to which this section applies is disclosed to any person in accordance with subsection (3), the information must not be used or further disclosed except—
- (a) for a purpose connected with the functions, investigation or proceedings for the purposes of which it was so disclosed, or
- (b) in accordance with an enactment or order of a court or tribunal.

(6) Information to which this section applies may be disclosed in accordance with subsection (3) despite any obligation of confidence that would otherwise prohibit or restrict the disclosure.

(7) This section does not prohibit any disclosure or use of information relating to a particular person if it is made with the consent of that person.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F243 Words in s. 201(4)(b) substituted (1.1.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 10 para. 24**; S.I. 2008/3244, art. 2(i)(xiv)

202 Protection of personal information disclosed for purposes of proceedings

(1) Information obtained from personal records produced in compliance with a notice under section 197 is "protected information" for the purposes of this section if—

(a) a person ("the discloser"), in accordance with section 201(3), discloses the information for the purposes of any proceedings, and

(b) either—

(i) the identity of the individual in question can be ascertained from the information itself, or

(ii) the discloser has reasonable cause to believe that it will be possible for a person who obtains the information as a direct or indirect consequence of the disclosure to ascertain the individual's identity from that information taken with other information obtained by virtue of section 197 or 198 and disclosed by or on behalf of the Secretary of State.

(2) The discloser must take all reasonable steps to ensure that, once disclosed by him in accordance with section 201(3), the protected information is not further disclosed to any person who is not someone to whom it is necessary to disclose the information for any purpose connected with the proceedings mentioned in subsection (1)(a).

(3) In subsection (2) the reference to further disclosure of the information does not include any such disclosure—

(a) by way of evidence in any proceedings, or

(b) in accordance with an enactment or order of a court or tribunal.

(4) The Secretary of State must make provision, whether in a code of practice issued under section 200 or otherwise, for requiring any person disclosing protected information in accordance with section 201(3) to ensure, by the use of a distinguishing mark or in some other way, that the information is clearly identified as protected information for the purposes of this section.

(5) Information that appears to be protected information must not be disclosed by way of evidence in any proceedings unless—

(a) the whole of the proceedings are held in private, or

(b) in any other case, the information is disclosed in accordance with permission given by the court or tribunal on an application under subsection (6).

(6) If, on an application by a party to—

(a) proceedings before a court, or

(b) proceedings of any description before a tribunal that sits, or may sit, in public during the whole or part of proceedings of that description,

the court or tribunal is satisfied that it is in the interests of justice for any information that appears to be protected information to be disclosed by way of evidence in the proceedings, it may give permission for the information to be so disclosed, on such terms as it thinks fit.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(7) When determining such an application, the court or tribunal must consider whether, in the interests of protecting the identity of the individual to whom the information relates, the whole or part of the proceedings should be held in private.

(8) If the court or tribunal is satisfied that the whole or part of the proceedings should be held in private, it must give such directions, or take such other steps, as appear to it to be appropriate.

(9) In this section "proceedings" means—
- (a) criminal or civil proceedings, or
- (b) relevant disciplinary proceedings (as defined by section 201(4)).

203 Manner in which disclosure notice may be served

(1) This section provides for the manner in which a notice may be served under section 197.

(2) The notice may be served on a person by—
- (a) delivering it to him,
- (b) leaving it at his proper address,
- (c) sending it by post to him at that address.

(3) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is his usual or last-known address (whether residential or otherwise), except that—
- (a) in the case of a notice to be served on the secretary, clerk or similar officer of a body corporate, it is the address of the registered office of that body or its principal office in the United Kingdom,
- (b) in the case of a notice to be served on a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership in the United Kingdom, and
- (c) in the case of a notice to be served on an officer of an unincorporated association (other than a partnership), it is the address of the principal office of the association in the United Kingdom.

Offences under this Part

204 Offences in connection with production of documents

(1) A person commits an offence if, without reasonable excuse, he fails to comply with any requirement imposed on him under section 197 or 198.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction—
- (a) to imprisonment for a term not exceeding 51 weeks, or
- (b) to a fine not exceeding level 3 on the standard scale,

or to both.

(3) If a person is convicted of an offence under subsection (1) in respect of a failure to produce a document and the failure continues after the date of his conviction, the person—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) commits a further offence, and
(b) is liable on summary conviction to a fine not exceeding 2% of level 3 on the standard scale for each day on which the failure so continues.

(4) A person commits an offence if, in purported compliance with any requirement imposed on him under section 198—
(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.

(5) "False or misleading" means false or misleading in a material particular.

(6) A person guilty of an offence under subsection (4) 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.

205 Offences relating to disclosure or use of information

(1) A person commits an offence if he fails to comply with section 201(2) or (5) or section 202(2).

(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 51 weeks or to a fine not exceeding the statutory maximum, or to both.

(3) It is a defence for a person charged with an offence under subsection (1) in respect of a disclosure of information to prove that at the time of the alleged offence—
(a) any of the circumstances in subsection (4) applied, or
(b) he reasonably believed that they applied.

(4) The circumstances referred to in subsection (3) are—
(a) that the disclosure was lawful,
(b) that the information had already been lawfully made available to the public,
(c) that the disclosure was necessary or expedient for the purpose of protecting the welfare of any individual,
(d) that the disclosure was made in a form in which no person to whom the information relates is identified.

(5) Subsection (4)(d) is not satisfied if the identity of any such person can be ascertained either—
(a) from the information itself, or
(b) from that information taken with other information obtained by virtue of section 197 or 198 and disclosed by or on behalf of the Secretary of State.

206 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

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) 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) "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,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) "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) "Offence" means an offence under this Part.

207 Offences committed by partnerships and other unincorporated associations

(1) Proceedings for an offence alleged to have been committed by a partnership must 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) must 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 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, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate.

(5) A fine imposed on a partnership on its conviction for an offence must be paid out of the partnership assets.

(6) A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association.

(7) Subsections (1) and (2) do not affect any liability of a partner, officer or member under section 206(4) or (6).

(8) "Offence" means an offence under this Part.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

208 Penalties for offences under this Part: transitional modification

(1) 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 reference in section 204(6)(b) to a period of imprisonment of 12 months is a reference to a period of imprisonment of 6 months.

(2) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the references in sections 204(2)(a) and 205(2)(b) to periods of imprisonment of 51 weeks are references to periods of imprisonment of 3 months.

Supplementary

209 Orders and regulations under this Part

(1) Any power under this Part to make an order or regulations is exercisable by statutory instrument.

(2) Subject to subsection (3) a statutory instrument made by virtue of this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A statutory instrument containing an order under section 196(7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) Any power under this Part to make an order or regulations—
   (a) may make different provision for different cases or descriptions of case or different purposes or areas, and
   (b) may make incidental, supplementary, consequential, transitory, transitional or saving provision.

210 Interpretation of this Part

(1) In this Part—

"authorised officer", in relation to any function, means (subject to subsection (5)) an officer of the Secretary of State authorised by him to act in exercise of the function,

"document" means anything in which information of any description is recorded,

"enactment" includes any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), and references to enactments include enactments passed or made after the passing of this Act,

"employed" means employed whether under a contract of service or a contract for services or otherwise, and whether for remuneration or not,

"functions to which this Part applies" has the meaning given by section 195(4),

"health service provider" and "NHS contractor" have the meaning given by section 196,

"NHS body" must be construed in accordance with section 196,

"personal records" has the meaning given by section 12 of the Police and Criminal Evidence Act 1984 (c. 60),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

"statutory health body" has the meaning given by section 196.

(2) References in this Part to the provision of services—
  (a) in relation to statutory health bodies, health service providers or NHS contractors, include references to the provision of goods or facilities, and
  (b) include references to the provision of services (or goods or facilities) wherever that takes place.

(3) References in this Part to the health service are references to the health service in England.

(4) In relation to information recorded otherwise than in legible form, any reference in this Part to the production of documents is a reference to the production of a copy of the information in legible form.

(5) Where functions of the Secretary of State are exercisable by a Special Health Authority—
  (a) references in this Part to authorised officers include officers of the Special Health Authority authorised by or on behalf of the Special Health Authority to act in exercise of the functions, and
  (b) references in this Part to information held or disclosed by or on behalf of the Secretary of State include information held or disclosed by or on behalf of the Special Health Authority.

PART 11

PROPERTY AND FINANCE

CHAPTER 1

LAND AND OTHER PROPERTY

211 Acquisition, use and maintenance of property

(1) The Secretary of State may acquire—
  (a) any land, either by agreement or compulsorily,
  (b) any other property,

  required by him for the purposes of this Act.

(2) In particular, land may be so acquired to provide residential accommodation for persons employed for any of those purposes.

(3) The Secretary of State may use for the purposes of any of the functions conferred on him by this Act any property belonging to him by virtue of this Act, and he has power to maintain all such property.

(4) A local social services authority may be authorised to purchase land compulsorily for the purposes of this Act by means of an order made by the authority and confirmed by the Secretary of State.

(5) The Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this section.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Section 120(3) of the Local Government Act 1972 (c. 70) (which relates to the application of Part 1 of the Compulsory Purchase Act 1965 (c. 56) where a council is authorised to acquire land by agreement) applies to the acquisition of land by the Secretary of State under this section as it applies to such acquisition by a council under that section.

(7) Sections 238 and 239 of the Town and Country Planning Act 1990 (c. 8) (use and development of consecrated land and burial grounds) apply to consecrated land or land comprised in a burial ground (within the meaning of section 240 of that Act) which—

(a) the Secretary of State holds for the purposes of the health service, and

(b) has not been the subject of a relevant acquisition (within the meaning of that section) by him,

as if that land had been the subject of such an acquisition by him for those purposes.

Modifications etc. (not altering text)

C26 S. 211 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 10** (with Sch. 3 Pt. 1)

CHAPTER 2

TRUSTS

212 Special trustees for a university hospital or teaching hospital

(1) In this Act "special trustees" are trustees appointed by the Secretary of State in relation to England under—

(a) section 29 of the National Health Service Reorganisation Act 1973 (c. 32),

(b) section 95 of the National Health Service Act 1977 (c. 49), and

(c) this section,

for any hospital falling within subsection (2).

(2) A hospital falls within this subsection if, immediately before the day appointed for the purposes of section 29 of the National Health Service Reorganisation Act 1973 (c. 32), it was controlled and managed by a University Hospital Management Committee or a Board of Governors, other than—

(a) a body on whose request an order was made under section 24(2) of that Act, or

(b) a preserved Board within the meaning of section 15(6) of that Act.

(3) Special trustees must hold and administer the property transferred under the National Health Service Reorganisation Act 1973.

(4) The number of special trustees appointed under this section is such as the Secretary of State may from time to time determine after consultation with such persons as he considers appropriate.

(5) Special trustees have power to accept, hold and administer any property on trust, being a trust which is wholly or mainly for hospitals for which they are appointed, for all or any purposes relating to—

(a) hospital services (including research), or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) any other part of the health service associated with hospitals.

(6) The term of office of any special trustee appointed under this section must be fixed by the Secretary of State, but a special trustee may be removed by the Secretary of State at any time during the special trustee's term of office.

(7) Subsection (3) is subject to sections 213 and 214.

213 Transfers of trust property

(1) The Secretary of State may, having regard to any change or proposed change—
(a) in the arrangements for the administration of a hospital or other establishment or facility, or
(b) in the area or functions of any NHS body other than an NHS foundation trust,
by order provide for the transfer of any trust property from any relevant health service body to any other relevant health service body.

(2) In this section "relevant health service body" means—
(a) an NHS body,
(b) special trustees, or
(c) trustees for a Primary Care Trust, an NHS trust or an NHS foundation trust.

(3) Where property is transferred by an order under this section to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned.

(4) Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property.

(5) In this section "special trustees" includes special trustees within the meaning of section 160 of the National Health Service (Wales) Act 2006 (c. 42).

214 Transfer of functions and property to or from special trustees

(1) If it appears to the Secretary of State at any time that all the functions of any special trustees should be discharged by a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust, he may by order provide for the transfer of all trust property from the special trustees to the body or, in such proportions as may be specified in the order, to those bodies.

(2) Before acting under subsection (1) the Secretary of State must consult the special trustees and other bodies concerned.

(3) If it appears to the Secretary of State at any time that—
(a) the functions of any special trustees should be discharged by the trustees for a Primary Care Trust, an NHS trust or an NHS foundation trust ("the trustees of the body"), or
(b) the functions of the trustees of the body should be discharged by special trustees,
he may, after consulting the special trustees and the trustees of the body, by order provide for the transfer of all trust property from the special trustees to the trustees of the body, or from the trustees of the body to the special trustees.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Where property is transferred by an order under this section to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned.

(5) Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property.

(6) "Special trustees" includes special trustees within the meaning of section 160 of the National Health Service (Wales) Act 2006.

215 Trustees and property under section 222

(1) Where property is given in pursuance of section 222 (power of NHS bodies to raise money) to or on trust for any purposes of a hospital for which special trustees have been appointed, the property may be held, administered and applied by the special trustees instead of by the body responsible for the hospital if that body and the special trustees agree.

(2) The body responsible for a hospital is—
- (a) in the case of a hospital vested in an NHS trust or an NHS foundation trust, that trust, and
- (b) in any other case, the Strategic Health Authority or Primary Care Trust exercising functions of the Secretary of State in respect of the hospital.

(3) Subsection (4) applies where property is given in pursuance of section 222—
- (a) on trust for any purposes of a Primary Care Trust for which trustees have been appointed under paragraph 12 of Schedule 3,
- (b) on trust for any purposes of an NHS trust for which trustees have been appointed under paragraph 10 of Schedule 4, or paragraph 10 of Schedule 3 to the National Health Service (Wales) Act 2006 (c. 42), or
- (c) on trust for any purposes of an NHS foundation trust for which trustees have been appointed under section 51.

(4) Where this subsection applies and the trustees and the Primary Care Trust, NHS trust or NHS foundation trust agree, the property may be held, administered and applied by the trustees instead of by the Primary Care Trust, NHS trust or NHS foundation trust.

(5) Property given in pursuance of section 222 on trust may be transferred by order of the Secretary of State under section 213 or 214 in the same circumstances as other trust property may be transferred under either of those sections.

216 Application of trust property: further provisions

(1) Any discretion given by a trust instrument to the trustees of property transferred under—
- (a) section 24 of the National Health Service Reorganisation Act 1973 (c. 32) (transfer of trust property from abolished authorities),
- (b) section 25 of that Act (transfer of trust property held for health services by local health authorities),
- (c) section 92 of the National Health Service Act 1977 (c. 49) (further transfers of trust property), or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) section 213 or 214 of this Act,

is exercisable by the person to whom the property is so transferred and, subject to this section, the transfer does not affect the trusts on which the property is held.

(2) Where—

(a) property has been transferred under section 24 of the National Health Service Reorganisation Act 1973, or section 92 of the National Health Service Act 1977, and

(b) any discretion is given by a trust instrument to the trustees to apply the property, or income arising from the property, to such hospital services (including research) as the trustees consider appropriate without any restriction on the kinds of hospital services and without any restriction to one or more specified hospitals,

the discretion is enlarged so as to allow the application of the property or of the income arising from the property, to such extent as the trustees consider appropriate, for any other part of the health service associated with any hospital.

(3) Subsection (2) applies on any subsequent transfer of the property under section 213 or 214 **[**[F244]of this Act or section 300 or 302 of the Health and Social Care Act 2012**]**.

Textual Amendments

F244 Words in s. 216(3) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 112**; S.I. 2012/1319, art. 2(3)

217 Trusts: supplementary provisions

(1) This section applies in relation to—

(a) section 51(1) to (3),

(b) sections 212 to 214,

(c) section 216,

(d) section 218,

(e) section 220,

(f) paragraphs 12 and 13 of Schedule 2,

(g) paragraph 12 of Schedule 3,

(h) paragraph 10 of Schedule 4, and

(i) paragraphs 8 and 9 of Schedule 6.

(2) A provision—

(a) contained in a provision to which this section applies,

(b) for the transfer of any property,

includes provision for the transfer of any rights and liabilities arising from that property.

(3) Where a transfer of property by virtue of a provision to which this section applies is of, or includes—

(a) land held on lease from a third party, or

(b) any other asset leased or hired from a third party or in which a third party has an interest,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

the transfer is binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.

(4) "Third party" means a person other than the Secretary of State or an NHS body.

(5) Nothing in a provision to which this section applies affects any power of Her Majesty, **[**[F245]the court (as defined in the Charities Act 2011)**]** or any other person, to alter the trusts of any charity.

(6) Nothing in section 12 of the Finance Act 1895 (c. 16) (which requires certain Acts and certain instruments relating to the vesting of property by virtue of an Act to be stamped as conveyances on sale) applies to—

(a) a provision to which this section applies, or

(b) an order made in pursuance of any such provision.

(7) Stamp duty is not payable on an order falling within subsection (6)(b).

Textual Amendments

F245 Words in s. 217(5) substituted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, **Sch. 7 para. 111** (with s. 20(2), Sch. 8)

Modifications etc. (not altering text)

C27 S. 217 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 10** (with Sch. 3 Pt. 1)

218 Private trusts for hospitals

(1) Subsection (2) applies where the terms of a trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property for the purposes of any health service hospital.

(2) The trust instrument must be construed as authorising or requiring the trustees to apply the trust property to the like extent, and at the like times, for the purpose of making payments, whether of capital or income, to the appropriate hospital authority.

(3) Any sum paid to the appropriate hospital authority must, so far as practicable, be applied by it for the purpose specified in the trust instrument.

(4) "The appropriate hospital authority" means—

(a) where special trustees are appointed for the hospital, those trustees,

(b) where the hospital is managed by, and trustees have been appointed for, an NHS trust, an NHS foundation trust or Primary Care Trust, the trustees,

(c) where the hospital is managed by an NHS trust, an NHS foundation trust or Primary Care Trust and neither paragraph (a) nor paragraph (b) applies, the NHS trust, NHS foundation trust or Primary Care Trust, and

(d) in any other case, the Strategic Health Authority or Special Health Authority exercising functions of the Secretary of State in respect of the hospital, or the Special Health Authority or Local Health Board exercising functions of the Welsh Ministers in respect of the hospital.

(5) Nothing in this section applies to property transferred under section 24 of the National Health Service Reorganisation Act 1973.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) In this section—

"health service hospital" includes such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), and

"special trustees" includes special trustees within the meaning of section 160 of that Act.

CHAPTER 3

PROPERTY TRANSFERRED UNDER THE NATIONAL HEALTH SERVICE ACT 1946

219 Transferred property free of trusts

(1) All property vested in the Secretary of State in consequence of the transfer of that property under section 6 of the National Health Service Act 1946 (c. 81) (transfer of hospitals) is vested free of any trust existing immediately before that transfer.

(2) The Secretary of State may use any such property for the purpose of any of his functions under this Act, but he must so far as practicable secure that the objects for which any such property was used immediately before that transfer are not prejudiced by the exercise of the power conferred by this subsection.

220 Trust property previously held for general hospital purposes

(1) This section applies to property—

(a) transferred under section 23 of the National Health Service Reorganisation Act 1973 (c. 32) (winding-up of hospital endowment funds), or

(b) transferred under section 24 of that Act (transfer of trust property from abolished authorities) and which immediately before the day appointed for the purposes of that section was, in accordance with any provision contained in or made under section 7 of the National Health Service Act 1946, applicable for purposes relating to hospital services or relating to some form of research,

including any such property which has been further transferred under section 92 of the National Health Service Act 1977 (c. 49).

(2) This section continues to apply to any such property after any further transfer under section 213 or 214 **[**[F246]of this Act or section 300 or 302 of the Health and Social Care Act 2012**]**.

(3) The person holding the property after the transfer or last transfer must secure, so far as is reasonably practicable, that the objects of any original endowment, and the observance of any conditions attached to that endowment, including in particular conditions intended to preserve the memory of any person or class of persons, are not prejudiced by this Part of this Act.

(4) "Original endowment" means a hospital endowment which was transferred under section 7 of the National Health Service Act 1946 (c. 81) and from which the property in question is derived.

(5) Subject to subsection (3), the property must be held on trust for such purposes relating to hospital services (including research), or to any other part of the health service associated with any hospital, as the person holding the property considers appropriate.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Where the person holding the property is a body of special trustees, the power conferred by subsection (5) must be exercised as respects the hospitals for which they are appointed.

Textual Amendments

F246 Words in s. 220(2) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 115**; S.I. 2012/1319, art. 2(3)

221 Voluntary hospitals

(1) Subsection (2) applies where—

(a) any hospital provided by the Secretary of State in accordance with this Act was a voluntary hospital transferred by virtue of the National Health Service Act 1946, and

(b) the character and associations of that hospital before its transfer were such as to link it with a particular religious denomination.

(2) Regard must be had in the general administration of the hospital to the preservation of that character and those associations.

CHAPTER 4

RAISING MONEY

222 Power to raise money

(1) This section applies to any NHS body other than a Local Health Board.

(2) A body to which this section applies has power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to—

(a) assist the body in providing or improving any services or any facilities or accommodation which is or are, or will be, provided as part of the health service, or

(b) assist it in connection with its functions with respect to research.

(3) Subject to any directions of the Secretary of State excluding specified descriptions of activity, the activities authorised by this section include—

(a) public appeals or collections,

(b) competitions,

(c) entertainments,

(d) bazaars,

(e) sales of produce or other goods, and

(f) other similar activities.

(4) The activities may involve the use of land, premises or other property held by or for the benefit of the body exercising the power.

(5) Subsection (4) is subject to any restrictions on the purposes for which trust property may be used.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Subject to this section and section 215, the body at whose instance property is given in pursuance of this section must, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given.

(7) Where property held by a body under this section is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess is applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the body as it considers appropriate.

(8) Where property held by a body under this section is insufficient to enable the purpose for which it was given to be fulfilled the body may apply so much of the capital or income at its disposal as is needed to enable the purpose to be fulfilled.

(9) Subsection (8) is subject in the case of trust property to any restrictions on the purpose for which the trust property may be applied and, in the case of money paid or payable by the Secretary of State under section 224 or 226, to any directions he may give.

(10) Where the capital or income applicable under subsection (8) is insufficient or is not applied to enable the purpose to be fulfilled, the property held by the body is applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the body as it considers appropriate.

(11) Where under subsection (7) or (10) property becomes applicable for purposes other than that for which it was given the body applying the property must have regard to the desirability of applying it for a purpose similar to that for which it was given.

(12) References in this section to the purposes for which trust property may be used or applied include, in the case of trust property which has been transferred under section 213 or 214, references to those purposes as enlarged by section 216.

CHAPTER 5

FORMATION OF COMPANIES

223 Public-private partnerships

(1) The Secretary of State may form, or participate in forming, companies to provide facilities or services to persons or bodies exercising functions, or otherwise providing services, under this Act.

(2) The Secretary of State may, with a view to securing or facilitating the provision by companies of facilities or services to persons or bodies falling within subsection (1)—
   (a) invest in the companies (whether by acquiring assets, securities or rights or otherwise), or
   (b) provide loans and guarantees and make other kinds of financial provision to or in respect of them,

   or both.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) For the purposes of subsections (1) and (2) it is immaterial that the facilities or services provided or to be provided by the companies in question are not provided or to be provided—

(a) only to persons or bodies falling within subsection (1), or

(b) to persons or bodies falling within subsection (1) only in their capacities as persons or bodies such as are mentioned in that provision.

(4) "Companies" means companies **[**[F247]as defined in section 1(1) of the Companies Act 2006**]** (c. 6).

(5) This section does not affect any powers of the Secretary of State exercisable otherwise than by virtue of this section.

Textual Amendments

F247 Words in s. 223(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 258(2)** (with art. 10)

CHAPTER 6

FINANCE

[[F248]*The Board*

Textual Amendments

F248 Ss. 223B-223F and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 24**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

223B Funding of the Board

(1) The Secretary of State must pay to the Board in respect of each financial year sums not exceeding the amount allotted for that year by the Secretary of State towards meeting the expenditure of the Board which is attributable to the performance by it of its functions in that year.

(2) An amount is allotted to the Board for a financial year under this section when the Board is notified in writing by the Secretary of State that the amount is allotted to it for that year.

(3) The Secretary of State may make a new allotment under this section increasing or reducing the allotment previously so made only if—

(a) the Board agrees to the change,

(b) a parliamentary general election takes place, or

(c) the Secretary of State considers that there are exceptional circumstances that make a new allotment necessary.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Secretary of State may give directions to the Board with respect to the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.

(5) Sums falling to be paid to the Board under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

223C Financial duties of the Board: expenditure

(1) The Board must ensure that total health expenditure in respect of each financial year does not exceed the aggregate of—

(a) the amount allotted to the Board for that year under section 223B,

(b) any sums received by the Board or clinical commissioning groups in that year under any provision of this Act (other than sums received by the Board under section 223B or by clinical commissioning groups under section 223G), and

(c) any sums received by the Board or clinical commissioning groups in that year otherwise than under this Act for the purpose of enabling it or them to defray such expenditure.

(2) In this section, "total health expenditure", in relation to a financial year, means—

(a) expenditure which is attributable to the performance by the Board of its functions in that year, other than sums paid by it under section 223G, and

(b) expenditure which is attributable to the performance by clinical commissioning groups of their functions in that year.

(3) The Secretary of State may by directions determine whether expenditure by the Board or a clinical commissioning group which is of a description specified in the directions must, or must not, be treated for the purposes of this section as part of total health expenditure.

(4) The Secretary of State may by directions determine the extent to which, and the circumstances in which, sums received by the Board or a clinical commissioning group under section 223B or (as the case may be) 223G but not yet spent must be treated for the purposes of this section as part of total health expenditure, and to which financial year's expenditure they must be attributed.

(5) The Secretary of State may by directions require the Board to use banking facilities specified in the directions for any purposes so specified.

223D Financial duties of the Board: controls on total resource use

(1) In this Chapter—

"total capital resource use", in relation to a financial year, means the use of capital resources in that year by the Board and clinical commissioning groups (taken together);

"total revenue resource use", in relation to a financial year, means the use of revenue resources in that year by the Board and clinical commissioning groups (taken together).

(2) The Board must ensure that total capital resource use in a financial year does not exceed the amount specified by the Secretary of State.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The Board must ensure that total revenue resource use in a financial year does not exceed the amount specified by the Secretary of State.

(4) The Secretary of State may give directions, in relation to a financial year, specifying descriptions of resources which must, or must not, be treated as capital resources or revenue resources for the purposes of this Chapter.

(5) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must not be taken into account for the purposes of this Chapter.

(6) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must be taken into account for the purposes of this section.

(7) The amount specified for the purposes of subsection (2) or (3) may be varied only if—
   (a) the Board agrees to the change,
   (b) a parliamentary general election takes place, or
   (c) the Secretary of State considers that there are exceptional circumstances which make the variation necessary.

(8) Any reference in this Chapter to the use of capital resources or revenue resources is a reference to their expenditure, consumption or reduction in value.

223E Financial duties of the Board: additional controls on resource use

(1) The Secretary of State may direct the Board to ensure that total capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(2) The Secretary of State may direct the Board to ensure that total revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(3) The Secretary of State may direct the Board to ensure —
   (a) that total revenue resource use in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified;
   (b) that the Board's use of revenue resources in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified.

(4) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).

(5) The Secretary of State may not give a direction under subsection (1) or (2) unless the direction is for the purpose of complying with a limit imposed by the Treasury.

223F Power to establish contingency fund

(1) The Board may use a proportion of the sums paid to it under section 223B to establish a contingency fund.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Board may make a payment out of the fund where the payment is necessary in order to enable—
  (a) the Board to discharge any of its commissioning functions, or
  (b) a clinical commissioning group to discharge any of its functions.

(3) The Board must publish guidance as to how it proposes to exercise its powers to make payments out of the contingency fund.

(4) In this section, "commissioning functions" means functions in arranging for the provision of services as part of the health service.**]**

[F249 Clinical commissioning groups

Textual Amendments

F249 Ss. 223G-223K and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 27**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

223G Means of meeting expenditure of clinical commissioning groups out of public funds

(1) The Board must pay in respect of each financial year to each clinical commissioning group sums not exceeding the amount allotted for that year by the Board to the group towards meeting the expenditure of the group which is attributable to the performance by it of its functions in that year.

(2) In determining the amount to be allotted to a clinical commissioning group for any year, the Board may take into account—
  (a) the expenditure of the clinical commissioning group during any previous financial year, and
  (b) the amount that it proposes to hold, during the year to which the allotment relates, in any contingency fund established under section 223F.

(3) An amount is allotted to a clinical commissioning group for a year under this section when the group is notified in writing by the Board that the amount is allotted to it for that year.

(4) The Board may make a new allotment under this section increasing or reducing an allotment previously so made.

(5) Where the Board allots an amount to a clinical commissioning group or makes a new allotment under subsection (4), it must notify the Secretary of State.

(6) The Board may give directions to a clinical commissioning group with respect to—
  (a) the application of sums paid to it by virtue of a new allotment increasing an allotment previously so made, and
  (b) the payment of sums by it to the Board in respect of charges or other sums referable to the valuation or disposal of assets.

(7) Sums falling to be paid to clinical commissioning groups under this section are payable subject to such conditions as to records, certificates or otherwise as the Board may determine.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(8) In this section and sections 223H to 223K "financial year" includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

223H Financial duties of clinical commissioning groups: expenditure

(1) Each clinical commissioning group must, in respect of each financial year, perform its functions so as to ensure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—
  (a) the amount allotted to it for that year under section 223G,
  (b) any sums received by it in that year under any provision of this Act (other than sums received by it under section 223G), and
  (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray such expenditure.

(2) The Board may by directions determine—
  (a) whether specified sums must, or must not, be treated for the purposes of this section as received by a specified clinical commissioning group,
  (b) whether specified expenditure must, or must not, be treated for those purposes as expenditure within subsection (1) of a specified clinical commissioning group, or
  (c) the extent to which, and the circumstances in which, sums received by a clinical commissioning group under section 223G but not yet spent must be treated for the purposes of this section as part of the expenditure of the group, and to which financial year's expenditure they must be attributed.

(3) The Secretary of State may by directions require a clinical commissioning group to use specified banking facilities for any specified purposes.

(4) In this section, "specified" means specified in the directions.

223I Financial duties of clinical commissioning groups: use of resources

(1) For the purposes of this section and section 223J—
  (a) a clinical commissioning group's capital resource use, in relation to a financial year, means the group's use of capital resources in that year, and
  (b) a clinical commissioning group's revenue resource use, in relation to a financial year, means the group's use of revenue resources in that year.

(2) A clinical commissioning group must ensure that its capital resource use in a financial year does not exceed the amount specified by direction of the Board.

(3) A clinical commissioning group must ensure that its revenue resource use in a financial year does not exceed the amount specified by direction of the Board.

(4) Any directions given in relation to a financial year under subsection (6) of section 223D apply (in relation to that year) for the purposes of this section as they apply for the purposes of that section.

(5) The Board may by directions make provision for determining to which clinical commissioning group a use of capital resources or revenue resources is to be attributed for the purposes of this section or section 223J.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Where the Board gives a direction under subsection (2) or (3), it must notify the Secretary of State.

223J Financial duties of clinical commissioning groups: additional controls on resource use

(1) The Board may direct a clinical commissioning group to ensure that its capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(2) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(3) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to prescribed matters relating to administration does not exceed an amount specified in the direction.

(4) The Board may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).

(5) The Board may not exercise the power conferred by subsection (1) or (2) in relation to particular matters unless the Secretary of State has given a direction in relation to those matters under subsection (1) of section 223E or (as the case may be) subsection (2) of that section.

(6) The Board may not exercise the power conferred by subsection (3) in relation to prescribed matters relating to administration unless the Secretary of State has given a direction in relation to those matters under subsection (3)(a) of section 223E.

223K Payments in respect of quality

(1) The Board may, after the end of a financial year, make a payment to a clinical commissioning group.

(2) For the purpose of determining whether to make a payment under subsection (1) and (if so) the amount of the payment, the Board must take into account at least one of the following factors—
   (a) the quality of relevant services provided during the financial year;
   (b) any improvement in the quality of relevant services provided during that year (in comparison to the quality of relevant services provided during previous financial years);
   (c) the outcomes identified during the financial year as having been achieved from the provision at any time of relevant services;
   (d) any improvement in the outcomes identified during that financial year as having been so achieved (in comparison to the outcomes identified during previous financial years as having been so achieved).

(3) For that purpose, the Board may also take into account either or both of the following factors—
   (a) relevant inequalities identified during that year;

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) any reduction in relevant inequalities identified during that year (in comparison to relevant inequalities identified during previous financial years).

(4) Regulations may make provision as to the principles or other matters that the Board must or may take into account in assessing any factor mentioned in subsection (2) or (3).

(5) Regulations may provide that, in prescribed circumstances, the Board may, if it considers it appropriate to do so—

(a) not make a payment that would otherwise be made to a clinical commissioning group under subsection (1), or

(b) reduce the amount of such a payment.

(6) Regulations may make provision as to how payments under subsection (1) may be spent (which may include provision as to circumstances in which the whole or part of any such payments may be distributed to members of the clinical commissioning group).

(7) A clinical commissioning group must publish an explanation of how the group has spent any payment made to it under subsection (1).

(8) In this section—

"relevant services" means services provided in pursuance of arrangements made by the clinical commissioning group—

(a) under section 3 or 3A or Schedule 1, or

(b) by virtue of section 7A;

"relevant inequalities" means inequalities between the persons for whose benefit relevant services are at any time provided with respect to—

(a) their ability to access the services, or

(b) the outcomes achieved for them by their provision.**]**

Strategic Health Authorities and Special Health Authorities

224 Means of meeting expenditure of Strategic Health Authorities out of public funds

(1) The Secretary of State must pay in respect of each financial year to each Strategic Health Authority sums not exceeding the amount allotted for that year by the Secretary of State to the Strategic Health Authority towards meeting the expenditure of the Strategic Health Authority which is attributable to the performance by it of its functions in that year.

(2) Where the Secretary of State has made an initial determination of the amount ("the initial amount") to be allotted for any year to a Strategic Health Authority under subsection (1), he may increase the initial amount by a further sum if it appears to him that over a period notified to the Strategic Health Authority—

(a) it satisfied any objectives notified to it as objectives to be met in performing its functions, or

(b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) "Notified" means specified or referred to in a notice given to the Strategic Health Authority by the Secretary of State.

(4) In making any increase under subsection (2), the Secretary of State may (whether by directions under subsection (9) or otherwise) impose any conditions he considers appropriate on the application or retention by the Strategic Health Authority of the sum in question.

(5) Subsection (6) applies where—
- (a) the Secretary of State has, under subsection (2), increased by any sum the amount to be allotted for any year to a Strategic Health Authority,
- (b) the Secretary of State has notified the Strategic Health Authority of the allotment, and
- (c) it subsequently appears to the Secretary of State that the Strategic Health Authority has failed (wholly or in part) to satisfy any conditions imposed in making that increase.

(6) Where this subsection applies, the Secretary of State may reduce—
- (a) the allotment made to that Strategic Health Authority for that year, or
- (b) when he has made an initial determination of the amount ("the initial amount") to be allotted for any subsequent year to the Strategic Health Authority under subsection (1), the initial amount,

by an amount not exceeding the sum mentioned in subsection (5)(a).

(7) An amount is allotted to a Strategic Health Authority for a year under this section when it is notified by the Secretary of State that the amount is allotted to it for that year.

(8) The Secretary of State may, subject to subsection (6), make an allotment under this section increasing or reducing an allotment previously so made; and the reference to a determination in subsection (2) includes a determination made with a view to increasing or reducing an allotment previously so made.

(9) The Secretary of State may give directions to a Strategic Health Authority with respect to—
- (a) the application of sums paid to it under this section, or
- (b) the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.

(10) Sums falling to be paid to Strategic Health Authorities under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

225 Means of meeting expenditure of Special Health Authorities out of public funds

(1) The Secretary of State must pay in respect of each financial year to each Special Health Authority sums not exceeding the amount allotted for that year by the Secretary of State to the Special Health Authority towards meeting the expenditure of the Special Health Authority which is attributable to the performance by it of its functions in that year.

(2) An amount is allotted to a Special Health Authority for a year under this section when it is notified by the Secretary of State that the amount is allotted to it for that year.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.

(4) The Secretary of State may give directions to a Special Health Authority with respect to—
  (a) the application of sums paid to it under this section, or
  (b) the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.

(5) Sums falling to be paid to Special Health Authorities under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

226 Financial duties of Strategic Health Authorities and Special Health Authorities

(1) Each Strategic Health Authority must, in respect of each financial year, perform its functions so as to secure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—
  (a) the amount allotted to it for that year under section 224(1),
  (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that subsection), and
  (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.

(2) Each Special Health Authority must, in respect of each financial year, perform its functions so as to secure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—
  (a) the amount allotted to it for that year under section 225(1),
  (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that subsection), and
  (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.

(3) The Secretary of State may give such directions to a Strategic Health Authority or Special Health Authority as appear to be requisite to secure that the Authority complies with the duty under subsection (1) or (2).

(4) To the extent to which—
  (a) any expenditure is defrayed by a Strategic Health Authority or Special Health Authority as trustee or on behalf of a Strategic Health Authority or Special Health Authority by special trustees, or
  (b) any sums are received by a Strategic Health Authority or Special Health Authority as trustee or under section 222,

  that expenditure and, subject to subsection (6), those sums, must be disregarded for the purposes of this section.

(5) For the purposes of this section sums which, in the hands of a Strategic Health Authority or Special Health Authority, cease to be trust funds and become applicable by the Authority otherwise than as trustee must be treated, on their becoming so applicable, as having been received by the Authority otherwise than as trustee.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Of the sums received by a Strategic Health Authority or Special Health Authority under section 222, so much only as accrues to the Authority after defraying any expenses incurred in obtaining them must be disregarded under subsection (4).

(7) Subject to subsection (4), the Secretary of State may by directions determine—

(a) whether specified sums must, or must not, be treated for the purposes of this section as received under this Act by a specified Strategic Health Authority or specified Special Health Authority,

(b) whether specified expenditure must, or must not, be treated for those purposes as—

(i) expenditure within subsection (1) of a specified Strategic Health Authority, or

(ii) expenditure within subsection (2) of a specified Special Health Authority, or

(c) the extent to which, and the circumstances in which, sums received—

(i) by a Strategic Health Authority under section 224, or

(ii) by a Special Health Authority under section 225,

but not yet spent must be treated for the purposes of this section as part of the expenditure of the Strategic Health Authority or Special Health Authority and to which financial year's expenditure they must be attributed.

(8) "Specified" means of a description specified in the directions.

227 Resource limits for Strategic Health Authorities and Special Health Authorities

(1) Each Strategic Health Authority and each Special Health Authority must ensure that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the Secretary of State.

(2) For the purpose of subsection (1) the Secretary of State may give directions—

(a) specifying uses of resources which must, or must not, be taken into account,

(b) making provision for determining to which Strategic Health Authority or Special Health Authority certain uses of resources must be attributed,

(c) specifying descriptions of resources which must, or must not, be taken into account.

(3) The Secretary of State may give such directions to a Strategic Health Authority or Special Health Authority as appear to be requisite to secure that the Authority complies with the duty under subsection (1).

(4) Subsections (4) to (6) of section 226 apply in relation to the duty under subsection (1) of this section as they apply in relation to the duties under subsections (1) and (2) of that section; and for that purpose references to the defraying of expenditure and the receipt of sums are references to the incurring of liabilities and the acquisition of assets.

(5) Where the Secretary of State has specified an amount under this section in respect of a financial year, he may vary the amount by a later specification.

(6) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Primary Care Trusts

228 Public funding of Primary Care Trusts

[[F250](1) The Secretary of State must pay in respect of each financial year to each Primary Care Trust sums not exceeding the amount allotted for that year by the Secretary of State to the Primary Care Trust towards meeting the expenditure of the Primary Care Trust which is attributable to the performance by it of its functions in that year.**]**

[F251](2) . . . . . .

(3) Where the Secretary of State has made an initial determination of the amount ("the initial amount") to be allotted for any year to a Primary Care Trust under subsection **[**[F252](1)**]** , he may increase the initial amount by a further sum if it appears to him that over a period notified to the Primary Care Trust—

(a) it satisfied any objectives notified to it as objectives to be met in performing its functions, or

(b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).

(4) "Notified" means specified or referred to in a notice given to the Primary Care Trust by the Secretary of State.

(5) In making any increase under subsection (3), the Secretary of State may (whether by directions under subsection (10) or otherwise) impose any conditions he considers appropriate on the application or retention by the Primary Care Trust of the sum in question.

(6) Subsection (7) applies where—

(a) the Secretary of State has, under subsection (3), increased by any sum the amount to be allotted for any year to a Primary Care Trust,

(b) the Secretary of State has notified the Primary Care Trust of the allotment, and

(c) it subsequently appears to the Secretary of State that the Primary Care Trust has failed (wholly or in part) to satisfy any conditions imposed in making that increase.

(7) Where this subsection applies, the Secretary of State may reduce—

(a) the allotment made to the Primary Care Trust for that year, or

(b) when he has made an initial determination of the amount ("the initial amount") to be allotted for any subsequent year to the Primary Care Trust under subsection **[**[F253](1)**]** , the initial amount,

by an amount not exceeding the sum mentioned in subsection (6)(a).

(8) An amount is allotted to a Primary Care Trust for a year under this section when the Primary Care Trust is notified by the Secretary of State that the amount is allotted to it for that year.

(9) The Secretary of State may make an allotment under this section increasing or reducing (subject to subsection (7)) an allotment previously so made; and the reference to a determination in subsection (3) includes a determination made with a view to increasing or reducing an allotment previously so made.

(10) The Secretary of State may give directions to a Primary Care Trust with respect to—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 application of sums paid to it under this section, or

(b) the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.

(11) Sums falling to be paid to Primary Care Trusts under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

[F254](12) . . . . . .

Textual Amendments

F250 S. 228(1) substituted (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 12 para. 2(2)**; S.I. 2010/708, art. 2(c)

F251 S. 228(2) repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 2(3), **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

F252 Word in s. 228(3) substituted (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 12 para. 2(4)**; S.I. 2010/708, art. 2(c)

F253 Word in s. 228(7)(b) substituted (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 12 para. 2(4)**; S.I. 2010/708, art. 2(c)

F254 S. 228(12) repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 2(5), **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

229 Financial duties of Primary Care Trusts

(1) Each Primary Care Trust must, in respect of each financial year, perform its functions so as to secure that its expenditure which is attributable to the performance by it of its functions in that year [F255]... does not exceed the aggregate of—

(a) the amount allotted to it for that year under **[**[F256]section 228(1)**]** ,

(b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section), and

(c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.

(2) The Secretary of State may give such directions to a Primary Care Trust as appear to be requisite to secure that it complies with the duty under subsection (1).

(3) To the extent to which—

(a) any expenditure is defrayed by a Primary Care Trust as trustee or on behalf of a Primary Care Trust by special trustees, or

(b) any sums are received by a Primary Care Trust as trustee or under section 222,

that expenditure and, subject to subsection (5) those sums, must be disregarded for the purposes of this section.

(4) For the purposes of this section sums which, in the hands of a Primary Care Trust, cease to be trust funds and become applicable by the Primary Care Trust otherwise than as trustee must be treated, on their becoming so applicable, as having been received by the Primary Care Trust otherwise than as trustee.

(5) Of the sums received by a Primary Care Trust under section 222 so much only as accrues to the Primary Care Trust after defraying any expenses incurred in obtaining them must be disregarded under subsection (3).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) Subject to subsection (3), the Secretary of State may by directions determine—

(a) whether specified sums must, or must not, be treated for the purposes of this section as received under this Act by a specified Primary Care Trust,

(b) whether specified expenditure must, or must not, be treated for those purposes as expenditure within subsection (1) of a specified Primary Care Trust, or

(c) the extent to which, and the circumstances in which, sums received by a Primary Care Trust under section 228 but not yet spent must be treated for the purposes of this section as part of the expenditure of the Primary Care Trust and to which financial year's expenditure they must be attributed.

(7) "Specified" means of a description specified in the directions.

Textual Amendments

F255 Words in s. 229(1) repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 3(a), **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

F256 Words in s. 229(1)(a) substituted (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 12 para. 3(b)**; S.I. 2010/708, art. 2(c)

230 Resource limits for Primary Care Trusts

(1) Each Primary Care Trust must ensure that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the Secretary of State.

F257(2) . . . . . .

F258(3) . . . . . .

(4) For the purpose of subsection (1) the Secretary of State may give directions—

(a) specifying uses of resources which must, or must not, be taken into account,

(b) making provision for determining to which Primary Care Trust certain uses of resources must be attributed,

(c) specifying descriptions of resources which must, or must not, be taken into account.

(5) Where the Secretary of State has specified an amount under this section in respect of a financial year, he may vary the amount by a later specification.

(6) Subsections (3) to (5) of section 229 apply in relation to the duty under subsection (1) of this section as they apply in relation to the duty under subsection (1) of that section; and for that purpose references to the defraying of expenditure and the receipt of sums are references to the incurring of liabilities and the acquisition of assets.

(7) The Secretary of State may give such directions to a Primary Care Trust as appear to be requisite to secure that it complies with the duty under subsection (1).

(8) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F257 S. 230(2) repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 4, **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

F258 S. 230(3) repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 4, **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

231 Further provision about the expenditure of Primary Care Trusts

Schedule 14 makes further provision about the expenditure of Primary Care Trusts.

Accounts and audit

232 Accounts and audit

Schedule 15 makes provision about the accounts of certain health service bodies and the auditing of such accounts.

Allowances and remuneration

233 Allowances for members of certain bodies

(1) The Secretary of State may pay to members of any body specified by him in an order as a body formed for the purpose of performing a function connected with the provision of services under this Act, such travelling and other allowances, including compensation for loss of remunerative time, as he may determine.

(2) Payments under this section are subject to such conditions as to records, certificates, or otherwise as the Secretary of State may determine.

234 Special arrangement as to payment of remuneration

(1) Subsection (2) applies where the Secretary of State considers it appropriate for remuneration in respect of—

(a) primary medical services, primary dental services, primary ophthalmic services or pharmaceutical services, or

(b) services provided under a pilot scheme **[**[F259]established under section 134(1) of this Act**]** or an LPS scheme,

to be paid by a particular body.

(2) Where this subsection applies, and the functions of the body do not include the function of paying the remuneration, the Secretary of State may by order confer that function on that body.

(3) Any sums required to enable a body to pay the remuneration must, if apart from this section there is no provision authorising the payment of the sums by the Secretary of State or out of money provided by Parliament, be paid by him.

(4) If the Secretary of State by order so provides with respect to remuneration in respect of such pharmaceutical services or such local pharmaceutical services as may be specified in the order—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) an NHS trust or an NHS foundation trust determined in accordance with the order has the function of paying sums so determined to a Primary Care Trust so determined in respect of the whole or any part of that remuneration, and

(b) subsection (3) does not apply with respect to the whole or that part of the remuneration.

Textual Amendments

F259 Words in s. 234(1)(b) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 7(d)**; S.I. 2010/30, art. 2(b)

235 Superannuation of officers of certain hospitals

(1) The Secretary of State may enter into an agreement with the governing body of any hospital to which this section applies—

(a) for admitting officers of the hospital of such classes as may be provided in the agreement to participate, on such terms and conditions as may be so provided, in the superannuation benefits provided under regulations made under section 10 of the Superannuation Act 1972 (c. 11) in like manner as officers of NHS trusts, and

(b) those regulations apply accordingly in relation to the officers so admitted subject to such modifications as may be provided in the agreement.

(2) The governing body of any hospital to which this section applies has such powers as may be necessary for the purpose of giving effect to any terms and conditions on which their officers are admitted to participate in those superannuation benefits.

(3) This section applies to any hospital (not vested in the Secretary of State) which is used, in pursuance of arrangements made by the governing body of the hospital with the Secretary of State, for the provision of services under this Act or the National Health Service (Wales) Act 2006 (c. 42).

(4) "Superannuation benefits" means annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits.

236 Payments for certain medical examinations

(1) Where a medical practitioner carries out a medical examination of any person with a view to an application for his admission to hospital for assessment or treatment being made under Part 2 of the Mental Health Act 1983 (c. 20) **[**[F260]the Secretary of State**][**[F260]the prescribed clinical commissioning group**]** must pay to that medical practitioner—

(a) reasonable remuneration in respect of that examination and in respect of any recommendation or report made by him with regard to the person examined, and

(b) the amount of any expenses reasonably incurred by him in connection with the examination or the making of any such recommendation or report.

(2) No payment may be made under this section to a medical practitioner—

(a) in respect of an examination carried out in the provision of primary medical services for that person, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) in respect of an examination carried out or any recommendation or report made**[**[F261]—

(i)**]** as part of his duty as an officer of **[**[F262]a Primary Care Trust,**][**[F263]an**]** NHS trust, Special Health Authority, NHS foundation trust or Local Health Board**[**[F264], or

(ii) pursuant to arrangements made by the National Health Service Commissioning Board or a clinical commissioning group, or

(iii) pursuant to arrangements made in the exercise (by any person) of the public health functions of the Secretary of State or a local authority**]**.

(3) This section applies only in a case where it is intended, when the medical examination of the person in question is carried out, that if he is admitted to hospital in pursuance of an application mentioned in subsection (1), the whole cost of his maintenance and treatment will be defrayed out of moneys provided by Parliament.

Textual Amendments

F260 Words in s. 236(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(2)**

F261 Word in s. 236(2)(b) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(a)**

F262 Words in s. 236(2)(b) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(b)**

F263 Word in s. 236(2)(b) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(c)**

F264 S. 236(2)(b)(ii)(iii) and preceding word inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 123(3)(d)**

PART 12

PUBLIC INVOLVEMENT AND SCRUTINY

CHAPTER 1

PATIENTS' FORUMS

237 Establishment of Patients' Forums

[F265](1) . . . . . .

[F265](2) . . . . . .

[F266](3) . . . . . .

[F266](4) . . . . . .

[F266](5) . . . . . .

[F266](6) . . . . . .

[F266](7) . . . . . .

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[F266](8) . . . . . .

[F266](9) . . . . . .

Textual Amendments

F265 S. 237(1)(2) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 231(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F266 S. 237(3)-(9) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

[F267]238 Additional functions of PCT Patients' Forums

. . . . . .

Textual Amendments

F267 S. 238 repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

[F268]239 Entry and inspection of premises

. . . . . .

Textual Amendments

F268 S. 239 repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

[F269]240 Annual reports

. . . . . .

Textual Amendments

F269 S. 240 repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 231(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

241 Further provision about Patients' Forums

[F270](1) . . . . . .

[F270](2) . . . . . .

[F271](3) . . . . . .

[F271](4) . . . . . .

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) The regulations may include provision applying, or corresponding to, any provision of Part 5A of the Local Government Act 1972 (c 70) (access to meetings and documents), with or without modifications.

Textual Amendments

F270 S. 241(1)(2) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 231(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F271 S. 241(3)(4) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 230(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

CHAPTER 2

PUBLIC INVOLVEMENT AND CONSULTATION

242 Public involvement and consultation

[F272(1) This section applies to—

(a) relevant English bodies, and

(b) relevant Welsh bodies.

(1A) In this section—

" relevant English body " means—

(a) a Strategic Health Authority,

(b) a Primary Care Trust,

(c) an NHS trust that is not a relevant Welsh body, or

(d) an NHS foundation trust;

" relevant Welsh body " means an NHS trust all or most of whose hospitals, establishments and facilities are in Wales.

(1B) Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services, whether directly or through representatives, are involved (whether by being consulted or provided with information, or in other ways) in—

(a) the planning of the provision of those services,

(b) the development and consideration of proposals for changes in the way those services are provided, and

(c) decisions to be made by that body affecting the operation of those services.

(1C) Subsection (1B)(b) applies to a proposal only if implementation of the proposal would have an impact on—

(a) the manner in which the services are delivered to users of those services, or

(b) the range of health services available to those users.

(1D) Subsection (1B)(c) applies to a decision only if implementation of the decision (if made) would have an impact on—

(a) the manner in which the services are delivered to users of those services, or

(b) the range of health services available to those users.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(1E) The reference in each of subsections (1C)(a) and (1D)(a) to the delivery of services is to their delivery at the point when they are received by users.

(1F) For the purposes of subsections (1B) to (1E), a person is a "user" of any health services if the person is someone to whom those services are being or may be provided.

(1G) A relevant English body must have regard to any guidance given by the Secretary of State as to the discharge of the body's duty under subsection (1B).

(1H) The guidance mentioned in subsection (1G) includes (in particular)—

(a) guidance given by the Secretary of State as to when, or how often, involvement under arrangements under subsection (1B) is to be carried out;

(b) guidance given by the Secretary of State as to the form to be taken by such involvement in any case specified by the guidance.**]**

(2) Each **[**[F273]relevant Welsh body**]** must make arrangements with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on—

(a) the planning of the provision of those services,

(b) the development and consideration of proposals for changes in the way those services are provided, and

(c) decisions to be made by that body affecting the operation of those services.

(3) For the purposes of this section a body is responsible for health services—

(a) if the body provides or will provide those services to individuals, or

(b) if another person provides, or will provide, those services to individuals—

(i) at that body's direction,

(ii) on its behalf, or

(iii) in accordance with an agreement or arrangements made by that body with that other person,

and references in this section to the provision of services include references to the provision of services jointly with another person.

(4) Subsection (5) applies to health services for which a Strategic Health Authority is not responsible by virtue of subsection (3), but which are or will be provided to individuals in the area of the Strategic Health Authority, and for which—

(a) a Primary Care Trust any part of whose area falls within the Strategic Health Authority's area, or

(b) an NHS trust which provides services at or from a hospital or other establishment or facility which falls within the Strategic Health Authority's area,

is responsible by virtue of subsection (3).

(5) A Strategic Health Authority may give directions to Primary Care Trusts falling within paragraph (a) of subsection (4), and NHS trusts falling within paragraph (b) of that subsection, as to the arrangements which they are to make under **[**[F274]this section**]** in relation to health services to which this subsection applies.

[[F275](6) This section does not require a body to make arrangements in relation to matters to which a trust special administrator's report or draft report under section 65F, 65I, 65R

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

or 65U relates before the decision of the Secretary of State under section 65K or 65W has been published.**]**

Textual Amendments

F272 S. 242(1)-(1H) substituted for s. 242(1) (3.11.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 233(2)**, 245(5); S.I. 2008/2434, art. 2(2)(a)

F273 Words in s. 242(2) substituted (3.11.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 233(3)**, 245(5); S.I. 2008/2434, art. 2(2)(a)

F274 Words in s. 242(5) substituted (3.11.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 233(4)**, 245(5); S.I. 2008/2434, art. 2(2)(a)

F275 S. 242(6) inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(7)**, 40(1); S.I. 2010/30, art. 3(b)

[F276 242A Strategic Health Authorities: further duty to involve users

(1) The Secretary of State must by regulations require each Strategic Health Authority to make arrangements which secure that health service users are, directly or through representatives, involved (whether by being consulted or provided with information, or in other ways) in prescribed matters.

(2) In this section " health service users " means persons to whom health services are being or may be provided in the area of the Strategic Health Authority.

(3) A Strategic Health Authority must have regard to any guidance given by the Secretary of State as to the discharge of the authority's duty under regulations under this section.

(4) The guidance mentioned in subsection (3) includes (in particular)—

(a) guidance given by the Secretary of State as to when, or how often, involvement under arrangements under the regulations is to be carried out;

(b) guidance given by the Secretary of State as to the form to be taken by such involvement in any case specified by the guidance.

(5) Any duty of a Strategic Health Authority under regulations under this section is in addition to the authority's duty under section 242(1B).

Textual Amendments

F276 Ss. 242A, 242B inserted (26.9.2008 for specified purposes, 3.11.2008 for the purpose of the insertion of s. 242B in so far as not already in force, 22.2.2010 in so far as not already in force) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 233(5)**, 245(5); S.I. 2008/2434, art. 2(1)(2)(b); S.I. 2010/112, art. 3

242B Directions in cases where Strategic Health Authority arranges involvement

(1) The Secretary of State may make regulations enabling a Strategic Health Authority, in circumstances mentioned in subsection (2), to direct a Primary Care Trust that persons who would otherwise be involved in a particular matter under arrangements made by the Primary Care Trust under section 242 are not to be involved in that matter under those arrangements.

(2) The circumstances referred to in subsection (1) are where the persons concerned are to be involved (whether by the Strategic Health Authority, by the Strategic Health

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Authority and the Primary Care Trust acting jointly, or otherwise) under arrangements made or to be made by the Strategic Health Authority.

(3) Regulations under this section may include provision—

(a) for the consequences of compliance with a direction, including provision that a Primary Care Trust is not to be taken to have failed to comply with its duty under section 242(1B) by reason of compliance with a direction,

(b) enabling a direction to be given where involvement under arrangements made by the Primary Care Trust has already begun, and as to the provision that may be made by the direction in such a case,

(c) requiring prescribed information to be provided by a Primary Care Trust to a Strategic Health Authority,

(d) requiring prescribed information to be provided by a Strategic Health Authority to a Primary Care Trust,

(e) enabling a Strategic Health Authority to direct a Primary Care Trust to act jointly with the Strategic Health Authority in carrying out involvement.**]**

Textual Amendments

F276 Ss. 242A, 242B inserted (26.9.2008 for specified purposes, 3.11.2008 for the purpose of the insertion of s. 242B in so far as not already in force, 22.2.2010 in so far as not already in force) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 233(5)**, 245(5); S.I. 2008/2434, art. 2(1)(2)(b); S.I. 2010/112, art. 3

[F277]243 The Commission for Patient and Public Involvement in Health

. . . . . .

Textual Amendments

F277 S. 243 repealed (1.4.2008 for the purpose of the omission of s. 243(2)(d)(f)(i), 30.6.2008 in so far as not already in force) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 232(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3)(4)(a), Sch.

CHAPTER 3

[[F278]OVERVIEW AND SCRUTINY COMMITTEES**][**[F278]REVIEW AND SCRUTINY BY LOCAL AUTHORITIES**]**

Textual Amendments

F278 Pt. 12 Ch. 3 heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(8)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

244 [F279Functions of overview and scrutiny committees][F279Review and scrutiny by local authorities]

(1) This section applies to any local authority, except that it applies to the council of a district only where the district is comprised in an area for which there is no county council.

(2) Regulations may, in relation to [F280an overview and scrutiny committee of] an authority to which this section applies, make provision—

(a) as to matters relating to the health service in the authority's area which [F281the committee][F281the authority] may review and scrutinise,

(b) as to matters relating to the health service in the authority's area on which [F281the committee][F281the authority] may make reports and recommendations to [F282local NHS bodies][F282relevant NHS bodies or relevant health service providers], the Secretary of State or the regulator,

(c) as to matters on which [F282local NHS bodies][F282relevant NHS bodies or relevant health service providers] must consult [F281the committee][F281the authority] in accordance with the regulations [F283(including provision as to circumstances in which the Secretary of State or the regulator may require consultation on those matters in accordance with the regulations)],

(d) as to information which [F282local NHS bodies][F282relevant NHS bodies or relevant health service providers] must provide to [F281the committee][F281the authority],

(e) as to information which may not be disclosed by a [F284local NHS body][F284relevant NHS body or relevant health service provider] to [F281the committee][F281the authority],

(f) requiring [F285any officer of a local NHS body][F285any member or employee of a relevant NHS body, or a relevant health service provider or member or employee of a relevant health service provider,] to attend before [F281the committee][F281the authority] to answer questions.

[F286(2ZA) If (by virtue of subsection (2)(c)) regulations make provision as to matters on which relevant NHS bodies or relevant health service providers must consult the authority, the regulations may also make provision—

(a) as to circumstances in which the authority may refer any of those matters to the Secretary of State, the regulator or the Board;

(b) conferring powers on the Secretary of State to give directions to the Board in relation to a matter referred to the Secretary of State by virtue of regulations under paragraph (a);

(c) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter so referred;

(d) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter referred to the Board by virtue of regulations under paragraph (a);

(e) conferring powers on the Secretary of State to give directions to the Board as to the exercise of its powers by virtue of regulations under paragraph (c) or (d).

(2ZB) The powers that may be conferred under any of paragraphs (b) to (d) of subsection (2ZA) include powers to require the person to whom the direction is given—

(a) to consult (or consult further) with the authority on the matter in question;

(b) to determine the matter in a particular way;

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) to take, or not to take, any other steps in relation to the matter.

(2ZC) If (by virtue of subsection (2ZA)(a)) regulations make provision for an authority to refer a matter to the Secretary of State, the regulator or the Board, the regulations may also provide for any provision of section 101 of the Local Government Act 1972—

(a) not to apply in relation to the discharge by the authority of that function, or

(b) to apply in relation to its discharge with such modifications as may be prescribed.

(2ZD) Any functions conferred on a local authority by regulations under this section are not to be the responsibility of an executive of the authority under executive arrangements (within the meaning of Part 1A of the Local Government Act 2000).

(2ZE) Regulations under this section may authorise a local authority to arrange for its functions under the regulations to be discharged by an overview and scrutiny committee of the authority.**]**

[[F287](2A) In subsection (2)(d) and (e), references to information are to information relating to matters relating to the health service in the authority's area.**]**

(3) **[**[F288]For the purposes of subsections (2) and (2ZA)—

"relevant NHS body", in relation to an authority to which this section applies, means an NHS body, other than a Special Health Authority, which is prescribed for those purposes in relation to the authority;

"relevant health service provider", in relation to an authority to which this section applies, means a body or person which—

(a) provides services in pursuance of arrangements made—

(i) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

(ii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or

(iii) by the Board, a clinical commissioning group or a local authority by virtue of section 7A, and

(b) is prescribed, or is of a description prescribed, for those purposes in relation to the authority.**]**

[[F289](3A) In subsection (2)(f) "member"—

(a) in relation to a clinical commissioning group, includes a person who is not a member of the group but is a member of a committee or sub-committee of it;

(b) in relation to a relevant health service provider which is a body corporate, includes a person who is not a member of the body but is a director of it;

(c) in relation to an NHS trust, means a director of the trust;

(d) in relation to an NHS foundation trust, means a director or governor of the trust.

(3B) For the purposes of subsection (2)(f)—

(a) a member of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as a member of the group or (as the case may be) relevant health service provider, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) an employee of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as an employee of the group or (as the case may be) relevant health service provider.**]**

(4) "The health service" includes services provided in pursuance of arrangements under regulations under section 75 in relation to the exercise of health-related functions of a local authority.

[[F290](5) In this section, section 245 and section 246 references to an overview and scrutiny committee include references to—

(a) an overview and scrutiny committee of a local authority operating executive arrangements under Part 1A of the Local Government Act 2000 (executive arrangements in England), and

(b) an overview and scrutiny committee appointed by a local authority under section 9JA of that Act (appointment of overview and scrutiny committees by committee system local authorities).**]**

Textual Amendments

F279 S. 244 heading substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(7)**, 306(1)(d)(4)

F280 Words in s. 244(2) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 190(2)(a)**, 306(1)(d)(4)

F281 Words in s. 244(2) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(b)**, 306(1)(d)(4)

F282 Words in s. 244(2) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(c)**, 306(1)(d)(4)

F283 Words in s. 244(2)(c) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 190(2)(e)**, 306(1)(d)(4)

F284 Words in s. 244(2) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(d)**, 306(1)(d)(4)

F285 Words in s. 244(2)(f) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(2)(f)**, 306(1)(d)(4)

F286 S. 244(2ZA)-(2ZE) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(3)**, 306(1)(d)(4)

F287 S. 244(2A) inserted (1.4.2009) by Local Government and Public Involvement in Health Act 2007 (c. 28), **ss. 121(4)**, 245(5); S.I. 2008/3110, art. 4(c)

F288 S. 244(3) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(4)**, 306(1)(d)(4)

F289 S. 244(3A)(3B) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 190(5)**, 306(1)(d)(4)

F290 S. 244(5) inserted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 74**; S.I. 2012/1008, art. 4(b)

Modifications etc. (not altering text)

C28 S. 244 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

245 Joint overview and scrutiny committees etc

(1) In this section, "relevant functions"—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) in relation to a local authority operating executive arrangements under **[**[F291]Part 1A**]** of the Local Government Act 2000 (c. 22) ("the 2000 Act"), are functions which are, or, but for regulations under this section, would be, exercisable under **[**[F292]section 9F(2)(f)**]** of that Act by an overview and scrutiny committee of that authority, and

[[F293](b) in relation to a local authority operating a committee system under that Part, are any corresponding functions which are or, but for regulations under this section, would be, exercisable by an overview and scrutiny committee of the authority appointed under section 9JA of that Act.**]**

(2) Regulations may make provision under which—

(a) two or more local authorities may appoint a joint committee of those authorities (a "joint overview and scrutiny committee") and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the committee,

(b) a local authority may arrange for relevant functions in relation to that authority to be exercisable by an overview and scrutiny committee of another local authority,

(c) a county council for any area may arrange for one or more of the members of an overview and scrutiny committee of the council for a district comprised in that area to be appointed as—

(i) a member of an overview and scrutiny committee of the county council or another local authority, for the purposes of relevant functions of the committee in relation to the county council, or

(ii) a member of an overview and scrutiny committee of the county council, for the purposes of relevant functions of the committee in relation to another local authority.

(3) The regulations may in particular—

(a) provide for arrangements to be made only in specified circumstances, or subject to specified conditions or limitations,

(b) in relation to joint overview and scrutiny committees, make provision applying, or corresponding to, any provision of—

(i) **[**[F294]sections 9F(5), 9FA, 9FC to 9FG and 9FI**]** of the 2000 Act, or

[F295](ia) . . . . . .

[F295](ib) . . . . . .

(ii) section 246 of, and Schedule 17 to, this Act, and Schedule 11 to the National Health Service (Wales) Act 2006 (c. 42),

with or without modifications.

(4) The regulations may require, or enable the Secretary of State to direct, a local authority—

(a) to make arrangements of any description within subsection (2), and

(b) to comply with such requirements in connection with the arrangements as may be specified in the regulations or as the Secretary of State may direct.

(5) In section 244(2) and (3), references to an overview and scrutiny committee include references to a joint overview and scrutiny committee.

(6) In subsection (2)(c), references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(7) **[**[F296]Section 9F(5)**]** of the 2000 Act does not apply to the discharge of functions by virtue of arrangements under regulations under subsection (2).

(8) **[**[F297]Section 9FA(5)**]** of the 2000 Act does not apply to persons who are members of an overview and scrutiny committee by virtue of arrangements under regulations under subsection (2)(c).

(9) "Local authority" does not include the Common Council of the City of London.

Textual Amendments

F291 Words in s. 245(1)(a) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(2)(a)(i)**; S.I. 2012/1008, art. 4(b)

F292 Words in s. 245(1)(a) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(2)(a)(ii)**; S.I. 2012/1008, art. 4(b)

F293 S. 245(1)(b) substituted for s. 245(1)(b) (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(2)(b)**; S.I. 2012/1008, art. 4(b)

F294 Words in s. 245(3)(b)(i) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(3)(a)**; S.I. 2012/1008, art. 4(b)

F295 S. 245(3)(b)(ia)(ib) repealed (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 3 para. 75(3)(b), **Sch. 25 Pt. 4**; S.I. 2012/1008, art. 4(b)(c)

F296 Words in s. 245(7) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(4)**; S.I. 2012/1008, art. 4(b)

F297 Words in s. 245(8) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 75(5)**; S.I. 2012/1008, art. 4(b)

246 Overview and scrutiny committees: exempt information

(1) This section applies in relation to any item of business at a meeting of an overview and scrutiny committee which is an item relating to**[**[F298]—

(a)**]** functions of the committee under **[**[F299]section 9F(2)(f)**]** of the Local Government Act 2000 (c. 22)**[**[F300], or

(b) corresponding functions of an overview and scrutiny committee appointed under section 9JA of that Act**]**

(2) In relation to any such item, information is exempt information for the purposes of section 100A(4) of the Local Government Act 1972 (c. 70) (exclusion of public from meetings to prevent disclosure of exempt information) if it falls within any of the descriptions of information specified in Schedule 17, or in Schedule 11 to the National Health Service (Wales) Act 2006.

(3) The Secretary of State may by order vary Schedule 17—

(a) by adding any description or other provision in connection with a relevant body or services provided by, or under arrangements made by, a relevant body, **[**[F301]or services in respect of which direct payments under section 12A(1), or under regulations under section 12A(4), are made by a relevant body,**]** or

(b) by deleting or varying any description or other provision specified or contained in that Schedule.

(4) The Secretary of State may exercise the power conferred by subsection (3) by amending any Part of Schedule 17, with or without amendment of any other Part.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) In this section and Schedule 17 "relevant body" means a body in respect of which overview and scrutiny committees exercise functions under regulations under section 244.

Textual Amendments

F298 Words in s. 246(1) inserted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 76(a)**; S.I. 2012/1008, art. 4(b)

F299 Words in s. 246(1) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 76(b)**; S.I. 2012/1008, art. 4(b)

F300 S. 246(1)(b) and preceding word inserted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 76(c)**; S.I. 2012/1008, art. 4(b)

F301 Words in s. 246(3)(a) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 9**; S.I. 2010/30, art. 2(b)

Modifications etc. (not altering text)

C29 S. 246: power to apply conferred by 2007 c. 28, s. 123(5)(b)(iii) (as substituted (12.1.2010) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), **ss. 32(1)**, 148(2)(a)(ii))

247 Application to the City of London

(1) The Common Council may establish a committee which has, in relation to the City of London, the powers which under **[**[F302]section 9F(2)(f)**]** of the Local Government Act 2000 a local authority's overview and scrutiny committee has in relation to the authority's area.

(2) Sections 244(2) to (4), 245 and 246 (and Schedule 17 to this Act and Schedule 11 to the National Health Service (Wales) Act 2006 (c. 42)) apply as if such a committee were an overview and scrutiny committee and as if the Common Council were a London borough council.

(3) **[**[F303]Section 9F**]** of the Local Government Act 2000 applies as if such a committee were an overview and scrutiny committee and as if the Common Council were a local authority, but with the omission—

(a) of subsections (1) to **[**[F304](4)**]**,

[F305](b) . . . . . .

[F305](c) . . . . . .

[F305](d) . . . . . .

[[F306](3A) Section 9FA of the Local Government Act 2000 applies as if such a committee were an overview and scrutiny committee and as if the Common Council were a local authority, but with the omission—

(a) of subsection (3),

(b) in subsection (6), of paragraph (b), and

(c) in subsection (8)(a), of the reference to members of the executive.**]**

(4) In the provisions applied by subsections (2) **[**[F307]to (3A)**]**, references to functions under any provision of **[**[F308]section 9F(2)**]** of the 2000 Act are, in the case of the committee established under subsection (1), references to its functions under that subsection.

(5) "The Common Council" means the Common Council of the City of London.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F302 Words in s. 247(1) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(2)**; S.I. 2012/1008, art. 4(b)

F303 Words in s. 247(3) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(3)(a)**; S.I. 2012/1008, art. 4(b)

F304 Word in s. 247(3)(a) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(3)(b)**; S.I. 2012/1008, art. 4(b)

F305 S. 247(3)(b)-(d) repealed (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 3 para. 77(3)(c), **Sch. 25 Pt. 4**; S.I. 2012/1008, art. 4(b)(c)

F306 S. 247(3A) inserted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(4)**; S.I. 2012/1008, art. 4(b)

F307 Words in s. 247(4) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(5)(a)**; S.I. 2012/1008, art. 4(b)

F308 Words in s. 247(4) substituted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 77(5)(b)**; S.I. 2012/1008, art. 4(b)

[F309 247A Application to certain other local authorities without overview and scrutiny committees

(1) This section applies to a local authority ("Authority A") that—

(a) is—

(i) a county council in England,

(ii) a London borough council, or

(iii) a district council for an area for which there is no county council,

(b) does not operate executive arrangements, and

(c) has not appointed an overview and scrutiny committee under section 9JA of the Local Government Act 2000 ("the 2000 Act").

(2) Authority A must establish a committee which has, in relation to Authority A's area, the functions which under section 9F(2)(f) of the 2000 Act the overview and scrutiny committee of a local authority operating executive arrangements ("Authority B") has in relation to Authority B's area.

(3) In relation to the committee established by Authority A under subsection (2)—

(a) sections 244(2) to (4), 245 and 246 (and Schedule 17 to this Act and Schedule 11 to the National Health Service (Wales) Act 2006) apply as if the committee were an overview and scrutiny committee,

(b) section 9F of the 2000 Act applies as if—

(i) the committee were an overview and scrutiny committee,

(ii) subsections (1) to (4) were omitted, and

(iii) in subsection (5) for paragraphs (a) and (b) there were substituted "its functions under section 247A(2) of the National Health Service Act 2006",

(c) section 9FA of the 2000 Act applies as if—

(i) the committee were an overview and scrutiny committee,

(ii) subsection (3) were omitted, and

(iii) in subsection (8)(a) the reference to members of the executive were a reference to members of the authority, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) paragraphs 11 to 13 of Schedule A1 to the 2000 Act apply as if the committee were an overview and scrutiny committee.

(4) In the provisions as applied by subsection (3) references to functions under any provision of section 9F(2) of the 2000 Act are, in the case of a committee established by Authority A under subsection (2), references to the committee's functions under subsection (2).

(5) In this section "executive arrangements" means executive arrangements under Part 1A of the 2000 Act.**]**

Textual Amendments

F309 S. 247A inserted (4.5.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 3 para. 78**; S.I. 2012/1008, art. 4(b)

PART 13

MISCELLANEOUS

Independent advocacy services

248 Independent advocacy services

[[F310](1) The Secretary of State must arrange, to such extent as he considers necessary to meet all reasonable requirements, for the provision of independent advocacy services.

(2) "Independent advocacy services" are services providing assistance (by way of representation or otherwise) to individuals making or intending to make—

(a) a complaint under a procedure operated by a health service body or independent provider,

(b) a complaint under section 113(1) or (2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43),

(c) a complaint to the Health Service Commissioner for England or the Public Services Ombudsman for Wales,

(d) a complaint of a prescribed description which relates to the provision of services as part of the health service and—

(i) is made under a procedure of a prescribed description, or

(ii) gives rise, or may give rise, to proceedings of a prescribed description.

(3) In subsection (2)—

"health service body" means—

(a) in relation to England, a body which, under section 2(1) of the Health Service Commissioners Act 1993 (c. 46), is subject to investigation by the Health Service Commissioner for England,

(b) in relation to Wales, a Welsh health service body (within the meaning of the Public Services Ombudsman (Wales) Act 2005 (c. 10)),

"independent provider" means—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) in relation to England, a person who, under section 2B(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England,

(b) in relation to Wales, a person who is an independent provider in Wales (within the meaning of the Public Services Ombudsman (Wales) Act 2005).

(4) The Secretary of State may make such other arrangements as he considers appropriate for the provision of assistance to individuals in connection with complaints relating to the provision of services as part of the health service.

(5) In making arrangements under this section the Secretary of State must have regard to the principle that the provision of services under the arrangements should, so far as practicable, be independent of any person who is—

(a) the subject of a relevant complaint, or

(b) involved in investigating or adjudicating on such a complaint.

(6) The Secretary of State may make payments to any person in pursuance of arrangements under this section.

F311(7) . . . . . .

F312(8) . . . . . .]

Textual Amendments

F310 S. 248 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 185(2)**, 306(1)(d)(4)

F311 S. 248(7) repealed (30.6.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 4(b)(c)

F312 S. 248(8) repealed (30.6.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 4(b)(c)

Joint working with the prison service

249 Joint working with the prison service

(1) In exercising their respective functions, NHS bodies (on the one hand) and the prison service (on the other) must co-operate with one another with a view to improving the way in which those functions are exercised in relation to securing and maintaining the health of prisoners.

(2) The Secretary of State may by regulations make provision for or in connection with enabling prescribed NHS bodies (on the one hand) and the prison service (on the other) to enter into prescribed arrangements in relation to the exercise of—

(a) prescribed functions of the NHS bodies, and

(b) prescribed health-related functions of the prison service,

if the arrangements are likely to lead to an improvement in the way in which those functions are exercised in relation to securing and maintaining the health of prisoners.

(3) The arrangements which may be prescribed include arrangements—

(a) for or in connection with the establishment and maintenance of a fund—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(i) which is made up of contributions by one or more NHS bodies and by the prison service, and

(ii) out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the prison service,

(b) for or in connection with the exercise by an NHS body on behalf of the prison service of prescribed health-related functions of the prison service in conjunction with the exercise by the NHS body of prescribed functions of the NHS body,

(c) for or in connection with the exercise by the prison service on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the prison service of prescribed health-related functions of the prison service,

(d) as to the provision of staff, goods or services in connection with any arrangements mentioned in paragraph (a), (b) or (c),

(e) as to the making of payments by the prison service to an NHS body in connection with any arrangements mentioned in paragraph (b),

(f) as to the making of payments by an NHS body to the prison service in connection with any arrangements mentioned in paragraph (c).

(4) Any arrangements made by virtue of this section do not affect the liability of NHS bodies, or of the prison service, for the exercise of any of their functions.

(5) "The prison service" means the Minister of the Crown exercising functions in relation to prisons (within the meaning of the Prison Act 1952 (c. 52)); and "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

Modifications etc. (not altering text)

C30 S. 249 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

Standing advisory committees

[F313]250 Secretary of State's standing advisory committees

. . . . . .

Textual Amendments

F313 S. 250 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 283(1)**, 306(4) (with s. 283(3)); S.I. 2012/1319, art. 2(3)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[F314 The National Information Governance Board for Health and Social Care

Textual Amendments

F314 Ss. 250A-250D and cross-heading inserted (21.7.2008 for specified purposes, 1.10.2008 for specified purposes, 1.1.2009 in so far as not already in force) by Health and Social Care Act 2008 (c. 14), **ss. 157(1)**, 170; S.I. 2008/2497, art. 7(1)(a)(2)(a)

250A National Information Governance Board: functions

(1) There is to be a board known as the National Information Governance Board for Health and Social Care.

(2) The functions of the Board are—

(a) to monitor the practice followed by relevant bodies in relation to the processing of relevant information,

(b) to keep the Secretary of State, and such bodies as the Secretary of State may designate by direction, informed about the practice being followed by relevant bodies in relation to the processing of relevant information,

(c) to publish guidance on the practice to be followed in relation to the processing of relevant information,

(d) to advise the Secretary of State on particular matters relating to the processing of relevant information by any person, and

(e) to advise persons who process relevant information on such matters relating to the processing of relevant information by them as the Secretary of State may from time to time designate by direction.

(3) The Board must, in exercising its functions, seek to improve the practice followed by relevant bodies in relation to the processing of relevant information.

(4) In this section "relevant information" means—

(a) patient information,

(b) any other information obtained or generated in the course of the provision of the health service, and

(c) any information obtained or generated in the course of the exercise by a local social services authority in England of its adult social services functions.

(5) In subsection (4) "patient information" means—

(a) information (however recorded) which relates to the physical or mental health or condition of an individual ("P"), to the diagnosis of P's condition or to P's care or treatment, and

(b) information (however recorded) which is to any extent derived, directly or indirectly, from that information,

whether or not the identity of the individual in question is ascertainable from the information.

(6) The Board must provide advice under subsection (2)(d) if requested to do so by the Secretary of State; and may provide advice under subsection (2)(d) or (e) without being requested to do so by the person to whom the advice is to be provided.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(7) A relevant body must have regard to any guidance published under subsection (2)(c) and any advice given to it under subsection (2)(e); and the Secretary of State must have regard to any advice given under subsection (2)(d).

(8) The Board may request any relevant body to provide the Board with specified information for the purpose of enabling the Board to ascertain whether the relevant body has had proper regard to—
- (a) guidance given under subsection (2)(c),
- (b) advice given under subsection (2)(e), and
- (c) any advice given to the relevant body by the Secretary of State.

(9) In this section—

"adult social services functions", in relation to a local social services authority, means the authority's social services functions (within the meaning of the Local Authority Social Services Act 1970), other than those for which the authority's director of children's services is responsible under section 18 of the Children Act 2004;

"processing", in relation to information, has the same meaning as in the Data Protection Act 1998;

"relevant body" means—
- (a) any body or person engaged in the provision of the health service, including a body or person so engaged under contract, or
- (b) any body or person providing social care services;

"social care services" means services provided by a local social services authority in England in the exercise of its adult social services functions.

250B National Information Governance Board: Wales

(1) The functions of the National Information Governance Board for Health and Social Care, except—
- (a) its functions under section 252 in relation to regulations under section 251, and
- (b) its functions under subsection (2),

are exercisable only in relation to England.

(2) In relation to Wales, the Secretary of State may seek the views of the Board on such matters concerned with the processing of information falling within section 250A(4)(a) or (b) as the Secretary of State considers appropriate.

250C National Information Governance Board: further provisions.

(1) The Secretary of State may by regulations make provision about the National Information Governance Board for Health and Social Care.

(2) The regulations may, in particular, make provision as to—
- (a) the appointment of the chair and other members of the Board by the Secretary of State or such other person as may be prescribed,
- (b) the terms of appointment of members,
- (c) the establishment and membership of committees or sub-committees of the Board,
- (d) the delegation by the Board of its functions, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(e) the proceedings of the Board.

(3) The regulations may make provision as to the payment by the Secretary of State of such expenses incurred by the Board or any committee or sub-committee of the Board as the Secretary of State may determine.

(4) The regulations may also make provision for the payment to members of the Board or any committee or sub-committee of the Board of such remuneration or allowances as the Secretary of State may determine.

(5) Regulations under this section cannot include provision by virtue of section 272(8)(a) amending or repealing an Act.

250D National Information Governance Board: annual reports

(1) The National Information Governance Board for Health and Social Care must, not later than 3 months after the end of each reporting year—
(a) prepare a report on its activities during the year, and
(b) send a copy of the report to the Secretary of State.

(2) In subsection (1) "reporting year" means—
(a) such period of not more than 12 months beginning with the day on which the Board is first established as the Board may determine, and
(b) each successive period of 12 months.**]**

Patient information

251 Control of patient information

(1) The Secretary of State may by regulations make such provision for and in connection with requiring or regulating the processing of prescribed patient information for medical purposes as he considers necessary or expedient—
(a) in the interests of improving patient care, or
(b) in the public interest.

(2) Regulations under subsection (1) may, in particular, make provision—
(a) for requiring prescribed communications of any nature which contain patient information to be disclosed by health service bodies in prescribed circumstances—
(i) to the person to whom the information relates,
(ii) (where it relates to more than one person) to the person to whom it principally relates, or
(iii) to a prescribed person on behalf of any such person as is mentioned in sub-paragraph (i) or (ii),
in such manner as may be prescribed,
(b) for requiring or authorising the disclosure or other processing of prescribed patient information to or by persons of any prescribed description subject to compliance with any prescribed conditions (including conditions requiring prescribed undertakings to be obtained from such persons as to the processing of such information),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) for securing that, where prescribed patient information is processed by a person in accordance with the regulations, anything done by him in so processing the information must be taken to be lawfully done despite any obligation of confidence owed by him in respect of it,

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

(3) Subsections (1) and (2) are subject to subsections (4) to (7).

(4) Regulations under subsection (1) may not make provision requiring the processing of confidential patient information for any purpose if it would be reasonably practicable to achieve that purpose otherwise than pursuant to such regulations, having regard to the cost of and the technology available for achieving that purpose.

(5) Where regulations under subsection (1) make provision requiring the processing of prescribed confidential patient information, the Secretary of State—

(a) must, at any time within the period of one month beginning on each anniversary of the making of such regulations, consider whether any such provision could be included in regulations made at that time without contravening subsection (4), and

(b) if he determines that any such provision could not be so included, must make further regulations varying or revoking the regulations made under subsection (1) to such extent as he considers necessary in order for the regulations to comply with that subsection.

(6) Regulations under subsection (1) may not make provision for requiring the processing of confidential patient information solely or principally for the purpose of determining the care and treatment to be given to particular individuals.

(7) Regulations under this section may not make provision for or in connection with the processing of prescribed patient information in a manner inconsistent with any provision made by or under the Data Protection Act 1998 (c 29).

(8) Subsection (7) does not affect the operation of provisions made under subsection (2)(c).

(9) Before making any regulations under this section the Secretary of State must, to such extent as he considers appropriate in the light of the requirements of section 252, consult such bodies appearing to him to represent the interests of those likely to be affected by the regulations as he considers appropriate.

(10) In this section "patient information" means—

(a) information (however recorded) which relates to the physical or mental health or condition of an individual, to the diagnosis of his condition or to his care or treatment, and

(b) information (however recorded) which is to any extent derived, directly or indirectly, from such information,

whether or not the identity of the individual in question is ascertainable from the information.

(11) For the purposes of this section, patient information is "confidential patient information" where—

(a) the identity of the individual in question is ascertainable—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(i) from that information, or

(ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person processing that information, and

(b) that information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

(12) In this section "medical purposes" means the purposes of any of—

(a) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services, and

(b) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care and treatment.

(13) In this section—

"health service body" means any body (including a government department) or person engaged in the provision of the health service that is prescribed, or of a description prescribed, for the purposes of this definition,

"processing", in relation to information, means the use, disclosure or obtaining of the information or the doing of such other things in relation to it as may be prescribed for the purposes of this definition.

[F315 252 Consultation with National Information Governance Board

(1) Before laying before Parliament a draft of any statutory instrument containing regulations under section 251(1), or making any regulations pursuant to section 251(5)(b), the Secretary of State must seek and have regard to the views of the National Information Governance Board for Health and Social Care on the proposed regulations.

(2) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, any views received from the Board on the proposed regulations.]

Textual Amendments

F315 S. 252 substituted (1.1.2009) by Health and Social Care Act 2008 (c. 14), **ss. 158**, 170(3)(4); S.I. 2008/2497, art. 7(2)(b)

Emergency powers

253 Emergency powers

(1) The Secretary of State may give directions under this section if he considers that by reason of an emergency [F316 it is necessary to do so in order to ensure that a service falling to be provided under or by virtue of this Act is provided] [F316 it is appropriate to do so].

[F317 (1A) A direction under this section may be given to—

(a) an NHS body other than a Local Health Board;

(b) the National Institute for Health and Care Excellence;

(c) the Health and Social Care Information Centre;

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(d) any body or person, other than an NHS body, providing services in pursuance of arrangements made—

(i) by the Secretary of State under section 12,

(ii) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

(iii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or

(iv) by the Board, a clinical commissioning group or a local authority by virtue of section 7A.**]**

(2) **[**[F318]In relation to a body within subsection (1A)(a) to (c), the powers conferred by this section may be exercised—

(a) to give directions to the body about the exercise of any of its functions;

(b) to direct the body to cease to exercise any of its functions for a specified period;

(c) to direct the body to exercise any of its functions concurrently with another body or person for a specified period;

(d) to direct the body to exercise any function conferred on another body or person under or by virtue of this Act for a specified period (whether to the exclusion of, or concurrently with, that body or person).

(2A) In relation to a body or person within subsection (1A)(d), the powers conferred by this section may be exercised—

(a) to give directions to the body or person about the provision of any services that it provides in pursuance of arrangements mentioned in subsection (1A)(d);

(b) to direct the body or person to cease to provide any of those services for a specified period;

(c) to direct the body or person to provide other services for the purposes of the health service for a specified period.**]**

[[F319](2B) The Secretary of State may direct the Board to exercise the functions of the Secretary of State under this section.

(2C) The Secretary of State may give directions to the Board about its exercise of any functions that are the subject of a direction under subsection (2B).

(2D) In this section, "specified" means specified in the direction.**]**

(3) The powers conferred on the Secretary of State by this section are in addition to any other powers exercisable by him.

(4) **[**[F320]The references in this section to this Act do not include a reference to Chapter 5 of Part 2 (NHS foundation trusts).**]**

Textual Amendments

F316 Words in s. 253(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 47(2)**, 306(1)(d)(4)

F317 S. 253(1A) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 47(3)**, 306(1)(d)(4)

F318 S. 253(2)(2A) substituted for s. 253(2) (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 47(4)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F319 S. 253(2B)-(2D) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 47(5)**, 306(1)(d)(4)

F320 S. 253(4) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 47(6)**, 306(1)(d)(4)

Local social services authorities

254 Local social service authorities

(1) Subject to paragraphs (d) and (e) of section 3(1), the services described in Schedule 20 in relation to—

(a) care of mothers,

(b) prevention, care and after-care,

(c) home help and laundry facilities,

are functions exercisable by local social services authorities.

(2) A local social services authority which provides premises, furniture or equipment for any of the purposes of this Act may permit the use of the premises, furniture or equipment by—

(a) any other local social services authority,

(b) any of the bodies established under this Act, or

[[F321](c) a local authority (as defined in section 579(1) of the Education Act 1996) for the purposes of the exercise of any education functions (as defined in that section).**]**

(3) The permission may be on such terms (including terms with respect to the services of any staff employed by the authority giving permission) as may be agreed.

(4) A local social services authority may provide (or improve or furnish) residential accommodation for officers—

(a) employed by it for the purposes of any of its functions as a local social services authority, or

(b) employed by a voluntary organisation for the purposes of any services provided under this section and Schedule 20.

(5) In this section and Schedule 20 "equipment" includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle.

Textual Amendments

F321 S. 254(2)(c) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(2)**

Supplies by the Secretary of State

255 Supplies not readily obtainable

(1) Where the Secretary of State has acquired—

(a) supplies of human blood for the purposes of any service under this Act,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) any part of a human body for the purpose of, or in the course of providing, any such service, or

(c) supplies of any other substances or preparations not readily obtainable,

he may arrange to make such supplies or that part available (on such terms, including terms as to charges, as he considers appropriate) to any person.

(2) The Secretary of State may exercise the powers conferred by subsection (1) only if, and to the extent that, he is satisfied that anything which he proposes to do or allow under those powers—

(a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind, and

(b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than as private patients.

(3) "Health service hospital" includes such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42).

Community services

256 Power of Primary Care Trusts to make payments towards expenditure on community services

(1) **[**[F322]A Primary Care Trust**][**[F322]The Board or a clinical commissioning group**]** may make payments to—

(a) a local social services authority towards expenditure incurred or to be incurred by it in connection with any social services functions (within the meaning of the Local Authority Social Services Act 1970 (c. 42)), other than functions under section 3 of the Disabled Persons (Employment) Act 1958 (c. 33),

(b) a district council, or a Welsh county council or county borough council, towards expenditure incurred or to be incurred by it in connection with its functions under Part 2 of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (meals and recreation for old people),

(c) **[**[F323]a local authority (as defined in section 579(1) of the Education Act 1996)**]** (c. 56), towards expenditure incurred or to be incurred by it in connection with its functions under the Education Acts (within the meaning of that Act), in so far as it performs those functions for the benefit of disabled persons,

(d) a local housing authority within the meaning of the Housing Act 1985 (c. 68), towards expenditure incurred or to be incurred by it in connection with its functions under Part 2 of that Act (provision of housing), or

(e) any of the bodies mentioned in subsection (2), in respect of expenditure incurred or to be incurred by it in connection with the provision of housing accommodation.

(2) The bodies are—

[[F324](za) a private registered provider of social housing,**]**

(a) a registered social landlord within the meaning of the Housing Act 1985 (see section 5(4) and (5) of that Act),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[[F325](b) the Homes and Communities Agency,

(ba) the Welsh new towns residuary body,**]**

[[F326](bb) the Greater London Authority,**]**

(c) a new town development corporation,

[[F327](ca) a Mayoral development corporation,**]**

(d) an urban development corporation established under the Local Government, Planning and Land Act 1980 (c. 65),

[[F328](e) the Regulator of Social Housing.**]**

(3) **[**[F329]A Primary Care Trust**][**[F329]The Board or a clinical commissioning group**]** may make payments to a local authority towards expenditure incurred or to be incurred by the authority in connection with the performance of any of the authority's functions which, in the opinion of **[**[F330]the Primary Care Trust**][**[F330]the Board or (as the case may be) the clinical commissioning group**]**—

(a) have an effect on the health of any individuals,

(b) have an effect on, or are affected by, any NHS functions, or

(c) are connected with any NHS functions.

(4) "NHS functions" means functions exercised by an NHS body.

(5) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.

[[F331](5A) The Secretary of State may by directions to the Board specify the minimum amount which the Board must spend in a financial year in making payments under—

(a) this section;

(b) subsection (1) of this section;

(c) subsection (3) of this section.

(5B) The Secretary of State may by directions to the Board specify—

(a) a body or description of bodies to whom payments under subsection (1) or (3), or under either or both of those subsections, must be made by the Board in a financial year;

(b) functions or activities, or descriptions of functions or activities, in respect of which such payments must be made by the Board in a financial year;

(c) the minimum amount which the Board must spend in a financial year in making such payments—

(i) to a body or description of bodies specified in relation to the year under paragraph (a);

(ii) in respect of functions or activities, or descriptions of functions or activities, specified in relation to the year under paragraph (b);

(iii) to a body or description of bodies specified in relation to the year under paragraph (a) in respect of functions or activities or descriptions of functions or activities so specified under paragraph (b).**]**

(6) The Secretary of State may by directions prescribe conditions relating to payments under this section or section 257.

(7) The conditions include, in particular, conditions requiring, in such circumstances as may be specified—

(a) repayment of the whole or part of a payment under this section, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) in respect of property acquired with a payment under this section, payment of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.

(8) No payment may be made under this section in respect of any expenditure unless the conditions relating to it conform with the conditions prescribed under subsection (6) for payments of that description.

(9) "A disabled person" is a person who has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities or who has such other disability as may be prescribed.

Textual Amendments

F322 Words in s. 256(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(2)**

F323 Words in s. 256(1)(c) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(3)**

F324 S. 256(2)(za) inserted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 1(2), **Sch. 2 para. 134(a)** (with art. 6, Sch. 3)

F325 S. 256(2)(b)(ba) substituted for s. 256(2)(b) (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), art. 1(2), **Sch. 1 para. 52** (with Sch. 2) (see S.I. 2008/3068, art. 2(1)(b))

F326 S. 256(2)(bb) inserted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 19 para. 44**; S.I. 2012/628, art. 6(i) (with arts. 9, 11, 14, 15, 17)

F327 S. 256(2)(ca) inserted (15.1.2012) by Localism Act 2011 (c. 20), s. 240(1)(l), **Sch. 22 para. 57**

F328 S. 256(2)(e) substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 1(2), **Sch. 2 para. 134(b)** (with art. 6, Sch. 3)

F329 Words in s. 256(3) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(3)(a)**

F330 Words in s. 256(3) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(3)(b)**

F331 S. 256(5A)(5B) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 4 para. 129(4)**

Modifications etc. (not altering text)

C31 S. 256 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

C32 S. 256(2)(e) modified (1.12.2008) by The Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 (S.I. 2008/2839), arts. 1(1), 3, **Sch. para. 1** (with art. 6)

C33 S. 256(3) modified by 2004 c. 17, s. 4(5)(a)(i) (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 258(a)** (with Sch. 3 Pt. 1))

257 Payments in respect of voluntary organisations under section 256

(1) This section applies where the expenditure in respect of which a payment under section 256 is proposed to be made is expenditure in connection with services to be provided by a voluntary organisation.

(2) Where this section applies, the Primary Care Trust may make payments to the voluntary organisation towards the expenditure incurred or to be incurred by the organisation in connection with the provision of those services, instead of or in addition to making payments under section 256(1) or (3).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Where this section applies—

(a) a body falling within any of paragraphs (a) to (d) of section 256(1) which has received payments under the paragraph, and

(b) a local authority which has received payments under section 256(3),

may make out of the sums paid to it payments to the voluntary organisation towards expenditure incurred or to be incurred by the organisation in connection with the provision of those services.

(4) No payment may be made under subsection (2) or (3) except subject to conditions which conform with the conditions prescribed for payments of that description under section 256(6).

Modifications etc. (not altering text)

C34 S. 257(2) modified by 2004 c. 17, s. 4(5)(a)(i) (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 258(a)** (with Sch. 3 Pt. 1))

Universities

258 University clinical teaching and research

(1) The Secretary of State must exercise his functions under this Act so as to secure that there are made available such facilities as he considers are reasonably required by any university which has a medical or dental school, in connection with—

(a) clinical teaching, and

(b) research connected with clinical medicine or clinical dentistry.

(2) Regulations may provide for any functions—

(a) exercisable by a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board,

(b) in relation to the provision of facilities such as are mentioned in subsection (1),

to be exercisable by the body jointly with one or more NHS body other than an NHS foundation trust.

Modifications etc. (not altering text)

C35 S. 258 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

Sale of medical practices

259 Sale of medical practices

(1) It is unlawful to sell the goodwill of the medical practice of a person to whom any of subsections (2) to (4) applies, unless the person—

(a) no longer provides or performs the services mentioned, and

(b) has never carried on the practice in a relevant area.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) This subsection applies to a person who has at any time provided general medical services under arrangements made—

(a) with any Council, Committee or Authority under the National Health Service Act 1946 (c. 81) or the National Health Service Reorganisation Act 1973 (c. 32), or

(b) with any Primary Care Trust, Health Authority or Local Health Board under section 29 of the National Health Service Act 1977 (c. 49).

(3) This subsection applies to a person who has at any time provided or performed personal medical services in accordance with section 28C of the National Health Service Act 1977 (prior to the coming into force of section 16CC of that Act).

(4) This subsection applies to a person who has at any time, in prescribed circumstances or, if regulations so provide, in all circumstances, provided or performed primary medical services—

(a) in accordance with section 28C arrangements (within the meaning given by section 28D of the National Health Service Act 1977),

(b) in accordance with arrangements under section 16CC(2)(b) of that Act,

(c) under a general medical services contract (within the meaning of section 28Q(2) of that Act),

(d) in accordance with section 92 arrangements or section 50 arrangements,

(e) in accordance with arrangements under section 83(2)(b) of this Act, or section 41(2)(b) of the National Health Service (Wales) Act 2006 (c. 42),

(f) under a general medical services contract or a Welsh general medical services contract.

(5) In this section—

"goodwill" includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice,

"medical practice" includes any part of a medical practice,

"relevant area", in relation to any Council, Committee, Primary Care Trust, Local Health Board or Authority by arrangement or contract with whom a person has at any time provided or performed services, means the area, district or locality of that Council, Committee, Primary Care Trust, Local Health Board or Authority (at that time),

"section 50 arrangements" means arrangements for the provision of services made under section 50 of the National Health Service (Wales) Act 2006 (c. 42), and

"Welsh general medical services contract" means a contract under section 42(2) of the National Health Service (Wales) Act 2006.

(6) Schedule 21 makes further provision in relation to this section.

Modifications etc. (not altering text)

C36 S. 259 transfer of functions (10.7.2008) by Welsh Ministers (Transfer of Functions) Order 2008 (S.I. 2008/1786), **art. 2(b)** reg. 1(2)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Price of medical supplies

260 Control of maximum price of medical supplies other than health service medicines

(1) The Secretary of State may by order provide for the control of maximum prices to be charged for any medical supplies, other than health service medicines, required for the purposes of this Act.

(2) The Secretary of State may by direction given with respect to any undertaking, or by order made with respect to any class or description of undertakings, require persons carrying on the undertaking or undertakings of that class or description—

(a) to keep such books, accounts and records relating to the undertaking as may be prescribed by the direction, the order or a notice served under the order,

(b) to furnish at such times, in such manner and in such form as may be so prescribed such estimates, returns or information relating to the undertaking as may be so prescribed.

(3) The power to make an order under this section includes power to provide for any incidental and supplementary provisions which the Secretary of State considers it expedient for the purposes of the order to provide.

(4) Schedule 22 makes further provision in relation to this section.

(5) In this section and Schedule 22—

"medical supplies" includes surgical, dental and optical materials and equipment, and

"undertaking" means any public utility undertaking or any undertaking by way of trade or business, which is concerned with medical supplies required for the purposes of this Act,

and "equipment" includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle.

261 Powers relating to voluntary schemes

(1) The powers under this section may be exercised where there is in existence a scheme (referred to in this section and sections 262 and 263 as a "voluntary scheme") made by the Secretary of State and the industry body for the purpose of—

(a) limiting the prices which may be charged by any manufacturer or supplier to whom the scheme relates for the supply of any health service medicines, or

(b) limiting the profits which may accrue to any manufacturer or supplier to whom the scheme relates in connection with the manufacture or supply of any health service medicines.

(2) For the purposes of this section and sections 262 and 263, a voluntary scheme must be treated as applying to a manufacturer or supplier to whom it relates if—

(a) he has consented to the scheme being so treated (and has not withdrawn that consent), and

(b) no notice is in force in his case under subsection (4).

(3) For the purposes of this section a voluntary scheme has effect, in relation to a manufacturer or supplier to whom it applies, with any additions or modifications made by him and the Secretary of State.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) If any acts or omissions of any manufacturer or supplier to whom a voluntary scheme applies (a "scheme member") have shown that, in the scheme member's case, the scheme is ineffective for either of the purposes mentioned in subsection (1), the Secretary of State may by a written notice given to the scheme member determine that the scheme does not apply to him.

(5) A notice under subsection (4) must give the Secretary of State's reasons for giving the notice, and the Secretary of State may not give a notice under that subsection until he has given the scheme member an opportunity to make representations about the acts or omissions in question.

(6) Consent under subsection (2)(a) must be given, or withdrawn, in the manner required by the Secretary of State.

(7) The Secretary of State may after consultation with the industry body require any manufacturer or supplier to whom a voluntary scheme applies to—

(a) record and keep any information, and

(b) provide any information to the Secretary of State,

which the Secretary of State may require for the purpose of enabling the scheme to operate or facilitating its operation or for the purpose of giving full effect to any provision made under subsection (8).

(8) The Secretary of State may—

(a) prohibit any manufacturer or supplier to whom a voluntary scheme applies from increasing any price charged by him for the supply of any health service medicine covered by the scheme without the approval of the Secretary of State, and

(b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.

Commencement Information

I2 S. 261(7) in force at 3.4.2007 for specified purposes immediately after 1999 c. 8, s. 33(7) comes into force by S.I. 2007/1179, **art. 2(a)**

262 Power to control prices

(1) The Secretary of State may, after consultation with the industry body—

(a) limit any price which may be charged by any manufacturer or supplier for the supply of any health service medicine, and

(b) provide for any amount representing sums charged by that person for that medicine in excess of the limit to be paid to the Secretary of State within a specified period.

(2) The powers conferred by this section are not exercisable at any time in relation to a manufacturer or supplier to whom at that time a voluntary scheme applies.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

263 Statutory schemes

(1) The Secretary of State may, after consultation with the industry body, make a scheme (referred to in this section and section 264 as a statutory scheme) for the purpose of—
  (a) limiting the prices which may be charged by any manufacturer or supplier for the supply of any health service medicines, or
  (b) limiting the profits which may accrue to any manufacturer or supplier in connection with the manufacture or supply of any health service medicines.

(2) A statutory scheme may, in particular, make any provision mentioned in subsections (3) to (6).

(3) The scheme may require any manufacturer or supplier to whom it applies to—
  (a) record and keep information, and
  (b) provide information to the Secretary of State.

(4) The scheme may provide for any amount representing sums charged by any manufacturer or supplier to whom the scheme applies, in excess of the limits determined under the scheme, for health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.

(5) The scheme may provide for any amount representing the profits, in excess of the limits determined under the scheme, accruing to any manufacturer or supplier to whom the scheme applies in connection with the manufacture or supply of health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.

(6) The scheme may—
  (a) prohibit any manufacturer or supplier to whom the scheme applies from increasing, without the approval of the Secretary of State, any price charged by him for the supply of any health service medicine covered by the scheme, and
  (b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.

(7) A statutory scheme may not apply to a manufacturer or supplier to whom a voluntary scheme applies.

264 Statutory schemes: supplementary

(1) The Secretary of State may, after consultation with the industry body, make any provision he considers necessary or expedient for the purpose of enabling or facilitating—
  (a) the introduction of a statutory scheme or of a limit under section 262, or
  (b) the determination of the provision to be made in a proposed statutory scheme.

(2) The provision may, in particular, require any person to whom such a scheme or limit may apply to—
  (a) record and keep information,
  (b) provide information to the Secretary of State.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Where the Secretary of State is preparing to make or vary a statutory scheme, he may make any provision he considers necessary or expedient for transitional or transitory purposes which could be made by such a scheme.

Commencement Information

I3 S. 264 in force at 3.4.2007 in so far as not already in force immediately after 1999 c. 8, s. 36 comes into force by S.I. 2007/1179, **art. 2(b)**

265 Enforcement

(1) Regulations may provide for a person who contravenes any provision of regulations or directions under sections 261 to 264 to be liable to pay a penalty to the Secretary of State.

(2) The penalty may be—
- (a) a single penalty not exceeding £100,000, or
- (b) a daily penalty not exceeding £10,000 for every day on which the contravention occurs or continues.

(3) Regulations may provide for any amount required to be paid to the Secretary of State by virtue of section 261(8)(b), 262(1)(b) or 263(4) or (6)(b) to be increased by an amount not exceeding 50 per cent.

(4) Regulations may provide for any amount payable to the Secretary of State by virtue of provision made under section 261(8)(b), 262(1)(b) or 263(4), (5) or (6)(b) (including such an amount as increased under subsection (3)) to carry interest at a rate specified or referred to in the regulations.

(5) Provision may be made by regulations for conferring on manufacturers and suppliers a right of appeal against enforcement decisions taken in respect of them in pursuance of sections 261 to 264 and this section.

(6) The provision which may be made by virtue of subsection (5) includes any provision which may be made by model provisions with respect to appeals under section 6 of the Deregulation and Contracting Out Act 1994 (c. 40), reading—
- (a) the references in subsections (4) and (5) of that section to enforcement action as references to action taken to implement an enforcement decision,
- (b) in subsection (5) of that section, the references to interested persons as references to any persons and the reference to any decision to take enforcement action as a reference to any enforcement decision.

(7) In subsections (5) and (6), "enforcement decision" means a decision of the Secretary of State or any other person to—
- (a) require a specific manufacturer or supplier to provide information to him,
- (b) limit, in respect of any specific manufacturer or supplier, any price or profit,
- (c) refuse to give his approval to a price increase made by a specific manufacturer or supplier,
- (d) require a specific manufacturer or supplier to pay any amount (including an amount by way of penalty) to him,

and in this subsection "specific" means specified in the decision.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(8) A requirement or prohibition, or a limit, under sections 261 to 264, may only be enforced under this section and may not be relied on in any proceedings other than proceedings under this section.

(9) The Secretary of State must consult the industry body before making any regulations under this section.

(10) The Secretary of State may by order increase (or further increase) either of the sums mentioned in subsection (2).

266 Controls: supplementary

(1) Any power conferred on the Secretary of State by sections 261(6) to (8) and 262 to 264 may be exercised by—
  (a) making regulations, or
  (b) giving directions to a specific manufacturer or supplier.

(2) Regulations under subsection (1)(a) may confer power for the Secretary of State to give directions to a specific manufacturer or supplier; and in this subsection "specific" means specified in the direction concerned.

(3) The powers to refuse approval under section 261(8)(a) or 263(6)(a) or to impose a limit under section 262(1)(a) or 263(1) are exercisable only with a view to limiting by reference to the prices or profits which would be reasonable in all the circumstances—
  (a) the prices which may be charged for, or
  (b) the profits which may accrue to any manufacturer or supplier in connection with,

  the manufacture or supply for the purposes of the health service of health service medicines.

(4) In so exercising those powers (in the case of sections 262(1)(a) and 263(1) and (6)(a)) the Secretary of State and any other person must bear in mind, in particular—
  (a) the need for medicinal products to be available for the health service on reasonable terms, and
  (b) the costs of research and development.

(5) The powers conferred by sections 261 to 264 do not affect any other powers of the Secretary of State to control prices or profits.

(6) In this section and sections 261 to 265—

"health service" includes the health services within the meaning of the National Health Service (Scotland) Act 1978 (c. 29) and the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),

"health service medicine" means a medicinal product used to any extent for the purposes of the health service,

"the industry body" means any body which appears to the Secretary of State appropriate to represent manufacturers and suppliers,

"manufacture" includes assemble and "manufacturer" means any person who manufactures health service medicines,

"medicinal product" has the meaning given by section 130 of the Medicines Act 1968 (c. 67),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

"supplier" means any person who supplies health service medicines,

and contravention of a provision includes a failure to comply with it, and supplying medicines includes selling them.

Commencement Information

I4 S. 266 in force at 3.4.2007 for specified purposes immediately after 1999 c. 8, s. 38 comes into force by S.I. 2007/1179, **art. 2(c)**

Use of facilities in private practice

267 Permission for use of facilities in private practice

(1) A person to whom this section applies who wishes to use any relevant health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients may apply in writing to the Secretary of State for permission under this section.

(2) Any application for permission under this section must specify—

(a) which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients, and

(b) which of the kinds of services mentioned in subsection (1) he wishes the permission to cover.

(3) On receiving an application under this section the Secretary of State—

(a) must consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any services provided under this Act, and

(b) must grant the permission applied for unless in his opinion anything for which permission is sought would so interfere.

(4) Any grant of permission under this section is on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine.

(5) The persons to whom this section applies are—

(a) medical practitioners, registered pharmacists or other persons who provide pharmaceutical services under Chapter 1 of Part 7,

(b) chiropodists who provide services under this Act at premises where services are provided under that Chapter,

(c) persons providing primary medical services, primary dental services or primary ophthalmic services under a general medical services contract, a general dental services contract or a general ophthalmic services contract, or in accordance with section 92 arrangements or section 107 arrangements.

(6) "Relevant health service accommodation or facilities", in relation to a person to whom this section applies, means—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) any accommodation or facilities available at premises provided by the Secretary of State by virtue of this Act, being accommodation or facilities which that person is authorised to use for purposes of this Act, or

(b) in the case of a person to whom this section applies by virtue of subsection (5)(b), accommodation or facilities which that person is authorised to use for purposes of this Act at premises where services are provided under Chapter 1 of Part 7.

Health service development

268 Persons displaced by health service development

(1) Subsection (2) applies—

(a) where the carrying out of a scheme for the provision by the Secretary of State in pursuance of this Act of hospital accommodation or other facilities will involve the displacement from any premises of persons living in the premises, and

(b) in so far as it appears to the Secretary of State that there is no other residential accommodation suitable for the reasonable requirements of those persons available on reasonable terms.

(2) The Secretary of State may make arrangements with one or more of the bodies mentioned in subsection (3) for securing the provision, in advance of the displacement, of residential accommodation which becomes necessary as the carrying out of the scheme proceeds.

(3) The bodies are—

(a) a local housing authority (within the meaning of the Housing Act 1985 (c. 68)),

(b) a housing association or housing trust (within the meaning of the Housing Associations Act 1985 (c. 69)),

(c) a development corporation established under the New Towns Act 1981 (c. 64),

[[F332](d) the Homes and Communities Agency,

[[F333](da) the Greater London Authority,**]**

(e) the Welsh new towns residuary body.**]**

(4) Arrangements under subsection (2) may include provision for the making of payments by the Secretary of State to the body with whom the arrangements are made.

Textual Amendments

F332 S. 268(3)(d)(e) substituted for s. 268(3)(d) (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), art. 1(2), **Sch. 1 para. 53** (with Sch. 2) (see S.I. 2008/3068, art. 2(1)(b))

F333 S. 268(3)(da) inserted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 19 para. 45**; S.I. 2012/628, art. 6(i) (with arts. 9, 11, 14, 15, 17)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Registration of information, etc

269 Special notices of births and deaths

(1) The requirements of this section with respect to the notification of births and deaths are in addition to, and not in substitution for, the requirements of any Act relating to the registration of births and deaths.

(2) Each registrar of births and deaths must furnish, to the Primary Care Trust the area of which includes the whole or part of the registrar's sub-district, such particulars of each birth and death which occurred in the area of the Primary Care Trust as are entered in a register of births or deaths kept for that sub-district.

(3) Regulations may provide as to the manner in which and the times at which particulars must be furnished under subsection (2).

(4) In the case of each child born—

(a) the child's father, if at the time of the birth he is residing on the premises where the birth takes place, and

(b) any person in attendance upon the mother at the time of, or within six hours after, the birth,

must give notice of the birth to the Primary Care Trust for the area in which the birth takes place.

(5) Subsection (4) applies to any child which is born after the expiry of the twenty-fourth week of pregnancy whether alive or dead.

(6) Notice under subsection (4) must be given either—

(a) by posting within 36 hours after the birth a prepaid letter or postcard addressed to the Primary Care Trust at its offices and containing the required information, or

(b) by delivering within that period at the offices of the Primary Care Trust a written notice containing the required information.

(7) A Primary Care Trust must, upon application to it, supply without charge to any medical practitioner or midwife residing or practising within its area prepaid addressed envelopes together with the forms of notice.

(8) Any person who fails to give notice of a birth in accordance with subsection (4) is liable on summary conviction to a fine not exceeding level 1 on the standard scale, unless he satisfies the court that he believed, and had reasonable grounds for believing, that notice had been duly given by some other person.

(9) Proceedings in respect of an offence under subsection (8) must not, without the Attorney-General's written consent, be taken by any person other than a party aggrieved or the Primary Care Trust concerned.

(10) A registrar of births and deaths must, for the purpose of obtaining information concerning births which have occurred in his sub-district, have access at all reasonable times to—

(a) notices of births received by a Primary Care Trust under this section, or

(b) any book in which those notices may be recorded.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

270 Provision of information by Registrar General

(1) The Registrar General may provide to **[**[F334]the Secretary of State**]**[F334]any of the following persons**]** any information to which this section applies**[**[F335]—

(a) the Secretary of State,

(b) the Board,

(c) a clinical commissioning group,

(d) a local authority,

(e) the National Institute for Health and Care Excellence,

(f) the Health and Social Care Information Centre,

(g) a Special Health Authority which has functions that are exercisable in relation to England,

(h) the Care Quality Commission, and

(i) such other persons as the Secretary of State may specify in a direction.**]**

(2) Any information provided under subsection (1) must be provided in such form as appears to the Registrar General appropriate for the purpose of assisting **[**[F336]the Secretary of State**]**[F336]the person to whom the information is provided**]** in the performance of **[**[F337]his functions**]**[F337]functions exercisable by the person**]** in relation to the health service.

(3) This section applies to any information—

(a) entered in any register kept under the Births and Deaths Registration Act 1953 (c. 20),

(b) entered in the Adopted Children Register maintained by the Registrar General under the Adoption and Children Act 2002 (c. 38), or

(c) which is kept by the Registrar General under any other enactment and relates to any birth or death.

(4) "Enactment" includes an enactment contained in subordinate legislation.

[[F338](5) In this section, "local authority" has the same meaning as in section 2B.**]**

Textual Amendments

F334 Words in s. 270(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 285(2)(a)**, 306(1)(d)(4)

F335 S. 270(1)(a)-(i) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 285(2)(b)**, 306(1)(d)(4)

F336 Words in s. 270(2) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 285(3)(a)**, 306(1)(d)(4)

F337 Words in s. 270(2) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 285(3)(b)**, 306(1)(d)(4)

F338 S. 270(5) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 285(4)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 14

SUPPLEMENTARY

271 Territorial limit of exercise of functions

(1) The functions of a Minister of the Crown under this Act are exercisable only in relation to England.

(2) "Minister of the Crown" includes the Treasury.

(3) Subsection (1) does not apply in relation to—

(a) section 8(1) (directions to health service bodies) to such extent as it allows directions to be given in respect of matters concerning xenotransplantation, surrogacy agreements, embryology or human genetics,

(b) Chapter 5 of Part 1 (NHS foundation trusts),

[F339(c) section 169(3) (power of the Secretary of State to direct that the First-tier Tribunal exercise functions in relation to appeals),]

(d) section 235 (superannuation of officers of certain hospitals),

F340(e) . . . . . .

F341(f) . . . . . .

[F342(fa) sections 250B to 250D (National Information Governance Board),]

(g) sections 251 (control of patient information) and [F343252 (consultation with National Information Governance Board)] ,

(h) Schedule 21 (prohibition as to the sale of medical practices),

(i) section 260 and Schedule 22 (control of maximum price of medical supplies other than health service medicines) and sections 261 to 266 (control of prices of medicines and profits),

and section 272(7) and (8), to the extent that they apply in relation to a provision mentioned in any of paragraphs (a) to (i).

Textual Amendments

F339 S. 271(3)(c) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 125** (with Sch. 5)

F340 S. 271(3)(e) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.

F341 S. 271(3)(f) repealed (30.6.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 4(b)(c)

F342 S. 271(3)(fa) inserted (1.1.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 14 para. 5(a)**; S.I. 2008/2497, art. 7(2)(c)

F343 Words in s. 271(3)(g) substituted (1.1.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 14 para. 5(b)**; S.I. 2008/2497, art. 7(2)(c)

272 Orders, regulations, rules and directions

(1) This section does not apply to—

(a) Chapter 5 of Part 2 (as to which, see section 64), and

(b) Part 10 (as to which, see section 209).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Subject to subsection (3), any power under this Act to make an order, rules or regulations is exercisable by statutory instrument.

(3) Subsection (2) does not apply to an order under—

(a) section 66(2),

(b) section 95(1) or 110(1),

(c) section 211(4),

(d) paragraph 22, 23, 24 or 26 of Schedule 3,

(e) paragraph 9, 27 or 29 of Schedule 4, or

(f) paragraph 2 of Schedule 18.

(4) Subject to subsections (5)**[**[F344], (6) and (6A)**]** , a statutory instrument made by virtue of this Act is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Subsection (4) does not apply to a statutory instrument containing a PCT order, or an order under—

(a) section 25,

[[F345](aa) section 52D(1) or (7) or 52E(6),

(ab) section 65B(1), 65E(1), 65J(2), 65L(2), (4) or (5), or 65V(2),**]**

(b) Schedule 4, or

(c) paragraph 1(1) of Schedule 5.

(6) A statutory instrument containing—

[[F346](zza) regulations under section 3(1D),**]**

[[F347](zzb) regulations under section 6C(1) or (2),**]**

[[F348](zzc) regulations under section 6E, except where they do not include provision by virtue of subsection (7)(c) of that section,**]**

[[F349](zzd) regulations under section 7(1C),**]**

[[F350](za) an order under section 12C(8) or (10),**]**

[[F351](zb) regulations under section 13Z1,**]**

[[F352](zc) an order under section 28 which varies such an order as mentioned in section 28A(5),**]**

[[F353](zd) regulations under section 186A(4),**]**

(a) regulations under section 251, except where they are made by virtue of subsection (5)(b) of that section,

(b) an order under section 265(10), or

(c) an order under section 193(4),

may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

[[F354](6A) A statutory instrument containing an order under section 52D(1), 52E(6), 65B(1), 65E(1), 65J(2), 65L(2) or (4) or 65V(2) must be laid before Parliament after it is made.**]**

(7) Any power under this Act to make orders, rules, regulations or schemes, and any power to give directions—

(a) may be exercised either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) may be exercised so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition, and

(c) may, in particular, except where the power is a power to make rules, make different provision for different areas.

(8) Any such power includes power—

(a) to make such incidental, supplementary, consequential, saving or transitional provision (including, in the case of a power to make an order or regulations, provision amending, repealing or revoking enactments) as the person or body exercising the power considers to be expedient, and

(b) to provide for a person to exercise a discretion in dealing with any matter.

(9) Subsections (7) and (8) do not apply to an order under section 260 (but this does not affect subsection (1) of that section).

Textual Amendments

F344 Words in s. 272(4) substituted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(8)(a)**, 40(1); S.I. 2010/30, art. 3(b)

F345 S. 272(5)(aa)(ab) inserted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(8)(b)**, 40(1); S.I. 2010/30, art. 3(b)

F346 S. 272(6)(zza) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 13(8)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4)

F347 S. 272(6)(zzb) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 18(2)**, 306(1)(d)(4)

F348 S. 272(6)(zzc) inserted (27.3.2012 for specified purposes, 1.2.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 20(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(4)

F349 S. 272(6)(zzd) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 21(5)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F350 S. 272(6)(za) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 1 para. 10**; S.I. 2010/30, art. 2(b)

F351 S. 272(6)(zb) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 23(2)**, 306(1)(d)(4)

F352 S. 272(6)(zc) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 48(2)**, 306(1)(d)(4)

F353 S. 272(6)(zd) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 50(2)**, 306(1)(d)(4)

F354 S. 272(6A) inserted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(8)(c)**, 40(1); S.I. 2010/30, art. 3(b)

Modifications etc. (not altering text)

C37 S. 272 applied (1.3.2007) by National Health Service (Wales) Act 2006 (c. 42), ss. 208(1), **209(4)** (with s. 19(3))

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

C38 S. 272(7)(8) applied by 2006 c. 28, **s. 70(3)** (as substituted (1.3.2007) by National Health Service (Consequential Provisions) Act (c. 43), Sch. 1 para. 285 (with Sch. 3 Pt. 1))

C39 S. 272(7) applied by 2007 c. 18, s. 42(5B) (as inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 287(3)**, 306(1)(d)(4))

273 Further provision about orders and directions under this Act

(1) Where under or by virtue of any provision of this Act—

(a) an order may be made, or

(b) directions may be given,

that provision includes power to vary or revoke the order or directions by subsequent order or by subsequent directions.

(2) Subsection (1) does not affect section 14(b) of the Interpretation Act 1978 (c. 30).

(3) A direction under this Act by a Strategic Health Authority must be given by an instrument in writing.

(4) A direction under this Act by the Secretary of State must be given—

(a) (subject to paragraphs (b) and (c)) by an instrument in writing,

(b) in the case of a direction under—

[[F355](zi) section 7 about a function of a person other than the Secretary of State,**]**

(i) section 7 about a function **[**[F356]of the Secretary of State**]** under section 4, 197 or 198, or

(ii) section **[**[F357]169(3) or**]** 199(2),

by regulations,

(c) in the case of—

(i) any other direction under section 7, or

(ii) a direction under section 8, 15, 87, 94(4), 103, 109(4)**[**[F358], 120 or 253**]**,

by regulations or an instrument in writing.

(5) Subsection (4) does not apply to a direction under section 88 (as to which, see that section).

Textual Amendments

F355 S. 273(4)(b)(zi) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 21(6)(a)**, 306(1)(d)(4) (with Sch. 6 para. 5(3))

F356 Words in s. 273(4)(b)(i) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 21(6)(b)**, 306(1)(d)(4) (with Sch. 6 para. 5(3))

F357 Words in s. 273(4)(b)(ii) inserted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 126(a)** (with Sch. 5)

F358 Words in s. 273(4)(c)(ii) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 47(7)**, 306(1)(d)(4)

Modifications etc. (not altering text)

C40 S. 273 applied (1.3.2007) by National Health Service (Wales) Act 2006 (c. 42), ss. 208(1), **209(4)** (with s. 19(3))

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

C41 S. 273(1) applied by 2007 c. 18, s. 42(5B) (as inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 287(3)**, 306(1)(d)(4))

274 Supplementary regulatory powers

Regulations may provide for—

(a) prescribing the forms and manner of service of notices and other documents,

(b) prescribing the manner in which documents may be executed or proved,

(c) exempting judges and justices of the peace from disqualification by their liability to rates.

275 Interpretation

(1) In this Act (except where the context otherwise requires)—

"dental practitioner" means a person registered in the dentists register under the Dentists Act 1984 (c. 24),

"facilities" includes the provision of (or the use of) premises, goods, materials, vehicles, plant or apparatus,

F359 . . . . . .

"financial year" means a period of 12 months ending with 31st March in any year,

"functions" includes powers and duties,

"goods" include accommodation,

"the health service" means the health service continued under section 1(1) and under section 1(1) of the National Health Service (Wales) Act 2006 (c. 42),

"health service hospital" means a hospital vested in the Secretary of State for the purposes of his functions under this Act or vested in a Primary Care Trust, an NHS trust or an NHS foundation trust,

"hospital" means—

(a) any institution for the reception and treatment of persons suffering from illness,

(b) any maternity home, and

(c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation,

and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution, and "hospital accommodation" must be construed accordingly,

"illness" includes **[**F360any disorder or disability of the mind**]** and any injury or disability requiring medical or dental treatment or nursing,

"local authority" means a county council, a county borough council, a district council, a London borough council, and the Common Council of the City of London,

F361 . . . . . .

"Local Health Board" means a body established under section 11 of the National Health Service (Wales) Act 2006 (c. 42),

"local pharmaceutical services" means such services as are prescribed under section 134(7) or paragraph 1(7) of Schedule 12,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

"local social services authority" means the council of a non-metropolitan county, of a county borough or of a metropolitan district or London borough, or the Common Council of the City of London,

"medical" includes surgical,

"medical practitioner" means a registered medical practitioner within the meaning of Schedule 1 to the Interpretation Act 1978 (c. 30),

"medicine" includes such chemical re-agents as are included in a list approved by the Secretary of State for the purposes of section 126,

"modifications" includes additions, omissions and amendments,

"NHS trust" includes an NHS trust established under the National Health Service (Wales) Act 2006 **[**[F362]and, subject to Schedule 8A, a body that becomes a National Health Service trust by virtue of an order made under section 52D(1) or 65E(1),**]** ,

"officer" includes servant,

"optometrist" means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 (c. 44) **[**[F363], or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,**]** or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist,

"patient" includes a woman who is pregnant or breast-feeding or who has recently given birth,

"prescribed" means prescribed by regulations made by the Secretary of State,

"property" includes rights,

[[F364]"registered pharmacist" means a person registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 of the Pharmacy Order 2010,**]**

[[F365]"Regulation (EC) No. 883/2004" means Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems,**]**

"regulations" means regulations made by the Secretary of State,

[[F366]"the regulator" means Monitor,**]**

"Special Health Authority" includes a Special Health Authority established under the National Health Service (Wales) Act 2006,

"university" includes a university college,

"voluntary organisation" means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

[[F367]"Welsh new towns residuary body" means the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a) (i) to (iii) of the New Towns Act 1981.**]**

(2) In this Act (except where the context otherwise requires) any reference to a body established under this Act or the National Health Service (Wales) Act 2006 (c. 42) includes a reference to a body continued in existence by virtue of this Act or that Act.

(3) So far as is necessary or expedient in consequence of a direction under section 7 or 15 providing for the exercise by a Strategic Health Authority, Primary Care Trust or Special Health Authority of a function exercisable by another person or body, any reference in any enactment, instrument or other document to that other person or body

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

must be read as a reference to the Strategic Health Authority, Primary Care Trust or Special Health Authority.

(4) Any reference in this Act to the purposes of a hospital is a reference to its general purposes and to any specific purpose.

[[F368](5) In each of the following, the reference to section 3 includes a reference to section 117 of the Mental Health Act 1983 (after-care)—

(a) in section 223K(8), paragraph (a) of the definition of "relevant services",

(b) in section 244(3), paragraph (a)(i) of the definition of "relevant health service provider",

(c) in section 252A(10), the definition of "service arrangements",

(d) section 253(1A)(d)(ii).**]**

Textual Amendments

F359 Words in s. 275(1) omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 127** (with Sch. 5)

F360 Words in s. 275(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), s. 56(1), **Sch. 1 para. 24**; S.I. 2008/1900, art. 2(a) (with art. 3, Sch.)

F361 Words in s. 275(1) repealed (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, Sch. 2 para. 60(4), **Sch. 3 Pt. 2**

F362 Words in s. 275(1) inserted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), **ss. 18(9)**, 40(1); S.I. 2010/30, art. 3(b)

F363 Words in s. 275(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **203**

F364 Words in s. 275(1) substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), art. 1(5), **Sch. 4 para. 13(4)**; S.I. 2010/1621, art. 2(1), Sch.

F365 Words in s. 275(1) inserted (1.6.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010 (S.I. 2010/915), regs. 1(1), **4**

F366 Words in s. 275(1) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 11**; S.I. 2012/1319, art. 2(3)

F367 Words in s. 275(1) inserted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), art. 1(2), **Sch. 1 para. 54** (with Sch. 2) (see S.I. 2008/3068, art. 2(1)(b))

F368 S. 275(5) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 40(5)**, 306(1)(d)(4)

Modifications etc. (not altering text)

C42 S. 275 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 4** (with Sch. 3 Pt. 1)

C43 S. 275 modified (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 2 para. 11** (with Sch. 3 Pt. 1)

276 Index of defined expressions

In this Act the following expressions are defined or otherwise explained by the provisions indicated—

body established under this Act	section 275(2)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

commissioner, in relation to an NHS contract	section 9(1)
contractor, in relation to a general dental services contract	section 100(4)
contractor, in relation to a general medical services contract	section 84(5)
contractor, in relation to a general ophthalmic services contract	section 117(5)
fraud case	section 151(3)
general dental services contract	section 100(2)
general medical services contract	section 84(2)
general ophthalmic services contract	section 117(2)
NHS body	section 28(6)
LPS scheme	paragraph 1(2) of Schedule 12
NHS contract	section 9(1)
NHS trust order	section 25(2)
optical appliances	section 179(5)
PCT order	section 18(2)
pharmaceutical list	section 129(11)
pharmaceutical services	section 126(8)
F369	**F369**
. . .	. . .
practitioner	section 151(9)
primary dental services	section 99
primary medical services	section 83
primary ophthalmic services	section 115
provider, in relation to an NHS contract	section 9(1)
purposes of a hospital	section 275(4)
the regulator	**[**[F370]section 275(1)**]**
relevant dental service	section 176(4)
section 92 arrangements	section 92(8)
section 107 arrangements	section 107(8)
special trustees	section 212(1)
F371	**F371**
. . .	. . .
terms of service	section 148(7)
unsuitability case	section 151(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F369 S. 276 entry repealed (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), Sch. 1 para. 11, **Sch. 6**; S.I. 2010/30, art. 2(b)

F370 Words in s. 276 substituted (1.7.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 13 para. 12**; S.I. 2012/1319, art. 2(3)

F371 Words in s. 276 omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 208(5)**, 306(1)(d)(4)

277 Commencement

(1) Subject to this section, this Act comes into force on 1st March 2007.

(2) In this section—

"the 1977 Act" means the National Health Service Act 1977 (c. 49), and

"the 2006 Act" means the Health Act 2006 (c. 28).

(3) Subsection (4) applies to—

(a) sections 33 and 35 to 38 of the Health Act 1999 (c. 8) (see sections 261 and 263 to 266 of this Act),

(b) subsection (7) of section 45 of the Nationality, Immigration and Asylum Act 2002 (c. 41) and paragraph 2(2B) of Schedule 8 to the 1977 Act as substituted by that subsection (see paragraph 2(7) of Schedule 20 to this Act),

(c) section 21 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (see section 50 of this Act),

(d) paragraph 3 of the Schedule to the Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006 (S.I. 2006/1056) and section 41B(2) and (6)(b) of the 1977 Act as amended by that paragraph (see section 128 of this Act),

(e) sub-paragraphs (a) and (b) of paragraph 5 of that Schedule and section 4A(1) and (3) of the National Health Service and Community Care Act 1990 (c. 19) as amended by those sub-paragraphs (see section 11 of this Act),

(f) sub-paragraph (c) of paragraph 5 of that Schedule and section 4A(4) of the National Health Service and Community Care Act 1990 as added by that sub-paragraph (see section 11 of this Act),

(g) section 34 of the 2006 Act, and section 42A of the 1977 Act as inserted by that section (see section 131 of this Act),

(h) section 35 of the 2006 Act, and subsections (2B) and (2C) of section 42 of the 1977 Act as inserted by that section (see section 129 of this Act),

(i) subsection (1) of section 36 of the 2006 Act, and section 43(2) of the 1977 Act as substituted by that subsection (see section 132 of this Act),

(j) sections 37 to 41 of, and paragraphs 7 to 9, 11, 12(a), 13(2), (5) and (6), 15, 16, 17, 21(b), 22, 29, 46 and 50 of Schedule 8 to, the 2006 Act (which relate to primary ophthalmic services) and—

(i) the 1977 Act,

(ii) section 4A of the National Health Service and Community Care Act 1990,

(iii) Schedule 1 to the Health and Social Care Act 2001 (c. 15), and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(iv) section 17(1) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

to the extent that a provision mentioned in any of sub-paragraphs (i) to (iv), as amended by any of those provisions of the 2006 Act, relates to primary ophthalmic services,

(k) subsection (2) of section 42 of the 2006 Act, and paragraph 2A(1)(b) and (ba) of Schedule 12 to the 1977 Act as substituted by that subsection (see section 180 of this Act),

(l) subsection (3) of section 42 of the 2006 Act, and paragraph 2B of Schedule 12 to the 1977 Act as inserted by that subsection (see section 181 of this Act),

(m) sections 44 to 55 of the 2006 Act, and sections 76 to 78 of that Act so far as relating to those sections (see Part 10 of this Act),

(n) section 56 of, and paragraph 24(a) of Schedule 8 to, that Act and—

(i) section 98 of the 1977 Act as substituted by section 56 of that Act, and

(ii) Schedule 12B to the 1977 Act as inserted by that section,

(see section 232 of, and Schedule 15 to, this Act), and

(o) paragraphs 14, 24(b) and 25 of Schedule 8 to the 2006 Act (which relate to the substitution of "optometrist" for "ophthalmic optician") and the 1977 Act as amended by those paragraphs.

(4) To the extent that—

(a) this Act re-enacts a provision to which this subsection applies, and

(b) the provision has not come into force before the commencement of this Act,

the re-enactment by this Act of the provision does not come into force until the provision which is re-enacted comes into force; and the re-enactment comes into force immediately after, and to the extent that, the provision which is re-enacted comes into force.

(5) Accordingly, the re-enactment by this Act of the provision does not affect any power to bring the provision into force.

278 Short title, extent and application

(1) This Act may be cited as the National Health Service Act 2006.

(2) Subject to this section, this Act extends to England and Wales only.

(3) Sections 261 to 266 in Part 13 (price of medical supplies) extend also to Scotland and Northern Ireland.

(4) The Secretary of State may by order provide that this Act, in its application to the Isles of Scilly, has effect with such modifications as may be specified in the order.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULES

SCHEDULE 1

Section 5

FURTHER PROVISION ABOUT THE SECRETARY OF STATE AND SERVICES UNDER THIS ACT

Medical inspection of pupils

1 The Secretary of State must provide for the medical inspection at appropriate intervals of pupils in attendance at schools maintained by **[**[F372]local authorities**]** and for the medical treatment of such pupils.

Textual Amendments

F372 Words in Sch. 1 para. 1 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(5)(a)**

2 (1) The Secretary of State may, by arrangement with any **[**[F373]local authority**]** , provide for any medical inspection or treatment of—

(a) senior pupils in attendance at any educational establishment, other than a school, which is maintained by the authority and at which full-time further education is provided, or

(b) any child or young person who, in pursuance of section 19 or 319 of the Education Act 1996 (c. 56), is receiving primary or secondary education otherwise than at a school.

(2) The Secretary of State may, by arrangement with the proprietor of any educational establishment which is not maintained by a **[**[F373]local authority**]** , provide for any medical inspection or treatment of junior or senior pupils in attendance at the establishment.

(3) Sub-paragraphs (1) and (2) do not affect the Secretary of State's powers apart from those sub-paragraphs.

Textual Amendments

F373 Words in Sch. 1 para. 2 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(5)(b)**

3 An arrangement under paragraph **[**[F374]2(2)**]** may provide for payments by the proprietor in question.

Textual Amendments

F374 Word in Sch. 1 para. 3 substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 14 para. 6**; S.I. 2009/462, art. 5

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 A [F375local authority] may not make an arrangement under paragraph 2(1)(a) unless the governing body of the educational establishment agrees to the arrangement.

Textual Amendments

F375 Words in Sch. 1 para. 4 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(5)(b)**

5 (1) Sub-paragraph (2) applies to—

(a) each [F376local authority] , in respect of the schools which it maintains (other than foundation, voluntary or foundation special schools), and

(b) each governing body of a foundation, voluntary or foundation special school, in respect of the school.

(2) The [F376local authority] or governing body must make available to the Secretary of State such accommodation as is appropriate for the purpose of assisting him to make provision under paragraph 1 in relation to the pupils in attendance at the schools or school in question.

Textual Amendments

F376 Words in Sch. 1 para. 5 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(5)(b)**

6 In paragraphs 1 to 5 any expression to which a meaning is given for the purposes of the Education Act 1996 (c. 56) or the School Standards and Framework Act 1998 (c. 31) has that meaning.

7 Any charge made under regulations under this Act in respect of the supply of drugs, medicines or appliances must be disregarded for the purposes of paragraphs 1 and 2.

[F377 Weighing and measuring of children

Textual Amendments

F377 Sch. 1 paras. 7A, 7B and cross-heading inserted (21.7.2008 for specified purposes, 1.10.2008 in so far as not already in force) by Health and Social Care Act 2008 (c. 14), **ss. 143(1)**, 170 (with s. 143(2)); S.I. 2008/2497, art. 6

7A (1) The Secretary of State may, by arrangement with any [F378local authority], provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.

(2) The Secretary of State may, by arrangement with the proprietor of any school which is not maintained by a [F378local authority], provide for the weighing and measuring of junior pupils in attendance at that school.

(3) The Secretary of State may, by arrangement with any person who is registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect of early years provision, provide for the weighing and measuring of young children for whom childcare is provided by that person.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of Part 3 of the Childcare Act 2006 has the same meaning as in that Part.

Textual Amendments

F378 Words in Sch. 1 para. 7A substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 60(5)(b)**

7B (1) The Secretary of State may by regulations—

(a) authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,

(b) require any weighing and measuring provided for by the Secretary of State under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,

(c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and

(d) make other provision regulating the processing of information resulting from any weighing or measuring provided for by the Secretary of State under paragraph 7A.

(2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring to have regard to any guidance given from time to time by the Secretary of State.

(3) In sub-paragraph (1)(d), " processing ", in relation to information, has the same meaning as in the Data Protection Act 1998.

(4) Regulations under this paragraph cannot include provision by virtue of section 272(8)(a) amending or repealing an Act.**]**

Contraceptive services

8 The Secretary of State must arrange, to such extent as he considers necessary to meet all reasonable requirements, for—

(a) the giving of advice on contraception,

(b) the medical examination of persons seeking advice on contraception,

(c) the treatment of such persons, and

(d) the supply of contraceptive substances and appliances.

Provision of vehicles for disabled persons

9 The Secretary of State may provide vehicles (including wheelchairs) for persons appearing to him to be persons who have a physical impairment which has a

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

10 (1) Sub-paragraphs (2) and (3) apply in respect of—
(a) a vehicle provided under paragraph 9, and
(b) a vehicle belonging to a person mentioned in that paragraph.

(2) The Secretary of State may—
(a) adapt the vehicle to make it suitable for the circumstances of the person in question,
(b) maintain and repair the vehicle,
(c) take out insurance policies relating to the vehicle and pay any duty with which the vehicle is chargeable under the Vehicle Excise and Registration Act 1994 (c. 22),
(d) provide a structure in which the vehicle may be kept, and provide all material and execute all works necessary to erect the structure.

(3) The Secretary of State may make payments by way of grant towards costs incurred by a person mentioned in paragraph 9 in respect of any matter mentioned in sub-paragraph (4) in relation to the vehicle.

(4) The matters are—
(a) the taking of action referred to in sub-paragraph (2),
(b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel, and
(c) the taking of instruction in the driving of the vehicle.

(5) The powers under sub-paragraph (2) and sub-paragraph (3) may be exercised on such terms and subject to such conditions as the Secretary of State may determine.

11 Regulations may provide for any incidental or supplementary matter for which it appears to the Secretary of State necessary or expedient to provide in connection with—
(a) the taking of action under paragraph 10(2), or
(b) the making of any payment under paragraph 10(3).

Provision of a microbiological service by the Secretary of State

12 (1) The Secretary of State may—
(a) provide a microbiological service for the control of the spread of infectious diseases, and
(b) carry on such other activities as in his opinion can conveniently be carried on in conjunction with that service.

(2) The service may include the provision of laboratories.

(3) Charges may be made for services or materials supplied.

(4) A power under this paragraph may be exercised both for the purposes of the health service and for other purposes.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Powers of the Secretary of State in relation to research

13 (1) The Secretary of State may conduct research, or may assist any person to conduct research, into—

(a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and

(b) any such other matters connected with any service provided under this Act as the Secretary of State considers appropriate.

(2) Assistance may be given by grants or otherwise.

[F379SCHEDULE 1A

Sections 14B(6), 14D(2) and 14I(4)

CLINICAL COMMISSIONING GROUPS

Textual Amendments

F379 Sch. 1A inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), ss. 25(2), 306(1)(d)(4), **Sch. 2** (with Sch. 6 paras. 7-13); S.I. 2012/1831, art. 2(2)

PART 1

CONSTITUTION OF CLINICAL COMMISSIONING GROUPS

General

1 A clinical commissioning group must have a constitution.

2 (1) The constitution must specify—

(a) the name of the clinical commissioning group,

(b) the members of the group, and

(c) the area of the group.

(2) The name of the group must comply with such requirements as may be prescribed.

3 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of its functions (including its functions in determining the terms and conditions of its employees).

(2) The arrangements may include provision—

(a) for the appointment of committees or sub-committees of the clinical commissioning group, and

(b) for any such committees to consist of or include persons other than members or employees of the clinical commissioning group.

(3) The arrangements may include provision for any functions of the clinical commissioning group to be exercised on its behalf by—

(a) any of its members or employees,

(b) its governing body, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) a committee or sub-committee of the group.

4 (1) The constitution must specify the procedure to be followed by the clinical commissioning group in making decisions.

(2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the group and the manner in which they are made.

5 The constitution must specify the arrangements made by the clinical commissioning group for discharging its duties under section 14O(1) to (4).

6 The provision made by virtue of paragraphs 3 and 4 must secure that there is effective participation by each member of the clinical commissioning group in the exercise of the group's functions.

Governing bodies of clinical commissioning groups

7 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of the functions of its governing body.

(2) The arrangements—

(a) must include provision for the appointment of the audit committee and remuneration committee of the governing body, and

(b) may include provision for the appointment of other committees or sub-committees of the governing body.

(3) Arrangements under sub-paragraph (2)(a) may include provision for the audit committee to include individuals who are not members of the governing body.

(4) Arrangements under sub-paragraph (2)(b) may include provision for a committee or sub-committee to include individuals who are not members of the governing body but are—

(a) members of the clinical commissioning group, or

(b) individuals of a description specified in the constitution.

(5) The arrangements may include provision for any functions of the governing body to be exercised on its behalf by—

(a) any committee or sub-committee of the governing body,

(b) a member of the governing body,

(c) a member of the clinical commissioning group who is an individual (but is not a member of the governing body), or

(d) an individual of a description specified in the constitution.

(6) In this paragraph, references to the functions of the governing body of a clinical commissioning group include references to the functions of the clinical commissioning group which are exercisable by the governing body under arrangements specified in the constitution by virtue of paragraph 3(3).

8 (1) The constitution must specify the procedure to be followed by the governing body in making decisions.

(2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the governing body and the manner in which they are made.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The provision made under sub-paragraph (2) must include provision for meetings of governing bodies to be open to the public, except where the clinical commissioning group considers that it would not be in the public interest to permit members of the public to attend a meeting or part of a meeting.

Supplemental

9 In addition to the provision authorised or required to be included under this Part of this Schedule, the constitution may make further provision.

PART 2

FURTHER PROVISION ABOUT CLINICAL COMMISSIONING GROUPS

Status

10 (1) A clinical commissioning group is a body corporate.

(2) A clinical commissioning group is not to be regarded as a servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.

(3) The property of a clinical commissioning group is not to be regarded as property of, or property held on behalf of, the Crown.

Staff

11 (1) A clinical commissioning group may appoint such persons to be employees of the group as it considers appropriate.

(2) A clinical commissioning group must—

(a) pay its employees remuneration and travelling or other allowances in accordance with determinations made by its governing body under section 14L(3)(a), and

(b) employ them on such other terms and conditions as it may determine.

(3) A clinical commissioning group may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.

(4) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.

(5) The arrangements that may be made under sub-paragraph (3) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any of the clinical commissioning group's employees who suffer loss of office or employment or loss or diminution of emoluments.

Accountable officer

12 (1) A clinical commissioning group must have an accountable officer.

(2) The accountable officer is to be appointed by the Board.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The Board may appoint a person to be the accountable officer for more than one clinical commissioning group (and in the following provisions of this paragraph such an appointment is referred to as a "joint appointment").

(4) The accountable officer may be—

(a) an individual who is a member of the clinical commissioning group or of any body that is a member of the group or, in the case of a joint appointment, an individual who is a member of any of the groups in question or of any body that is a member of any of those groups, or

(b) an employee of the group or of any member of the group or, in the case of a joint appointment, an employee of any of the groups in question or of any member of those groups.

(5) If the accountable officer is not an employee of the clinical commissioning group or, in the case of a joint appointment, of any of the groups in question, the group or any of the groups may pay remuneration and travelling or other allowances to the accountable officer in accordance with determinations made by its governing body under section 14L(3)(a).

(6) A clinical commissioning group may, for or in respect of its accountable officer, make arrangements for providing pensions, allowances or gratuities.

(7) The arrangements that may be made under sub-paragraph (6) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of the accountable officer where the officer suffers loss of office or loss or diminution of emoluments.

(8) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (6) include arrangements for the accountable officer to be a member of the scheme.

(9) The accountable officer is responsible for ensuring that the clinical commissioning group or, in the case of a joint appointment, each of the groups in question—

(a) complies with its obligations under—

(i) sections 14Q and 14R,

(ii) sections 223H to 223J,

(iii) paragraphs 17 to 19 of this Schedule, and

(iv) any other provision of this Act specified in a document published by the Board for the purposes of this sub-paragraph, and

(b) exercises its functions in a way which provides good value for money.

Remuneration etc for members of governing bodies

13 (1) A clinical commissioning group may pay members of its governing body such remuneration and travelling or other allowances as it considers appropriate.

(2) A clinical commissioning group may, for or in respect of such members of its governing body as it may determine, make arrangements for providing pensions, allowances or gratuities.

(3) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 arrangements that may be made under sub-paragraph (2) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any members of the governing body who suffer loss or diminution of emoluments.

(5) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (2) include arrangements for members of the governing body to be members of the scheme.

(6) Sub-paragraph (2) does not apply to members of the governing body who are—
- (a) members or employees of the clinical commissioning group, or
- (b) members or employees of a body that is a member of the clinical commissioning group.

Additional powers in respect of payment of allowances

14 A clinical commissioning group may pay such travelling or other allowances as it considers appropriate to any of the following—
- (a) members of the clinical commissioning group who are individuals;
- (b) individuals authorised to act on behalf of a member of the clinical commissioning group in dealings between the member and the group;
- (c) members of any committee or sub-committee of the clinical commissioning group or its governing body.

Trust funds and trustees

15 (1) The Secretary of State may by order provide for the appointment of trustees for a clinical commissioning group to hold property on trust—
- (a) for the general or any specific purposes of the group, or
- (b) for any purposes relating to the health service in England.

(2) An order under sub-paragraph (1) may—
- (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
- (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
- (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and
- (d) make provision with respect to the term of office of any trustee and his or her removal from office.

(3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the clinical commissioning group to the trustees.

Externally financed development agreements

16 (1) The powers of a clinical commissioning group include power to enter into externally financed development agreements.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.

(3) The Secretary of State may give a certificate under this paragraph if—
  (a) in the Secretary of State's opinion the purpose or main purpose of the agreement is the provision of services or facilities in connection with the discharge by a clinical commissioning group of any of its functions, and
  (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.

(4) If a clinical commissioning group enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.

(5) In sub-paragraph (3)(b) "another party" means any party to the agreement other than the clinical commissioning group.

(6) The fact that an agreement made by a clinical commissioning group has not been certified under this paragraph does not affect its validity.

Accounts and audits

17 (1) A clinical commissioning group must keep proper accounts and proper records in relation to the accounts.

(2) A clinical commissioning group must prepare annual accounts in respect of each financial year.

(3) The Board may, with the approval of the Secretary of State, direct a clinical commissioning group to prepare accounts in respect of such period or periods as may be specified in the direction.

(4) The Board may, with the approval of the Secretary of State, give directions to a clinical commissioning group as to—
  (a) the methods and principles according to which its annual or other accounts must be prepared, and
  (b) the form and content of such accounts.

(5) The annual accounts and, if the Board so directs, accounts prepared by virtue of sub-paragraph (3) must be audited in accordance with the Audit Commission Act 1998 by an auditor or auditors appointed in accordance with arrangements made by the Board for the purposes of this paragraph.

(6) The Comptroller and Auditor General may examine—
  (a) the annual accounts and any records relating to them, and
  (b) any report on them by the auditor or auditors.

(7) A clinical commissioning group must send its audited annual accounts, and any audited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.

(8) The Board may direct a clinical commissioning group to send its unaudited annual accounts, and any unaudited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(9) For the purposes of this paragraph "financial year" includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

Provision of financial information to Board

18 (1) The Board may direct a clinical commissioning group to supply it with such information relating to its accounts or to its income or expenditure, or its use of resources, as may be specified in the direction.

(2) The power conferred by sub-paragraph (1) includes power to direct a clinical commissioning group to supply the Board with—

(a) estimates of its future income or expenditure or its future use of resources;

(b) any information which the Board considers is necessary to enable it to verify any other information supplied to it under sub-paragraph (1).

(3) A clinical commissioning group must supply the Board with any information specified in a direction under sub-paragraph (1) within such period as may be specified in the direction.

(4) In this paragraph, a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

Provision of information required by the Secretary of State

19 (1) The Secretary of State may require each clinical commissioning group to provide the Board with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

(3) The powers conferred by this paragraph must be exercised in the same way in relation to each clinical commissioning group.

(4) The Board must give any information obtained by it under sub-paragraph (1) to the Secretary of State, in such form, and at such time or within such period, as the Secretary of State may require.

Incidental powers

20 The power conferred on a clinical commissioning group by section 2 includes, in particular, power to—

(a) enter into agreements,

(b) acquire and dispose of property, and

(c) accept gifts (including property to be held on trust for the purposes of the clinical commissioning group).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Seal and evidence

21 (1) The application of a clinical commissioning group's seal must be authenticated by the signature of any person who has been authorised (generally or specially) for that purpose.

(2) Any instrument which, if executed by an individual, would not need to be under seal may be executed on behalf of a clinical commissioning group by any person who has been authorised (generally or specially) for that purpose.

(3) A document purporting to be duly executed under a clinical commissioning group's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proven, taken to be so executed or signed.

PART 3

TRANSFER SCHEMES

22 The things that may be transferred under a property transfer scheme or a staff transfer scheme under section 14I include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme;

(c) criminal liabilities.

23 A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;

(d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee.

24 A property transfer scheme may make provision for the shared ownership or use of property.

25 A staff transfer scheme may make provision which is the same or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

26 A property transfer scheme or a staff transfer scheme may provide—

(a) for the scheme to be modified by agreement after it comes into effect, and

(b) for any such modifications to have effect from the date when the original scheme comes into effect.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 2

Section 13

STRATEGIC HEALTH AUTHORITIES

Corporate status

1 Each Strategic Health Authority is a body corporate.

Pay and allowances

2 (1) The Secretary of State may pay to—

(a) the chairman of a Strategic Health Authority, and

(b) any member of a Strategic Health Authority who is appointed by the Secretary of State,

such remuneration as he may determine with the approval of the Treasury.

(2) The Secretary of State may provide as he may determine with the approval of the Treasury for the payment of a pension, allowance or gratuity to or in respect of the chairman of a Strategic Health Authority.

(3) Where a person ceases to be chairman of a Strategic Health Authority, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may determine with the approval of the Treasury.

(4) The Secretary of State may pay to a member of a Strategic Health Authority, or of a committee or sub-committee of, or joint committee or joint sub-committee including, a Strategic Health Authority, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as he may determine with the approval of the Treasury.

(5) Allowances may not be paid under sub-paragraph (4) except in connection with the exercise, in such circumstances as the Secretary of State may determine with the approval of the Treasury, of such functions as he may so determine.

(6) Payments under this paragraph must be made at such times, and in such manner and subject to such conditions, as the Secretary of State may determine with the approval of the Treasury.

Membership of Strategic Health Authorities

3 A Strategic Health Authority consists of—

(a) a chairman appointed by the Secretary of State,

(b) not more than a prescribed number of persons (not being officers of the Strategic Health Authority) appointed by the Secretary of State, and

(c) a prescribed number of officers of the Strategic Health Authority.

4 Regulations may provide that all or any of the persons appointed as members of a Strategic Health Authority under paragraph 3(b)—

(a) must hold posts of a prescribed description, or

(b) must fulfil any other prescribed conditions.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 must provide that each of the persons who is a member of a Strategic Health Authority under paragraph 3(c) must either—

(a) hold an office of the Strategic Health Authority of a prescribed description, or

(b) be appointed by the chairman of the Strategic Health Authority and the persons appointed as members of the Strategic Health Authority under paragraph 3(c).

6 Regulations may provide for a person of a prescribed description who is not an officer of a Strategic Health Authority to be treated for the purposes of this Schedule, and any other prescribed provision relating to members of (or of committees or sub-committees of) Strategic Health Authorities, as if he were such an officer.

Staff

7 (1) A Strategic Health Authority may employ such officers as it may determine.

(2) A Strategic Health Authority may—

(a) pay its officers such remuneration and allowances, and

(b) employ them on such other terms and conditions,

as it may determine.

(3) A Strategic Health Authority must, in exercising its powers under sub-paragraph (1) or (2), act in accordance with regulations and any directions given by the Secretary of State.

(4) Regulations and directions under sub-paragraph (3) may make provision with respect to any matter connected with the employment by a Strategic Health Authority of its officers, including in particular provision—

(a) with respect to the qualifications of persons who may be employed as officers of a Strategic Health Authority,

(b) requiring a Strategic Health Authority to employ a chief officer and officers of such other descriptions as may be prescribed and to employ, for the purpose of performing prescribed functions of the Strategic Health Authority or any other body, officers having prescribed qualifications or experience, and

(c) as to the manner in which any officers of a Strategic Health Authority must be appointed.

(5) A direction under sub-paragraph (3) may relate to a particular officer or class of officer specified in the direction.

(6) Regulations and directions under sub-paragraph (3) may provide for approvals or determinations to have effect from a date specified in them.

(7) The date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate.

(8) Regulations may provide for the transfer of officers from one Strategic Health Authority to another Strategic Health Authority or to a Special Health Authority, and for arrangements under which the services of an officer of a Strategic Health

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Authority are placed at the disposal of another Strategic Health Authority, a Special Health Authority or a local authority.

(9) Sub-paragraph (11) applies where the registration of a dental practitioner in the dentists register is suspended—
  (a) by an interim suspension order under section 32 of the Dentists Act 1984 (c. 24) (interim orders), or
  (b) by a direction or an order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(10) For the purposes of sub-paragraph (9), a "relevant determination" that a practitioner's fitness to practice is impaired is a determination which is based solely on—
  (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),
  (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or
  (c) both those grounds.

(11) The suspension does not terminate any contract of employment made between the dental practitioner and a Strategic Health Authority, but a person whose registration is so suspended must not perform any duties under a contract made between him and a Strategic Health Authority which involves the practice of dentistry within the meaning of the Dentists Act 1984.

(12) Directions may be given—
  (a) by the Secretary of State to a Strategic Health Authority to place the services of any of its officers at the disposal of another Strategic Health Authority or of a Special Health Authority,
  (b) by the Secretary of State to any Strategic Health Authority to employ as an officer of the Strategic Health Authority any person who is or was employed by another Strategic Health Authority or by a Special Health Authority and is specified in the direction.

(13) Regulations made in pursuance of this paragraph may not require that all consultants employed by a Strategic Health Authority must be so employed whole-time.

8 (1) The Secretary of State must, before he makes regulations under paragraph 7, consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.

(2) The Secretary of State must, before he gives directions to a Strategic Health Authority under paragraph 7(12) in respect of any officer of a Strategic Health Authority—
  (a) consult the officer about the directions,
  (b) satisfy himself that the Strategic Health Authority of which he is an officer has consulted the officer about the placing or employment in question, or
  (c) in the case of a direction under paragraph 7(12)(a), consult with respect to the directions such body as he may recognise as representing the officer.

(3) But if the Secretary of State—
  (a) considers it necessary to give directions under paragraph 7(12)(a) for the purpose of dealing temporarily with an emergency, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) has previously consulted bodies recognised by him as representing the relevant officers about the giving of directions for that purpose,

the Secretary of State may disregard sub-paragraph (2) in relation to the directions.

Miscellaneous

9 Provision may be made by regulations as to—

(a) the appointment and tenure of office of the chairman, vice-chairman and members of a Strategic Health Authority,

(b) the appointment and tenure of office of any members of a committee or sub-committee of a Strategic Health Authority who are not members of the Strategic Health Authority,

(c) the appointment and tenure of office of any members of a joint committee or joint sub-committee including a Strategic Health Authority who are not members of the Strategic Health Authority,

[[F380](d) the circumstances in which the chairman or vice-chairman or any member of a Strategic Health Authority may be suspended from office,**]**

(e) the appointment and constitution of committees and sub-committees (and joint committees and joint sub-committees) of (or including) a Strategic Health Authority (including any such committees consisting wholly or partly of persons who are not members of the Strategic Health Authority in question), and

(f) the procedure of a Strategic Health Authority and of such committees and sub-committees as are mentioned in paragraph (e).

Textual Amendments

F380 Sch. 2 para. 9(d) substituted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 3 para. 10** (with Sch. 3 para. 19); S.I. 2010/30, art. 2(d)

10 Regulations made under this Schedule may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Strategic Health Authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

11 A Strategic Health Authority may pay subscriptions, of such amounts as the Secretary of State may approve, to the funds of such bodies as he may approve.

12 A Strategic Health Authority has power to accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Strategic Health Authority or for any purposes relating to the health service).

13 (1) The Secretary of State may by order provide for the appointment of trustees for a Strategic Health Authority to hold property on trust—

(a) for the general or any specific purposes of the Strategic Health Authority (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the Strategic Health Authority), or

(b) for any purposes relating to the health service.

(2) An order under sub-paragraph (1) may—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where under sub-paragraph (1) trustees have been appointed for a Strategic Health Authority, the Secretary of State may by order provide for the transfer of any trust property from the Strategic Health Authority to the trustees.

14 The proceedings of a Strategic Health Authority are not invalidated by any vacancy in its membership or by any defect in a member's appointment.

15 (1) A Strategic Health Authority may—

(a) make available at a hospital for which it has responsibility accommodation or services for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Strategic Health Authority in respect of the accommodation or services, and

(b) make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis.

(2) A Strategic Health Authority may exercise the power conferred by sub-paragraph (1) only if it is satisfied that its exercise—

(a) does not to any significant extent interfere with the performance by the Strategic Health Authority of any function conferred on it under this Act to provide accommodation or services of any kind, and

(b) does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

(3) Before a Strategic Health Authority decides to make accommodation or services available under sub-paragraph (1), it must consult organisations representative of the interests of persons likely to be affected by the decision.

(4) A Strategic Health Authority may allow accommodation or services which are made available under sub-paragraph (1) to be so made available in connection with treatment in pursuance of arrangements—

(a) made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital,

(b) for the treatment of private patients of that practitioner.

(5) References in this paragraph to a health service hospital include references to such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

16 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Strategic Health Authority of any function exercisable by it by virtue of section 7 or section 14 are enforceable by or against that Strategic Health Authority (and no other body).

(2) This paragraph does not apply in relation to the joint exercise of any functions by a Strategic Health Authority with another body under section 14(2)(c).

17 Provision may be made by regulations with respect to the recording of information by a Strategic Health Authority, and the furnishing of information by a Strategic Health Authority to the Secretary of State, another Strategic Health Authority or a Special Health Authority.

SCHEDULE 3

Section 18

PRIMARY CARE TRUSTS

PART 1

CONSTITUTION AND MEMBERSHIP

Status

1 Each Primary Care Trust is a body corporate.

2 (1) A Primary Care Trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) A Primary Care Trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Membership

3 The members of a Primary Care Trust are—

(a) a chairman appointed by the Secretary of State,

(b) officers of the Primary Care Trust, and

(c) a number of persons who are not officers of the Primary Care Trust.

4 (1) Regulations may make provision about—

(a) the appointment of the chairman and other members of a Primary Care Trust (including any conditions to be fulfilled for appointment),

(b) the tenure of office of the chairman and other members of a Primary Care Trust (including the circumstances in which they cease to hold office or may be removed or suspended from office),

(c) how many persons may be appointed as members of a Primary Care Trust and how many of those members may be officers (a minimum and maximum number may be specified for both purposes),

(d) the appointment and constitution of any committees of a Primary Care Trust (which may include or consist of persons who are not members of the Primary Care Trust),

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(e) the appointment and tenure of office of the members of any committees of a Primary Care Trust,

(f) the procedure to be followed by a Primary Care Trust, and by any committee of the Primary Care Trust, in the exercise of its functions,

(g) the circumstances in which a person who is not an officer of the Primary Care Trust must be treated as if he were such an officer.

(2) The power to make provision under paragraphs (c) and (f) of sub-paragraph (1) includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period (within the meaning of paragraph 14(2)).

(3) Any regulations under this paragraph may, in particular, make provision to deal with cases where the post of any officer of a Primary Care Trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

5 Any reference in this Schedule to a committee of a Primary Care Trust includes a reference to sub-committees of, and joint committees and joint sub-committees including, the Primary Care Trust.

6 The validity of any proceedings of a Primary Care Trust, or of any of its committees, is not affected by any vacancy among the members or by any defect in the appointment of any member.

Staff

7 (1) A Primary Care Trust may employ such officers as it considers appropriate.

(2) A Primary Care Trust may—

(a) pay its officers such remuneration and allowances, and

(b) employ them on such other terms and conditions,

as it considers appropriate.

(3) A Primary Care Trust must—

(a) in exercising its powers under sub-paragraph (2), and

(b) otherwise in connection with the employment of its officers,

act in accordance with regulations and any directions given by the Secretary of State.

(4) Before making any regulations under sub-paragraph (3), the Secretary of State must consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.

8 (1) The Secretary of State may direct a Primary Care Trust—

(a) to make the services of any of its officers available to another Primary Care Trust, or

(b) to employ any person who is or was employed by another Primary Care Trust and is specified in the direction.

(2) Before he gives a direction under sub-paragraph (1), the Secretary of State must—

(a) consult the person whose services will be made available or who will be employed,

(b) satisfy himself that the Primary Care Trust has consulted that person, or

(c) consult any such body as he may recognise as representing that person.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Sub-paragraph (2) does not apply in relation to a direction under sub-paragraph (1)(a) if the Secretary of State—

(a) considers it necessary to give the direction for the purpose of dealing temporarily with an emergency, and

(b) has previously consulted bodies recognised by him as representing the person whose services will be made available about the giving of directions for that purpose.

9 In addition to making provision in relation to Strategic Health Authorities or Special Health Authorities, regulations under paragraph 7(8) of Schedule 2 or under paragraph 3(8) of Schedule 6 may also provide—

(a) for the transfer of officers of one Primary Care Trust to another, and

(b) for arrangements under which the officers of a Primary Care Trust are placed at the disposal of another Primary Care Trust or a local authority.

10 (1) Sub-paragraph (3) applies where the registration of a dental practitioner in the dentists register is suspended—

(a) by an interim suspension order under section 32 of the Dentists Act 1984 (c. 24) (interim orders), or

(b) by a direction or an order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a "relevant determination" that a practitioner's fitness to practice is impaired is a determination which is based solely on—

(a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),

(b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or

(c) both those grounds.

(3) The suspension does not terminate any contract of employment made between the dental practitioner and a Primary Care Trust, but a person whose registration is so suspended must not perform any duties under a contract made between him and a Primary Care Trust which involves the practice of dentistry within the meaning of the Dentists Act 1984.

Remuneration, pensions etc of members

11 (1) A Primary Care Trust may pay the chairman and any other members of the Primary Care Trust such remuneration and such travelling and other allowances as may be determined by the Secretary of State.

(2) A Primary Care Trust may pay the chairman or any person who has been chairman of the trust such pension, allowance or gratuity as may be determined by the Secretary of State.

(3) A Primary Care Trust may pay the members of any committee of a Primary Care Trust such travelling and other allowances as may be determined by the Secretary of State.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) If, when a person ceases to be chairman of a Primary Care Trust, the Secretary of State determines that there are special circumstances which make it right that that person should receive compensation, the Primary Care Trust must pay to him a sum by way of compensation of such amount as the Secretary of State may determine.

Trust funds and trustees

12 (1) The Secretary of State may by order provide for the appointment of trustees for a Primary Care Trust to hold property on trust—

(a) for the general or any specific purposes of the Primary Care Trust (including the purposes of any specific hospital or other establishment or facility which is managed by the Trust), or

(b) for any purposes relating to the health service.

(2) The order may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate,

(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where trustees have been appointed for a Primary Care Trust under sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the Primary Care Trust to the trustees.

PART 2

PCT ORDERS

13 (1) A PCT order must specify—

(a) the name of the Primary Care Trust, and

(b) the operational date of the Primary Care Trust.

(2) The operational date of a Primary Care Trust is the date on which functions exercisable by it may be undertaken fully by the Primary Care Trust.

14 (1) A PCT order may provide for the establishment of a Primary Care Trust with effect from a date earlier than the operational date.

(2) During the period beginning with that earlier date and ending with the day immediately preceding the operational date (referred to in this Schedule as the preparatory period), the exercise of any functions by the Primary Care Trust must be limited to such exercise as may be specified in the PCT order for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) A PCT order may require a Strategic Health Authority whose area includes any part of the area of a Primary Care Trust to meet costs of the Primary Care Trust performing its functions during the preparatory period by doing either or both of the following—
  (a) discharging such liabilities of the Primary Care Trust as may be incurred during the preparatory period and are of a description specified in the order,
  (b) paying the Primary Care Trust sums to enable it to meet (or to contribute towards its meeting) expenditure of a description specified in the order.

(4) A PCT order may require an NHS trust, or a Strategic Health Authority whose area includes any part of the area of a Primary Care Trust, to make available to the Primary Care Trust during the preparatory period—
  (a) premises and other facilities of the NHS trust or Strategic Health Authority,
  (b) staff of the NHS trust, or
  (c) officers of the Strategic Health Authority.

PART 3

POWERS AND DUTIES

General

15 (1) A Primary Care Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

(2) In particular it may—
  (a) acquire and dispose of property,
  (b) enter into contracts, and
  (c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Primary Care Trust or for any purposes relating to the health service).

Rights and liabilities

16 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Primary Care Trust of any function exercisable by it by virtue of section 7, 19 or 15 are enforceable by or against that Primary Care Trust (and no other body).

(2) This paragraph does not apply in relation to the joint exercise of any functions by a Primary Care Trust with another body under section 19(2)(c).

Powers of Primary Care Trusts to enter into externally financed development agreements

17 (1) The powers of a Primary Care Trust include power to enter into externally financed development agreements.

(2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.

(3) The Secretary of State may give a certificate under this paragraph if—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) in his opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the Primary Care Trust of any of its functions, and

(b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.

(4) If a Primary Care Trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.

(5) "Another party" means any party to the agreement other than the Primary Care Trust.

(6) The fact that an agreement made by a Primary Care Trust has not been certified under this paragraph does not affect its validity.

Research

18 (1) A Primary Care Trust may conduct, commission or assist the conduct of research.

(2) A Primary Care Trust may, in particular, make officers available or provide facilities under sub-paragraph (1).

Training

19 A Primary Care Trust may—

(a) make officers available in connection with any instruction provided under section 63 of the Health Services and Public Health Act 1968 (c. 46),

(b) make officers and facilities available in connection with training by a university or any other body providing training in connection with the health service.

Specific duties

20 (1) As soon as is practicable after the end of each financial year each Primary Care Trust must prepare a report on the Primary Care Trust's activities during that year and must send a copy of the report to each Strategic Health Authority whose area includes any part of the Primary Care Trust's area and to the Secretary of State.

(2) The report must give details of the measures the Primary Care Trust has taken to promote economy, efficiency and effectiveness in using its resources for the exercise of its functions.

(3) A Primary Care Trust must prepare and send such other reports, and supply such information, to any Strategic Health Authority whose area includes any part of the Primary Care Trust's area or to the Secretary of State as it, or he, requires.

21 Provision must be made by regulations requiring Primary Care Trusts to publicise—

(a) the Primary Care Trust's audited accounts,

(b) the Primary Care Trust's annual reports prepared under paragraph 20,

(c) any report on the Primary Care Trust's accounts made pursuant to section 8 of the Audit Commission Act 1998 (c. 18) (report of auditor on matter of public interest), and

(d) any other document as may be prescribed,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

by taking such steps as may be specified in the regulations.

Compulsory acquisition

22 (1) A Primary Care Trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the Primary Care Trust and confirmed by the Secretary of State.

(2) The Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.

(3) No order may be made by a Primary Care Trust under Part 2 of the Acquisition of Land Act 1981 (c. 67) in respect of any land unless the proposal to acquire the land compulsorily—

(a) has been submitted to the Secretary of State in the form, and with the information, required by him, and

(b) has been approved by him.

Dissolution

23 (1) The Secretary of State may, if a Primary Care Trust is dissolved, by order transfer (or provide for the transfer) to himself or to a Strategic Health Authority, an NHS trust, a Special Health Authority, an NHS foundation trust or another Primary Care Trust any property or liabilities of the dissolved trust.

(2) The liabilities which may be transferred by virtue of sub-paragraph (1) to a Strategic Health Authority, an NHS trust, a Special Health Authority, an NHS foundation trust or another Primary Care Trust include criminal liabilities.

(3) If any consultation requirements apply, they must be complied with before the order is made.

(4) "Consultation requirements" means requirements about consultation contained in regulations.

PART 4

TRANSFER OF PROPERTY

24 (1) The Secretary of State may by order (referred to in this paragraph and paragraph 25 as a transfer order)—

(a) transfer (or provide for the transfer of) any of the property and liabilities of a health service authority to a Primary Care Trust,

(b) create or impose (or provide for the creation or imposition of) new rights or liabilities in respect of property transferred or retained.

(2) Any property and liabilities which—

(a) belong to a health service authority other than the Secretary of State or are used or managed by a Strategic Health Authority, and

(b) will be transferred to a Primary Care Trust by or under a transfer order,

must be identified by agreement between the health service authority (or Strategic Health Authority) and the Primary Care Trust or, in default of agreement, by direction of the Secretary of State.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Where a transfer order provides for the transfer of—
  (a) land held on lease from a third party, or
  (b) any other asset leased or hired from a third party or in which a third party has an interest,

the transfer is binding on the third party despite the fact that, apart from this sub-paragraph, the transfer would have required the third party's consent or concurrence.

(4) "Third party" means a person other than a health service authority.

(5) In this paragraph and paragraph 25, "health service authority" means the Secretary of State, a Strategic Health Authority, a Primary Care Trust or an NHS trust.

25 (1) Stamp duty is not chargeable in respect of any transfer to a Primary Care Trust effected by or under a transfer order.

(2) Where it becomes necessary, for the purpose of a transfer by or under a transfer order, to apportion any property or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose.

(3) Where a transfer order transfers (or provides for the transfer of) any property or rights to which paragraph 24(3) applies, the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties (within the meaning of that sub-paragraph), including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

(4) A certificate issued by the Secretary of State that—
  (a) any specified property,
  (b) any specified interest in or right over any property, or
  (c) any specified right or liability,

has been vested in a Primary Care Trust by or under a transfer order is conclusive evidence of that fact for all purposes.

(5) "Specified" means specified in the certificate.

(6) A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

(7) Paragraph 24 and this paragraph do not affect—
  (a) any existing power of a health service authority to transfer property or liabilities to a Primary Care Trust,
  (b) the extent of the power conferred by section 272(8).

PART 5

TRANSFER OF STAFF

26 (1) The Secretary of State may by order transfer to a Primary Care Trust any specified description of employees to which this paragraph applies.

(2) This paragraph applies to employees of—
  (a) a Strategic Health Authority,
  (b) a Primary Care Trust,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) an NHS trust.

(3) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.

27 (1) The contract of employment of an employee transferred under paragraph 26—

(a) is not terminated by the transfer, and

(b) has effect from the date of the transfer as if originally made between the employee and the Primary Care Trust to which he is transferred.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the body from which an employee is transferred under paragraph 26 under or in connection with his contract of employment are by virtue of this sub-paragraph transferred to the Primary Care Trust to which the employee is transferred under that paragraph, and

(b) anything done before the date of the transfer by or in relation to the body from which he is so transferred in respect of him or the contract of employment is deemed from that date to have been done by or in relation to the Primary Care Trust to which he is transferred.

(3) Sub-paragraphs (1) and (2) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the body from which they would be transferred, or the Primary Care Trust to which they would be transferred, that he objects to the transfer.

(4) Where an employee objects as mentioned in sub-paragraph (3) his contract of employment with the body from which he would be transferred is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.

(5) This paragraph does not affect any right of an employee to which paragraph 26 applies to terminate his contract of employment if a substantial change is made to his detriment in his working conditions.

(6) But no such right arises by reason only that under this paragraph the identity of his employer changes, unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

28 (1) Where an employee will be transferred by an order under paragraph 26 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, divided so as to constitute two separate contracts of employment between the employee and the transferor and the employee and the Primary Care Trust in question.

(2) Where an employee's contract of employment is divided as provided under sub-paragraph (1), the order must provide for paragraph 27 to have effect in the case of the employee and his contract of employment subject to appropriate modifications.

29 Where a Primary Care Trust is dissolved, an order under paragraph 23 includes power to transfer employees of the Primary Care Trust and the order may make any provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under paragraph 26.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 4

Section 25

NHS TRUSTS ESTABLISHED UNDER SECTION 25

PART 1

CONSTITUTION, ESTABLISHMENT, ETC

Status

1 Each NHS trust is a body corporate.

2 (1) An NHS trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) An NHS trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Board of directors

3 (1) Each NHS trust has a board of directors consisting of—

(a) a chairman appointed by the Secretary of State, and

(b) executive and non-executive directors.

(2) Sub-paragraph (1)(b) is subject to paragraph 7(2).

(3) An executive director is a director who is an employee of the NHS trust, and a non-executive director is a director who is not an employee of the NHS trust.

(4) Sub-paragraph (3) is subject to any provision made by regulations under paragraph 4(1)(d).

Regulations

4 (1) The Secretary of State may by regulations make provision with respect to—

(a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they cease to hold, or may be removed from, office or may be suspended from performing the functions of the office),

(b) the persons by whom the directors and any of the officers must be appointed and the manner of their appointment,

(c) the maximum and minimum numbers of the directors,

(d) the circumstances in which a person who is not an employee of the NHS trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director,

(e) the proceedings of the NHS trust (including the validation of proceedings in the event of a vacancy or defect in appointment), and

(f) the appointment, constitution and exercise of functions by committees and sub-committees of the NHS trust (whether or not consisting of or including any members of the board).

(2) Regulations under sub-paragraph (1) may, in particular, make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

persons or where the functions of such an officer are in any other way performed by more than one person.

Provision to be made by first NHS trust order

5 (1) The first NHS trust order made in relation to any NHS trust must specify—
- (a) the name of the NHS trust,
- (b) the functions of the NHS trust,
- (c) the number of executive directors and non-executive directors,
- (d) where the NHS trust has a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order,
- (e) the operational date of the NHS trust, and
- (f) if a scheme is to be made under paragraph 8, the Primary Care Trusts, Special Health Authority or Local Health Board which is to make the scheme.

(2) The functions which may be specified in an NHS trust order include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.

(3) For the purposes of sub-paragraph (1)(d), an NHS trust has a significant teaching commitment in the following cases—
- (a) if the NHS trust is established to provide services at a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment, and
- (b) in any other case, if the Secretary of State so provides in the order.

(4) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—
- (a) is employed by the university in question, and
- (b) would also, apart from this sub-paragraph, be regarded as employed by the NHS trust,

his employment by the NHS trust must be disregarded in determining whether, if appointed, he will be a non-executive director of the NHS trust.

(5) The operational date of the NHS trust is the date on which it will begin to undertake the whole of the functions conferred on it.

(6) An NHS trust order must specify the accounting date of the NHS trust.

Temporary availability of staff etc.

6 (1) An NHS trust order may require a Strategic Health Authority, Special Health Authority, Primary Care Trust or Local Health Board to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the NHS trust and the transfer of premises or other facilities to the NHS trust.

(2) An NHS trust order making provision under this paragraph may make provision with respect to the time when the functions of the Strategic Health Authority, Special Health Authority, Primary Care Trust or Local Health Board under the provision are to come to an end.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Establishment of NHS trust prior to operational date

7 (1) An NHS trust order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust and, during the period between that earlier date and the operational date, the NHS trust has such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.

(2) If an NHS trust order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust must be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.

(3) If an NHS trust order makes the provision referred to in sub-paragraph (1), the order may require a Strategic Health Authority, Special Health Authority or Local Health Board to discharge such liabilities of the NHS trust as—

(a) may be incurred during the period referred to in that sub-paragraph, and

(b) are of a description specified in the order.

Transfer of staff to NHS trusts

8 (1) This paragraph applies to any person who, immediately before an NHS trust's operational date—

(a) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work solely at, or for the purposes of, a hospital or other establishment or facility which will become the responsibility of the NHS trust, or

(b) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this paragraph by a scheme made by the Special Health Authority, Primary Care Trust or Local Health Board specified as mentioned in paragraph 5(1)(f).

(2) Sub-paragraph (1) is subject to sub-paragraph (6).

(3) A scheme under this paragraph does not have effect unless approved by the Secretary of State.

(4) Subject to sub-paragraphs (9) to (11), the contract of employment between a person to whom this paragraph applies and the Special Health Authority, Primary Care Trust or Local Health Board by whom he is employed has effect from the operational date as if originally made between him and the NHS trust.

(5) In particular—

(a) all the rights, powers, duties and liabilities of the Special Health Authority, Primary Care Trust or Local Health Board under or in connection with a contract to which sub-paragraph (4) applies are by virtue of this paragraph transferred to the NHS trust on its operational date, and

(b) anything done before that date by or in relation to the Special Health Authority, Primary Care Trust or Local Health Board in respect of that contract or the employee is deemed from that date to have been done by or in relation to the NHS trust.

(6) In any case where—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) an NHS trust order provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust,

(b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the NHS trust to a person who at that time is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which will become the responsibility of the NHS trust, and

(c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,

sub-paragraphs (4) and (5) have effect in relation to that person's contract of employment as if he were a person to whom this paragraph applies and as if any reference in those sub-paragraphs to the operational date of the NHS trust were a reference to the date on which he takes up employment with the NHS trust.

(7) Sub-paragraphs (4) and (5) do not affect any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only of the change in employer effected by this paragraph.

(8) A scheme under this paragraph may designate a person either individually or as a member of a class or description of employees.

(9) In the case of a person who falls within sub-paragraph (1)(b), a scheme under this paragraph may provide that, with effect from the NHS trust's operational date, his contract of employment (his "original contract") must be treated, in accordance with the scheme, as divided so as to constitute—

(a) a contract of employment with the NHS trust, and

(b) a contract of employment with the Special Health Authority, Primary Care Trust or Local Health Board by whom he was employed before that date (the "transferor authority").

(10) Where a scheme makes provision as mentioned in sub-paragraph (9)—

(a) the scheme must secure that the benefits to the employee under the two contracts referred to in that sub-paragraph, when taken together, are not less favourable than the benefits under his original contract,

(b) this paragraph applies in relation to the contract referred to in sub-paragraph (9)(a) as if it were a contract transferred under this paragraph from the transferor authority to the NHS trust, and

(c) so far as necessary to preserve any rights and obligations, the contract referred to in sub-paragraph (9)(b) must be regarded as a continuation of the employee's original contract.

(11) Where, as a result of the provisions of this paragraph, by virtue of his employment during any period after the operational date of the NHS trust—

(a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and

(b) he also has statutory rights against the trust under Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) must be taken as satisfying his entitlement to benefits under that Part of that Act.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Transfer of property and liabilities to NHS trusts

9 (1) The Secretary of State may by order transfer, or provide for the transfer of, any of the property and liabilities of a Strategic Health Authority, a Primary Care Trust, a Special Health Authority, a Local Health Board or the Secretary of State, to an NHS trust, with effect from any date as may be specified in the order.

(2) An order under this paragraph may create or impose such new rights or liabilities in respect of what is transferred or what is retained as appear to the Secretary of State to be necessary or expedient.

(3) Nothing in this paragraph affects the power of the Secretary of State or any power of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board to transfer property or liabilities to an NHS trust otherwise than under sub-paragraph (1).

(4) Stamp duty is not chargeable in respect of any transfer to an NHS trust effected by or by virtue of an order under this paragraph.

(5) Where an order under this paragraph provides for the transfer—

(a) of land held on lease from a third party, or

(b) of any other asset leased or hired from a third party or in which a third party has an interest,

the transfer is binding on the third party notwithstanding that, apart from this sub-paragraph, it would have required his consent or concurrence.

(6) "Third party" means a person other than the Secretary of State, a Strategic Health Authority, a Primary Care Trust, a Special Health Authority or a Local Health Board.

(7) Any property and liabilities which—

(a) belong to, or are used or managed by, a Strategic Health Authority, Special Health Authority or Local Health Board or belong to a Primary Care Trust, and

(b) will be transferred to an NHS trust by or by virtue of an order under this paragraph,

must be identified by agreement between the Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board and the NHS trust or, in default of agreement, by direction of the Secretary of State.

(8) Where, for the purpose of a transfer pursuant to an order under this paragraph, it becomes necessary to apportion any property or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose.

(9) Where any such property or rights fall within sub-paragraph (5), the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

(10) In the case of any transfer made by or pursuant to an order under this paragraph, a certificate issued by the Secretary of State that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order is conclusive evidence of that fact for all purposes.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(11) An order under this paragraph may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

(12) Sub-paragraph (11) does not affect section 272(8).

Trust funds and trustees

10 (1) The Secretary of State may by order provide for the appointment of trustees for an NHS trust to hold property on trust—

(a) for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the NHS trust), or

(b) for any purposes relating to the health service.

(2) An order under sub-paragraph (1) may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where under sub-paragraph (1) trustees have been appointed for an NHS trust, the Secretary of State may by order provide for the transfer of any trust property from the NHS trust to the trustees.

Pay and allowances

11 (1) An NHS trust must pay—

(a) to the chairman and any non-executive director of the NHS trust remuneration of an amount determined by the Secretary of State, not exceeding such amount as may be approved by the Treasury,

(b) to the chairman and any non-executive director of the NHS trust such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury,

(c) to any member of a committee or sub-committee of the NHS trust who is not also a director such travelling and other allowances as may be so determined.

(2) If an NHS trust so determines in the case of a person who is or has been a chairman of the NHS trust, the NHS trust must pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury.

(3) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) in relation to different cases or descriptions of cases.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 and other information

12 (1) For each accounting year an NHS trust must prepare and send to the Secretary of State an annual report in such form as may be determined by the Secretary of State.

(2) At such time or times as may be prescribed, an NHS trust must hold a public meeting at which must be presented—

(a) its audited accounts and annual report, and

(b) any report on the accounts made pursuant to section 8 of the Audit Commission Act 1998 (c. 18) or paragraph 19 of Schedule 8 to the Government of Wales Act 2006 (c. 32).

[[F381](2A) In the case of NHS Direct National Health Service Trust the reference to a report under section 8 of the Audit Commission Act 1998 has effect as a reference to a report under paragraph 6(2) of Schedule 15 to this Act.**]**

(3) In such circumstances and at such time or times as may be prescribed, an NHS trust must hold a public meeting at which such documents as may be prescribed must be presented.

Textual Amendments

F381 Sch. 4 para. 12(2A) inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **5(2)** (with art. 10)

Modifications etc. (not altering text)

C44 Sch. 4 para. 12(2)(b) modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 10(4)(a)** (with Sch. 3 Pt. 1)

13 An NHS trust must furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning, as, and in such form as, he may require.

PART 2

POWERS AND DUTIES

General

14 (1) An NHS trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

(2) In particular it may—

(a) acquire and dispose of property,

(b) enter into contracts, and

(c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the NHS trust or for any purposes relating to the health service).

(3) The reference in sub-paragraph (2)(c) to specific purposes of the NHS trust includes a reference to the purposes of a specific hospital or other establishment or facility at or from which services are provided by the NHS trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

NHS contracts

15 (1) In addition to carrying out its other functions, an NHS trust may, as the provider, enter into NHS contracts.

(2) An NHS trust may not, as the provider, enter into an NHS contract for the provision of high security psychiatric services (within the meaning of section 4) unless the NHS trust is approved for the purpose of this paragraph by the Secretary of State.

(3) Such approval—
- (a) must be for a period specified in the approval,
- (b) may be given subject to conditions, and
- (c) may be amended or revoked at any time.

Research

16 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

Training

17 An NHS trust may—
- (a) provide training for persons employed or likely to be employed by the NHS trust or otherwise in the provision of services under this Act, and
- (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.

Joint exercise of functions

18 An NHS trust may enter into arrangements for the carrying out, on such terms as the NHS trust considers appropriate, of any of its functions jointly with any Strategic Health Authority, Primary Care Trust, Special Health Authority, Local Health Board or other NHS trust, or any other body or individual.

Payment for accommodation or services

19 (1) According to the nature of its functions, an NHS trust may make accommodation or services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS trust in respect of the accommodation or services.

(2) An NHS trust may exercise the power conferred by sub-paragraph (1) only—
- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
- (b) in circumstances specified in directions under section 8, with the Secretary of State's consent.

Additional income

20 (1) For the purpose of making additional income available in order better to perform its functions, an NHS trust has the powers specified in section 7(2) of the Health and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Medicines Act 1988 (c. 49) (extension of powers of Secretary of State for financing the health service).

(2) The power conferred by sub-paragraph (1) may be exercised only—

(a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and

(b) in circumstances specified in directions under section 8, with the consent of the Secretary of State.

Provision of accommodation and services outside England and Wales

21 An NHS Trust may arrange for the provision of accommodation and services outside England and Wales.

Conferral of further powers by order

22 The Secretary of State may by order confer specific powers on NHS trusts, further to those provided for by paragraphs 15 to 21.

Powers of NHS trusts to enter into externally financed development agreements

23 (1) The powers of an NHS trust include power to enter into externally financed development agreements.

(2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.

(3) The Secretary of State may give a certificate under this paragraph if—

(a) in his opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the NHS trust of any of its functions, and

(b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.

(4) If an NHS trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.

(5) "Another party" means any party to the agreement other than the NHS trust.

(6) The fact that an agreement made by an NHS trust has not been certified under this paragraph does not affect its validity.

Agreements under section 92 or 107

24 An NHS trust may provide services under an agreement made under section 92 (primary medical services) or section 107 (primary dental services) and may do so as a member of a qualifying body (within the meaning given by section 93 or section 108).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Staff

25 (1) An NHS trust may employ such staff as it considers appropriate.

(2) An NHS trust may—
(a) pay its staff such remuneration and allowances, and
(b) employ them on such other terms and conditions,
as it considers appropriate.

(3) An NHS trust must—
(a) in exercising its powers under sub-paragraph (2), and
(b) otherwise in connection with the employment of its staff,
act in accordance with regulations and any directions given by the Secretary of State.

(4) Before making any regulations under sub-paragraph (3), the Secretary of State must consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.

Pensions, etc.

26 (1) An NHS trust may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.

(2) Such arrangements may include the establishment and administration, by the NHS trust or otherwise, of one or more pension schemes.

(3) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the NHS trust's employees who suffer loss of office or employment or loss or diminution of emoluments.

(4) This paragraph does not affect the generality of paragraphs 14 and 25.

Compulsory acquisition

27 (1) An NHS trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the NHS trust and confirmed by the Secretary of State.

(2) Subject to sub-paragraph (3), the Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.

(3) No order may be made by an NHS trust under Part 2 of the Acquisition of Land Act 1981 with respect to any land unless the proposal to acquire the land compulsorily—
(a) has been submitted to the Secretary of State in such form and together with such information as he may require, and
(b) has been approved by him.

PART 3

DISSOLUTION

28 (1) The Secretary of State may by order dissolve an NHS trust.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) An order under this paragraph may be made—

(a) on the application of the NHS trust concerned, or

(b) if the Secretary of State considers it appropriate in the interests of the health service.

(3) Except where it appears to the Secretary of State necessary to make an order under this paragraph as a matter of urgency **[**[F382]or where the order is made following the publication of a final report under section 65I(3)**]** , no such order may be made until after the completion of such consultation as may be prescribed.

Textual Amendments

F382 Words in Sch. 4 para. 28(3) inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(10)**, 40(1); S.I. 2010/30, art. 3(b)

29 (1) If an NHS trust is dissolved under paragraph 28, the Secretary of State may by order transfer, or provide for the transfer, to himself or an NHS body of such of the property and liabilities of the NHS trust which is dissolved as in his opinion is appropriate; and any such order may include provisions corresponding to those of paragraph 9.

(2) The liabilities which may be transferred by virtue of sub-paragraph (1) to an NHS body include criminal liabilities.

(3) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of paragraph 8, including provision for the making of a scheme by such Strategic Health Authority, Special Health Authority, Local Health Board or other body as may be specified in the order.

(4) No order may be made under this paragraph until after completion of such consultation as may be prescribed.

30 (1) If an NHS trust is dissolved under paragraph 28, the Secretary of State or such other NHS trust, Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board as he may direct must undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 11(2) or paragraph 26, would otherwise have been the responsibility of the NHS trust which has been dissolved.

(2) Sub-paragraph (1) does not affect the generality of paragraph 29.

31 An NHS trust may not be dissolved or wound up except in accordance with paragraph 28 or section 57.

PART 4

MISCELLANEOUS

Use and development of consecrated land and burial grounds

32 Section 128 of the Town and Country Planning Act 1971 (c. 78) (use and development of consecrated land and burial grounds) applies to consecrated land

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

and land comprised in a burial ground, within the meaning of that section, which an NHS trust holds for any of its purposes as if—

(a) that land had been acquired by the NHS trust as mentioned in subsection (1) of that section, and

(b) the NHS trust were a statutory undertaker, within the meaning of that Act.

Instruments etc.

33 (1) The fixing of the seal of an NHS trust must be authenticated by the signature—

(a) of the chairman or of some other person authorised (whether generally or specifically) by the NHS trust for that purpose, and

(b) of one other director.

(2) A document purporting to be duly executed under the seal of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so executed.

(3) A document purporting to be signed on behalf of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so signed.

Interpretation

34 In this Schedule—

"provide" includes manage,

"operational date" has the meaning given by paragraph 5(5).

SCHEDULE 5

Section 27

FINANCIAL PROVISION ABOUT NHS TRUSTS ESTABLISHED UNDER SECTION 25

Originating capital of NHS trusts

1 (1) Each NHS trust has an originating capital of an amount specified in an order made by the Secretary of State.

(2) The originating capital of an NHS trust is an amount representing the excess of the valuation of its assets over the amounts of its liabilities.

(3) In determining the originating capital of an NHS trust, there must be left out of account such assets or liabilities as are, or are of a class, determined for the purposes of this paragraph by the Secretary of State with the consent of the Treasury.

(4) An NHS trust's originating capital is deemed to have been issued out of moneys provided by Parliament and is an asset of the Consolidated Fund.

(5) An NHS trust's originating capital is public dividend capital.

(6) With the consent of the Treasury, the Secretary of State may determine—

(a) the dividend which is payable at any time on any public dividend capital issued, or treated as issued, to an NHS trust under this Act,

(b) the amount of any such public dividend capital which must be repaid at any time,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) any other terms on which any public dividend capital is so issued, or treated as issued.

(7) An order under sub-paragraph (1) may be made only with the consent of the Treasury.

(8) In this paragraph—

"assets" means the assets which, on or in connection with the establishment of the NHS trust, are or will be transferred to it (whether before, on or after its operational date), and

"liabilities" means the liabilities which are or will be so transferred.

Financial obligations of NHS trusts

2 (1) Each NHS trust must ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.

(2) Each NHS trust must achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it.

(3) Any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.

Borrowing

3 (1) For the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State or from any other person.

(2) Sub-paragraph (1) is subject to any direction given by the Secretary of State under section 8, to the provisions of this paragraph and to any limit imposed under this Schedule.

(3) An NHS trust may not mortgage or charge any of its assets or in any other way use any of its assets as security for a loan.

(4) The Secretary of State must determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).

Guarantees of borrowing

4 (1) The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the principal of, and the payment of interest on, any sums which an NHS trust borrows from a person other than the Secretary of State.

(2) Immediately after a guarantee is given under this paragraph, the Secretary of State must lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is issued for fulfilling a guarantee so given, the Secretary of State must lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned must make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—

(a) payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued, and

(b) payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued.

Limits on indebtedness

5 The aggregate of all sums borrowed by NHS trusts which are required to provide or manage services at or from hospitals or other establishments or facilities which are situated in England must not exceed £5,000 million or such other sum not exceeding £10,000 million as may be specified by order made by the Secretary of State with the consent of the Treasury.

Additional public dividend capital

6 The Secretary of State may, with the consent of the Treasury, instead of making a loan to an NHS trust under paragraph 3, pay an amount to the NHS trust as public dividend capital.

Supplementary payments

7 (1) The Secretary of State may make a payment to an NHS trust.

(2) The payment may be subject to such conditions as he considers appropriate, including conditions as to repayment.

Surplus funds

8 If it appears to the Secretary of State that any sum held by an NHS trust otherwise than as trustee is surplus to its foreseeable requirements, the trust must, if the Secretary of State with the approval of the Treasury and after consultation with the trust so directs, pay that sum into the Consolidated Fund.

Investment

9 (1) An NHS trust has power to invest money held by it in any investments, including investments which do not produce income, specified in directions under section 8.

(2) Sub-paragraph (1) does not apply in relation to money held by an NHS trust as trustee.

10 Any direction under section 8 with respect to—

(a) the power conferred on an NHS trust by paragraph 3, or

(b) the maximum amount which an NHS trust may invest in any investments or class of investments,

may be given only with the consent of the Treasury.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 6

Section 28

SPECIAL HEALTH AUTHORITIES ESTABLISHED UNDER SECTION 28

Corporate status

1 Each Special Health Authority is a body corporate.

Pay and allowances

2 (1) The Secretary of State may pay to—
(a) the chairman of a Special Health Authority, and
(b) any member of a Special Health Authority who is appointed by the Secretary of State,
such remuneration as he may determine with the approval of the Treasury.

(2) The Secretary of State may provide as he may determine with the approval of the Treasury for the payment of a pension, allowance or gratuity to or in respect of the chairman of a Special Health Authority.

(3) Where a person ceases to be chairman of a Special Health Authority, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may determine with the approval of the Treasury.

(4) The Secretary of State may pay to a member of a Special Health Authority, or of a committee or sub-committee of, or joint committee or joint sub-committee including, a Special Health Authority, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as he may determine with the approval of the Treasury.

(5) Allowances may not be paid under sub-paragraph (4) except in connection with the exercise, in such circumstances as the Secretary of State may determine with the approval of the Treasury, of such functions as he may so determine.

(6) Payments under this paragraph must be made at such times, and in such manner and subject to such conditions, as the Secretary of State may determine with the approval of the Treasury.

Staff

3 (1) A Special Health Authority may employ such officers as it may determine.

(2) A Special Health Authority may—
(a) pay its officers such remuneration and allowances, and
(b) employ them on such other terms and conditions,
as it may determine.

(3) A Special Health Authority must, in exercising its powers under sub-paragraph (1) or (2), act in accordance with regulations and any directions given by the Secretary of State.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Regulations and directions under sub-paragraph (3) may make provision with respect to any matter connected with the employment by a Special Health Authority of its officers, including in particular provision—

(a) with respect to the qualifications of persons who may be employed as officers of a Special Health Authority,

(b) requiring a Special Health Authority to employ a chief officer and officers of such other descriptions as may be prescribed and to employ, for the purpose of performing prescribed functions of the Special Health Authority or any other body, officers having prescribed qualifications or experience, and

(c) as to the manner in which any officers of a Special Health Authority must be appointed.

(5) A direction under sub-paragraph (3) may relate to a particular officer or class of officer specified in the direction.

(6) Regulations and directions under sub-paragraph (3) may provide for approvals or determinations to have effect from a date specified in them.

(7) The date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate.

(8) Regulations may provide for the transfer of officers from one Special Health Authority to another Special Health Authority or to a Strategic Health Authority, and for arrangements under which the services of an officer of a Special Health Authority are placed at the disposal of another Special Health Authority, a Strategic Health Authority or a local authority.

(9) Sub-paragraph (11) applies where the registration of a dental practitioner in the dentists register is suspended—

(a) by an interim suspension order under section 32 of the Dentists Act 1984 (c. 24) (interim orders), or

(b) by a direction or an order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(10) For the purposes of sub-paragraph (9), a “relevant determination” that a practitioner's fitness to practice is impaired is a determination which is based solely on—

(a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),

(b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or

(c) both those grounds.

(11) The suspension does not terminate any contract of employment made between the dental practitioner and a Special Health Authority, but a person whose registration is so suspended must not perform any duties under a contract made between him and a Special Health Authority which involves the practice of dentistry within the meaning of the Dentists Act 1984.

(12) Directions may be given—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) by the Secretary of State to a Special Health Authority to place the services of any of its officers at the disposal of another Special Health Authority or of a Strategic Health Authority,

(b) by the Secretary of State to any Special Health Authority to employ as an officer of the Special Health Authority any person who is or was employed by another Special Health Authority or by a Strategic Health Authority and is specified in the direction.

(13) Regulations made in pursuance of this paragraph may not require that all consultants employed by a Special Health Authority must be so employed whole-time.

4 (1) The Secretary of State must, before he makes regulations under paragraph 3, consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.

(2) The Secretary of State must, before he gives directions to a Special Health Authority under paragraph 3(12) in respect of any officer of a Special Health Authority—

(a) consult the officer about the directions,

(b) satisfy himself that the Special Health Authority of which he is an officer has consulted the officer about the placing or employment in question, or

(c) in the case of a direction under paragraph 3(12)(a), consult with respect to the directions such body as he may recognise as representing the officer.

(3) But if the Secretary of State—

(a) considers it necessary to give directions under paragraph 3(12)(a) for the purpose of dealing temporarily with an emergency, and

(b) has previously consulted bodies recognised by him as representing the relevant officers about the giving of directions for that purpose,

the Secretary of State may disregard sub-paragraph (2) in relation to the directions.

Miscellaneous

5 Provision may be made by regulations as to—

(a) the appointment and tenure of office of the chairman, vice-chairman and members of a Special Health Authority,

(b) the appointment and tenure of office of any members of a committee or sub-committee of a Special Health Authority who are not members of the Special Health Authority,

(c) the appointment and tenure of office of any members of a joint committee or joint sub-committee including a Special Health Authority who are not members of the Special Health Authority,

[[F383](d) the circumstances in which the chairman or vice-chairman or any member of a Special Health Authority may be suspended from office,**]**

(e) the appointment and constitution of committees and sub-committees (and joint committees and joint sub-committees) of (or including) a Special Health Authority (including any such committees consisting wholly or partly of persons who are not members of the Special Health Authority in question), and

(f) the procedure of a Special Health Authority and of such committees and sub-committees as are mentioned in paragraph (e).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F383 Sch. 6 para. 5(d) substituted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), Sch. 3 paras. 11, **18(1)(a)** (with Sch. 3 para. 19); S.I. 2010/30, art. 2(d)

6 Regulations made under this Schedule may make provision (including provision modifying this Schedule) to deal with cases where the post of chief officer or any other officer of a Special Health Authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

7 A Special Health Authority may pay subscriptions, of such amounts as the Secretary of State may approve, to the funds of such bodies as he may approve.

8 A Special Health Authority has power to accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the Special Health Authority or for any purposes relating to the health service).

9 (1) The Secretary of State may by order provide for the appointment of trustees for a Special Health Authority to hold property on trust—

(a) for the general or any specific purposes of the Special Health Authority (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the Special Health Authority), or

(b) for any purposes relating to the health service.

(2) An order under sub-paragraph (1) may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where under sub-paragraph (1) trustees have been appointed for a Special Health Authority, the Secretary of State may by order provide for the transfer of any trust property from the Special Health Authority to the trustees.

10 The proceedings of a Special Health Authority are not invalidated by any vacancy in its membership or by any defect in a member's appointment.

11 (1) A Special Health Authority may—

(a) make available at a hospital for which it has responsibility accommodation or services for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the Special Health Authority in respect of the accommodation or services, and

(b) make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) A Special Health Authority may exercise the power conferred by sub-paragraph (1) only if it is satisfied that its exercise—

(a) does not to any significant extent interfere with the performance by the Special Health Authority of any function conferred on it under this Act to provide accommodation or services of any kind, and

(b) does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

(3) Before a Special Health Authority decides to make accommodation or services available under sub-paragraph (1), it must consult organisations representative of the interests of persons likely to be affected by the decision.

(4) A Special Health Authority may allow accommodation or services which are made available under sub-paragraph (1) to be so made available in connection with treatment in pursuance of arrangements—

(a) made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital,

(b) for the treatment of private patients of that practitioner.

(5) References in this paragraph to a health service hospital include references to such a hospital within the meaning of section 206 of the National Health Service (Wales) Act 2006 (c. 42), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust.

12 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Special Health Authority of any function exercisable by it by virtue of section 7 or section 29 are enforceable by or against that Special Health Authority (and no other body).

(2) This paragraph does not apply in relation to the joint exercise of any functions by a Special Health Authority with another body under section 29(1)(b).

13 Provision may be made by regulations with respect to the recording of information by a Special Health Authority, and the furnishing of information by a Special Health Authority to the Secretary of State, another Special Health Authority or a Strategic Health Authority.

SCHEDULE 7

Section 30

CONSTITUTION OF PUBLIC BENEFIT CORPORATIONS

Requirement for a constitution

1 (1) A public benefit corporation must have a constitution.

(2) As well as any provision authorised or required to be made by this Schedule, the constitution may make further provision (other than provision as to the powers of the corporation) consistent with this Schedule.

2 The constitution must name the corporation and, if the corporation is an NHS foundation trust, its name must include the words “NHS foundation trust”.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Eligibility for membership

3 (1) The persons who may become or continue as members of a public benefit corporation are—

(a) individuals who live in any area specified in the constitution as the area for a public constituency,

(b) individuals employed by the corporation under a contract of employment and, if the constitution so provides, individuals who exercise functions for the purposes of the corporation otherwise than under a contract of employment with the corporation,

(c) if the constitution so provides, individuals who have attended any of the corporation's hospitals as either a patient or the carer of a patient within a period specified in the constitution.

(2) The constitution may specify one or more areas as areas for public constituencies, each of which must be an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more such electoral areas.

(3) A person may become or continue as a member of the corporation by virtue of sub-paragraph (1)(b) only if—

(a) he is employed by the corporation under a contract of employment which has no fixed term or has a fixed term of at least 12 months, or

(b) he has been continuously employed by the corporation for at least 12 months or, where he exercises functions for the purposes of the corporation as mentioned in that sub-paragraph, he has done so continuously for such a period.

(4) Chapter 1 of Part 14 of the Employment Rights Act 1996 (c. 18) applies for the purpose of determining whether an individual has been continuously employed by the corporation, or has continuously exercised functions for the purposes of the corporation, as it applies for the purposes of that Act.

(5) The constitution may divide those who come within sub-paragraph (1)(b) into two or more descriptions of individuals.

(6) An individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation, does not come within sub-paragraph (1)(c).

(7) The constitution may divide those who come within sub-paragraph (1)(c) into three or more descriptions of individuals, one of which must comprise the carers of patients.

(8) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member.

Constituencies

4 (1) Members of a public benefit corporation are referred to as follows.

(2) Those who live in an area specified in the constitution as an area for any public constituency are referred to collectively as a public constituency.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) Those who come within paragraph 3(1)(b) are referred to collectively as the staff constituency and, if the power in paragraph 3(5) is exercised, each description of members is referred to as a class within that constituency.

(4) Those who come within paragraph 3(1)(c) are referred to collectively as the patient's constituency and, if the power in paragraph 3(7) is exercised, each description of members is referred to as a class within that constituency.

(5) A person who is a member of a constituency, or of a class within a constituency, may not while that membership continues be a member of any other constituency or class.

(6) A person who comes within paragraph 3(1)(b) may not become or continue as a member of any constituency other than the staff constituency.

5 The constitution must require a minimum number of members of each constituency or, where there are classes within the constituency, of each class.

Becoming a member

6 (1) An individual who is eligible to become a member of a public benefit corporation may do so on an application made to the corporation.

(2) The constitution may provide for any individual who is—

(a) eligible to become a member of the staff constituency, and

(b) invited by the corporation to become a member of that constituency (and, where there are classes within the constituency, a member of the appropriate class),

to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.

(3) The constitution may provide for any individual who is—

(a) eligible to become a member of the patients' constituency (otherwise than as the carer of a patient), and

(b) invited by the corporation to become a member of a specified constituency (and where there are classes within the constituency, a member of the specified class),

to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.

(4) The constituency and, where applicable, class to be specified—

(a) if he is eligible to be a member of any public constituency, is that constituency,

(b) otherwise, is the patients' constituency and, where applicable, the class of which he is eligible to become a member.

Board of Governors

7 (1) A public benefit corporation has a board of governors.

(2) Only members of the corporation and persons appointed under the following provisions may become or continue as members of the board.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(3) The members of the board other than the appointed members must be chosen by election.

(4) Members of a constituency or, where there are classes within it, members of each class may elect any of their number to be a member of the board.

8 (1) The following may not become or continue as members of the board of governors—

(a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged,

(b) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,

(c) a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

(2) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member of the board.

9 (1) More than half of the members of the board of governors must be elected by members of the corporation other than those who come within paragraph 3(1)(b).

(2) At least three members of the board must be elected by the staff constituency or, where there are classes within it, at least one member of the board must be elected by each class and at least three members must be elected altogether.

(3) At least one member of the board must be appointed by a Primary Care Trust for which the corporation provides goods or services.

(4) At least one member of the board must be appointed by one or more qualifying local authorities.

(5) A qualifying local authority is a local authority for an area which includes the whole or part of an area specified in the constitution as the area for a public constituency.

(6) If any of the corporation's hospitals includes a medical or dental school provided by a university, at least one member of the board must be appointed by that university.

(7) An organisation specified in the constitution as a partnership organisation may appoint a member of the board.

10 (1) An elected member of the board of governors may hold office for a period of three years.

(2) Such a member is eligible for re-election at the end of that period.

(3) But such a member ceases to hold office if he ceases to be a member of the corporation.

11 The corporation may pay travelling and other expenses to members of the board of governors at rates decided by the corporation.

12 The constitution must provide for the chairman of the corporation or (in his absence) another person to preside at meetings of the board of governors.

13 (1) The constitution must provide for meetings of the board of governors to be open to members of the public.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.

14 (1) The constitution must make provision as to—
- (a) the conduct of elections for membership of the board,
- (b) the appointment of persons to membership,
- (c) the practice and procedure of the board,
- (d) the removal of a member from office.

(2) The constitution may make further provision about the board.

Directors

15 (1) A public benefit corporation has a board of directors.

(2) The constitution must provide for all the powers of the corporation to be exercisable by the board of directors on its behalf.

(3) But the constitution may provide for any of those powers to be delegated to a committee of directors or to an executive director.

Modifications etc. (not altering text)

C45 Sch. 7 para. 15(3) modified by 1983 c. 20, s. 142B (as inserted (24.7.2007) by Mental Health Act 2007 (c. 12), **ss. 45(3)**, 56(1); S.I. 2007/2156, art. 2)

16 (1) The board consists of—
- (a) executive directors, one of whom is the chief executive (and accounting officer) and another the finance director,
- (b) non-executive directors, one of whom is the chairman.

(2) One of the executive directors must be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984 (c 24)); and another must be a registered nurse or a registered midwife.

(3) A person may not be appointed as an executive director if he is within paragraph 8(1).

(4) A person may be appointed as a non-executive director only if—
- (a) he is a member of a public constituency or the patients' constituency, or
- (b) where any of the corporation's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university,

and he is not within paragraph 8(1).

17 (1) It is for the board of governors at a general meeting to appoint or remove the chairman and the other non-executive directors.

(2) Removal of a non-executive director under sub-paragraph (1) requires the approval of three-quarters of the members of the board.

(3) It is for the non-executive directors to appoint or remove the chief executive.

(4) It is for a committee consisting of the chairman, the chief executive and the other non-executive directors to appoint or remove the executive directors.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) The appointment of a chief executive requires the approval of the board of governors.

18 (1) It is for the board of governors at a general meeting to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors.

(2) The corporation must establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors; but the constitution may make provision for those matters to be decided pending the establishment of such a committee.

Initial directors of former NHS trusts

19 (1) This paragraph applies, where the application for authorisation is made under section 33, to the exercise of the powers mentioned in paragraph 17 to appoint the initial non-executive directors and the initial chief executive.

(2) The power to appoint the initial chairman of the corporation must be exercised by appointing the chairman of the NHS trust, if he wishes to be appointed.

(3) The power to appoint the other initial non-executive directors of the corporation must be exercised, so far as possible, by appointing any of the non-executive directors of the NHS trust (other than the chairman) who wish to be appointed.

(4) A person appointed in accordance with sub-paragraph (2) or (3) must be appointed for the unexpired period of his term of office as chairman or non-executive director of the NHS trust; but if, on any such appointment, that period is less than 12 months, he must be appointed for 12 months.

(5) The power to appoint the initial chief executive of the corporation must be exercised by appointing the chief officer of the NHS trust, if he wishes to be appointed.

(6) Sub-paragraphs (a) and (b) of paragraph 16(4) do not apply to the appointment of any initial non-executive director in pursuance of this paragraph; and paragraph 17(5) does not apply to the appointment of the initial chief executive of the corporation in pursuance of sub-paragraph (5).

Register of members etc

20 (1) A public benefit corporation must have—

(a) a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs,

(b) a register of members of the board of governors,

(c) a register of interests of the members of the board of governors,

(d) a register of directors,

(e) a register of interests of the directors.

(2) The constitution may make further provision about the registers including, in particular, admission to, and removal from, the registers.

21 The constitution must make provision for dealing with conflicts of interest of members of the board of governors and of the directors.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

22 (1) A public benefit corporation must make the following documents available for inspection by members of the public free of charge at all reasonable times—

(a) a copy of the current constitution,

(b) a copy of the current authorisation,

(c) a copy of the latest annual accounts and of any report of the auditor on them,

(d) a copy of the latest annual report,

(e) **[**[F384]a copy of the latest information as to its forward planning,**]**

(f) a copy of any notice given under section 52.

(2) Any person who requests it must be provided with a copy of or extract from any of the above documents.

(3) The corporation is also to make the registers mentioned in paragraph 20 available for inspection by members of the public, except in circumstances prescribed; and, so far as the registers are required to be available—

(a) they must be available free of charge at all reasonable times,

(b) a person who requests it must be provided with a copy of or extract from them.

(4) If the person requesting a copy or extract under this paragraph is not a member of the corporation, the corporation may impose a reasonable charge for doing so.

Textual Amendments

F384 Sch. 7 para. 22(1)(e) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 156(6)**, 306(1)(d)(4)

Auditor

23 (1) A public benefit corporation must have an auditor.

(2) It is for the board of governors to appoint or remove the auditor at a general meeting of the board.

[[F385](3) An auditor may be—

(a) an officer of the Audit Commission (if appointed by the board with the agreement of the Commission),

(b) an individual who is not an officer of the Audit Commission, or

(c) a firm.**]**

[[F385](4) A person appointed as auditor must be—

(a) eligible for appointment as a statutory auditor (see Part 42 of the Companies Act 2006),

(b) a member of one or more of the bodies listed in section 3(7)(a) to (e) of the Audit Commission Act 1998, or

(c) a member of any other body of accountants approved by the regulator for the purposes of this paragraph.**]**

(5) Where an officer of the Audit Commission is appointed as auditor, the Commission must charge the public benefit corporation such fees for his services as will cover the full cost of providing them.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) The corporation must establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

[[F386](7) In this paragraph—

"the Audit Commission" means the Audit Commission for Local Authorities and the National Health Service in England; and

"firm" has the same meaning as in the Audit Commission Act 1998 (see section 53(1) of that Act).**]**

Textual Amendments

F385 Sch. 7 para. 23(3)(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 258(3)(a)** (with art. 10)

F386 Sch. 7 para. 23(7) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 258(3)(b)** (with art. 10)

Accounts

24 (1) **[**[F387]A public benefit corporation must keep proper accounts and proper records in relation to the accounts.

(1A) The regulator may with the approval of the Secretary of State give directions to the corporation as to the content and form of its accounts.**]**

(2) The accounts must be audited by the corporation's auditor.

(3) But the Comptroller and Auditor General may examine—

(a) the accounts,

(b) **[**[F388]any records**][**[F388]the records**]** relating to them, and

(c) any report of the auditor on them.

(4) If trustees are appointed under section 51, the Comptroller and Auditor General may also examine—

(a) the accounts kept by the trustees,

(b) any records relating to them, and

(c) any report of an auditor on them.

(5) In auditing the accounts the auditor must comply with any directions given by the regulator as to the standards, procedures and techniques to be adopted.

Textual Amendments

F387 Sch. 7 para. 24(1)(1A) substituted for Sch. 7 para. 24(1) (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F388 Words in Sch. 7 para. 24(3)(b) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(2)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

25 (1) A public benefit corporation must prepare in respect of each financial year annual accounts in such form as the regulator may with the approval of **[**[F389]the Treasury**][**[F389]the Secretary of State**]** direct.

[[F390](1A) The regulator may with the approval of the Secretary of State direct a public benefit corporation—

(a) to prepare accounts in respect of such period or periods as may be specified in the direction;

(b) that any accounts prepared by it by virtue of paragraph (a) are to be audited in accordance with such requirements as may be specified in the direction.**]**

(2) In preparing its annual accounts **[**[F391]or in preparing any accounts by virtue of sub-paragraph (1A)(a)**]**, the corporation must comply with any directions given by the regulator with the approval of **[**[F392]the Treasury**][**[F392]the Secretary of State**]** as to—

(a) the methods and principles according to which the accounts must be prepared,

(b) the **[**[F393]information to be given in**][**[F393]content and form of**]** the accounts.

(3) In determining the form and content of the annual accounts**[**[F394], or of any accounts to be prepared by it by virtue of sub-paragraph (1A)(a),**]** the regulator must aim to ensure that the accounts present a true and fair view.

(4) The corporation must—

(a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and

(b) **[**[F395]once it has done so,**]** send copies of those documents to the regulator **[**[F396]within such period as the regulator may direct**]**.

[[F397](4A) The corporation must send to the regulator within such period as the regulator may direct—

(a) a copy of any accounts prepared by the corporation by virtue of sub-paragraph (1A)(a), and

(b) a copy of any report of an auditor on them prepared by virtue of sub-paragraph (1A)(b).**]**

(5) The constitution must provide for the functions of the corporation under this paragraph to be delegated to the accounting officer.

(6) In this paragraph and paragraph 27 "financial year" means—

(a) the period beginning with the date on which the corporation is authorised under section 35 and ending with the next 31st March, and

(b) each successive period of twelve months beginning with 1st April.

Textual Amendments

F389 Words in Sch. 7 para. 25(1) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(3)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F390 Sch. 7 para. 25(1A) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(4)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F391 Words in Sch. 7 para. 25(2) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(5)(a)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F392 Words in Sch. 7 para. 25(2) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(5)(b)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F393 Words in Sch. 7 para. 25(2) substituted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(5)(c)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F394 Words in Sch. 7 para. 25(3) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(6)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F395 Words in Sch. 7 para. 25(4)(b) omitted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 154(7)(a)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F396 Words in Sch. 7 para. 25(4)(b) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(7)(b)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

F397 Sch. 7 para. 25(4A) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 154(8)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

Annual reports and forward plans

26 (1) A public benefit corporation must prepare annual reports and send them to the regulator.

(2) The reports must give—

(a) information on any steps taken by the corporation to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership,

[[F398](ab) information on the corporation's policy on pay and on the work of the committee established under paragraph 18(2) and such other procedures as the corporation has on pay,

(ac) information on the remuneration of the directors and on the expenses of the governors and the directors,**]**

(b) any other information the regulator requires.

[[F399](2A) Before imposing a requirement under sub-paragraph (2)(b) that the regulator considers is sufficiently significant to justify consultation, the regulator must consult such persons as it considers appropriate.**]**

(3) It is for the regulator to decide—

(a) the form of the reports,

(b) when the reports must be sent to it,

(c) the periods to which the reports are to relate.

Textual Amendments

F398 Sch. 7 para. 26(2)(ab)(ac) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(1)**, 306(1)(d)(4)

F399 Sch. 7 para. 26(2A) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(2)**, 306(1)(d)(4)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Modifications etc. (not altering text)

C46 Sch. 7 para. 26(2): power to amend conferred (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(3)(a)**, 306(1)(d)(4)

C47 Sch. 7 para. 26(2A): power to repeal conferred (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(3)(b)**, 306(1)(d)(4)

27 (1) A public benefit corporation must give information to **[**[F400]the regulator**]**[[F400]the Secretary of State**]** as to its forward planning in respect of each financial year.

(2) The document containing the information must be prepared by the directors.

(3) In preparing the document the directors must have regard to the views of the board of governors.

Textual Amendments

F400 Words in Sch. 7 para. 27(1) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 156(4)**, 306(1)(d)(4)

Meeting of board of governors to consider annual accounts and reports

28 The following documents must be presented to the board of governors of a public benefit corporation at a general meeting—

(a) the annual accounts,

(b) any report of the auditor on them,

(c) the annual report.

Instruments etc

29 (1) The constitution must make provision for the authentication of the fixing of the corporation's seal.

(2) A document purporting to be duly executed under the corporation's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

[[F401]Power to make provision about voting

Textual Amendments

F401 Sch. 7 para. 30 and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 158(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2)

30 (1) Regulations may amend this Chapter so as to add, vary or omit provision relating to voting by members of the council of governors of a public benefit corporation that is an NHS foundation trust, by its directors or by its members.

(2) The power under sub-paragraph (1) is exercisable only in relation to provision in this Chapter that was inserted, or otherwise provided for, by Part 4 of the Health and Social Care Act 2012.**]**

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 8

Section 31

INDEPENDENT REGULATOR OF NHS FOUNDATION TRUSTS

Membership

1 (1) The regulator consists of a number of members (but not more than 5) appointed by the Secretary of State.

(2) One of the members must be appointed as chairman and another as deputy chairman.

(3) The deputy chairman need not be appointed before the end of the period of six months beginning with the establishment of the regulator.

Tenure of office

2 (1) A person holds and vacates office as a member in accordance with the terms of his appointment.

(2) But—

(a) he may at any time resign his office by giving notice to the Secretary of State,

(b) the Secretary of State may at any time remove him from office on the ground of incapacity or misbehaviour.

[F402(c) the Secretary of State may suspend him from office if it appears to the Secretary of State that there are or may be grounds to remove him from office under paragraph (b).]

(3) A person must not be appointed as a member for a period of more than four years.

(4) A person who ceases to be a member is eligible for re-appointment.

Textual Amendments

F402 Sch. 8 para. 2(2)(c) inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 3 para. 12(2)** (with Sch. 3 para. 19); S.I. 2010/30, art. 2(d)

[F403 2A (1) This paragraph applies where the Secretary of State decides to suspend a person under paragraph 2(2)(c).

(2) The Secretary of State must give notice to the person of the decision and the suspension takes effect on receipt by the person of the notice.

(3) A notice under subsection (2) may be—

(a) delivered in person, in which case the person is treated as receiving it when it is delivered, or

(b) sent by first class post to the person's last known address, in which case the person is treated as receiving it on the third day after the day on which it was posted.

(4) The initial period of suspension must not exceed 6 months.

(5) The Secretary of State may review the person's suspension at any time.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) The Secretary of State must review the person's suspension if requested in writing by the person to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.

(7) Following a review during any period of suspension, the Secretary of State may—
- (a) revoke the suspension, or
- (b) suspend the person for another period of not more than 6 months from the expiry of the current period.

(8) The Secretary of State must revoke the suspension if at any time—
- (a) he decides that there are no grounds to remove the person from office under paragraph 2(2)(b), or
- (b) he decides that there are such grounds but does not remove the person from office under that provision.

(9) A person who is suspended under paragraph 2(2)(c) is to be disregarded for the purposes of the maximum number of members under paragraph 1(1) at any time during the suspension.**]**

Textual Amendments

F403 Sch. 8 para. 2A inserted (19.1.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 3 para. 12(3)** (with Sch. 3 para. 19); S.I. 2010/30, art. 2(d)

Remuneration and pensions

3 (1) The regulator must pay to the chairman—
- (a) such remuneration, and
- (b) such travelling and other allowances,

as the Secretary of State may determine.

(2) The regulator must pay to the members (other than the chairman) such travelling and other allowances as the Secretary of State may determine.

(3) In the case of any such person who holds or has held office as chairman as the Secretary of State may determine, the regulator must pay—
- (a) such pension, allowance or gratuity to or in respect of him, or
- (b) such contributions or payments towards provision for such a pension, allowance or gratuity,

as the Secretary of State may determine.

Staff

4 The regulator may, after consulting the Minister for the Civil Service as to numbers and terms and conditions of service, employ such staff as the regulator may determine.

Superannuation

5 (1) Sub-paragraph (2) applies where—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) a person is an active or deferred member of a scheme under section 1 of the Superannuation Act 1972 (c. 11), and
(b) he is appointed as chairman.

(2) The Minister for the Civil Service may determine that the person's term of office as chairman must be treated for the purposes of the scheme as service in the employment by reference to which he is a member (whether or not any benefits are payable by virtue of paragraph 3(3)).

(3) The regulator must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (2) or (3) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Procedure

6 (1) The regulator may regulate its own procedure and make any arrangements it considers appropriate for the discharge of its functions.

(2) The validity of any act of the regulator is not affected by any vacancy among the members or by any defect in the appointment of any member.

Delegation of functions

7 Anything which the regulator is authorised or required to do may be done by—
(a) the chairman or deputy chairman or any committee,
(b) any member of the staff,
if authorised by the regulator (generally or specifically) for that purpose.

General powers

8 (1) The regulator may do anything which appears to it to be necessary or expedient for the purposes of or in connection with the exercise of its functions.

(2) That includes in particular—
(a) acquiring and disposing of property,
(b) entering into contracts,
(c) accepting gifts of property,
and co-operating with other public authorities.

Specific powers

9 (1) The regulator may with the consent of the Secretary of State borrow money temporarily by way of overdraft, but may not otherwise borrow money.

(2) The regulator may conduct, commission or assist the conduct of research.

Finance

10 The Secretary of State may make contributions towards the regulator's expenses.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 and other information

11 (1) As soon as possible after the end of each financial year, the regulator must prepare an annual report on how it has exercised its functions during the year.

(2) The regulator must—
(a) lay a copy of the report before Parliament, and
(b) once it has done so, send a copy of it to the Secretary of State.

(3) The regulator must in respect of each financial year prepare a report which provides an overall summary of the accounts of NHS foundation trusts.

(4) The report must be prepared as soon as possible after the regulator has received the accounts of all NHS foundation trusts for the relevant financial year.

(5) The regulator must—
(a) lay a copy of the report before Parliament, and
(b) once it has done so, send a copy of it to the Secretary of State.

(6) The regulator must provide the Secretary of State with such other reports and information relating to the exercise of the regulator's functions as he may require.

12 (1) The regulator must keep accounts in such form as the Secretary of State may direct.

(2) The regulator must prepare in respect of each financial year annual accounts in such form as the Secretary of State may direct.

(3) The regulator must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.

(4) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of them and of his report before Parliament.

(5) In paragraph 11 and this paragraph, “financial year” means—
(a) the period beginning with the establishment of the regulator and ending with the next 31st March, and
(b) each successive period of twelve months beginning with 1st April.

13 The regulator must respond in writing to any recommendation which—
(a) is made by a Committee of either House of Parliament, or a Committee of both Houses, and
(b) relates to the exercise by the regulator of its functions.

Seal and evidence

14 The application of the regulator's seal must be authenticated by the signature of the chairman or deputy chairman or of any member of the staff who has been authorised by the regulator (whether generally or specifically) for that purpose.

15 A document purporting to be duly executed under the regulator's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

General

16 (1) The regulator must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The regulator's property must not be regarded as property of, or property held on behalf of, the Crown.

(3) The regulator must exercise its functions effectively, efficiently and economically.

[F404SCHEDULE 8A

Sections 52D and 65E

DE-AUTHORISED NHS FOUNDATION TRUSTS

Textual Amendments

F404 Sch. 8A inserted (15.2.2010 for specified purposes) by Health Act 2009 (c. 21), s. 40(1), **Sch. 2**; S.I. 2010/30, art. 3(c)

Introductory

1 (1) This Schedule applies to a body which is an NHS trust by virtue of an order made under section 52D(1) or 65E(1) (a "de-authorisation order").

(2) In this Schedule "the NHS foundation trust" means the body as it was constituted immediately before the order was made.

Replacement of constitution

2 (1) The constitution of the body pursuant to paragraph 1(1) of Schedule 7 ceases to have effect.

(2) The body ceases to have members and a board of governors.

(3) Subject to the following provisions of this Schedule, this Act applies in relation to the body as it applies in relation to an NHS trust established by an order made under section 25.

3 Nothing in this Chapter affects the continuity of the body or of its property or liabilities (including its criminal liabilities).

Board of directors

4 (1) This paragraph is subject to any provision made under section 52D(4) or (7) or 65L(4) or (5).

(2) The number of executive directors and non-executive directors of the NHS trust is the number of executive directors and non-executive directors provided for in the constitution of the NHS foundation trust.

(3) On the de-authorisation order taking effect, the persons who were the chairman and executive and non-executive directors of the NHS foundation trust become, for

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

the unexpired terms of their appointments, the chairman and executive and non-executive directors of the NHS trust.

Name and functions

5 (1) This paragraph applies only to a body which is an NHS trust by virtue of an order made under section 65E(1), and is subject to any provision made under section 65L(4).

(2) "NHS trust" is substituted for "NHS foundation trust" in the name of the body.

(3) The functions of the NHS trust (to be undertaken from the day on which the de-authorisation order takes effect) are to provide goods and services for the purposes of the health service.

Trustees

6 Any order appointing trustees for the NHS foundation trust has effect as an order under paragraph 10 of Schedule 4 appointing trustees for the NHS trust.

Public dividend capital

7 (1) The amount which was the public dividend capital of the NHS foundation trust continues as public dividend capital of the NHS trust held on the same conditions.

(2) That is subject to any determination under paragraph 1(6) of Schedule 5.

(3) Paragraph 1(1) of that Schedule does not apply.

Accounts

8 (1) The accounting date of the NHS trust is 31 March.

(2) The first accounting period of the NHS trust begins with the first day of the financial year in which the de-authorisation order takes effect (and for that purpose the body is to be treated as having been an NHS trust with effect from that day).

(3) But the Secretary of State may direct that the trust's first accounting period begins with the first day of the following financial year.

(4) Paragraphs 24 and 25 of Schedule 7 apply to the body, as if it continued to be a public benefit corporation, in respect of any financial year before the NHS trust's first accounting period.

Contracts

9 (1) Nothing in this Act—

(a) prevents the NHS trust continuing to be a party to a contract to which the NHS foundation trust was a party, or

(b) affects the rights or liabilities of any person under such a contract.

(2) A contract to which the NHS foundation trust was a party and to which the NHS trust becomes a party is not an NHS contract by virtue of section 9(1).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Other property

10 Nothing in this Act—

(a) prevents the NHS trust continuing to hold property which the NHS foundation trust held, or

(b) affects the rights or liabilities of any person in respect of that property.

Membership of bodies corporate

11 Nothing in this Act—

(a) prevents the NHS trust remaining a member of a body corporate of which the NHS foundation trust was a member, or

(b) affects the rights or liabilities of any person in respect of that membership.

Directions

12 Paragraphs 9 to 11 do not affect the Secretary of State's powers to give directions under this Act.**]**

SCHEDULE 9

Section 54

NHS FOUNDATION TRUSTS: TRANSFER OF STAFF

1 An order under section 54(4) may provide for the transfer of employees of an NHS foundation trust **[**[F405]to which section 53 applies**]** to a person mentioned in that subsection.

Textual Amendments

F405 Words in Sch. 9 para. 1 inserted (15.2.2010) by Health Act 2009 (c. 21), **ss. 18(11)**, 40(1); S.I. 2010/30, art. 3(b)

2 The contract of employment of an employee transferred under such an order—

(a) is not terminated by the transfer,

(b) has effect from the date of transfer as if originally made between the employee and the transferee.

3 Where an employee is so transferred—

(a) all the rights, powers, duties and liabilities of the trust under or in connection with the contract of employment are by virtue of this paragraph transferred to the transferee on the date of transfer, and

(b) anything done before that date by or in relation to the trust in respect of that contract or the employee must be treated from that date as having been done by or in relation to the transferee.

This paragraph does not affect the generality of paragraph 2.

4 But if the employee informs the trust or the proposed transferee that he objects to the transfer—

(a) paragraphs 2 and 3 do not apply, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) the contract of employment is terminated immediately before the date of transfer but the employee must not be treated, for any purpose, as having been dismissed by the trust.

5 This Schedule does not affect any right of an employee to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.

6 In this Schedule, "date of transfer" means the date decided under the order for the transfer of the employee.

SCHEDULE 10

Section 62

AUDIT OF ACCOUNTS OF NHS FOUNDATION TRUSTS

General duty

1 In auditing the accounts of any NHS foundation trust an auditor must by examination of the accounts and otherwise satisfy himself that—

(a) they are prepared in accordance with directions under paragraph 25 of Schedule 7,

(b) they comply with the requirements of all other provisions contained in, or having effect under, any enactment which are applicable to them,

(c) proper practices have been observed in their compilation, and

(d) the trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

Right to documents and information

2 (1) An auditor of an NHS foundation trust has a right of access at all reasonable times to every document relating to the trust which appears to him necessary for the purposes of his functions under this Chapter.

(2) The auditor may—

(a) require a person holding or accountable for any such document to give him such information and explanation as he considers necessary for the purposes of his functions under this Chapter,

(b) if he considers it necessary, require the person to attend before him in person to give the information or explanation or to produce the document.

(3) The auditor may also—

(a) require any director or officer of the trust to give him such information or explanation as he considers necessary for the purposes of his functions under this Chapter,

(b) if he considers it necessary, require the director or officer to attend before him in person to give the information or explanation.

(4) The trust must provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under this Chapter; but this sub-paragraph does not affect the generality of sub-paragraphs (1) to (3).

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) A person who without reasonable excuse fails to comply with any requirement of an auditor of an NHS foundation trust under any of sub-paragraphs (1) to (3) is guilty of an offence.

(6) A person guilty of an offence under sub-paragraph (5) is liable on summary conviction—
  (a) to a fine not exceeding level 3 on the standard scale, and
  (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for the offence.

(7) Any expenses incurred by an auditor of an NHS foundation trust in connection with proceedings for an offence under sub-paragraph (5) alleged to have been committed in relation to the audit of the accounts of the trust, so far as not recovered from any other source, are recoverable from the trust.

Reports

3 In auditing the accounts of an NHS foundation trust, the auditor must consider—
  (a) whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the trust or brought to the attention of the public, and
  (b) whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit.

4 (1) When an auditor of an NHS foundation trust has concluded his audit of the trust's accounts, he must enter on the accounts—
  (a) a certificate that he has completed the audit in accordance with this Chapter, and
  (b) his opinion on the accounts.

(2) But where the auditor makes a report to the board of governors and board of directors of the trust under paragraph 3 at the conclusion of the audit, he may instead include the certificate and his opinion in that report.

5 (1) Any report under paragraph 3 must be sent by the auditor to the board of governors and board of directors of the trust and to the regulator—
  (a) at once if it is an immediate report,
  (b) otherwise not later than 14 days after conclusion of the audit.

(2) The directors must take the report into consideration as soon as practicable after receiving it.

Referral to regulator

6 If the auditor of an NHS foundation trust has reason to believe that the trust or a director or officer of the trust—
  (a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful, or
  (b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,

he must refer the matter at once to the regulator.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Audit of accounts of directors or officers

7 (1) Where a director or officer of an NHS foundation trust receives money or other property—
(a) on behalf of the trust, or
(b) for which he ought to account to the trust,
the accounts of the director or officer must be audited by the auditor of the accounts of the trust.

(2) The accounts of the director or officer must be made up to 31st March.

(3) Paragraph 25(5) of Schedule 7 and paragraphs 1 to 5 of this Schedule apply with the necessary modifications to the audit under this paragraph.

Restriction on disclosure of information

8 (1) No information relating to an NHS foundation trust or other person and obtained by an auditor (or by a person acting on the auditor's behalf) under this Chapter or in the course of an audit under this Chapter may be disclosed except—
(a) with the consent of the person to whom the information relates,
(b) for the purposes of any functions of an auditor of an NHS foundation trust,
(c) for the purposes of the functions of the regulator,
(d) for the purposes of the functions of the Comptroller and Auditor General under this Chapter,
(e) for the purposes of the functions of **[**[F406]the Care Quality Commission**]** ,
(f) for the purposes of any criminal proceedings.

(2) A person who discloses information in contravention of sub-paragraph (1) is guilty of an offence.

(3) A person guilty of an offence under sub-paragraph (2) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or to both),
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or to both).

(4) 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 reference in sub-paragraph (3) to a period of imprisonment of 12 months is a reference to a period of imprisonment of 6 months.

Textual Amendments

F406 Words in Sch. 10 para. 8(1)(e) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 86**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 11

Section 135

PILOT SCHEMES

How pilot schemes may be initiated

1 (1) A pilot scheme may be made—
- (a) on the initiative of a Primary Care Trust, or
- (b) in response to a request made by a person wishing to participate in the scheme.

(2) The request referred to in sub-paragraph (1)(b) must—
- (a) be made in writing, and
- (b) comply with such requirements (if any) as may be prescribed.

Preliminary steps to be taken

2 (1) Before making a pilot scheme, the Primary Care Trust concerned must prepare proposals for the scheme and submit them to the Secretary of State.

(2) But proposals may be submitted by a Primary Care Trust only with the agreement of the other proposed participants.

(3) In preparing proposals for a pilot scheme, a Primary Care Trust must comply with any directions given to it by the Secretary of State as to—
- (a) the matters to be dealt with, and information to be included, in the proposals, and
- (b) the procedure to be followed by the Primary Care Trust.

(4) Before submitting proposals for a pilot scheme, a Primary Care Trust must (in addition to complying with any requirements about consultation imposed by or under any other enactment) comply with any directions given to it by the Secretary of State about the extent to which, and manner in which, it must consult on the proposals.

(5) The Secretary of State may give directions—
- (a) requiring a Primary Care Trust to submit proposals to him,
- (b) as to the matters to which a Primary Care Trust must have regard in making any recommendation to the Secretary of State when submitting proposals for a pilot scheme,
- (c) as to the form in which any such recommendation must be made,
- (d) requiring Primary Care Trusts to provide the Secretary of State with summaries (prepared and presented in the manner specified in the directions) of all requests received by them during the period specified in the directions.

(6) A direction under this paragraph may be given so as to apply—
- (a) generally in circumstances specified in the direction, or
- (b) in relation to a particular case.

Approval

3 (1) If proposals for a pilot scheme are submitted under paragraph 2, the Secretary of State must—
- (a) approve them as submitted,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 such modifications as he considers appropriate and approve them as modified, or

(c) reject them.

(2) The Secretary of State may not approve proposals for a pilot scheme unless satisfied that they include satisfactory provision for any participant other than the Primary Care Trust to withdraw from the scheme if he wishes to do so.

(3) When the Secretary of State makes a decision under this paragraph—

(a) he must notify the Primary Care Trust concerned of the decision, and

(b) the Primary Care Trust must, without delay, notify the other participants in the proposed scheme.

Preliminary approval

4 (1) This paragraph applies if a Primary Care Trust proposes to make a pilot scheme but has not determined who the participants, or who all of the participants, will be.

(2) The Primary Care Trust may apply to the Secretary of State for preliminary approval to be given to its proposals.

(3) If such an application is made, the Secretary of State must—

(a) give preliminary approval to the proposals as submitted,

(b) make such modifications as he considers appropriate and give preliminary approval to them as modified, or

(c) reject them.

(4) If a Primary Care Trust is given preliminary approval, it must take such steps, with a view to obtaining final approval for the proposed pilot scheme, as the Secretary of State may direct.

(5) The fact that the Secretary of State has given preliminary approval to proposals for a pilot scheme does not affect his right to refuse to approve the completed proposals when they are submitted under paragraph 2.

(6) Sub-paragraphs (3) to (6) of paragraph 2 apply in relation to an application for preliminary approval of proposals under this paragraph as they apply in relation to proposals under that paragraph.

Effect of proposals on existing services

5 (1) Proposals for a pilot scheme submitted under paragraph 2, or included in an application for preliminary approval of proposals under paragraph 4, must include—

(a) an assessment by the Primary Care Trust of the likely effect of the implementation of the proposals in the area of the Primary Care Trust on the services mentioned in sub-paragraph (2),

(b) any assessment supplied to the Primary Care Trust by another Primary Care Trust under sub-paragraph (4).

(2) The services are—

(a) pharmaceutical services,

(b) local pharmaceutical services provided under existing pilot schemes or LPS schemes,

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) primary medical services.

(3) If it appears to a Primary Care Trust that the proposals would, if implemented, affect any of the services mentioned in sub-paragraph (2) provided in the area of another Primary Care Trust, it must consult that other Primary Care Trust about the proposals before submitting them under paragraph 2 or including them in an application for preliminary approval under paragraph 4.

(4) A Primary Care Trust consulted under sub-paragraph (3) must prepare an assessment of the likely effect of the implementation of the proposals on those services and supply it to the Primary Care Trust which consulted it.

Guidance

6 The Secretary of State may issue guidance about the criteria by reference to which, as a general rule, powers under paragraph 3 or 4 are likely to be exercised.

Making a scheme

7 (1) If the Secretary of State approves proposals for a pilot scheme under paragraph 3 and notifies the Primary Care Trust concerned in accordance with that paragraph, the Primary Care Trust must implement the proposals in accordance with directions given by the Secretary of State.

(2) A proposed participant in a pilot scheme (other than the Primary Care Trust concerned) may withdraw at any time before the proposals relating to him are implemented.

(3) A pilot scheme, as implemented, may differ from the proposals for the scheme approved by the Secretary of State only if he agrees to the variation or—

(a) directions given by him (either under sub-paragraph (1) or generally) authorise variations that satisfy specified requirements, and

(b) the variation satisfies those requirements.

(4) As soon as is reasonably practicable after implementing proposals for a pilot scheme, the Primary Care Trust concerned must (in accordance with any directions given to it by the Secretary of State) publish details of the scheme.

SCHEDULE 12

Section 144

LPS SCHEMES

Provision of local pharmaceutical services

1 (1) Primary Care Trusts **[**[F407]or Strategic Health Authorities **]** may establish LPS schemes.

(2) In this Act, an "LPS scheme" means one or more agreements—

(a) made by a Primary Care Trust **[**[F408]or Strategic Health Authority (the "commissioning body") **]** in accordance with this Schedule,

(b) under which local pharmaceutical services will be provided (otherwise than by the **[**[F409]commissioning body). **]**[F410]...

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[F410](c) . . . . . .

[[F411](2A) A Strategic Health Authority may establish an LPS scheme only where the only other parties are Primary Care Trusts.

(2B) A Primary Care Trust may provide local pharmaceutical services under an LPS scheme (where it is not the commissioning body), but only in prescribed circumstances.**]**

(3) An LPS scheme may include arrangements—

(a) for the provision of services which are not local pharmaceutical services, but which may be provided under this Act, other than under Chapter 1 of this Part, and whether or not of the kind usually provided by pharmacies,

(b) for the provision of training and education (including training and education for persons who are, or may become, involved in the provision of local pharmaceutical services).

(4) An LPS scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services or primary dental services.

(5) In determining the arrangements it needs to make in order to comply with section 126, a Primary Care Trust may take into account arrangements under an LPS scheme **[**[F412]in its area**]**.

(6) The functions of an NHS trust **[**[F413], an NHS foundation trust and a Primary Care Trust**]** include power to provide any services to which an LPS scheme applies.

(7) In this Schedule—

"local pharmaceutical services" means such services of a kind which may be provided under section 126, or by virtue of section 127, (other than practitioner dispensing services) as may be prescribed for the purposes of this Schedule, and

"LP services" means services provided under an LPS scheme (including any services to which the scheme applies as a result of sub-paragraph (3)).

(8) "Practitioner dispensing services" means the provision of drugs, medicines or listed appliances (within the meaning given by section 126) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 132(1).

Textual Amendments

F407 Words in Sch. 12 para. 1(1) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(7)**, 40(1); S.I. 2012/1902, art. 2(d)

F408 Words in Sch. 12 para. 1(2)(a) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(8)(a)**, 40(1); S.I. 2012/1902, art. 2(d)

F409 Words in Sch. 12 para. 1(2)(b) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(8)(b)**, 40(1); S.I. 2012/1902, art. 2(d)

F410 Sch. 12 para. 1(2)(c) and word repealed (1.9.2012) by Health Act 2009 (c. 21), ss. 29(8)(c), 40(1), **Sch. 6**; S.I. 2012/1902, art. 2(d)

F411 Sch. 12 para. 1(2A)(2B) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(9)**, 40(1); S.I. 2012/1902, art. 2(d)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F412 Words in Sch. 12 para. 1(5) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(10)**, 40(1); S.I. 2012/1902, art. 2(d)

F413 Words in Sch. 12 para. 1(6) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(11)**, 40(1); S.I. 2012/1902, art. 2(d)

Designation of priority neighbourhoods or premises

2 (1) The Secretary of State may make regulations allowing a Primary Care Trust **[**[F414]or Strategic Health Authority **]** to designate—

(a) **[**[F415]neighbourhoods**][**[F415]relevant areas**]**,

(b) premises, or

(c) descriptions of premises,

for the purposes of this paragraph.

(2) The regulations may, in particular, make provision—

(a) as to the circumstances in which, and the **[**[F416]neighbourhoods**][**[F416]relevant areas**]** or premises in relation to which, designations may be made or maintained,

(b) allowing a Primary Care Trust to defer consideration of pharmaceutical list applications relating to **[**[F416]neighbourhoods**][**[F416]relevant areas**]**, premises or descriptions of premises that have been designated,

(c) allowing a designation to be cancelled in prescribed circumstances,

(d) requiring a designation to be cancelled—

(i) if the Secretary of State gives a direction to that effect, or

(ii) in prescribed circumstances.

(3) "Pharmaceutical list applications" means applications for inclusion in a pharmaceutical list.

[[F417](4) "Relevant area" has the same meaning as in section 129(2A).**]**

Textual Amendments

F414 Words in Sch. 12 para. 2(1) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(12)**, 40(1); S.I. 2012/1902, art. 2(d)

F415 Words in Sch. 12 para. 2(1)(a) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 207(12)(a)**, 306(1)(d)(4)

F416 Words in Sch. 12 para. 2(2)(a)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 207(12)(a)**, 306(1)(d)(4)

F417 Sch. 12 para. 2(4) inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 207(12)(b)**, 306(1)(d)(4)

Regulations

3 (1) The Secretary of State may make regulations with respect to LP services.

(2) The regulations must include provision for participants other than **[**[F418]the commissioning body **]** to withdraw from an LPS scheme if they wish to do so.

(3) The regulations may, in particular—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) provide that an LPS scheme may be made only—
  (i) in prescribed circumstances,
  (ii) in relation to an area, a community or a category of persons determined in accordance with the regulations, or
  (iii) in relation to premises determined in accordance with the regulations,

(b) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with an LPS scheme,

(c) make provision as to the services, or categories of service, for which an LPS scheme must provide,

(d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons providing LP services,

(e) require details of each LPS scheme to be published,

(f) make provision with respect to the variation and termination of an LPS scheme,

(g) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both LP services and pharmaceutical services from the same premises,

(h) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list,

(i) provide for parties to an LPS scheme to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 9,

(j) provide for directions, as to payments, made under section 9(11) (as it has effect as a result of regulations made by virtue of paragraph (i)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court,

(k) authorise Primary Care Trusts **[**[F419]or Strategic Health Authorities **]** to make payments of financial assistance for prescribed categories of preparatory work undertaken—
  (i) in connection with preparing proposals for an LPS scheme, or
  (ii) in preparation for the provision of services under a proposed LPS scheme.

Textual Amendments

F418 Words in Sch. 12 para. 3(2) substituted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(14)**, 40(1); S.I. 2012/1902, art. 2(d)

F419 Words in Sch. 12 para. 3(3)(k) inserted (1.9.2012) by Health Act 2009 (c. 21), **ss. 29(15)**, 40(1); S.I. 2012/1902, art. 2(d)

[F420]SCHEDULE 13

Section 169

. . . . . .

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F420 Sch. 13 omitted (18.1.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 2 para. 128** (with Sch. 5)

SCHEDULE 14

Section 231

FURTHER PROVISION ABOUT THE EXPENDITURE OF PRIMARY CARE TRUSTS

Pharmaceutical services expenditure

F421 1 . . . . . .

Textual Amendments

F421 Sch. 14 para. 1 repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 5(2), **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

Main expenditure

F422 2 . . . . . .

Textual Amendments

F422 Sch. 14 para. 2 repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 5(2), **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

3 (1) For each financial year, the Secretary of State must apportion among all Primary Care Trusts, in such manner as he considers appropriate, the total of the remuneration referable to the cost of drugs which is paid by each Primary Care Trust in that year.

(2) A Primary Care Trust is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (1).

(3) Where in any financial year any remuneration referable to the cost of drugs for which a Primary Care Trust is accountable is paid by another Primary Care Trust, the remuneration must be treated (for the purposes of sections 228 and 229) as having been paid by the first Primary Care Trust in the performance of its functions.

(4) The Secretary of State may, in particular, exercise his discretion under sub-paragraph (1)—

(a) so that any apportionment reflects, in the case of each Primary Care Trust, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the Primary Care Trust in question,

(b) by reference to averaged or estimated amounts.

(5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Primary Care Trust other than the Primary Care Trust

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

which is accountable for the payment to be reimbursed in such manner as he may determine.

[[F423]3A(1) The Secretary of State may designate any element of the remuneration paid by Primary Care Trusts to persons providing pharmaceutical services or local pharmaceutical services which is not remuneration referable to the cost of drugs.

(2) If an element is so designated, the Secretary of State must for each financial year apportion among all Primary Care Trusts, in such manner as the Secretary of State considers appropriate, the total of the remuneration referable to that element which is paid by each Primary Care Trust in that year.

(3) A Primary Care Trust is accountable in any year for remuneration referable to that element to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (2).

(4) Where in any financial year any remuneration referable to that element for which a Primary Care Trust is accountable is paid by another Primary Care Trust, the remuneration must be treated (for the purposes of sections 228 and 229) as having been paid by the first Primary Care Trust in the performance of its functions.

(5) The Secretary of State may, in particular, exercise the discretion under sub-paragraph (2)—

(a) so that any apportionment relating to services associated with the provision of drugs reflects, in the case of each Primary Care Trust, the financial consequences of orders for the provision of drugs, being orders which in the opinion of the Secretary of State are attributable to the Primary Care Trust in question,

(b) by reference to averaged or estimated amounts.

(6) The Secretary of State may make provision for any remuneration referable to an element designated under sub-paragraph (1) which is paid by a Primary Care Trust other than the Primary Care Trust which is accountable for the payment to be reimbursed in such manner as the Secretary of State may determine.**]**

Textual Amendments

F423 Sch. 14 para. 3A inserted (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 12 para. 5(3)**; S.I. 2010/708, art. 2(c)

Interpretation

4 (1) In this Schedule—

[[F424]"designate" means designate in writing (and different designations may be made for different purposes),**]**

"drugs" includes medicines and listed appliances (within the meaning given by section 126),

[F425]…

"remuneration referable to the cost of drugs" includes ([F426]... subject to sub-paragraph (2)) remuneration payable to persons providing local pharmaceutical services.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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 Secretary of State must determine what remuneration paid by Primary Care Trusts to persons providing pharmaceutical services or local pharmaceutical services must be treated for the purposes of this Schedule as remuneration referable to the cost of drugs.

(3) The Secretary of State may treat all remuneration paid by Primary Care Trusts to such persons, so far as it is met by an NHS trust or an NHS foundation trust under section 234(4), as remuneration referable to the cost of drugs for those purposes.

[[F427](4) If the Secretary of State does not treat such remuneration, so far as it is so met by an NHS trust or NHS foundation trust, as remuneration referable to the cost of drugs, the Secretary of State may treat it as remuneration falling within paragraph 3A(1).**]**

Textual Amendments

F424 Words in Sch. 14 para. 4(1) substituted (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 12 para. 5(4)(a)**; S.I. 2010/708, art. 2(c)

F425 Words in Sch. 14 para. 4(1) repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 5(4)(b), **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

F426 Words in Sch. 14 para. 4(1) repealed (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 12 para. 5(4)(c), **Sch. 15 Pt. 4**; S.I. 2010/708, art. 2(c)(d)

F427 Sch. 14 para. 4(4) inserted (1.4.2010) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 12 para. 5(5)**; S.I. 2010/708, art. 2(c)

SCHEDULE 15

Section 232

ACCOUNTS AND AUDIT

NHS bodies

1 (1) The following are NHS bodies for the purposes of this Schedule—

(a) any Strategic Health Authority,

(b) any Special Health Authority to which sub-paragraph (2) applies,

(c) any Primary Care Trust,

(d) any NHS trust all or most of whose hospitals, establishments and facilities are situated in England,

(e) any trustees for such an NHS trust appointed under paragraph 10 of Schedule 4,

(f) any special trustees appointed as mentioned in section 212(1) for a trust all or most of whose hospitals, establishments and facilities are situated in England,

(g) any trustees for a Primary Care Trust appointed under paragraph 12 of Schedule 3.

(2) This sub-paragraph applies to any Special Health Authority which—

(a) performs functions only or mainly in respect of England, or

(b) neither performs functions only or mainly in respect of England, nor performs functions only or mainly in respect of Wales.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

[[F428](3) References in this Schedule to "NHS Direct" are to NHS Direct National Health Service Trust.**]**

Textual Amendments

F428 Sch. 15 para. 1(3) inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(2)** (with art. 10)

Accounts to be kept by NHS bodies

2 (1) Each NHS body must keep proper accounts and proper records in relation to the accounts.

(2) If the Secretary of State so directs with the approval of the Treasury, the accounts of any such body of a description specified in the direction must be kept in such form as is so specified.

(3) This paragraph is subject to paragraph 8(2).

Preparation of annual accounts

3 (1) Each NHS body must prepare in respect of each financial year annual accounts in such form as the Secretary of State may direct with the approval of the Treasury.

(2) This paragraph is subject to paragraph 8(3).

Auditing of accounts of certain NHS bodies

4 (1) This paragraph applies to any NHS body that is not a Special Health Authority (as to which, see paragraph 6).

[[F429](a) a Special Health Authority (as to which, see paragraph 6).**][**[F430], or

(b) NHS Direct (as to which, see paragraph 6). **]**

(2) Any annual accounts prepared by any such body under paragraph 3 must be audited in accordance with the Audit Commission Act 1998 (c. 18) by an auditor or auditors appointed by the Audit Commission (see section 2(1)(b) of that Act).

(3) The Comptroller and Auditor General may examine—

(a) any such accounts and any records relating to them, and

(b) any report on them by the auditor or auditors.

(4) "The Audit Commission" means the Audit Commission for Local Authorities and the National Health Service in England [F431]....

Textual Amendments

F429 Sch. 15 para. 4(1)(a): words in Sch. 15 para. 4(1) renumbered as Sch. 15 para. 4(1)(a) (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(3)** (with art. 10)

F430 Sch. 15 para. 4(1)(b) and word inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(3)** (with art. 10)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

F431 Words in Sch. 15 para. 4(4) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), Sch. 9 para. 1(2)(z1), **Sch. 18 Pt. 9**; S.I. 2008/172, art. 4(a)(n)(i)

Transmission of annual accounts

5 (1) Each NHS body that is **[**[F432]neither**]** a Special Health Authority **[**[F433]nor NHS Direct**]** must send a copy of any accounts of the body audited as mentioned in paragraph 4(2) to the Secretary of State by the specified date.

(2) If the body is a Primary Care Trust, it must also send a copy of any such accounts to any Strategic Health Authority whose area includes any part of the Primary Care Trust's area.

(3) Each **[**[F434]NHS body that is a Special Health Authority or NHS Direct**]** must send copies of any annual accounts prepared by it under paragraph 3—

(a) to the Secretary of State by the specified date, and

(b) to the Comptroller and Auditor General as soon as is reasonably practicable following the end of the financial year in question.

(4) The "specified date", in relation to a financial year, means such date as the Secretary of State may direct in relation to that year.

Textual Amendments

F432 Word in Sch. 15 para. 5(1) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(4)(a)** (with art. 10)

F433 Words in Sch. 15 para. 5(1) inserted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(4)(b)** (with art. 10)

F434 Words in Sch. 15 para. 5(3) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(5)** (with art. 10)

Auditing of certain Special Health Authority accounts by Comptroller and Auditor General

6 (1) This paragraph applies where **[**[F435]an NHS body that is a Special Health Authority or NHS Direct**]** sends a copy of its annual accounts to the Comptroller and Auditor General under paragraph 5(3).

(2) The Comptroller and Auditor General must examine, certify and report on the accounts.

(3) The **[**[F436]body**]** must lay before both Houses of Parliament—

(a) a copy of the accounts, and

(b) the Comptroller and Auditor General's report on them.

Textual Amendments

F435 Words in Sch. 15 para. 6(1) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(6)** (with art. 10)

F436 Word in Sch. 15 para. 6(3) substituted (26.3.2008) by Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (S.I. 2008/817), arts. 1, **6(7)** (with art. 10)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Summarised accounts of NHS bodies other than Special Health Authorities

7 (1) This paragraph applies in relation to NHS bodies that are not Special Health Authorities.

(2) The Secretary of State must prepare summarised accounts relating to such bodies in respect of each financial year.

(3) Sub-paragraph (2) is subject to paragraphs 8(3) and 9(2).

(4) The summarised accounts must be prepared in such form as the Treasury may direct.

(5) The Secretary of State must transmit the summarised accounts to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which they relate.

(6) The Comptroller and Auditor General must —
(a) examine and certify the summarised accounts, and
(b) lay copies of them and his report on them before both Houses of Parliament.

(7) This paragraph has effect subject to any provision made under section 14(1) of the Government Resources and Accounts Act 2000 (c. 20) (power to disapply this paragraph in relation to specified bodies and years).

Exceptions for accounts of charitable trusts

8 (1) For the purposes of this paragraph a "relevant charitable trust", in relation to an NHS body, means a charitable trust whose trustee or trustees is or are that body.

(2) Nothing in paragraph 2, so far as it applies to an NHS body of any description, has effect in relation to accounts relating to a relevant charitable trust.

(3) Nothing in paragraph 3 or 7, so far as it applies to an NHS body of any description, requires any annual or summarised accounts prepared by or in relation to the body to include matters relating to a relevant charitable trust.

Exceptions for accounts of non-charitable trusts

9 (1) For the purposes of this paragraph a "relevant non-charitable trust", in relation to an NHS body, means a trust which is not a charitable trust and whose trustee or trustees is or are that body.

(2) Nothing in paragraph 7, so far as it relates to an NHS body of any description, requires any summarised accounts prepared in relation to the body to include matters relating to a relevant non-charitable trust.

[F437]SCHEDULE 16

Section 243

. . . . . .

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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

F437 Sch. 16 repealed (30.6.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), ss. 232(1), 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 4(b)(c)

SCHEDULE 17

Section 246

EXEMPT INFORMATION RELATING TO HEALTH SERVICES

Modifications etc. (not altering text)

C48 Sch. 17: power to apply conferred by 2007 c. 28, s. 123(5)(b)(iii) (as substituted (12.1.2010) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), **ss. 32(1)**, 148(2)(a)(ii))

PART 1

DESCRIPTIONS OF EXEMPT INFORMATION

1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, a relevant body.

2 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of a relevant body.

3 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by a relevant body.

4 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by a relevant body.

5 The amount of any expenditure proposed to be incurred by a relevant body under any particular contract for the acquisition of property or the supply of goods and services.

6 Any terms proposed or to be proposed by or to a relevant body in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.

7 The identity of a relevant body (as well as of any other person, by virtue of paragraph 6) as the person offering any particular tender for a contract for the supply of goods or services.

8 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between a relevant body or a Minister of the Crown and employees of, or office-holders under, a relevant body.

9 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with—

(a) any legal proceedings by or against a relevant body, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) the determination of any matter affecting a relevant body,

(whether, in either case, proceedings have been commenced or are in contemplation).

10 Information relating to a particular person who was included in a list of persons undertaking to provide services under Part 2 of the National Health Service Act 1977 (c. 49).

11 Information relating to a particular person who is, or was formerly, included in, or is an applicant for inclusion in—

(a) a pharmaceutical list, or

(b) a pharmaceutical list or ophthalmic list under the National Health Service (Wales) Act 2006 (c. 42).

12 Information relating to a particular person who—

(a) provided primary medical services, primary dental services or primary ophthalmic services under a contract under section 28K, 28Q or 28WA of the National Health Service Act 1977, or

(b) was included in a list under section 28X of that Act.

13 (1) Information relating to a particular person who—

(a) is, or was formerly, providing primary medical services, primary dental services or primary ophthalmic services under a contract under section 84, 100 or 117, or

(b) is, or was formerly, included in, or is an applicant for inclusion in, a list under section 91, 106, 123 or **[**[F438]146**][**[F438]147A**]**.

(2) In this paragraph—

(a) references to primary medical services and primary dental services include such services provided under the National Health Service (Wales) Act 2006, and

(b) references to provisions of this Act include references to corresponding provisions of that Act.

Textual Amendments

F438 Word in Sch. 17 para. 13(1)(b) substituted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 208(6)**, 306(1)(d)(4)

14 Information relating to any particular employee, former employee, or applicant to become an employee, of a person referred to in paragraph 10, 11, 12 or 13.

15 Information relating to the physical or mental health of a particular individual.

PART 2

QUALIFICATIONS

16 Information relating to a person of a description specified in any of paragraphs 1 to 4 and 10 to 14 of Part 1 is not exempt information by virtue of that paragraph unless it relates to an individual of that description in the capacity indicated by the description.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

17 Information falling within paragraph 5 of Part 1 is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with a relevant body in respect of the property, goods or services, whether the advantage would arise as against that body or as against other such persons.

18 Information falling within paragraph 6 of Part 1 is exempt information if and so long as disclosure to the public of the terms would prejudice a relevant body in those or any other negotiations concerning the property or goods or services.

19 Information falling within paragraph 8 of Part 1 is exempt information if and so long as disclosure to the public of the information would prejudice a relevant body in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.

PART 3

INTERPRETATION

20 In this Schedule—

"disposal", in relation to property, includes the granting of an interest in or right over it,

"employee" means a person employed under a contract of service,

"labour relations matter" means—

(a) any of the matters specified in paragraphs (a) to (g) of section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (matters which may be the subject of a collective agreement), or

(b) any dispute about a matter falling within paragraph (a),

and for the purposes of this definition the enactments mentioned in paragraph (a), with the necessary modifications, apply in relation to office-holders under a relevant body as they apply in relation to employees of a relevant body,

"office-holder", in relation to a relevant body, means the holder of any paid office appointments to which are or may be made or confirmed by the body or by any person who holds any such office or is an employee of the body.

SCHEDULE 18

Section 75

SECTION 75 ARRANGEMENTS: TRANSFER OF STAFF

Application of Schedule

1 This Schedule applies where, under any arrangements under regulations under section 75, any functions of a body ("the transferor") will be exercised by another body ("the transferee").

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

Orders transferring staff

2 (1) The Secretary of State may by order transfer to the transferee any specified description of employees of the transferor.

(2) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.

Effect of order on contracts of employment

3 (1) The contract of employment of an employee transferred by an order under paragraph 2—

(a) is not terminated by the transfer, and

(b) has effect from the date of the transfer as if originally made between the employee and the transferee.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee's contract of employment are by virtue of this sub-paragraph transferred to the transferee, and

(b) anything done before the date of the transfer by or in relation to the transferor in respect of the employee or his contract of employment is deemed from that date to have been done by or in relation to the transferee.

(3) Sub-paragraphs (1) and (2) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the transferor or the transferee that he objects to the transfer.

(4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.

(5) This paragraph does not affect any right of an employee transferred by an order under paragraph 2 to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

Effect of order on pension rights

4 (1) An order under paragraph 2 may provide that, in the case of an employee of any specified description who is transferred by the order, paragraph 3 does not apply in relation to—

(a) so much of the employee's contract of employment as relates to relevant pension provisions, or

(b) any rights, powers, duties or liabilities under or in connection with that contract, or otherwise arising in connection with the employee's employment, and relating to such provisions.

(2) If an order under paragraph 2 provides as mentioned in sub-paragraph (1), the order may in relation to any such employee make such provision (if any) as the Secretary

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

of State considers appropriate with respect to all or any of the matters mentioned in paragraphs (a) and (b) of that sub-paragraph.

(3) The provision which may be made by virtue of sub-paragraph (2) includes provision—

(a) for any such employee's contract of employment with the transferee to have effect with any specified modifications,

(b) for relevant pension provisions of any specified description to have effect in the case of any such employee with any such modifications.

(4) In this paragraph "relevant pension provisions" means the provisions of an occupational pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48), with the exception (if the order under paragraph 2 so provides) of any provisions of such a scheme falling within a description specified in the order.

Divided employments

5 (1) Where an employee will be transferred by an order under paragraph 2 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, divided so as to constitute two separate contracts of employment between the employee and the transferor and between the employee and the transferee.

(2) Where an employee's contract of employment is divided as provided under sub-paragraph (1)—

(a) the order must provide for paragraph 3 to have effect in the case of the employee and his contract of employment subject to appropriate modifications, and

(b) paragraph 4 similarly applies only so far as appropriate in connection with the employee's employment by the transferee.

[F439]SCHEDULE 19

Section 250

. . . . . .

Textual Amendments

F439 Sch. 19 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 283(1)**, 306(4) (with s. 283(3)); S.I. 2012/1319, art. 2(3)

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 20

Section 254

FURTHER PROVISION ABOUT LOCAL SOCIAL SERVICES AUTHORITIES

Modifications etc. (not altering text)

C49 Sch. 20 modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 3 para. 9** (with Sch. 3 Pt. 1)

Care of mothers and young children

1 A local social services authority may, with the Secretary of State's approval, and to such extent as he may direct must, make arrangements for the care of pregnant women and women who are breast feeding (other than for the provision of residential accommodation for them).

Prevention, care and after-care

2 (1) A local social services authority may, with the Secretary of State's approval, and to such extent as he may direct must, make the arrangements mentioned in sub-paragraph (2).

(2) The arrangements are for the purpose of the prevention of illness, for the care of persons suffering from illness and for the after-care of persons who have been suffering from illness and in particular for—

(a) the provision, for persons whose care is undertaken with a view to preventing them from becoming ill, persons suffering from illness and persons who have been suffering from illness, of centres or other facilities for training them or keeping them suitably occupied and the equipment and maintenance of such centres,

(b) the provision, for the benefit of such persons as are mentioned in paragraph (a), of ancillary or supplemental services, and

(c) the exercise of the functions of the local social services authority in respect of persons suffering from mental disorder who are received into guardianship under Part 2 or 3 of the Mental Health Act 1983 (c. 20) (whether the guardianship of the authority or of other persons).

(3) A local social services authority may not, and is not under a duty to, make under this paragraph arrangements to provide facilities for any of the purposes mentioned in section 15(1) of the Disabled Persons (Employment) Act 1944 (c. 10).

(4) No arrangements under this paragraph may provide for the payment of money to persons for whose benefit they are made, except in so far as they fall within sub-paragraph (5).

(5) Arrangements fall within this sub-paragraph if—

(a) they provide for the remuneration of such persons engaged in suitable work in accordance with the arrangements of such amounts as the local social services authority considers appropriate in respect of their occasional personal expenses, and

(b) it appears to the authority that no such payment would otherwise be made.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

(6) No arrangements under this paragraph may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (c. 33) (exclusion from benefits) applies solely—
  (a) because he is destitute, or
  (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(7) Section 95(2) to (7) of that Act apply for the purposes of sub-paragraph (6); and for that purpose a reference to the Secretary of State in section 95(4) or (5) is a reference to a local social services authority.

(8) The Secretary of State may make regulations as to the conduct of premises in which facilities are provided in pursuance of arrangements made under this paragraph for persons—
  (a) who are or have been suffering from mental disorder within the meaning of the Mental Health Act 1983, or
  (b) whose care is undertaken with a view to preventing them from becoming sufferers from mental disorder.

(9) "Facilities" means facilities for training such persons or keeping them suitably occupied.

(10) This paragraph does not apply in relation to persons under the age of 18.

(11) No authority is authorised or may be required under this paragraph to provide residential accommodation for any person.

Home help and laundry facilities

3 (1) Each local social services authority—
  (a) must provide or arrange for the provision of, on such a scale as is adequate for the needs of its area, of home help for households where such help is required owing to the presence of a person to whom sub-paragraph (2) applies, and
  (b) may provide or arrange for the provision of laundry facilities for households for which home help is being, or can be, provided under paragraph (a).

(2) This sub-paragraph applies to any person who—
  (a) is suffering from illness,
  (b) is pregnant or has recently given birth,
  (c) is aged, or
  (d) handicapped as a result of having suffered from illness or by congenital deformity.

Research

4 (1) A local social services authority may conduct or assist other persons in conducting research into matters relating to the functions of local social services authorities under this Schedule.

(2) Sub-paragraph (1) does not affect any powers conferred by any other Act.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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)*

SCHEDULE 21

Section 259

PROHIBITION OF SALE OF MEDICAL PRACTICES

Modifications etc. (not altering text)

C50 Sch. 21 transfer of functions (10.7.2008) by Welsh Ministers (Transfer of Functions) Order 2008 (S.I. 2008/1786), **art. 2(b)**

Prohibition, and certificate of the Secretary of State

1 (1) Any person who sells or buys the goodwill of a medical practice which it is unlawful to sell by virtue of section 259 is guilty of an offence and liable on conviction on indictment to a fine not exceeding—

(a) such amount as will in the court's opinion secure that he derives no benefit from the offence, and

(b) the further amount of £500,

or to imprisonment for a term not exceeding three months, or both.

(2) Any person proposing to be a party to a transaction or series of transactions which he considers might amount to a sale of the goodwill of a medical practice in contravention of section 259 may ask the Secretary of State for a certificate under this paragraph.

(3) The Secretary of State must—

(a) consider any such application, and

(b) if he is satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of such a medical practice, issue to the applicant a certificate to that effect.

(4) The certificate must—

(a) be in the prescribed form, and

(b) set out all material circumstances disclosed to the Secretary of State.

(5) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it is a defence to prove that the transaction or series of transactions was certified by the Secretary of State under sub-paragraph (3).

(6) Any document purporting to be such a certificate is admissible in evidence and is deemed to be such a certificate unless the contrary is proved.

(7) The court may disregard such a certificate if it appears to the court that the applicant for the certificate—

(a) failed to disclose to the Secretary of State all the material circumstances, or

(b) made any misrepresentation with respect to the material circumstances.

(8) A prosecution for an offence under this paragraph may be instituted only by or with the consent of the Director of Public Prosecutions, and the Secretary of State must, at the request of the Director, furnish him with—

(a) a copy of any certificate issued by the Secretary of State under sub-paragraph (3), and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) copies of any documents produced to him in connection with the application for that certificate.

Certain transactions deemed sale of goodwill

2 (1) For the purposes of section 259 and paragraph 1, a disposal of premises previously used for the purposes of a medical practice is deemed to be a sale of the goodwill of a medical practice if—

(a) the person disposing of the premises did so knowing that another person ("A") intended to use them for the purposes of A's medical practice, and

(b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.

(2) If a person disposes of any premises together with any other property, the court must, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it considers just.

(3) For the purposes of sub-paragraphs (1) and (2)—

(a) "disposal" means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and "disposes" and "disposing" must be read accordingly, and

(b) a person who procures the disposal of any premises must be treated as having disposed of them.

(4) Where in pursuance of any partnership agreement—

(a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership,

(b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or

(c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,

there is deemed for the purposes of section 259 and paragraph 1 to have been a sale of goodwill as specified in sub-paragraph (5).

(5) The sale of goodwill is the sale of the goodwill of the practice—

(a) of any partner to whom, or to whose personal representative, the consideration (or any part of it) is given or for whose benefit the services are performed,

(b) to the partner or each of the partners by or on whose behalf the consideration (or any part of it) was given or to the partner who performed the services.

(6) The sale is deemed for the purposes of section 259 and paragraph 1 to have been effected—

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) in a case to which sub-paragraph (4)(a) or (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part was given, or

(b) in a case to which sub-paragraph (4)(c) applies, at the time when the agreement was made.

(7) Sub-paragraph (8) applies if a person ("the assistant")—

(a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice),

(b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed, and

(c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.

(8) For the purposes of section 259 and paragraph 1, a sale of the goodwill of the practice is deemed to have taken place (at the time when the remuneration was fixed) unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.

(9) For the purposes of section 259 and paragraph 1, the goodwill of a medical practice is deemed to have been sold if sub-paragraph (10) or (11) applies.

(10) This sub-paragraph applies where a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—

(a) to do or refrain from doing any act for the purpose of facilitating the succession of another to the practice, or

(b) to allow any act to be done for that purpose.

(11) This sub-paragraph applies where a person—

(a) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice), and

(b) succeeds, or has previously succeeded, to the practice.

(12) Sub-paragraph (9) does not apply if it is proved that no part of the consideration was given in respect of the goodwill.

(13) Sub-paragraph (9) does not apply to anything done—

(a) in relation to the acquisition of premises for the purposes of a medical practice,

(b) in pursuance of a partnership agreement, or

(c) in the performance of medical services by one person as an assistant to another.

Consideration

3 (1) In determining for the purposes of section 259 and this Schedule the consideration given in respect of any transaction, the court must—

(a) have regard to any other transaction appearing to the court to be associated with the first transaction,

(b) estimate the total consideration given in respect of both or all the transactions, and

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) apportion the total between the transactions in such manner as the court considers just.

(2) For the purposes of section 259 and this Schedule consideration is deemed to be given to a person ("B") if—

(a) it is given to another person but with B's knowledge and consent, and

(b) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration.

Carried-over goodwill

4 The fact that a person's medical practice was previously carried on by another person who at any time provided or performed services as specified in section 259 does not, by itself, make it unlawful under section 259 for the goodwill of his practice to be sold.

Interpretation

5 In section 259 and this Schedule, unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.

SCHEDULE 22

Section 260

CONTROL OF MAXIMUM PRICES FOR MEDICAL SUPPLIES

Orders and directions

1 (1) An order under section 260 may make such provision (including provision for requiring any person to furnish any information) as the Secretary of State considers necessary or expedient for facilitating the introduction or operation of a scheme of control—

(a) for which provision has been made under that section, or

(b) for which, in his opinion, it will or may be necessary or expedient that provision should be made.

(2) An order under section 260—

(a) may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as may be specified in the order, and

(b) may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and so as to have effect either generally or in any particular area.

Notices, authorisations and proof of documents

2 (1) A notice to be served on any person for the purposes of section 260, or of any order or direction made or given under that section, is deemed to have been duly served on the person to whom it is directed if—

(a) it is delivered to him personally, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) it is sent by registered post or the recorded delivery service addressed to him at his last or usual place of abode or place of business.

(2) Where under section 260 or this Schedule a person has power to authorise other persons to act under those provisions, the power may be exercised so as to confer the authority either on particular persons or on a specified class of persons.

(3) Any permit, licence, permission or authorisation granted for the purposes of section 260 or this Schedule may be revoked at any time by the authority or person empowered to grant it.

(4) A document purporting to be duly executed under or by virtue of section 260 or this Schedule and signed by or on behalf of the person making it must be received in evidence and, unless the contrary is proved, taken to be so executed and signed.

Territorial extent

3 (1) Provisions in or having effect under section 260 or this Schedule which impose prohibitions, restrictions or obligations apply to—

(a) persons in the United Kingdom,

(b) persons on board any British ship or aircraft (other than an excepted ship or aircraft within the meaning of sub-paragraph (2)), and

(c) persons (wherever they are) who are ordinarily resident in the United Kingdom and are—

(i) British citizens,

(ii) British overseas territories citizens,

(iii) British Overseas citizens,

(iv) British subjects under the British Nationality Act 1981 (c. 61),

(v) British Nationals (Overseas) (within the meaning of that Act), or

(vi) British protected persons (within the meaning of that Act).

(2) In sub-paragraph (1)—

"British aircraft" means an aircraft registered in—

(a) any part of Her Majesty's dominions,

(b) any country outside Her Majesty's dominions in which Her Majesty has jurisdiction,

(c) any country consisting partly of one or more colonies and partly of one or more countries mentioned in paragraph (b),

"excepted ship or aircraft" means a ship or aircraft registered in any country listed in Schedule 3 to the British Nationality Act 1981 or in any territory administered by the government of any such country, other than a ship or aircraft at the disposal of, or chartered by or on behalf of, Her Majesty's Government in the United Kingdom.

False documents and false statements

4 (1) A person must not, with intent to deceive—

(a) use any document issued for the purposes of section 260 or this Schedule or of any order made under that section,

(b) have in his possession any document so closely resembling a document mentioned in paragraph (a) as to be calculated to deceive, or

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) produce, furnish, send or otherwise make use of for purposes connected with that section or this Schedule or any order or direction made or given under that section, any book, account, estimate, return, declaration or other document which is false in a material particular.

(2) A person must not, in furnishing any information for the purposes of section 260 or this Schedule or of any order made under that section—

(a) make a statement which he knows to be false in a material particular, or

(b) recklessly make a statement which is false in a material particular.

Restrictions on disclosing information

5 No person who obtains any information by virtue of section 260 or this Schedule may, otherwise than in connection with the execution of that section or this Schedule or of an order made under that section, disclose that information except—

(a) for the purposes of any criminal proceedings, or of a report of any criminal proceedings, or

(b) with permission granted by or on behalf of a Minister of the Crown.

6 Paragraph 5 does not apply if—

(a) the person who has obtained any such information as is referred to in that paragraph is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 (c. 36), and

(b) the information is not held by the public authority on behalf of another person.

Offences by corporations

7 (1) Where an offence under section 260 or this Schedule committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of any director, manager, secretary of other similar officer of the body corporate, or a person purporting to act in any such capacity, or

(b) to be attributable to any neglect on the part of such a person,

that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) "Director", in relation to a body corporate—

(a) established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, and

(b) whose affairs are managed by its members,

means a member of that body corporate.

Penalties

8 (1) A person who contravenes or fails to comply with—

(a) an order made under section 260,

(b) a direction given or requirement imposed under that section, or

(c) a provision of this Schedule,

is guilty of an offence.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) Sub-paragraph (1) does not apply if the contravention or failure is an offence under paragraph 9(3) or 10(5).

(3) A person guilty of an offence under sub-paragraph (1) is—
- (a) on summary conviction, liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding the prescribed sum, or to both, or
- (b) on conviction on indictment, liable to imprisonment for a term not exceeding two years or to a fine, or to both.

(4) Sub-paragraph (3) is subject to paragraph 11.

Production of documents

9 (1) For the purposes of—
- (a) securing compliance with any order made or direction given under section 260 by or on behalf of the Secretary of State, or
- (b) verifying any estimates, returns or information furnished to the Secretary of State in connection with section 260 or any order made or direction given under that section,

an officer of the Secretary of State duly authorised in that behalf has power, on producing (if required to do so) evidence of his authority, to require any person carrying on an undertaking or employed in connection with an undertaking to produce to that officer forthwith any documents relating to the undertaking which that officer may reasonably require for the purposes set out above.

(2) The power conferred by this paragraph to require any person to produce documents includes power—
- (a) if the documents are produced, to take copies of them or extracts from them and to require that person, or where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them,
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(3) If any requirement to produce documents or provide an explanation or make a statement which is imposed by virtue of this paragraph is not complied with, the person on whom the requirement was so imposed is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Sub-paragraph (3) is subject to paragraph 11.

(5) Where a person is charged with such an offence in respect of a requirement to produce any document, it is a defence to prove that it was not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

10 (1) A justice of the peace may issue a warrant under this paragraph if he is satisfied, on information on oath laid on the Secretary of State's behalf, that there are any reasonable grounds for suspecting that there are on any premises any documents—
- (a) of which production has been required by virtue of paragraph 9, and
- (b) which have not been produced in compliance with that requirement.

Status: *Point in time view as at 01/09/2012.*
Changes to legislation: *National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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) A warrant so issued may authorise any constable, together with any other persons named in the warrant and any other constables to—
  (a) enter the premises specified in the information (using such force as is reasonably necessary for the purpose), and
  (b) search the premises and take possession of any documents appearing to be such documents as are mentioned above, or to take in relation to any documents so appearing any other steps which may appear necessary for preserving them and preventing interference with them.

(3) Each warrant issued under this paragraph continues in force until the end of the period of one month after the date on which it is issued.

(4) Any documents of which possession is taken under this paragraph may be retained—
  (a) for a period of three months, or
  (b) if within that period proceedings to which they are relevant are commenced for an offence under section 260 or this Schedule, until the conclusion of those proceedings.

(5) A person is guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale, if he obstructs the exercise of—
  (a) any right of entry or search conferred by virtue of a warrant under this paragraph, or
  (b) any rights so conferred to take possession of any documents.

(6) Sub-paragraph (5) is subject to paragraph 11.

Penalties for offences: transitional modification for England and Wales

11 (1) In relation to an offence committed in England and Wales before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' courts power to impose imprisonment) paragraph 8(3) has effect as if for “twelve months” there were substituted “ three months ”.

(2) In relation to an offence committed in England and Wales before the commencement of section 280 of the Criminal Justice Act 2003 (alteration of penalties for specified summary offences) paragraphs 9(3) and 10(5) have effect as if “ to imprisonment for a term not exceeding three months or ” were inserted after “conviction”.

Status:
Point in time view as at 01/09/2012.

Changes to legislation:
National Health Service Act 2006 is up to date with all changes known to be in force on or before 21 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.