

## 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 local education authorities and for the medical treatment of such pupils.
- 2 (1) The Secretary of State may, by arrangement with any local education 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 local education 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.
- 3 An arrangement under paragraph 2(1)(b) may provide for payments by the proprietor in question.
- 4 A local education authority may not make an arrangement under paragraph 2(1)
  - (a) unless the governing body of the educational establishment agrees to the arrangement.
- 5 (1) Sub-paragraph (2) applies to—
  - (a) each local education 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 local education 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.
- 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- 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.

*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 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.

*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.

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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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
  - (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,
  - (d) the circumstances in which a member of a Strategic Health Authority who is (or must be regarded as) an officer of the Strategic Health Authority may be suspended from performing his functions as a member,
  - (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

---

*Status: This is the original version (as it was originally enacted).*

---

- (f) the procedure of a Strategic Health Authority and of such committees and sub-committees as are mentioned in paragraph (e).
- 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—
- (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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- 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),
  - (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

---

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

---

- (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.
- (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),

---

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

---

- (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.
  - (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 subparagraph (1), the Secretary of State may by order provide for the transfer of any trust property from the Primary Care Trust to the trustees.

---

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

---

## 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.
- (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—
- (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

---

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

---

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,
- 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.
- (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.

---

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

---

- (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,
  - (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.



---

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

---

- (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.

## 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).

---

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

---

### *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 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

---

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

---

- (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.

*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

---

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

---

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—
  - (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

---

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

---

- (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.

*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.

---

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

---

- (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.
- (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.

---

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

---

- (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.

#### *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).
- (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.
- 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.

---

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

---

- (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.

#### *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.



---

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

---

- (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 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.

---

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

---

- (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).

*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.

---

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

---

- (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.
- (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, no such order may be made until after the completion of such consultation as may be prescribed.
- 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 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,
  - (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

---

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

---

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.
- (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.

## 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.

---

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

---

- (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.
- (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



---

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

---

- (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—
- (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,
  - (d) the circumstances in which a member of a Special Health Authority who is (or must be regarded as) an officer of the Special Health Authority may be suspended from performing his functions as a member,

---

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

---

- (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).
- 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

---

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

---

- (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 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.

---

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

---

- (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”.

*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.
- (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.

---

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

---

### *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.
- (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.

---

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

---

- 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.
- (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.
- 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.
- (5) The appointment of a chief executive requires the approval of the board of governors.

---

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

---

- 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.
- 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,



---

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

---

- (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) 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.

#### *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.
- (3) An officer of the Audit Commission may be the auditor if he is appointed by the board with the agreement of the Commission.
- (4) But a person may not be appointed as auditor unless he (or, in the case of a firm, each of its members) is a member of one or more of the following bodies—
- (a) the bodies mentioned in section 3(7)(a) to (e) of the Audit Commission Act 1998 (c. 18),
  - (b) any other body of accountants established in the United Kingdom and 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.
- (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.
- (7) In this paragraph “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales.

#### *Accounts*

- 24 (1) A public benefit corporation must keep accounts in such form as the regulator may with the approval of the Treasury direct.
- (2) The accounts must be audited by the corporation’s auditor.
- (3) But the Comptroller and Auditor General may examine—

---

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

---

- (a) the accounts,
  - (b) any 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.
- 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 the Treasury direct.
- (2) In preparing its annual accounts, the corporation must comply with any directions given by the regulator with the approval of the Treasury as to—
  - (a) the methods and principles according to which the accounts must be prepared,
  - (b) the information to be given in the accounts.
- (3) In determining the form and content of the annual accounts 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) once it has done so, send copies of those documents to the regulator.
- (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.

#### *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,
  - (b) any other information the regulator requires.
- (3) It is for the regulator to decide—
  - (a) the form of the reports,
  - (b) when the reports must be sent to it,

---

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

---

- (c) the periods to which the reports are to relate.
- 27 (1) A public benefit corporation must give information to the regulator 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.

*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.

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.
- (3) A person must not be appointed as a member for a period of more than four years.

---

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

---

- (4) A person who ceases to be a member is eligible for re-appointment.

#### *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—
- (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.

### *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.

---

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

---

- (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.

#### *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.

## 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 to a person mentioned in that subsection.
- 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—

---

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

---

- (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
  - (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.

---

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

---

- (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).
- (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.

### *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 the Commission for Healthcare Audit and Inspection under Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43),
  - (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.

## 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,

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

---

- (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 may establish LPS schemes.
- (2) In this Act, an “LPS scheme” means one or more agreements—
  - (a) made by a Primary Care Trust in accordance with this Schedule,
  - (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) 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 made by it.
- (6) The functions of an NHS trust and an NHS foundation 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).

*Designation of priority neighbourhoods or premises*

- 2 (1) The Secretary of State may make regulations allowing a Primary Care Trust to designate—
- (a) neighbourhoods,
  - (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 neighbourhoods 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 neighbourhoods, premises or descriptions of premises that have been designated,
  - (c) allowing a designation to be cancelled in prescribed circumstances,
  - (d) requiring a designation to be cancelled—
    - (i) if the Secretary of State gives a direction to that effect, or
    - (ii) in prescribed circumstances.

---

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

---

- (3) “Pharmaceutical list applications” means applications for inclusion in a pharmaceutical list.

### *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 Primary Care Trusts to withdraw from an LPS scheme if they wish to do so.
- (3) The regulations may, in particular—
- (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 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.

SCHEDULE 13

Section 169

THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

*Constitution*

- 1 The Family Health Services Appeal Authority (“the FHSAA”) consists of—
- (a) a President,
  - (b) one or more Deputy Presidents, and
  - (c) a number of other members,
- all appointed by the Lord Chancellor on terms determined by him.
- 2 The number of the other members must be determined by the Lord Chancellor after consulting the Secretary of State.
- 3 A person appointed as the President must have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), and a person appointed as a Deputy President must have a 7 year general qualification.
- 4 The qualifications which the other members must have in order to be eligible for appointment must be determined by the Lord Chancellor.
- 5 Each person appointed under paragraph 1—
- (a) must hold and vacate office in accordance with the terms of his appointment, and
  - (b) may be removed from office by the Lord Chancellor, with the concurrence of the Lord Chief Justice, on grounds of incapacity or misbehaviour.
- 6 (1) The other members must include at least one—
- (a) health care professional of each description prescribed under section 91, 106 and 123, provided that each such health care professional is included in a list under one of those sections,
  - (b) optometrist or medical practitioner providing general ophthalmic services under the National Health Service (Wales) Act 2006 (c. 42), and
  - (c) registered pharmacist—
    - (i) providing or assisting in the provision of pharmaceutical services under this Act or the National Health Service (Wales) Act 2006, or
    - (ii) providing or performing local pharmaceutical services under this Act or the National Health Service (Wales) Act 2006.
- (2) The other members must also include—
- (a) such number of persons with a 7 year general qualification (construed as in paragraph 3) as the Lord Chancellor considers appropriate bearing in mind the requirements of paragraph 9, and
  - (b) a number of lay persons who do not fall within sub-paragraph 6(1)(a) to (c) and who possess such qualifications and experience as the Lord Chancellor considers appropriate.

*Procedure*

- 7 The procedure of the FHSAA is as it determines, subject to the following.
- 8 The functions of the FHSAA must be exercised by panels consisting—

---

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

---

- (a) in the case of functions referred to in section 169(3), of such one or more members as the President may choose, and
  - (b) in the case of other functions, of three members chosen by the President, and, in either case, the President may include himself (or, in the case of a one-member panel, may constitute the panel).
- 9 Subject to paragraph 10, at least one member of each panel (or, in the case of a one-member panel, that member) must have a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)).
- 10 (1) In the case of a panel constituted for the purposes—
- (a) of section 158 or 159, or
  - (b) of regulations under section 91, 106 or 123, containing provision corresponding to the sections mentioned in paragraph (a),
- one member of the panel must have the qualification mentioned in paragraph 9.
- (2) Unless the President decides otherwise, in relation to such a panel—
- (a) if the practitioner is a health care professional of a description prescribed under section 91, 106 or 123, one member of the panel must be a health care professional of the same description,
  - (b) if the practitioner is of a description referred to in paragraph 6(1)(b) or (c), one member of the panel must be a practitioner of that description, and
  - (c) the third member must neither fall within any of sub-paragraphs (a) to (c) of paragraph 6(1) nor have a legal qualification.
- 11 Where a panel has more than one member—
- (a) the President must nominate one of the members as chairman,
  - (b) decisions must be taken by a majority of votes, and
  - (c) if there is a tie the chairman has a second vote as a casting vote.
- 12 The FHSAA must—
- (a) give notice of a panel’s decision and of the reasons for it to each party to the proceedings, and
  - (b) publish each decision of a panel falling within paragraph 13 in such way as the FHSAA considers appropriate,
- and it may send a copy of any such decision to such prescribed persons or persons of prescribed descriptions as it considers appropriate, together with any information relevant to the decision which the FHSAA considers it appropriate to include.
- 13 The following decisions fall within this paragraph—
- (a) a decision on national disqualification (see section 159),
  - (b) a decision to allow an appeal brought by virtue of section 158(2)(a), (b) or (c), and
  - (c) such other decisions as may be prescribed.
- 14 The FHSAA may publish a decision not falling within paragraph 13.
- 15 The Lord Chancellor may make rules as to—
- (a) the composition of panels,
  - (b) the allocation to panels of cases, or of particular proceedings in any case, and
  - (c) the procedure to be followed by a panel in considering any matter before it.



---

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

---

- 16 The Lord Chancellor must make rules—
- (a) giving each party to proceedings before a panel the opportunity of putting his case at a hearing,
  - (b) entitling each party to be legally represented at any hearing (whether it is held at the instance of the panel or of a party), and
  - (c) securing that any hearing is held in public unless the practitioner asks for it to be in private (a request which the panel must consider but need not grant).
- 17 Rules under this Schedule may, in particular, make provision—
- (a) as to the carrying out by a Deputy President of functions of the President,
  - (b) as to how, and as to the time within which, an application to the FHSAA must be made, or an appeal to the FHSAA must be brought (so far as the matter is not provided for in or by virtue of this or any other Act),
  - (c) for a period which must elapse before an application, or a further application, may be made under section 158(5)(a), or under any provision of regulations under section 91, 106, 123 or 146 corresponding to that provision,
  - (d) as to the matters referred to in paragraph 12,
  - (e) for the giving by the panel of directions to the parties as to the conduct of the case, and for the consequences of failure to comply with such directions (which may include allowing or dismissing the appeal or application if the failure to comply was without reasonable excuse),
  - (f) empowering a panel to require persons to attend and give evidence or produce documents,
  - (g) about the admissibility of evidence, and
  - (h) enabling the panel to administer oaths.
- 18 No person may be required by virtue of any such rules to give any evidence or produce any document or other material which he could not be compelled to give or produce in civil proceedings in a court in England and Wales.

#### *Miscellaneous*

- 19 (1) The President must, in respect of each period of 12 months beginning on 1st April, prepare a written report about the FHSAA's activities during that period.
- (2) He must send a copy of the report to the Lord Chancellor, the Secretary of State and the Welsh Ministers.
- (3) After consulting the Lord Chancellor and the Welsh Ministers, the Secretary of State may give directions to the President as to subjects with which the report must deal.
- 20 The President must arrange such training for himself and the other members of the FHSAA as he considers appropriate.

#### *Interpretation*

- 21 In this Schedule—
- “practitioner” means the person whose case is before the FHSAA,
  - “prescribed” means prescribed by the Lord Chancellor in rules.

*Interpretation: Provisions under the National Health Service (Wales) Act 2006 (c. 42)*

22 In this Schedule—

- (a) references to section 91 include references to section 49 of the National Health Service (Wales) Act 2006,
- (b) references to section 106 include references to section 63 of that Act,
- (c) references to section 158 include references to section 114 of that Act, and
- (d) references to section 159 include references to section 115 of that Act.

SCHEDULE 14

Section 231

FURTHER PROVISION ABOUT THE EXPENDITURE OF PRIMARY CARE TRUSTS

*Pharmaceutical services expenditure*

- 1 (1) In sections 228 to 230 and this Schedule, “pharmaceutical services expenditure” means expenditure of a Primary Care Trust which—
- (a) is attributable to the payment of remuneration to persons providing pharmaceutical services, and
  - (b) is not excluded by sub-paragraph (2).
- (2) Expenditure is excluded if it is attributable to—
- (a) the reimbursement of expenses of persons providing pharmaceutical services which are designated expenses incurred in connection with the provision of those services (or in giving instruction in matters relating to those services),
  - (b) remuneration referable to the cost of drugs, or
  - (c) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 127), in respect of such of those services as are designated.

*Main expenditure*

- 2 (1) In section 228 “main expenditure”, in relation to a Primary Care Trust and the year in question, means—
- (a) expenditure of the Primary Care Trust mentioned in sub-paragraph (2),
  - (b) any other expenditure of the Primary Care Trust attributable to the performance of its functions in that year (other than pharmaceutical services expenditure and remuneration referable to the cost of drugs), and
  - (c) expenditure attributable to remuneration referable to the cost of drugs for which the Primary Care Trust is accountable in that year (whether paid by it or by another Primary Care Trust).
- (2) The expenditure is expenditure attributable to—
- (a) the reimbursement in that year of expenses of persons providing pharmaceutical services which are designated expenses incurred in connection with the provision of those services (or in giving instruction in matters relating to those services), or
  - (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 127), in respect of such of those services as are designated.

---

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

---

- 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 which is accountable for the payment to be reimbursed in such manner as he may determine.

#### *Interpretation*

- 4
- (1) In this Schedule—
    - “designated” means designated in writing by the Secretary of State (and different designations may be made for different purposes),
    - “drugs” includes medicines and listed appliances (within the meaning given by section 126),
    - “pharmaceutical services” does not include additional pharmaceutical services,
    - “remuneration referable to the cost of drugs” includes (except in paragraph 1(2)(b) and subject to sub-paragraph (2)) remuneration payable to persons providing local pharmaceutical services.
  - (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.

## 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.

*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).
- (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—

---

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

---

- (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 and Wales.

#### *Transmission of annual accounts*

- 5
- (1) Each NHS body that is not a Special Health Authority 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 Special Health Authority that is an NHS body 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.

#### *Auditing of certain Special Health Authority accounts by Comptroller and Auditor General*

- 6
- (1) This paragraph applies where a Special Health Authority that is an NHS body 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 Special Health Authority must lay before both Houses of Parliament—
    - (a) a copy of the accounts, and
    - (b) the Comptroller and Auditor General’s report on them.

#### *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 —

---

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

---

- (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.

SCHEDULE 16

Section 243

THE COMMISSION FOR PATIENT AND PUBLIC INVOLVEMENT IN HEALTH

*Status*

- 1
- The Commission for Patient and Public Involvement in Health (“the Commission”) must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission’s property must not be regarded as property of, or property held on behalf of, the Crown.

*Powers*

- 2
- (1) Subject to any directions given by the Secretary of State, the Commission 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, and
    - (b) enter into contracts.

### *Membership*

- 3 The Commission consists of a chairman appointed by the Secretary of State, and a number of other members.

### *Appointment, procedure etc*

- 4 (1) The Secretary of State may by regulations make provision as to—
- (a) the appointment of the chairman and other members of the Commission (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment, and the terms of their appointment),
  - (b) the tenure of office of the chairman and other members of the Commission (including circumstances in which they cease to hold office or may be removed or suspended from office),
  - (c) the appointment of, constitution of and exercise of functions by committees and sub-committees of the Commission (including committees and sub-committees which consist of or include persons who are not members of the Commission),
  - (d) the procedure of the Commission and any of its committees or sub-committees (including the validation of proceedings in the event of vacancies or defects in appointment).
- (2) The regulations may, in particular, make provision to deal with cases where the post of any officer of the Commission 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 The regulations may include provision applying, or corresponding to, any provision of Part 5A of the Local Government Act 1972 (access to meetings and documents), with or without modifications.

### *Remuneration and allowances*

- 6 (1) The Commission may pay to its chairman and to any other member such remuneration and allowances as the Secretary of State may determine.
- (2) The Commission may pay to any member of a committee or sub-committee such allowances as the Secretary of State may determine.
- (3) If the Secretary of State so determines, the Commission must pay, or make provision for the payment of, such pension, allowance or gratuities as the Secretary of State may determine to or in respect of a person who is or has been the chairman or any other member of the Commission.
- (4) If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the Commission to receive compensation, the Commission must pay to him such compensation as the Secretary of State may determine.

### *Staff*

- 7 (1) There is a Chief Executive of the Commission who is an employee of the Commission and is responsible to the Commission for the general exercise of the Commission's functions.

---

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

---

- (2) The Chief Executive must be appointed by the Commission.
- (3) The Commission may appoint such other employees as it considers appropriate, on such terms and conditions as the Commission may determine.

#### *Delegation of functions*

- 8 The Commission may arrange for the discharge of any of its functions by a committee, sub-committee, member or employee of the Commission.

#### *Assistance*

- 9 (1) The Commission may arrange for such persons as it considers appropriate to assist it in the discharge of any of its functions.
- (2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

#### *Payments and loans to the Commission*

- 10 (1) The Secretary of State may make payments to the Commission of such amounts, at such times and on such conditions (if any) as he considers appropriate.
- (2) The Secretary of State may make loans to the Commission on such terms (including terms as to repayment and interest) as he may determine.
- (3) The Secretary of State may give directions to the Commission as to the application of any sums he pays it under sub-paragraph (1) or (2), and the Commission must comply with any such directions.

#### *Accounts and audit*

- 11 (1) The Commission must keep accounts in such form as the Secretary of State may determine.
- (2) The Commission must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.
- (3) The Commission 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 determine.
- (4) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament.

#### *Reports and other information*

- 12 (1) The Commission must—
  - (a) prepare a report in relation to its activities in each financial year,
  - (b) as soon as possible after the end of each financial year, send a copy of its report for that year to the Secretary of State,
  - (c) publish any such report in whichever way the Commission considers appropriate,



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

- (d) make such other reports to the Secretary of State, and supply to him such information, as he may require.
- (2) The Secretary of State must lay before Parliament any report he receives under subparagraph (1)(b).
- (3) The Secretary of State may make regulations providing for the Commission to make other reports, in accordance with the regulations, to prescribed persons or descriptions of person.

#### *Application of seal and evidence*

- 13 The application of the seal of the Commission must be authenticated by the signature—
  - (a) of any member of the Commission, or
  - (b) of any other person who has been authorised by the Commission (whether generally or specifically) for that purpose.
- 14 A document purporting to be duly executed under the seal of the Commission 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.

## SCHEDULE 17

Section 246

### EXEMPT INFORMATION RELATING TO HEALTH SERVICES

#### **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.

---

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

---

- 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
  - (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 146.
- (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.
- 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

---

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

---

unless it relates to an individual of that description in the capacity indicated by the description.

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

---

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

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.

## SCHEDULE 19

Section 250

### FURTHER PROVISION ABOUT STANDING ADVISORY COMMITTEES

- 1 Regulations may make provision with respect to—
- (a) the appointment,
  - (b) the tenure of office, and
  - (c) the vacation of office,
- of the members of any standing advisory committee.
- 2 The Secretary of State must appoint a secretary to each standing advisory committee.
- 3 Each standing advisory committee may appoint such sub-committees as it considers appropriate, and as are approved by the Secretary of State, to consider and report on questions referred to it by the standing advisory committee.
- 4 Any such sub-committee may include persons who are not members of the standing advisory committee.

---

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

---

- 5 Each standing advisory committee must elect one of the members of the committee to be chairman of the committee.
- 6 Each standing advisory committee has power to regulate its own procedure.
- 7 The proceedings of a standing advisory committee are not invalidated by any vacancy in the membership of the committee, or by any defect in a member's appointment or qualification.
- 8 The Secretary of State may make such payments in respect of expenses incurred by a standing advisory committee as he may determine.
- 9 The Secretary of State may pay to the members of a standing advisory committee, or a sub-committee of a standing advisory committee, such travelling and other allowances, including compensation for loss of remunerative time, as he may determine.
- 10 Payments under this Schedule are subject to such conditions as to records, certificates, or otherwise as the Secretary of State may determine.

## SCHEDULE 20

Section 254

### FURTHER PROVISION ABOUT LOCAL SOCIAL SERVICES AUTHORITIES

#### *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 subparagraph (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).

---

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

---

- (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.
- (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,

---

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

---

- (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.

## SCHEDULE 21

Section 259

### PROHIBITION OF SALE OF MEDICAL PRACTICES

#### *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—



---

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

---

- (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
  - (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—

---

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

---

- (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—
  - (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
  - (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

---

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

---

- (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
  - (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
  - (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 or 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,

---

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

---

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.
- (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

---

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

---

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.
- (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".