Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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Health and Social Care Act 2008

2008 CHAPTER 14

An Act to establish and make provision in connection with a Care Quality Commission; to make provision about health care (including provision about the National Health Service) and about social care; to make provision about reviews and investigations under the Mental Health Act 1983; to establish and make provision in connection with an Office of the Health Professions Adjudicator and make other provision about the regulation of the health care professions; to confer power to modify the regulation of social care workers; to amend the Public Health (Control of Disease) Act 1984; to provide for the payment of a grant to women in connection with pregnancy; to amend the functions of the Health Protection Agency; and for connected purposes. [21st July 2008]

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

PART 1

THE CARE QUALITY COMMISSION

Modifications etc. (not altering text)

C1 Pt. 1 excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **17(4)(c)**(5)(b)

C2 Pt. 1 excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **14(4)(c)**

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CHAPTER 1

INTRODUCTORY

1 The Care Quality Commission

(1) There is to be a body corporate known as the Care Quality Commission (referred to in this Part as "the Commission").

(2) The Commission for Healthcare Audit and Inspection, the Commission for Social Care Inspection and the Mental Health Act Commission are dissolved.

(3) Schedule 1 (which makes further provision about the Care Quality Commission) has effect.

Commencement Information

I1 S. 1(1) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(a)**
I2 S. 1(2) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 1**
I3 S. 1(3) in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(b)**
I4 S. 1(3) in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 2**

2 The Commission's functions

(1) The Commission has the functions conferred on it by or under any enactment.

(2) Those functions include—
- (a) registration functions under Chapter 2,
- (b) review and investigation functions under Chapter 3, and
- (c) functions under the Mental Health Act 1983 (c. 20).

Commencement Information

I5 S. 2(1) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(c)**
I6 S. 2(2)(a) in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**
I7 S. 2(2)(a) in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 1** (with Pt. 3)
I8 S. 2(2)(b)(c) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 3**

3 The Commission's objectives

(1) The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.

(2) The Commission is to perform its functions for the general purpose of encouraging—
- (a) the improvement of health and social care services,
- (b) the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and
- (c) the efficient and effective use of resources in the provision of health and social care services.

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(3) In this Chapter "health and social care services" means the services to which the Commission's functions relate.

Commencement Information
I9 S. 3 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

4 Matters to which the Commission must have regard

(1) In performing its functions the Commission must have regard to—
- (a) views expressed by or on behalf of members of the public about health and social care services,
- (b) experiences of people who use health and social care services and their families and friends,
- (c) views expressed by local involvement networks about the provision of health and social care services in their areas,
- (d) the need to protect and promote the rights of people who use health and social care services (including, in particular, the rights of children, of persons detained under the Mental Health Act 1983, of persons who are deprived of their liberty in accordance with the Mental Capacity Act 2005 (c. 9), and of other vulnerable adults),
- (e) the need to ensure that action by the Commission in relation to health and social care services is proportionate to the risks against which it would afford safeguards and is targeted only where it is needed,
- (f) any developments in approaches to regulatory action, and
- (g) best practice among persons performing functions comparable to those of the Commission (including the principles under which regulatory action should be transparent, accountable and consistent).

(2) In performing its functions the Commission must also have regard to such aspects of government policy as the Secretary of State may direct.

(3) In subsection (1)(c), "local involvement network" has the meaning given by section 222(2) of the Local Government and Public Involvement in Health Act 2007 (c. 28).

Commencement Information
I10 S. 4 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

5 Statement on user involvement

(1) The Commission must publish a statement describing how it proposes to—
- (a) promote awareness among service users and carers of its functions,
- (b) promote and engage in discussion with service users and carers about the provision of health and social care services and about the way in which the Commission exercises its functions,
- (c) ensure that proper regard is had to the views expressed by service users and carers, and

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(d) arrange for any of its functions to be exercised by, or with the assistance of, service users and carers.

(2) The Commission may from time to time revise the statement and must publish any revised statement.

(3) Before publishing the statement (or revised statement) the Commission must consult such persons as it considers appropriate.

(4) In this section—

(a) "service users" means people who use health or social care services, and

(b) "carers" means people who care for service users as relatives or friends.

Commencement Information

I11 S. 5 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

6 Transfers of property, rights and liabilities

Schedule 2 (which makes provision for the transfer of property, rights and liabilities) has effect.

Commencement Information

I12 S. 6 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

7 Meaning of "health and social care services" in Chapter 1

In this Chapter "health and social care services" has the meaning given by section 3(3).

Commencement Information

I13 S. 7 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

CHAPTER 2

REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Introductory

8 "Regulated activity"

(1) In this Part "regulated activity" means an activity of a prescribed kind.

(2) An activity may be prescribed for the purposes of subsection (1) only if—

(a) the activity involves, or is connected with, the provision of health or social care in, or in relation to, England, and

(b) the activity does not involve the carrying on of any establishment or agency, within the meaning of the Care Standards Act 2000 (c. 14), for which Her

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Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under that Act.

(3) For the purposes of subsection (2), activities connected with the provision of health or social care include, in particular—

(a) the supply of staff who are to provide such care;

(b) the provision of transport or accommodation for those who require such care;

(c) the provision of advice in respect of such care.

Commencement Information

I14 S. 8 partly in force; S. 8 in force for specified purposes at Royal Assent, see s. 170

I15 S. 8 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I16 S. 8 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 2** (with Pt. 3)

9 "Health or social care"

(1) This section has effect for the interpretation of this Part.

(2) "Health care" includes all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

(3) "Social care" includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.

(4) "Health or social care" means health care or social care.

Commencement Information

I17 S. 9 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(e)**

Registration of persons carrying on regulated activities

10 Requirement to register as a service provider

(1) Any person who carries on a regulated activity without being registered under this Chapter in respect of the carrying on of that activity is guilty of an offence.

(2) The Secretary of State may by regulations make provision for the purposes of this Chapter for determining, in relation to a regulated activity carried on by two or more persons acting in different capacities, which of those persons is to be regarded as the person who carries on the activity.

(3) In the following provisions of this Part, the registration of a person under this Chapter in respect of the carrying on of a regulated activity by that person is referred to as registration "as a service provider" in respect of that activity.

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(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding £50,000, or to imprisonment for a term not exceeding 12 months, or to both;

(b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 12 months, or to both.

(5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.

Modifications etc. (not altering text)

C3 S. 10(1) excluded (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **16** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C4 S. 10(1) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **14(6)(c)**

C5 S. 10(1) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **art. 9(1)-(4)**

C6 S. 10(1) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **18(6)**, 18(7)

Commencement Information

I18 S. 10 partly in force; S. 10 in force for specified purposes at Royal Assent, see s. 170

I19 S. 10(1)(2)(4)(5) in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 4** (with art. 7)

I20 S. 10(3) in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

11 Applications for registration as a service provider

(1) A person seeking to be registered under this Chapter as a service provider must make an application to the Commission.

(2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.

(3) In such cases as the Commission may determine, a person seeking to be registered as a service provider in respect of two or more regulated activities may make a single application in respect of them.

Modifications etc. (not altering text)

C7 S. 11 modified (temp.) (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **3** (with arts. 4-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C8 S. 11(3) modified (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **5** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C9 S. 11(3) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **4(1)**

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Commencement Information

I21 S. 11 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2** (with art. 3)

12 Grant or refusal of registration as a service provider

(1) Subsections (2) to (4) apply where an application under section 11 has been made in accordance with the provisions of this Chapter with respect to a regulated activity.

(2) If the Commission is satisfied that—

(a) the requirements of regulations under section 20, and

(b) the requirements of any other enactment which appears to the Commission to be relevant,

are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.

(4) On granting the application, the Commission must issue a certificate of registration to the applicant.

(5) The Commission may at any time—

(a) vary or remove any condition for the time being in force in relation to a person's registration as a service provider, or

(b) impose any additional condition.

(6) Subsections (3) and (5) have effect subject to section 13.

Modifications etc. (not altering text)

C10 S. 12 modified (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **6** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C11 S. 12 applied (with modifications) (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **arts. 6-8**

C12 S. 12(2) modified (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **4(2)**

C13 S. 12(5) modified (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **12** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

Commencement Information

I22 S. 12(1)-(5) in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2** (with arts. 6-8)

I23 S. 12(6) in force at 6.4.2010 by S.I. 2010/807, art. 2(1), **Sch. 1 para. 3** (with Pt. 3)

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Registration of managers

13 Condition requiring registered manager

(1) The registration under this Chapter of a person ("S") as a service provider in respect of a regulated activity must in prescribed cases be subject to a registered manager condition.

(2) In deciding whether to impose a registered manager condition under section 12(3) or (5), in a case where subsection (1) does not require such a condition to be imposed, the Commission must have regard to prescribed matters.

(3) For the purposes of this Chapter, a registered manager condition is a condition that the activity as carried on by S, or the activity as carried on by S at or from particular premises, must be managed by an individual who is registered under this Chapter as a manager in respect of the activity, or the activity as carried on at or from those premises.

Commencement Information

I24 S. 13 partly in force; S. 13 in force for specified purposes at Royal Assent, see s. 170

I25 S. 13 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 4** (with Pt. 3)

14 Applications for registration as a manager

(1) A person seeking to be registered under this Chapter as a manager in respect of a regulated activity in respect of which a registered manager condition has, or is to have, effect must make an application to the Commission.

(2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.

(3) In such cases as the Commission may determine, a person seeking to be registered as a manager in respect of two or more regulated activities carried on by a person registered as a service provider may make a single application in respect of them.

Modifications etc. (not altering text)

C14 S. 14(1) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **4(1)**

C15 S. 14(2) modified (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **4(3)**

C16 S. 14(3) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **4(1)**

Commencement Information

I26 S. 14 in force at 6.4.2010 by S.I. 2010/807, art. 2(1), **Sch. 1 para. 4** (with Pt. 3)

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15 Grant or refusal of registration as a manager

(1) Subsections (2) to (4) apply where an application under section 14 has been made in accordance with the provisions of this Chapter with respect to a regulated activity in respect of which a person is registered under this Chapter as a service provider and in respect of which a registered manager condition has effect.

(2) If the Commission is satisfied that—
- (a) the requirements of regulations under section 20, and
- (b) the requirements of any other enactment which appears to the Commission to be relevant,

are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.

(4) On granting the application, the Commission must issue a certificate of registration to the applicant.

(5) The Commission may at any time—
- (a) vary or remove any condition for the time being in force in relation to a person's registration as a manager, or
- (b) impose any additional condition.

Modifications etc. (not altering text)

C17 S. 15 applied (with modifications) (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **arts. 6-8**

C18 S. 15(1) modified (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **4(4)**

Commencement Information

I27 S. 15 in force at 6.4.2010 by S.I. 2010/807, art. 2(1), **Sch. 1 para. 4** (with Pt. 3)

Further provision about registration as a service provider or manager

16 Regulations about registration

Regulations may make provision for the purposes of this Chapter about—
- (a) the keeping by the Commission of registers,
- (b) the making of applications for registration as a service provider or manager,
- (c) the registration of persons as service providers or managers, and
- (d) the notification by registered persons to the Commission of an address for service of documents.

Commencement Information

I28 S. 16 partly in force; S. 16 in force for specified purposes at Royal Assent, see s. 170

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I29 S. 16 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 5**

I30 S. 16 in force at 11.12.2009 in so far as not already in force by S.I. 2009/3023, **art. 2(a)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

17 Cancellation of registration

(1) The Commission may at any time cancel the registration of a person ("R") under this Chapter as a service provider or manager in respect of a regulated activity—

(a) on the ground that R has been convicted of, or admitted, a relevant offence;

(b) on the ground that any other person has been convicted of any relevant offence in relation to the regulated activity;

(c) on the ground that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;

(d) on the ground that R has failed to comply with a requirement imposed by or under Chapter 6;

(e) on any ground specified by regulations.

(2) The Commission must cancel the registration of a person under this Chapter as a manager in respect of a regulated activity if—

(a) no-one is registered under this Chapter as a service provider in respect of the activity, or

(b) the registration of a person under this Chapter as a service provider in respect of the activity ceases to be subject to a registered manager condition.

(3) For the purposes of this section, the following are relevant offences—

(a) a Part 1 offence,

(b) an offence under the Registered Homes Act 1984 (c. 23) or regulations made under it,

(c) an offence under Part 2 of the Care Standards Act 2000 (c. 14) or regulations made under it, and

(d) any other offence which appears to the Commission to be relevant.

(4) In this section "relevant requirements" means—

(a) any requirements or conditions imposed by or under this Chapter, and

(b) the requirements of any other enactment which appears to the Commission to be relevant.

Commencement Information

I31 S. 17 partly in force; S. 17 in force for specified purposes at Royal Assent, see s. 170

I32 S. 17(1)(3)(4) in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 6**

18 Suspension of registration

(1) The Commission may at any time suspend a person's registration under this Chapter as a service provider or manager for a specified period.

(2) Except where the Commission gives notice under section 31, the power conferred by subsection (1) is exercisable only on the ground that—

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(a) the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements, or

(b) the person has failed to comply with a requirement imposed by or under Chapter 6.

(3) The suspension of a person's registration does not affect the continuation of the registration (but see sections 34 and 36 as to offences).

(4) A period of suspension may be extended under subsection (1) on one or more occasions.

(5) In this section "relevant requirements" has the same meaning as in section 17.

Modifications etc. (not altering text)

C19 S. 18 modified (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **12** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

Commencement Information

I33 S. 18 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 7**

19 Applications by registered persons

(1) Except in case A or B, a person registered under this Chapter as a service provider or manager ("R") may apply to the Commission—

(a) for the variation or removal of any condition for the time being in force in relation to the registration, other than a registered manager condition required by section 13(1),

(b) for the cancellation of the registration, or

(c) for the cancellation of, or the variation of the period of, any suspension of the registration.

(2) Case A is where—

(a) the Commission has given R notice under section 26(4)(a) of a proposal to cancel the registration, and

(b) the Commission has not decided not to take that step.

(3) Case B is where—

(a) the Commission has given R notice under section 28(3) of its decision to cancel the registration, and

(b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.

(4) An application under subsection (1) must be made in such form, and contain or be accompanied by such information, as the Commission requires.

(5) If the Commission decides to grant an application under subsection (1)(a), it must serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied) and issue a new certificate of registration.

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(6) If the Commission decides to grant an application under subsection (1)(c), it must serve notice in writing of its decision on the applicant (stating, where applicable, the period as varied).

Commencement Information

I34 S. 19 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 8**

Regulation, code of practice and guidance

20 Regulation of regulated activities

(1) Regulations may impose in relation to regulated activities any requirements which the Secretary of State thinks fit for the purposes of this Chapter.

(2) Regulations under this section may in particular make provision with a view to—

(a) securing that any service provided in the carrying on of a regulated activity is of appropriate quality, and

(b) securing the health, safety and welfare of persons for whom any such service is provided.

(3) Regulations under this section may in particular—

(a) make provision as to the persons who are fit to carry on or manage a regulated activity;

(b) make provision as to the manner in which a regulated activity is carried on;

(c) make provision as to the persons who are fit to work for the purpose of the carrying on of a regulated activity;

(d) make provision as to the management and training of persons who work for the purpose of the carrying on of a regulated activity;

(e) make provision as to the fitness of premises;

(f) impose requirements as to the keeping of records and accounts;

(g) impose requirements as to the provision of information;

(h) impose requirements as to the financial position of a person registered as a service provider;

(i) impose requirements as to the making available to the public of information as to any charges made for the provision of any services provided in the carrying on of a regulated activity;

(j) impose requirements as to the review of the quality of any services provided in the carrying on of a regulated activity, as to the preparation of reports of such reviews, and as to the making available to the public of such reports;

(k) make provision as to the handling of complaints and disputes and the application of lessons learnt from them.

(4) Regulations made under this section by virtue of subsection (3)(b) may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity.

(5) Regulations made under this section may make provision for the prevention and control of health care associated infections and may include such provision as the

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

(6) In this Chapter "health care associated infection" means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where—
  (a) health or social care is being, or has been, provided to that or any other individual, and
  (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of that care.

(7) But "health care associated infection" does not include an infection to which the individual is deliberately exposed as part of any health care.

(8) Before making regulations under this section, except regulations which amend other regulations under this section and do not, in the opinion of the Secretary of State, effect any substantial change in the provision made by those regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

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

Commencement Information

I35 S. 20 partly in force; S. 20 in force for specified purposes at Royal Assent, see s. 170

I36 S. 20 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I37 S. 20 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 5** (with Pt. 3)

21 Code of practice relating to health care associated infections

(1) The Secretary of State may issue a code of practice about compliance with any requirements of regulations under section 20 which relate to the prevention or control of health care associated infections.

(2) The code may—
  (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);
  (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
  (c) make different provision for different cases or circumstances.

(3) The Secretary of State must keep the code under review and may from time to time—
  (a) revise the whole or any part of the code, and
  (b) issue a revised code.

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Commencement Information

I38 S. 21 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

22 Consultation etc. in relation to code of practice under s. 21

(1) Where the Secretary of State proposes to issue a code of practice under section 21, the Secretary of State must—

(a) prepare a draft of the code, and

(b) consult such persons as the Secretary of State considers appropriate about the draft.

(2) Where the Secretary of State proposes to issue under section 21 a revised code which in the opinion of the Secretary of State would result in a substantial change in the code, the Secretary of State must—

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

(b) consult such persons as the Secretary of State considers appropriate about the change.

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

(4) Where—

(a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is a document published by the Secretary of State in connection with the Secretary of State's functions relating to health or social care,

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

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

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

(5) Where—

(a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is not one to which subsection (4)(a) of this section applies,

(b) the document is revised, and

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

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

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

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Modifications etc. (not altering text)

C20 S. 22(3) modified (12.1.2009) by Health and Social Care Act 2008 (Commencement No.6, Transitory and Transitional Provisions) Order 2008 (S.I. 2008/3168), **art. 4**

Commencement Information

I39 S. 22 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

23 Guidance as to compliance with requirements

(1) The Commission must issue guidance about compliance with the requirements of regulations under section 20, other than requirements which relate to the prevention or control of health care associated infections.

(2) The guidance may, if the Commission thinks fit, also relate to compliance for the purposes of this Chapter with the requirements of any other enactments.

(3) The guidance may—

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

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

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

(4) The Commission may from time to time revise guidance issued by it under this section and issue the revised guidance.

Commencement Information

I40 S. 23 in force at 11.12.2009 by S.I. 2009/3023, **art. 2(b)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

24 Consultation in relation to guidance under s. 23

(1) Where the Commission proposes to issue guidance under section 23, it must—

(a) prepare a draft of the guidance, and

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

(2) Where the Commission proposes to issue under section 23 revised guidance which in its opinion would result in a substantial change in the guidance, the Commission must—

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

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

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

(4) Where—

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(a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is a document published by the Commission,

(b) the Commission proposes to revise the document, and

(c) in the opinion of the Commission, the revision would result in a substantial change in the guidance,

the Commission must, before revising the document, consult such persons as the Commission considers appropriate about the change.

(5) Where—

(a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is not one to which subsection (4)(a) of this section applies,

(b) the document is revised, and

(c) in the opinion of the Commission, the revision results in a substantial change in the guidance,

the Commission must consult such persons as the Commission considers appropriate about whether the guidance should be revised in connection with the change.

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

Commencement Information

I41 S. 24 in force at 11.12.2009 by S.I. 2009/3023, **art. 2(b)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

25 Effect of code under s. 21 and guidance under s. 23

(1) A code of practice under section 21 and guidance under section 23 are to be taken into account—

(a) in the making of any decision by the Commission under this Chapter;

(b) in any proceedings for the making of an order under section 30;

(c) in any proceedings on an appeal against such a decision or order;

(d) in any proceedings for an offence under section 33 or under regulations under section 20.

(2) A code of practice under section 21 or guidance under section 23 is also admissible in evidence in other criminal or civil proceedings.

(3) A failure to observe any provision of a code of practice under section 21 or guidance under section 23 does not of itself make a person liable to any criminal or civil proceedings.

Commencement Information

I42 S. 25 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I43 S. 25 in force at 11.12.2009 in so far as not already in force by S.I. 2009/3023, **art. 2(c)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

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Registration procedure

26 Notice of proposals

(1) Subsections (2) and (3) apply where a person applies for registration as a service provider or manager in respect of a regulated activity.

(2) If the Commission proposes to grant the application subject to any condition which has not been agreed in writing between it and the applicant, other than a registered manager condition required by section 13(1), it must give the applicant notice in writing of its proposal and of the conditions subject to which it proposes to grant the application.

(3) The Commission must give the applicant notice in writing of a proposal to refuse the application.

(4) Except where it makes an application under section 30 or gives notice under section 31, the Commission must give any person registered as a service provider or manager in respect of a regulated activity notice in writing of a proposal—

(a) to cancel the registration (otherwise than by virtue of section 17(2) or in accordance with an application under section 19(1)(b)),

(b) to suspend the registration or extend a period of suspension,

(c) to vary or remove (otherwise than in accordance with an application under section 19(1)(a)) any condition for the time being in force in relation to the registration, or

(d) to impose in relation to the registration any additional condition.

(5) The Commission must give the applicant notice in writing of a proposal to refuse an application under section 19(1)(a), (b) or (c).

(6) A notice under this section must give the Commission's reasons for its proposal.

Modifications etc. (not altering text)

C21 S. 26(2) excluded (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **7(1)(a)** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C22 S. 26(2) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **7(2)(a)**

Commencement Information

I44 S. 26(1)(3)(6) in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I45 S. 26(1) (3)(6) in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 6** (with Pt. 3)

I46 S. 26(2) in force at 6.4.2010 by S.I. 2010/807, art. 2(1), **Sch. 1 para. 6** (with Pt. 3)

I47 S. 26(4)(5) in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 9**

27 Right to make representations

(1) A notice under section 26 must state that within 28 days of service of the notice any person on whom it was served may make written representations to the Commission concerning any matter which that person wishes to dispute.

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(2) Where a notice has been served under section 26, the Commission must not determine any matter to which the notice relates until either—
  (a) any person on whom the notice was served has made written representations to it concerning the matter,
  (b) any such person has notified the Commission in writing that the person does not intend to make such representations, or
  (c) the period during which any such person could have made representations has elapsed.

Commencement Information

I48 S. 27 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I49 S. 27 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 7** (with Pt. 3)

28 Notice of decisions

(1) If the Commission decides to grant an application for registration as a service provider or manager in respect of a regulated activity—
  (a) unconditionally, or
  (b) subject only to conditions each of which is either required by section 13(1) or agreed in writing between the Commission and the applicant,

it must give the applicant notice in writing of the decision.

(2) A notice under subsection (1) must state the conditions subject to which registration is granted.

(3) If the Commission decides to adopt a proposal of which it was required to give notice under section 26, it must give notice in writing of its decision to any person to whom it was required by section 26 to give notice of the proposal.

(4) A notice under subsection (3) must—
  (a) explain the right of appeal conferred by section 32,
  (b) in the case of a decision to adopt a proposal under section 26(2), state the conditions subject to which the application is granted,
  (c) in the case of a decision to adopt a proposal under section 26(4)(b), state the period (or extended period) of suspension, and
  (d) in the case of a decision to adopt a proposal under section 26(4)(c) or (d), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.

(5) Where a person ("M") is registered as a manager in respect of a regulated activity, the Commission must—
  (a) give M a copy of any notice given under subsection (3) to the person ("S") registered as a service provider in respect of the regulated activity, and
  (b) give S a copy of any such notice given under that subsection to M.

(6) Subject to subsection (7), a decision of the Commission to adopt a proposal under section 26(2) or (4) takes effect—
  (a) at the end of the period of 28 days referred to in section 32(2), or

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(b) if an appeal is brought, on the determination or abandonment of the appeal.

(7) Where the applicant notifies the Commission in writing before the end of the period mentioned in subsection (6)(a) that the applicant does not intend to appeal, the decision is to take effect when the Commission receives the applicant's notification.

Modifications etc. (not altering text)

C23 S. 28(4)(b) excluded (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **7(1)(a)** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C24 S. 28(4)(b) excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **7(2)(a)**

Commencement Information

I50 S. 28(1)-(3) (4)(a) in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2** (with art. 8)

I51 S. 28(1)-(3) (4)(a)(c)(d) in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 8** (with Pt. 3)

I52 S. 28(4)(b)(5)-(7) in force at 6.4.2010 by S.I. 2010/807, art. 2(1), **Sch. 1 para. 8** (with Pt. 3)

I53 S. 28(4)(c)(d) in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 10**

29 Warning notice

(1) If it appears to the Commission that a person who is registered under this Chapter as a service provider or manager in respect of a regulated activity has failed to comply with the relevant requirements, the Commission may give the registered person a warning notice.

(2) A warning notice is a notice in writing—

(a) specifying the conduct which appears to the Commission to constitute a failure to comply with the relevant requirements,

(b) specifying the requirement concerned, and

(c) where it appears to the Commission that the failure is continuing—

(i) requiring the registered person to comply with the requirement concerned within a specified time, and

(ii) stating that, if the registered person fails to do so within that time, the Commission may take action to secure compliance with the relevant requirements.

(3) Subsections (4) and (5) apply where—

(a) a warning notice has been given to any person, and

(b) where any failure to comply with a requirement is specified under subsection (2)(c), the requirement has been complied with within the specified time.

(4) The failure to which the notice relates, so far as occurring before the relevant time, is not to constitute a ground for the cancellation or suspension of registration, the variation of the conditions of registration, the removal of a condition or the imposition of any additional condition.

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(5) No proceedings may be brought against any person registered in respect of the regulated activity for a Part 1 offence that arises out of the failure to which the notice relates, so far as occurring before the relevant time.

(6) In subsections (4) and (5) "the relevant time" means—

(a) where a time is specified under subsection (2)(c)(i), the time so specified, and

(b) in any other case, the date on which the notice was given.

(7) In this section "relevant requirements" means—

(a) any requirements or conditions imposed by or under this Chapter or Chapter 6, and

(b) the requirements of any other enactment which appears to the Commission to be relevant.

Commencement Information

I54 S. 29 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 11**

30 Urgent procedure for cancellation

(1) If—

(a) the Commission applies to a justice of the peace for an order cancelling the registration of a person as a service provider or manager in respect of a regulated activity, and

(b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,

the justice may make the order, and the cancellation has effect from the time when the order is made.

(2) An application under subsection (1) may, if the justice thinks fit, be made without notice having been given to the registered person.

(3) As soon as practicable after the making of an application under this section, the Commission must give notice of the application—

(a) to such Primary Care Trust or English local authority as may be determined in accordance with regulations,

(b) where the person registered as a service provider is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined,

(c) where the person registered as a service provider is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts, and

(d) to such other persons as the Commission considers appropriate.

(4) An order under subsection (1) must be in writing.

(5) Where such an order is made, the Commission must, as soon as practicable after the making of the order, serve on the person registered as a service provider or manager in respect of the regulated activity—

(a) a copy of the order, and

(b) notice of the right of appeal conferred by section 32.

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Commencement Information

I55 S. 30 partly in force; S. 30 in force for specified purposes at Royal Assent, see s. 170

I56 S. 30 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 11**

31 Urgent procedure for suspension, variation etc.

(1) If the Commission has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm, the Commission may, by giving notice in writing under this section to a person registered as a service provider or manager in respect of a regulated activity, provide for any decision of the Commission that is mentioned in subsection (2) to take effect from the time when the notice is given.

(2) Those decisions are—

(a) a decision under section 12(5) or 15(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;

(b) a decision under section 18 to suspend the registration or extend a period of suspension.

(3) The notice must—

(a) state that it is given under this section,

(b) state the Commission's reasons for believing that the circumstances fall within subsection (1),

(c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and

(d) explain the right of appeal conferred by section 32.

Commencement Information

I57 S. 31 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 11**

32 Appeals to the Tribunal

(1) An appeal against—

(a) any decision of the Commission under this Chapter, other than a decision to give a warning notice under section 29, or

(b) an order made by a justice of the peace under section 30,

lies to the **[**[F1]First-tier Tribunal**]**.

(2) No appeal against a decision or order may be brought by a person more than 28 days after service on the person of notice of the decision or order.

(3) On an appeal against a decision of the Commission, other than a decision to which a notice under section 31 relates, the **[**[F2]First-tier Tribunal**]** may confirm the decision or direct that it is not to have effect.

(4) On an appeal against an order made by a justice of the peace the **[**[F2]First-tier Tribunal**]** may confirm the order or direct that it is to cease to have effect.

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(5) On an appeal against a decision to which a notice under section 31 relates, the **[**[F2]First-tier Tribunal**]** may confirm the decision or direct that it is to cease to have effect.

(6) On an appeal against a decision or order, the **[**[F2]First-tier Tribunal**]** also has power—

(a) to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates,

(b) to direct that any such discretionary condition is to cease to have effect,

(c) to direct that any such discretionary condition as the **[**[F2]First-tier Tribunal**]** thinks fit shall have effect in respect of the regulated activity, or

(d) to vary the period of any suspension.

(7) In this section—

"discretionary condition", in relation to registration under this Chapter, means any condition other than a registered manager condition required by section 13(1);

[F3]…

Textual Amendments

F1 Words in s. 32(1) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 474(a)**

F2 Words in s. 32(3)-(6) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 474(a)**

F3 Words in s. 32(7) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 474(b)**

Modifications etc. (not altering text)

C25 S. 32 applied (12.1.2009) by Health and Social Care Act 2008 (Commencement No.6, Transitory and Transitional Provisions) Order 2008 (S.I. 2008/3168), **art. 7(6)**

C26 S. 32 applied (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **7(6)** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C27 S. 32 applied (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **7(7)**

C28 S. 32(7) modified (12.1.2009) by Health and Social Care Act 2008 (Commencement No.6, Transitory and Transitional Provisions) Order 2008 (S.I. 2008/3168), **art. 5**

Commencement Information

I58 S. 32 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I59 S. 32 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 10** (with Pt. 3)

Offences

33 Failure to comply with conditions

A person who—

(a) is registered under this Chapter in respect of a regulated activity (whether as a service provider or manager), and

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(b) fails, without reasonable excuse, to comply with any condition for the time being in force by virtue of this Chapter in relation to the registration,

is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.

Modifications etc. (not altering text)

C29 S. 33 excluded (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **9(5)**(6)

Commencement Information

I60 S. 33 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 12**

34 Offences relating to suspension or cancellation of registration

(1) If a person ("S") who is registered under this Chapter as a service provider in respect of a regulated activity carries on that activity while S's registration is suspended, S is guilty of an offence.

(2) A person ("M") whose registration under this Chapter as a manager in respect of a regulated activity is suspended is guilty of an offence if, during the period of suspension, M manages that activity at a time when no one else has been registered under this Chapter as a manager in respect of the activity since the suspension of M's registration.

(3) A person ("M") whose registration under this Chapter as a manager in respect of a regulated activity has been cancelled is guilty of an offence if M manages that activity at a time when—

(a) a person ("S") remains registered under this Chapter as a service provider in respect of the activity,

(b) S's registration remains subject to a registered manager condition, and

(c) no-one has been registered under this Chapter as a manager in respect of the activity since the cancellation of M's registration.

(4) If a person ("M") who is registered under this Chapter as a manager in respect of a regulated activity manages that activity while the registration of the person registered under this Chapter as a service provider in respect of the activity is suspended, M is guilty of an offence if M knows or could reasonably be expected to know of the suspension.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £50,000.

Commencement Information

I61 S. 34(1)(5) in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 13**

35 Contravention of regulations

Regulations under this Chapter may provide that a contravention of or failure to comply with any specified provision of the regulations is to be an offence, but may

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not provide for an offence to be triable on indictment or to be punishable with imprisonment or with a fine exceeding—

(a) in the case of regulations under section 20 (regulation of regulated activities), £50,000, or

(b) in any other case, level 4 on the standard scale.

Commencement Information

I62 S. 35 partly in force; S. 35 in force for specified purposes at Royal Assent, see s. 170

I63 S. 35 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

36 False description of concerns, premises etc.

(1) Any person who, with intent to deceive any person—

(a) applies any name to any concern carried on in England or to any premises in England, or

(b) in any way describes such a concern or such premises or holds such a concern or such premises out,

so as to indicate, or reasonably be understood to indicate, that the carrying on of the concern is a regulated activity or that the premises are used for the carrying on of a regulated activity is guilty of an offence unless the conditions in subsection (2) are met.

(2) Those conditions are—

(a) that a person is registered under this Chapter as a service provider in respect of the regulated activity in question, and

(b) that the registration has not been suspended.

(3) Any person who, with intent to deceive any person, in any way describes or holds out any person registered under this Chapter as a service provider in respect of a regulated activity as able to provide a service or do any thing the provision or doing of which would contravene a condition for the time being in force by virtue of this Chapter in relation to the regulated activity is guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section “concern” includes any organisation.

Commencement Information

I64 S. 36 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 14**

37 False statements in applications

(1) Subsection (2) applies to any application under this Chapter by a person (“A”)—

(a) for registration,

(b) for the variation or removal of any condition in force in relation to A's registration,

(c) for the variation or cancellation of any suspension of A's registration, or

(d) for the cancellation of A's registration.

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(2) If, in an application to which this subsection applies, A knowingly makes a statement which is false or misleading in a material respect, A is guilty of an offence.

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

Commencement Information

I65 S. 37 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I66 S. 37 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 10** (with Pt. 3)

Information to be available to public

38 Provision of copies of registers

(1) Subject to subsection (3), the Commission must secure that copies of any register kept for the purposes of this Chapter are available at its offices for inspection at all reasonable times by any person.

(2) Subject to subsections (3) and (4), any person who asks the Commission for a copy of, or an extract from, a register kept for the purposes of this Chapter is entitled to have one.

(3) Regulations may provide that subsections (1) and (2) do not apply—
- (a) in such circumstances as may be prescribed, or
- (b) to such parts of a register as may be prescribed.

(4) A fee determined by the Commission is payable for the copy or extract except—
- (a) in prescribed circumstances, or
- (b) in any case where the Commission considers it appropriate to provide the copy or extract free of charge.

Commencement Information

I67 S. 38 partly in force; S. 38 in force for specified purposes at Royal Assent, see s. 170

I68 S. 38 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 15**

Miscellaneous

39 Bodies required to be notified of certain matters

(1) Where the Commission gives a notice to which this section applies in respect of a regulated activity, it must give a copy of the notice—
- (a) to such Primary Care Trust or English local authority as may be determined in accordance with regulations,
- (b) where the person registered as a service provider in respect of the activity is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined,

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(c) where the person registered as a service provider in respect of the activity is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts, and

(d) to such other persons as the Commission considers appropriate.

(2) This section applies to the following notices—

(a) a notice under section 26 (notice of proposals),

(b) a notice under subsection (1) or (3) of section 28 (notice of decisions),

(c) a warning notice under section 29 (warning notice), and

(d) a notice under section 31 (urgent procedure for suspension, variation etc.).

(3) The Commission must notify each of the persons mentioned in subsection (1)(a) to (d) of either of the following events in relation to a person registered under this Chapter—

(a) the payment of a penalty in accordance with a penalty notice issued under section 86, or

(b) the commencement of proceedings in respect of a Part 1 offence.

(4) Regulations may prescribe cases in which subsection (1) or (3) does not apply.

Modifications etc. (not altering text)

C30 S. 39(1) excluded (E.) (1.4.2009) by Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009 (S.I. 2009/660), regs. 1(1), **9**

Commencement Information

I69 S. 39 partly in force; S. 39 in force for specified purposes at Royal Assent, see s. 170

I70 S. 39 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 15**

40 Periodic returns

(1) Regulations may require the person carrying on a regulated activity to make a return to the Commission at such intervals as may be prescribed.

(2) Provision may be made by the regulations as to the contents of the return and the period in respect of which and date by which it is to be made.

Commencement Information

I71 S. 40 partly in force; S. 40 in force for specified purposes at Royal Assent, see s. 170

I72 S. 40 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2, **Sch. 1 para. 15**

41 Liquidators etc.

(1) Regulations may—

(a) require any person to whom this section applies to give notice of the person's appointment to the Commission;

(b) require any person to whom this section applies to appoint a person to manage the regulated activity in question.

(2) This section applies to any person appointed as—

(a) a receiver or manager of the property of a relevant company,

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(b) the liquidator or provisional liquidator of a relevant company, or

(c) the trustee in bankruptcy of a relevant individual.

(3) In this section—

"company" includes a partnership;

"relevant company" means a company which is registered under this Chapter as a service provider in respect of a regulated activity;

"relevant individual" means an individual who is registered under this Chapter as a service provider in respect of a regulated activity.

Commencement Information

I73 S. 41 partly in force; S. 41 in force for specified purposes at Royal Assent, see s. 170

I74 S. 41 in force at 11.12.2009 in so far as not already in force by S.I. 2009/3023, **art. 2(d)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

42 Death of registered person

(1) Regulations may—

(a) provide for the provisions of this Chapter to apply with prescribed modifications in cases where a person who was the only person registered under this Chapter as a service provider in respect of a regulated activity has died;

(b) require the personal representatives of a deceased person who was registered as a service provider in respect of a regulated activity to notify the Commission of the person's death.

(2) Regulations under subsection (1)(a) may in particular—

(a) provide for the regulated activity to be carried on for a prescribed period by a person who is not registered in respect of it, and

(b) include provision for the prescribed period to be extended by such further period as the Commission may allow.

Commencement Information

I75 S. 42 partly in force; S. 42 in force for specified purposes at Royal Assent, see s. 170

I76 S. 42 in force at 11.12.2009 in so far as not already in force by S.I. 2009/3023, **art. 2(d)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

Power to modify provisions of Chapter

43 Power to modify Chapter in relation to newly regulated activities

(1) Regulations may modify the provisions of this Chapter in their application to any newly regulated activity of a prescribed description.

(2) A "newly regulated activity" is any regulated activity other than one which—

(a) consists of or includes the carrying on of a relevant concern,

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(b) under the 2000 Act as it has effect immediately before commencement, is regulated under Part 2 of that Act by virtue of regulations under section 42 of that Act (power to extend application of that Part), or

(c) consists of the provision of health care by a National Health Service body, as defined by section 121 of that Act.

(3) For this purpose a relevant concern is anything which, under the 2000 Act as it has effect immediately before commencement, would for the purposes of that Act be—

(a) an independent hospital,

(b) an independent clinic,

(c) an independent medical agency,

(d) a care home,

(e) a domiciliary care agency, or

(f) a nurses agency.

(4) Any regulated activity carried on by or on behalf of the Crown is for this purpose a newly regulated activity.

(5) In this section—

"the 2000 Act" means the Care Standards Act 2000 (c. 14);

"commencement" means the commencement of section 10 of this Act.

Commencement Information

I77 S. 43 partly in force; S. 43 in force for specified purposes at Royal Assent, see s. 170

I78 S. 43 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 11** (with Pt. 3)

Interpretation

44 Interpretation of Chapter 2

In this Chapter—

"health care associated infection" is to be read in accordance with section 20(6) and (7);

"registered manager condition" is to be read in accordance with section 13(3).

Commencement Information

I79 S. 44 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I80 S. 44 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 12** (with Pt. 3)

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CHAPTER 3

QUALITY OF HEALTH AND SOCIAL CARE

Health care standards

45 Standards set by Secretary of State

(1) The Secretary of State may prepare and publish statements of standards in relation to the provision of NHS care.

(2) The Secretary of State must keep the standards under review and may publish amended statements whenever the Secretary of State considers it appropriate.

(3) The Secretary of State may direct a person—

(a) to prepare a draft statement of standards for the purposes of subsection (1), submit it to the Secretary of State for approval and publish it in the form approved or modified by the Secretary of State;

(b) to keep standards under review for the purposes of subsection (2) and, whenever the person considers it appropriate, submit a draft amended statement to the Secretary of State for approval and publish it in the form approved or modified by the Secretary of State.

(4) The Secretary of State must consult such persons as the Secretary of State considers appropriate—

(a) before publishing a statement under subsection (1) or approving a statement under subsection (3)(a);

(b) before publishing under subsection (2), or approving under subsection (3)(b), any amended statement which in the opinion of the Secretary of State effects a substantial change in the standards.

Commencement Information

I81 S. 45 in force at 1.4.2010 by S.I. 2010/708, **art. 13(a)**

Reviews and investigations

46 Periodic reviews

(1) In respect of each Primary Care Trust the Commission must—

(a) conduct reviews of the provision of health care provided or commissioned by the Trust,

(b) assess the Trust's performance following each such review, and

(c) publish a report of its assessment.

(2) In respect of each English NHS provider the Commission must—

(a) conduct reviews of the provision of health care by the provider,

(b) assess the provider's performance following each such review, and

(c) publish a report of its assessment.

(3) In respect of each English local authority the Commission must—

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(a) conduct reviews of the provision of adult social services provided or commissioned by the authority,

(b) assess the authority's performance following each such review, and

(c) publish a report of its assessment.

(4) The assessment of a body's performance is to be by reference to such indicators of quality as the Secretary of State may devise or approve.

(5) The Secretary of State may direct the Commission to devise indicators for the purposes of subsection (4) and submit them to the Secretary of State for approval.

(6) The Commission must—

(a) prepare a statement describing the method that it proposes to use in assessing and evaluating a body's performance under this section, and

(b) submit the statement to the Secretary of State for approval.

(7) Different indicators may be devised or approved, and different methods may be described, for different cases.

(8) The Commission must publish—

(a) the indicators devised or approved from time to time by the Secretary of State, and

(b) the method statement approved from time to time by the Secretary of State.

(9) The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under this section.

Commencement Information

I82 S. 46(1)-(3) (9) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 16**

I83 S. 46(4)-(8) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(f)**

47 Frequency and period of review

(1) The Commission must—

(a) prepare a document setting out the frequency with which reviews under section 46 are to be conducted and the period to which they are to relate, and

(b) submit the document to the Secretary of State for approval.

(2) The document may make different provision for different cases.

(3) The Commission may revise the document from time to time with the approval of the Secretary of State.

(4) The Commission must publish the document as approved by the Secretary of State and as revised from time to time.

Commencement Information

I84 S. 47 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(g)**

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48 Special reviews and investigations

(1) The Commission may conduct any special review or investigation, and must do so if the Secretary of State so requests.

(2) A special review or investigation is a review (other than a periodic review) of or an investigation into—
- (a) the provision of NHS care,
- (b) the provision of adult social services, or
- (c) the exercise of functions by English Health Authorities.

(3) Such a review or investigation may relate—
- (a) to the overall provision of NHS care or adult social services or to the provision of NHS care or adult social services of a particular description;
- (b) to the overall exercise of functions or to the exercise of functions of a particular description;
- (c) to the provision of care or services or the exercise of functions by bodies or persons generally or by particular bodies or persons.

(4) Where the Commission conducts a review or investigation under this section, it must publish a report.

(5) The Commission must consider whether the report raises anything on which it ought to give advice to the Secretary of State under section 53(2).

(6) If the review or investigation gives rise to a duty to act under section 50(2) or (3) in respect of an English local authority, subsection (5) does not apply in relation to so much of the report as relates to that local authority.

(7) The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under subsection (4).

(8) In this section "English Health Authority" means—
- (a) a Strategic Health Authority, or
- (b) a Special Health Authority performing functions only or mainly in respect of England.

Commencement Information

I85 S. 48 partly in force; S. 48 in force for specified purposes at Royal Assent, see s. 170

I86 S. 48 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 17**

49 Power to extend periodic review function

(1) The Secretary of State may by regulations require the Commission to—
- (a) conduct periodic reviews of the carrying on of regulated activities by registered service providers, and
- (b) either—
  - (i) publish reports of such reviews, or
  - (ii) assess the performance of registered service providers following such reviews and publish reports of its assessment.

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(2) Regulations under subsection (1) may require the Commission to conduct periodic reviews in relation to—
  (a) all regulated activities or regulated activities of a particular description;
  (b) all registered service providers or particular registered service providers;
  (c) the whole of a regulated activity or a particular aspect of it.

(3) In the case of a regulated activity carried on by a Primary Care Trust, another English NHS provider or an English local authority—
  (a) subsection (1) does not apply to the carrying on of that activity by that body to the extent that the carrying on of that activity by that body is already subject to periodic review under section 46, but
  (b) this does not prevent the Secretary of State from requiring the Commission to conduct periodic reviews of a particular aspect of the activity as carried on by that body.

(4) If regulations under subsection (1) require the Commission to conduct periodic reviews, the following provisions have effect in relation to the reviews as they have effect in relation to reviews under section 46—
  (a) section 46(4) to (9), and
  (b) section 47.

(5) In this section "registered service provider" means a person registered under Chapter 2 as a service provider.

Commencement Information

I87 S. 49 partly in force; S. 49 in force for specified purposes at Royal Assent, see s. 170

I88 S. 49 in force at 11.12.2009 in so far as not already in force by S.I. 2009/3023, **art. 2(e)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

50 Failings by English local authorities

(1) This section applies where the Commission conducts a review under section 46 or 49, or a review or investigation under section 48, in respect of an English local authority.

(2) If the Commission considers that the local authority is failing to discharge any of its adult social services functions to an acceptable standard, then subject to subsection (3) the Commission must—
  (a) inform the Secretary of State of that fact, and
  (b) recommend any special measures which it considers the Secretary of State should take.

(3) If the Commission considers that the failure is not substantial, it may instead—
  (a) give the local authority a notice under subsection (4), and
  (b) inform the Secretary of State that it has done so.

(4) A notice under this subsection is a notice which specifies—
  (a) the respects in which the Commission considers that the local authority is failing,
  (b) the action which the Commission considers the local authority should take to remedy the failure, and

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(c) the time by which the Commission considers the action should be taken.

(5) If the Commission recommends that the Secretary of State should take special measures in relation to the local authority, the Commission must, if the Secretary of State so requests—

(a) conduct a further review under section 48 in relation to the authority, and

(b) include in its report under subsection (4) of that section a report on such matters as the Secretary of State may specify.

Commencement Information

I89 S. 50 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 18**

51 Failings by Welsh NHS bodies

(1) Following a review under section 46 or 49, or a review or investigation under section 48, the Commission must inform the Welsh Ministers if it considers that—

(a) there are significant failings in relation to the provision of health care by or pursuant to arrangements made by a Welsh NHS body,

(b) there are significant failings in the running of a Welsh NHS body, or

(c) there are significant failings in the running of a body, or the practice of an individual, providing health care pursuant to arrangements made by a Welsh NHS body.

(2) The Commission may also recommend to the Welsh Ministers that, with a view to remedying those failings, the Welsh Ministers take special measures—

(a) in a case falling within subsection (1)(a) or (b), in relation to the Welsh NHS body concerned;

(b) in a case falling within subsection (1)(c), in relation to the body or individual concerned (except an English NHS body or a cross-border Special Health Authority).

(3) In this section "Welsh NHS body" has the same meaning as in Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

Commencement Information

I90 S. 51 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 19**

I91 S. 51 in force at 11.12.2009 in so far as not already in force by S.I. 2009/3023, **art. 2(f)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

CHAPTER 4

FUNCTIONS UNDER MENTAL HEALTH ACT 1983

52 Transfer and amendment of functions under Mental Health Act 1983

(1) The functions of the Secretary of State under the following provisions of the Mental Health Act 1983 (c. 20) ("the MHA") are transferred to the Commission—

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(a) section 57(2)(a) (appointment of registered medical practitioners and other persons),
(b) section 58(3)(a) (appointment of registered medical practitioners),
(c) section 61(1) (receipt of reports on treatment),
(d) section 61(3) (power to disapply Part 4 certificates),
(e) section 64H(4) (receipt of reports on treatment),
(f) section 64H(5) (power to disapply Part 4A certificates),
(g) section 118(2) (code of practice) so far as it relates to the appointment of registered medical practitioners,
(h) section 119(1) (power to make provision for payment to practitioners etc.), and
(i) section 120 (duty to keep matters under review etc.).

(2) Registered medical practitioners, and other persons, appointed or authorised by the Commission in the exercise of a function under the MHA may include members or employees of the Commission.

(3) The functions of the Mental Health Act Commission under the MHA are transferred—
(a) in relation to England, to the Care Quality Commission;
(b) in relation to Wales, to the Welsh Ministers.

(4) Section 121 of the MHA (which makes provision about the Mental Health Act Commission and requires the Secretary of State and the Welsh Ministers to delegate some of their functions to it) ceases to have effect.

(5) Schedule 3 (which makes amendments to the MHA consequential on the provisions of this section, and other amendments to the MHA relating to the functions of the Commission and the Welsh Ministers) has effect.

Commencement Information
I92 S. 52 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20** (with art. 11, Sch. 4)

CHAPTER 5

FURTHER FUNCTIONS

53 Information and advice

(1) The Commission must keep the Secretary of State informed about the following matters—
(a) the provision of NHS care;
(b) the provision of adult social services;
(c) the carrying on of regulated activities.

(2) The Commission may at any time give the Secretary of State advice on anything connected with those matters.

(3) Advice under subsection (2) may in particular include advice on any changes that the Commission thinks should be made to—

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(a) regulations under section 20 (regulation of regulated activities),
(b) a code of practice under section 21 (code of practice relating to health care associated infections), or
(c) a statement of standards under section 45 (health care standards set by the Secretary of State).

(4) When requested to do so by the Secretary of State, the Commission must give the Secretary of State such advice or information in connection with a matter mentioned in subsection (1) as may be specified in the request.

(5) The Commission may give advice—
(a) to the Secretary of State or an English NHS body about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or NHS body in relation to the provision of health care by or pursuant to arrangements made by that body;
(b) to the Secretary of State or an English local authority about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or local authority in relation to the provision of adult social services by or pursuant to arrangements made by that authority.

Commencement Information
I93 S. 53 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20**

54 Studies as to economy, efficiency etc.

(1) The Commission may undertake or promote comparative or other studies designed to enable it to make recommendations—
(a) for improving economy, efficiency and effectiveness in any activity mentioned in subsection (2),
(b) for improving the management, other than the financial management, of an English NHS body, or
(c) for improving the management of an English local authority in its provision of adult social services.

(2) Those activities are—
(a) the provision of health care by an English NHS provider,
(b) the making of arrangements by a Primary Care Trust for the provision of health care,
(c) the provision of adult social services by an English local authority, and
(d) the making of arrangements by an English local authority for the provision of adult social services.

(3) The Commission may also undertake or promote studies designed to enable it to prepare reports as to the impact of—
(a) the operation of any particular statutory provisions, or
(b) any directions or guidance given by a Minister of the Crown (whether pursuant to any such provisions or otherwise),

on economy, efficiency and effectiveness in an activity mentioned in subsection (2)(c) or (d).

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(4) The Commission must undertake or promote a study falling within subsection (1) or (3) if the Secretary of State so requests.

(5) The reference in subsection (1) to an English NHS body does not include a reference to a Special Health Authority.

Commencement Information

I94 S. 54 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20**

55 Publication of results of studies under s. 54

(1) The Commission must publish—

(a) any recommendations made by it under subsection (1) of section 54, and

(b) the result of any studies undertaken or promoted under that section.

(2) The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication under subsection (1) of any recommendations or the result of any studies.

Commencement Information

I95 S. 55 partly in force; S. 55 in force for specified purposes at Royal Assent, see s. 170

I96 S. 55 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20**

56 Role of Audit Commission

(1) Subsection (2) applies to any function of the Commission under section 54 or 55 so far as relating to health care or English NHS bodies, except the function of being consulted under section 55(2).

(2) A function to which this subsection applies may be exercised on the Commission's behalf by the Audit Commission, if the Audit Commission and the Commission so agree.

(3) Where the Audit Commission exercises functions under subsection (2), it must do so on such terms, including terms as to payment, as the Commission and the Audit Commission may agree.

(4) The Commission and the Audit Commission may exercise jointly their respective functions under—

(a) section 54 (and section 60 in its application to functions under that section) so far as relating to English local authorities, and

(b) sections 33 and 34 of the Audit Commission Act 1998 (c. 18).

(5) The Commission and the Audit Commission must have regard to any guidance issued by the Secretary of State as to which of the Commission and the Audit Commission should promote or undertake studies which could be promoted or undertaken by either of them.

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(6) Subsection (4) is not to be taken to prejudice any other power of the Commission and the Audit Commission to act jointly.

(7) In this section "the Audit Commission" means the Audit Commission for Local Authorities and the National Health Service in England.

Commencement Information
I97 S. 56 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20**

57 Reviews of data, studies and research

(1) The Commission may review—
- (a) studies and research undertaken by others, or the quality of data obtained by others, in relation to the provision of NHS care or adult social services or the carrying on of regulated activities,
- (b) the methods used in undertaking such studies and research or in collecting and analysing such data, and
- (c) the validity of conclusions drawn from such studies and research or from such data.

(2) The Commission must conduct a review under subsection (1) if the Secretary of State so requests.

(3) If the Commission conducts a review under this section it must publish a report.

Commencement Information
I98 S. 57 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20**

58 Publication of information

(1) The Commission may make available to the public information relating to—
- (a) the provision of NHS care;
- (b) the provision of adult social services;
- (c) the carrying on of regulated activities.

(2) Subsection (1) is subject to sections 76 and 79(2).

Commencement Information
I99 S. 58 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20**

59 Additional functions

(1) The Secretary of State may by regulations provide that the Commission is to have such additional functions as may be specified in the regulations in relation to any of the following—
- (a) the provision of NHS care;

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(b) the exercise in respect of England of functions by cross-border Special Health Authorities;

(c) the improvement of—

(i) economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies, and

(ii) the financial or other management, or operations, of English NHS bodies;

(d) the provision of adult social services;

(e) the carrying on of regulated activities;

(f) the exercise of powers or the discharge of duties conferred or imposed by the Mental Health Act 1983 (c. 20) as mentioned in section 120(1) of that Act.

(2) The Secretary of State must consult the Independent Regulator of NHS Foundation Trusts before making provision under subsection (1) in relation to NHS foundation trusts.

Commencement Information

I100 S. 59 partly in force; S. 59 in force for specified purposes at Royal Assent, see s. 170

I101 S. 59 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 20**

CHAPTER 6

MISCELLANEOUS AND GENERAL

Inspections

60 Inspections

(1) The Commission may for the purposes of its regulatory functions carry out inspections of—

(a) the carrying on of a regulated activity,

(b) the provision of NHS care,

(c) the provision of adult social services, or

(d) the exercise of functions by an English NHS body.

(2) For the purposes of this Part, the "regulatory functions" of the Commission are its functions under Chapters 2, 3 and 5 except—

(a) its functions under section 53 (information and advice),

(b) its functions under section 57 (reviews of data, studies and research), and

(c) its functions under regulations under section 59 (additional functions) to the extent that the regulations provide that they are not to be treated as regulatory functions for the purposes of this Part.

Commencement Information

I102 S. 60 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

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I103 S. 60 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 13** (with Pt. 3)

61 Inspections carried out for registration purposes

(1) Regulations may prescribe—
- (a) the frequency with which inspections are to be carried out under section 60 for the purposes of the Commission's functions under Chapter 2,
- (b) the manner in which they are to be carried out, and
- (c) the type of person who may be authorised by the Commission to conduct them on its behalf.

(2) Where an inspection is carried out under section 60 for the purposes of the Commission's functions under Chapter 2, the Commission must—
- (a) prepare a report on the matters inspected, and
- (b) without delay send a copy of the report to—
  - (i) the person who carries on the regulated activity in question, and
  - (ii) if a person is registered under that Chapter as a manager in respect of the activity, that person.

(3) The Commission must publish a report prepared under subsection (2).

(4) The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of such a report.

Commencement Information

I104 S. 61 partly in force; S. 61 in force for specified purposes at Royal Assent, see s. 170

I105 S. 61 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I106 S. 61 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 13** (with Pt. 3)

Powers of entry etc.

62 Entry and inspection

(1) The power in subsection (2) is exercisable if the Commission considers it necessary or expedient for the purposes of any of its regulatory functions.

(2) A person authorised by the Commission may enter and inspect any premises which are, or which the person reasonably believes to be, regulated premises.

(3) Premises are "regulated premises" if they fall within one or more of the following descriptions—
- (a) they are used for the carrying on of a regulated activity,
- (b) they are owned or controlled by an English NHS body or English local authority, or
- (c) they are used or proposed to be used for or in connection with—
  - (i) the provision of NHS care,

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(ii) the exercise of any functions of an English NHS body, or

(iii) the provision of adult social services.

(4) If NHS care or an adult social service is provided to a person in premises used wholly or mainly as a private dwelling, the premises are not to be regarded as used for or in connection with the provision of that care or service.

(5) A person who proposes to exercise the power conferred by subsection (2) must if so required produce some duly authenticated document showing the person's authority to exercise the power.

(6) "Premises" includes a vehicle.

Commencement Information

I107 S. 62 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I108 S. 62 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 13** (with Pt. 3)

63 Entry and inspection: supplementary

(1) This section applies where a person ("A") is authorised by virtue of section 62 to enter and inspect premises.

(2) If A considers it necessary or expedient for relevant purposes, A may—

(a) make any examination into the state and management of the premises or the treatment of persons receiving care there,

(b) inspect and take copies of any documents or records,

(c) have access to, and check the operation of, any computer, and any associated apparatus or material, which is or has been in use in connection with any documents or records,

(d) inspect any other item,

(e) seize and remove from the premises any documents, records or other items,

(f) interview in private—

(i) any person who carries on or manages a regulated activity, or who manages the provision of NHS care or adult social services, at the premises,

(ii) any person working at the premises, and

(iii) any person receiving care at the premises who consents to be interviewed, and

(g) if the conditions in subsection (3) are met, examine in private any person receiving care at the premises.

(3) The conditions are—

(a) A is a registered medical practitioner or registered nurse,

(b) A has reason to believe that the person to be examined is not receiving proper care at the premises, and

(c) the person to be examined—

(i) is capable of giving consent to the examination and does so, or

(ii) is incapable of giving consent to the examination.

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(4) The power under subsection (2)(b) includes power—

(a) to require any person holding or accountable for documents or records (whether or not kept at the premises) to produce them for inspection at the premises, and

(b) to require any records which are kept by means of a computer to be produced in a form in which they are legible and can be taken away.

(5) The power under subsection (2)(f)(i) to interview a person in private includes power, in the case of a body corporate, to interview in private—

(a) any director, manager, secretary or other similar officer of the body corporate, and

(b) where the body is an English NHS body or English local authority, any officer or member of the NHS body or local authority.

(6) A may—

(a) require any person to afford A such facilities and assistance with respect to matters within the person's control as are necessary to enable A to exercise powers under section 62 and this section, and

(b) take such measurements and photographs, and make such recordings, as A considers necessary to enable A to exercise those powers.

(7) A person who without reasonable excuse—

(a) obstructs the exercise of a power conferred by section 62 or this section, or

(b) fails to comply with a requirement imposed under this section,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(8) In this section—

(a) "relevant purposes" means the purposes of any of the Commission's regulatory functions,

(b) any reference to documents or records includes a reference to personal and medical records, and

(c) any reference to a person receiving care at premises includes a reference to a person who is accommodated there.

Commencement Information

I109 S. 63 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I110 S. 63 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 13** (with Pt. 3)

64 Power to require documents and information etc.

(1) The Commission may require any person mentioned in subsection (2) to provide it with any information, documents, records (including personal and medical records) or other items which the Commission considers it necessary or expedient to have for the purposes of any of its regulatory functions.

(2) The persons are—

(a) an English NHS body,

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(b) a person providing health care commissioned by a Primary Care Trust,

(c) an English local authority,

(d) a person providing adult social services commissioned by an English local authority, or

(e) a person who carries on or manages a regulated activity.

(3) The power in subsection (1) to require the provision of information, documents or records includes, in relation to information, documents or records kept by means of a computer, power to require the provision of the information, documents or records in legible form.

(4) A person who without reasonable excuse fails to comply with a requirement imposed under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information

I111 S. 64 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I112 S. 64 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 13** (with Pt. 3)

65 Power to require explanation

(1) The Secretary of State may by regulations make provision requiring prescribed persons to provide an explanation of any relevant matter to the Commission, or to persons authorised by the Commission, in circumstances where the Commission considers the explanation necessary or expedient for the purposes of any of its regulatory functions.

(2) "Relevant matter" means—

(a) any documents, records or other items inspected, copied or provided under sections 62 to 64,

(b) any information provided under those sections,

(c) any documents, records, other items or information otherwise provided to the Commission by any person for the purposes of the Commission's regulatory functions, or

(d) any matters which are the subject of the exercise of any such functions.

(3) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the Commission.

(4) A person who without reasonable excuse fails to comply with a requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information

I113 S. 65 partly in force; S. 65 in force for specified purposes at Royal Assent, see s. 170

I114 S. 65 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I115 S. 65 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 13** (with Pt. 3)

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Interaction with other authorities

66 Interaction with other authorities

Schedule 4 (interaction with other authorities) has effect.

Commencement Information

I116 S. 66 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(h)**

I117 S. 66 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 21**

67 Co-ordination of reviews or assessments

The Commission must promote the effective co-ordination of reviews or assessments carried out by public bodies or other persons in relation to the carrying on of regulated activities.

Commencement Information

I118 S. 67 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 22**

68 Avoidance of unreasonable burdens in exercise of regulatory powers

(1) The Secretary of State may publish guidance about steps which regulatory authorities may take in exercising relevant powers with a view to avoiding the imposition of unreasonable burdens on those in respect of whom the powers are exercisable.

(2) "Regulatory authorities" means—

(a) the Commission, and

(b) such other bodies as may be prescribed.

(3) A body may not be prescribed under subsection (2)(b) unless it has functions relating to the provision of health or social care.

(4) "Relevant powers" means powers conferred by or under an enactment to—

(a) carry out inspections, or

(b) require the provision of information,

but, in relation to a body prescribed under subsection (2)(b), such powers are "relevant powers" only so far as they are exercisable in respect of a person in respect of whom the Commission has relevant powers.

(5) The steps mentioned in subsection (1) might include for example—

(a) co-operating with other regulatory authorities and co-ordinating the exercise of relevant powers,

(b) sharing information or the results of inspections, and

(c) seeking to obtain information from other sources before exercising a relevant power to require the provision of that information.

(6) In exercising relevant powers, regulatory authorities must have regard to any guidance published under subsection (1).

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(7) Nothing in this section is intended to limit the scope of a relevant power or affect a person's obligation to comply with a requirement imposed in the exercise of such a power.

(8) In this section—

(a) "inspections" includes inspections of persons, premises or the carrying on of activities,

(b) a reference to a power to carry out inspections includes a reference to any power which is ancillary to that power (such as a power to enter premises or to require assistance), and

(c) a reference to a power to require the provision of information includes a reference to a power to require the production of documents, records or other items, a power to require the making of reports and a power to require explanations.

Commencement Information

I119 S. 68 partly in force; S. 68 in force for specified purposes at Royal Assent, see s. 170

I120 S. 68 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 22**

69 Co-operation between the Commission and Welsh Ministers

(1) The Commission and the Welsh Ministers must co-operate with each other for the efficient and effective discharge of their corresponding functions.

(2) Their corresponding functions are—

(a) the Commission's functions, and

(b) any functions of the Welsh Ministers exercisable in or in relation to Wales which correspond or are similar to any of the Commission's functions.

(3) The Commission and the Welsh Ministers may share information with each other for the purposes of subsection (1).

Commencement Information

I121 S. 69 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 22**

70 Co-operation between the Commission and the Independent Regulator of NHS Foundation Trusts

(1) The Commission and the Independent Regulator of NHS Foundation Trusts must co-operate with each other in the exercise of their respective functions.

(2) In particular—

(a) the Commission must keep the Independent Regulator informed about the provision of health care by NHS foundation trusts, and

(b) the Independent Regulator must give the Commission any information the Independent Regulator has about the provision of health care by an NHS foundation trust which the Independent Regulator or the Commission

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considers would assist the Commission in the exercise of the Commission's functions.

(3) Without prejudice to subsection (2)(a) the Commission must, on request, provide the Independent Regulator with any material relevant to—
  (a) a review under section 46 or 49,
  (b) a review or investigation under section 48, or
  (c) a study promoted, or undertaken, by the Commission under section 54,

so far as the material relates to the provision of health care by an NHS foundation trust.

Commencement Information
I122 S. 70 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 22**

71 Provision of information by Auditor General for Wales

(1) The Auditor General for Wales must, on request, provide the Commission with any information it may reasonably require for the purpose of making comparisons, in the exercise of its functions under section 54 so far as relating to health care or English NHS bodies, between English NHS bodies and Welsh NHS bodies.

(2) In this section "Welsh NHS body" has the same meaning as in Part 3 of the Public Audit (Wales) Act 2004 (c. 23).

Commencement Information
I123 S. 71 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 22**

72 Provision of material to the Comptroller and Auditor General

The Commission must, on request, provide the Comptroller and Auditor General with any material relevant to—
  (a) a review under section 46 or 49 in respect of an English NHS body,
  (b) a review or investigation under section 48 in respect of such a body, or
  (c) a study promoted, or undertaken, by the Commission under section 54.

Commencement Information
I124 S. 72 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 23**
I125 S. 72 in force at 11.12.2009 in so far as not already in force by S.I. 2009/3023, **art. 2(g)** (with arts. 3-17) (as amended (8.2.2010) by S.I. 2010/47, art. 2)

73 Arrangements with Ministers

(1) The Commission and a Minister of the Crown may make arrangements for the Commission to—
  (a) perform any of its functions in relation to a prescribed health scheme, or a prescribed social care scheme, for which the Minister has responsibility;

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(b) provide services or facilities insofar as they are required by the Minister in connection with such a scheme.

(2) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.

(3) Those terms and conditions may include provision with respect to the making of payments to the Commission in respect of the cost to it of giving effect to the arrangements.

(4) In this section—

"health scheme" means a scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds;

"social care scheme" means a scheme which appears to the Secretary of State to be a social care scheme paid for out of public funds.

Commencement Information

I126 S. 73 partly in force; s. 73 in force for specified purposes at Royal Assent, see s. 170

I127 S. 73 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 24**

74 Arrangements with Northern Ireland Ministers

(1) The Commission and a Northern Ireland Minister may make arrangements for the Commission to—

(a) exercise on behalf of the Minister any function of the Minister which corresponds to a function of the Commission and relates to the Northern Ireland health service;

(b) provide services or facilities insofar as they are required by the Minister in connection with the exercise by the Minister of any such functions.

(2) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.

(3) Those terms and conditions may include provision with respect to the making of payments to the Commission in respect of the cost to it of giving effect to the arrangements.

(4) Any arrangements under subsection (1)(a) are not to affect the responsibility of the Minister on whose behalf the function is exercised.

(5) In this section—

"Northern Ireland Minister" includes the First Minister, the deputy First Minister and a Northern Ireland department;

"Northern Ireland health service" means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the National Health Service Act 2006 (c. 41).

Commencement Information

I128 S. 74 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 25**

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Inquiries

75 Inquiries

(1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the Commission of any of its functions.

(2) Before an inquiry is begun, the Secretary of State may give a direction that it be held in private.

(3) Where no such direction has been given, the person holding the inquiry may decide to hold it, or any part of it, in private.

(4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.

(5) The report of the person holding the inquiry is to be published, unless the Secretary of State considers that there are exceptional circumstances which make publication inappropriate.

(6) Publication is to be in such manner as the Secretary of State considers appropriate.

Commencement Information
I129 S. 75 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 26**

Information

76 Disclosure of confidential personal information: offence

(1) This section applies to information which—
  (a) has been obtained by the Commission on terms or in circumstances requiring it to be held in confidence, and
  (b) relates to and identifies an individual.

(2) A person is guilty of an offence if the person knowingly or recklessly discloses information to which this section applies during the lifetime of the individual.

(3) A person guilty of an offence under this section is liable—
  (a) on summary conviction, to imprisonment for a term not exceeding 12 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), the reference in subsection (3)(a) to 12 months is to be read as a reference to 6 months.

(5) For the purposes of subsection (1)(b), information obtained by the Commission is to be treated as identifying an individual if the individual can be identified from a combination of—
  (a) that information, and

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(b) other information obtained by the Commission.

(6) Reference in this section and in sections 77 to 80 to information obtained or disclosed by the Commission includes information obtained or disclosed by a person authorised by the Commission.

Commencement Information

I130 S. 76 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

77 Defence

(1) It is a defence for a person charged with an offence under section 76 to prove that at the time of the alleged offence—

(a) any of the circumstances in subsection (2) applied in relation to the disclosure, or

(b) the person reasonably believed that any of them so applied.

(2) The circumstances are—

(a) that the disclosure was made in a form in which the individual to whom the information relates is not identified;

(b) that the disclosure was made with the consent of that individual;

(c) that the information disclosed had previously been lawfully disclosed to the public;

(d) that the disclosure was made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (complaints about health care or social services);

(e) that the disclosure was made in accordance with any enactment or court order;

(f) that the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;

(g) that the disclosure was made to any person or body in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment.

(3) It is also a defence for a person charged with an offence under section 76 to prove that the disclosure was made—

(a) for the purpose of facilitating the exercise of any of the Commission's functions,

(b) in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(c) for the purpose of criminal proceedings (whether or not in the United Kingdom).

(4) If a person charged with an offence under section 76 relies on a defence in subsection (1) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

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(5) For the purposes of subsection (2)(a), information disclosed by a person is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of—
  (a) the information, and
  (b) other information disclosed by the person or by the Commission.

Commencement Information
I131 S. 77 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

78 Use of information etc.

Information obtained by, or documents or records produced to, the Commission in connection with any of its functions may be used by the Commission in connection with any of its other functions.

Commencement Information
I132 S. 78 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

79 Permitted disclosures

(1) Subsections (2) and (3) apply to any information obtained by the Commission in the course of exercising any of its functions.

(2) In the case of information relating to an individual, the Commission may disclose the information if—
  (a) the disclosure is made in a form in which the individual is not identified, or
  (b) the disclosure is made with the consent of the individual.

(3) In all cases (whether or not relating to an individual), the Commission may disclose the information if—
  (a) the information has previously been lawfully disclosed to the public,
  (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (complaints about health care or social services),
  (c) the disclosure is made in accordance with any enactment or court order,
  (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  (e) the disclosure is made to any person or body in circumstances where it is necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment,
  (f) the disclosure is made for the purpose of facilitating the exercise of any of the Commission's functions,
  (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

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(4) Subsections (2) and (3) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

(5) For the purposes of subsection (2)(a), information disclosed by the Commission is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of—

(a) the information, and

(b) other information disclosed by the Commission.

Commencement Information

I133 S. 79 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

80 Code of practice on confidential personal information

(1) The Commission must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.

(2) The code must in particular make provision—

(a) about the obtaining by the Commission of information which, once obtained, will be confidential personal information, and

(b) about the handling, use and disclosure by the Commission of confidential personal information.

(3) Before publishing the code, the Commission must consult—

(a) the National Information Governance Board for Health and Social Care, and

(b) such other persons as it considers appropriate.

(4) The Commission must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).

(5) In this section "confidential personal information" means information which—

(a) is obtained by the Commission on terms or in circumstances requiring it to be held in confidence, and

(b) relates to and identifies an individual.

(6) For the purposes of subsection (5)(b), information obtained by the Commission is to be treated as identifying an individual if the individual can be identified from a combination of—

(a) the information, and

(b) other information obtained by the Commission.

Commencement Information

I134 S. 80 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

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Further provisions about functions of Commission

81 Publication of programme of reviews etc.

(1) The Commission must from time to time prepare and publish a document setting out—
- (a) the special reviews and investigations that it proposes to conduct under section 48,
- (b) the studies that it proposes to undertake under section 54, and
- (c) the reviews that it proposes to conduct under section 57.

(2) Before preparing a document under subsection (1) the Commission must consult—
- (a) the Secretary of State, and
- (b) any other person or body specified by an order made by the Secretary of State,

and it must send each of those persons or bodies a copy of the document once it is prepared.

(3) The Commission may determine that any document or combination of documents prepared for the purposes of any other enactment or enactments is to be treated as a document prepared for the purposes of subsection (1) (so long as the requirements of subsection (2) are complied with in relation to the document or documents concerned).

(4) Nothing in a document published under subsection (1) is to be regarded—
- (a) as affecting any power of the Secretary of State to require a review or investigation to be conducted or a study to be undertaken, or
- (b) as preventing the Commission from conducting an investigation under section 48 where the Commission considers there to be a risk to the health, safety or welfare of persons receiving health or social care.

Commencement Information

I135 S. 81 partly in force; S. 81 in force for specified purposes at Royal Assent, see s. 170

I136 S. 81 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(i)**

82 Failure by the Commission in discharge of its functions

(1) The Secretary of State may give a direction to the Commission if the Secretary of State considers that the Commission—
- (a) is failing or has failed to discharge any of its functions, or
- (b) is failing or has failed properly to discharge any of its functions.

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

(3) If the Commission fails to comply with a direction under subsection (1), the Secretary of State may—
- (a) discharge the functions to which the direction relates, or
- (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.

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Commencement Information

I137 S. 82 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

83 Reports for each financial year etc.

(1) As soon as possible after the end of each financial year, the Commission must make a report on each of the following matters—

(a) the way in which it has exercised its functions during the year,

(b) the provision of NHS care during the year,

(c) the provision of adult social services during the year,

(d) the carrying on of regulated activities during the year, and

(e) the steps taken by it during the year to implement the proposals in its statement under section 5 (statement on user involvement).

(2) The Commission may comply with subsection (1) by preparing a single document or separate documents on each of the matters mentioned there.

(3) If the Secretary of State so directs, a report under subsection (1) must include separate reports on such aspects of the matters mentioned in that subsection as may be specified in the direction.

(4) The Commission must—

(a) lay before Parliament a copy of each report made under subsection (1), and

(b) send a copy of each such report to the Secretary of State.

(5) The Commission must also provide the Secretary of State with such reports and information relating to the exercise of its functions as the Secretary of State may from time to time request.

(6) Subsection (1)(a) does not apply to the Commission's functions under the Mental Health Act 1983 (c. 20).

(7) In this section, “financial year” means—

(a) the period beginning with the date on which the Commission is established and ending with the next 31 March following that date, and

(b) each successive period of 12 months ending with 31 March.

Commencement Information

I138 S. 83 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

84 Reports and information

(1) Subsections (2) and (3) apply to a report published by the Commission under any provision of this Part or of the Mental Health Act 1983.

(2) The Commission must make copies of the report available for inspection at its offices by any person at any reasonable time.

(3) Any person who requests a copy of the report is entitled to have one on payment of such reasonable fee (if any) as the Commission considers appropriate.

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(4) The Commission may charge a person such reasonable fee as it considers appropriate where it provides the person, on request, with any other information relevant to the exercise of the Commission's functions under this Part.

Commencement Information
I139 S. 84 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 27**

Fees

85 Fees

(1) The Commission may with the consent of the Secretary of State from time to time make and publish provision—
  (a) requiring a fee to be paid in respect of—
    (i) an application for registration as a service provider or manager under Chapter 2,
    (ii) the grant or subsistence of any such registration, or
    (iii) an application under section 19(1);
  (b) requiring English NHS bodies, English local authorities, persons registered under Chapter 2 and such other persons as may be prescribed to pay a fee in respect of the exercise by the Commission of such of its other functions under this Part as may be prescribed.

(2) The amount of a fee payable under provision under subsection (1) is to be such as may be specified in, or calculated or determined under, the provision.

(3) Provision under subsection (1) may include provision—
  (a) for different fees to be paid in different cases,
  (b) for different fees to be paid by persons of different descriptions,
  (c) for the amount of a fee to be determined by the Commission in accordance with specified factors, and
  (d) for determining the time by which a fee is to be payable.

(4) Before making provision under subsection (1) the Commission must consult such persons as it thinks appropriate.

(5) If the Secretary of State considers it necessary or desirable to do so, the Secretary of State may by regulations make provision determining the amount of a fee payable to the Commission by virtue of this section, and the time at which it is payable, instead of those matters being determined in accordance with provision made under subsection (1).

(6) Before making any regulations under this section, the Secretary of State must consult the Commission and such other persons as the Secretary of State thinks appropriate.

(7) For the purpose of determining the fee payable by a person by virtue of this section, the person must provide the Commission with such information, in such form, as the Commission may require.

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(8) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

Commencement Information

I140 S. 85 partly in force; S. 85 in force for specified purposes at Royal Assent, see s. 170

I141 S. 85 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(j)**

Enforcement

86 Penalty notices

(1) Where the Commission is satisfied that a person has committed a fixed penalty offence, the Commission may give the person a penalty notice in respect of the offence.

(2) A fixed penalty offence is any Part 1 offence that is prescribed for the purposes of this section.

(3) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice.

(4) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.

(5) Where a person is given a penalty notice, the person cannot be convicted of the offence to which the notice relates if the person pays a penalty in accordance with the notice.

(6) Penalties under this section are payable to the Commission.

(7) Penalties received by the Commission under this section must be paid to the Secretary of State.

Commencement Information

I142 S. 86 partly in force; S. 86 in force for specified purposes at Royal Assent, see s. 170

I143 S. 86 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 28**

87 Penalty notices: supplementary provision

(1) Regulations may make—

(a) provision as to the form and content of penalty notices,

(b) provision as to the monetary amount of the penalty and the time by which it is to be paid,

(c) provision determining the methods by which penalties may be paid,

(d) provision as to the records to be kept in relation to penalty notices,

(e) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—

(i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and

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(ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates,

(f) provision for a certificate—

(i) purporting to be signed by or on behalf of a prescribed person, and

(ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,

to be received in evidence of the matters so stated,

(g) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice, and

(h) such other provision in relation to penalties or penalty notices as the Secretary of State thinks necessary or expedient.

(2) Regulations under subsection (1)(b)—

(a) may make provision for penalties of different amounts to be payable in different cases, including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid, but

(b) must secure that the amount of any penalty payable in respect of any offence does not exceed one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction.

(3) In this section—

"penalty" means a penalty under a penalty notice;

"penalty notice" has the meaning given by section 86(3).

Commencement Information

I144 S. 87 partly in force; S. 87 in force for specified purposes at Royal Assent, see s. 170

I145 S. 87 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 28**

88 Guidance by the Commission in relation to enforcement action

(1) The Commission must issue guidance about how it will exercise its functions under any of the following provisions of this Part—

(a) section 12(5) (variation, removal or imposition of condition in relation to registration as a service provider),

(b) section 15(5) (variation, removal or imposition of condition in relation to registration as a manager),

(c) sections 17 and 18 (cancellation or suspension of registration),

(d) section 29 (warning notice),

(e) section 86 (penalty notices), and

(f) section 89 (publication of information).

(2) The guidance may also include guidance, in relation to any Part 1 offence, as to the circumstances in which the Commission is likely to take criminal proceedings for the offence.

(3) The Commission may from time to time revise guidance published by it under this section and issue the revised guidance.

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(4) Before issuing any guidance or revised guidance under this section, the Commission must consult—

(a) such persons as may be prescribed, and

(b) such other persons as the Commission considers appropriate.

Commencement Information

I146 S. 88 partly in force; S. 88 in force for specified purposes at Royal Assent, see s. 170

I147 S. 88 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(k)**

89 Publication of information relating to enforcement action etc.

(1) Regulations may authorise or require the publication by the Commission of prescribed information relating to—

(a) the cancellation or suspension of a person's registration under Chapter 2;

(b) the conviction of any person in respect of a Part 1 offence and the penalty imposed;

(c) the variation or removal under section 12(5)(a) or 15(5)(a) of any condition for the time being in force in relation to a person's registration;

(d) the imposition under section 12(5)(b) or 15(5)(b) of any additional condition;

(e) a warning notice under section 29;

(f) the payment by any person of a penalty in accordance with a penalty notice issued under section 86, and the offence to which the notice relates.

(2) Any regulations made by virtue of subsection (1)(e) must require the Commission, before publishing information relating to a warning notice under section 29, to provide the person to whom the notice was given with an opportunity to make representations to the Commission relating to the matters dealt with in the notice.

(3) The regulations may prescribe the time when, and manner in which, any information is to be published.

Commencement Information

I148 S. 89 partly in force; S. 89 in force for specified purposes at Royal Assent, see s. 170

I149 S. 89 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 29**

90 Proceedings for offences

(1) Proceedings in respect of a Part 1 offence may not, without the written consent of the Attorney General, be taken by any person other than—

(a) the Commission, or

(b) in relation to any functions of the Commission which the Secretary of State is for the time being discharging by virtue of section 82, the Secretary of State.

(2) Proceedings for a Part 1 offence may be brought within a period of 12 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge; but no such proceedings are to be

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brought by virtue of this subsection more than 3 years after the commission of the offence.

Commencement Information

I150 S. 90 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I151 S. 90 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 14** (with Pt. 3)

91 Offences by bodies corporate

(1) This section applies where a Part 1 offence is committed by a body corporate.

(2) If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) any director, manager or secretary of the body corporate, or

(b) any person who was purporting to act in any such capacity,

that director, manager, secretary or person purporting to act as such (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—

(a) to any other similar officer of the body, and

(b) where the body is an English NHS body or English local authority, to any officer or member of the NHS body or local authority.

Commencement Information

I152 S. 91 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

92 Unincorporated associations

(1) Proceedings for a Part 1 offence alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members).

(2) Rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.

(3) In proceedings for a Part 1 offence brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate.

(4) A fine imposed on an unincorporated association on its conviction for a Part 1 offence is to be paid out of the funds of the association.

(5) If a Part 1 offence committed by an unincorporated association is proved—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

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the officer or member (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.

Commencement Information

I153 S. 92 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

Service of documents

93 Service of documents

(1) Any notice required under this Part to be given to a person ("R") may be given to R—

(a) by being delivered personally to R,

(b) by being sent to R—

(i) by a registered post service, as defined by section 125(1) of the Postal Services Act 2000 (c. 26), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) subject to section 94, by being sent to R by an electronic communication.

(2) Where a notice is given as mentioned in subsection (1)(b), it is, unless the contrary is proved, to be taken to have been received on the third day after the day on which it is sent.

[[F4](2A) Where a notice is given as mentioned in subsection (1)(c) in accordance with section 94, it is, unless the contrary is proved, to be taken to have been received on the next working day after the day on which it is transmitted; and in this subsection "working day" means any day other than—

(a) a Saturday or Sunday;

(b) Christmas Day or Good Friday; or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England.**]**

(3) Any notice required under this Part to be given to a body corporate or firm is duly given if it is given to the secretary or clerk of that body or a partner of that firm.

(4) For the purposes of section 7 of the Interpretation Act 1978 (c. 30) in its application to this section, the proper address of a person is—

(a) in the case of a person registered under Chapter 2 who has notified the Commission under regulations under section 16 (regulations about registration) of an address for service, that address, and

(b) in any other case, the address determined in accordance with subsection (5).

(5) That address is—

(a) in the case of a secretary or clerk of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partner of a firm, the address of the principal office of the firm, and

(c) in any other case, the last known address of the person.

(6) In this section and in section 94—

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(a) "electronic communication" has the same meaning as in the Electronic Communications Act 2000 (c. 7),

(b) "notice" includes any other document, and

(c) a reference to a notice being given by or to a person includes a reference to a notice being served by or on a person.

Textual Amendments

F4 S. 93(2A) inserted (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **19** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

Modifications etc. (not altering text)

C31 S. 93 applied (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **18** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C32 S. 93 applied (1.4.2010) by The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (S.I. 2010/781), regs. 1, **28(7)**

C33 S. 93 applied (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **22**

Commencement Information

I154 S. 93 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I155 S. 93 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 14** (with Pt. 3)

94 Electronic communications

(1) If a notice required or authorised under this Part to be given by or to a person is sent by an electronic communication, it is to be treated as given only if the requirements of subsection (2) or (3) are met.

(2) If the person required or authorised to give the notice is the Commission—

(a) the person to whom the notice is required or authorised to be given must have indicated to the Commission the person's willingness to receive notices by an electronic communication and provided an address suitable for that purpose, and

(b) the notice must be sent to the address provided by that person.

(3) If the person required or authorised to give the notice is not the Commission, the notice must be sent in such manner as the Commission may require.

(4) An indication given for the purposes of subsection (2) may be given generally for the purposes of notices required or authorised to be given by the Commission under this Part or may be limited to notices of a particular description.

(5) A requirement imposed by the Commission under subsection (3) must be published in such manner as the Commission thinks appropriate for the purpose of bringing it to the attention of persons who are likely to be affected by it.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C34 S. 94 applied (11.12.2009) by The Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023), arts. 1(1), **18** (as amended (8.2.2010) by S.I. 2010/47, art. 2)

C35 S. 94 applied (6.4.2010) by The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010 (S.I. 2010/807), arts. 1(1)(a), **22**

Commencement Information

I156 S. 94 in force at 12.1.2009 for specified purposes by S.I. 2008/3168, **art. 2**

I157 S. 94 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 14** (with Pt. 3)

Further amendments

95 Further amendments relating to Part 1

Schedule 5 (which contains further amendments relating to the provisions of this Part) has effect.

Commencement Information

I158 S. 95 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(l)**

I159 S. 95 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 30**

I160 S. 95 in force at 2.11.2009 for specified purposes for E. by S.I. 2009/2862, **art. 2(d)**

I161 S. 95 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 13(b)**

I162 S. 95 in force at 6.4.2010 for specified purposes by S.I. 2010/807, art. 2(1), **Sch. 1 para. 15** (with Pt. 3)

Crown application

96 Application of Part 1 to Crown

(1) Any provision made by or under Chapter 2 or 3 or this Chapter binds the Crown, but does not affect Her Majesty in her private capacity.

(2) Subsection (1)—

(a) does not require regulations made under section 8 to be made so as to apply to activities carried on by or on behalf of the Crown, and

(b) is to be read as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (references to Her Majesty in her private capacity) were contained in this Act.

(3) No contravention of any provision made by or under Chapter 2 or 3 or this Chapter is to make the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) The provisions of Chapters 2 and 3 and this Chapter apply to persons in the public service of the Crown as they apply to other persons.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) If the Secretary of State certifies that it appears to the Secretary of State requisite or expedient in the interests of national security that the powers of entry and inspection conferred by sections 62 and 63—

(a) should not be exercisable in relation to any premises which are used by or on behalf of the Crown and are specified in the certificate, or

(b) should not be exercisable in relation to any premises which are so used and are specified in the certificate, except in circumstances specified in the certificate,

those powers are not exercisable in relation to those premises or (as the case may be) are not exercisable in relation to those premises except in those circumstances.

Commencement Information

I163 S. 96 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 31**

Interpretation

97 General interpretation of Part 1

(1) In this Part—

"adult social services" means—

(a) services which are provided or commissioned by an English local authority in the exercise of its adult social services functions, and

(b) services which are provided or commissioned by an English local authority under section 2(1)(b) of the Local Government Act 2000 (c. 22) and which are similar in nature to a service which could be provided by the authority in the exercise of any of its adult social services functions;

"adult social services functions" means social services functions (within the meaning of the Local Authority Social Services Act 1970 (c. 42)) so far as relating to persons aged 18 or over, excluding any function to which Chapter 4 of Part 8 of the Education and Inspections Act 2006 (c. 40) applies;

"the Commission" means the Care Quality Commission;

"cross-border Special Health Authority" means a Special Health Authority not performing functions only or mainly in respect of England or only or mainly in respect of Wales;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

"English local authority" means—

(a) a county council in England,

(b) a metropolitan district council,

(c) a non-metropolitan district council for an area for which there is no county council,

(d) a London borough council,

(e) the Common Council of the City of London, or

(f) the Council of the Isles of Scilly;

"English NHS body" means—

(a) a Primary Care Trust,

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) a Strategic Health Authority,

(c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England,

(d) an NHS foundation trust, or

(e) a Special Health Authority performing functions only or mainly in respect of England;

"English NHS provider" means—

(a) a Primary Care Trust,

(b) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England, or

(c) an NHS foundation trust;

"health care" has the meaning given by section 9(2) (but see subsection (2) below);

"health or social care" has the meaning given by section 9(4);

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

"NHS care" means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not);

"Part 1 offence" means an offence under this Part or under regulations under this Part;

"prescribed" means prescribed by regulations;

"regulated activity" has the meaning given by section 8;

"regulations" means regulations made by the Secretary of State;

"regulatory functions", in relation to the Commission, is to be read in accordance with section 60(2);

"social care" has the meaning given by section 9(3).

(2) Except in Chapter 2, any reference in this Part to the provision of health care includes a reference to—

(a) the provision of services connected with the provision of health care, and

(b) the promotion and protection of public health.

(3) Any reference in this Part to health care commissioned by a Primary Care Trust is a reference to health care provided by other persons pursuant to arrangements made by the Trust.

(4) Any reference in this Part to adult social services commissioned by an English local authority is a reference to adult social services provided by other persons pursuant to arrangements made by the authority.

(5) Any reference in this Part to a person who carries on a regulated activity includes a reference to a person who carries it on otherwise than for profit.

(6) Any reference in this Part to the provision of health care, or adult social services, by a person includes a reference to the provision of that care, or those services, by that person's agent or sub-contractor.

(7) In its application to a function conferred on the Commission by regulations under section 59(1)(b), Chapter 6 has effect as if any reference in Chapter 6 to an English NHS body included a reference to a cross-border Special Health Authority.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I164 S. 97 partly in force; s. 97 in force for specified purposes at Royal Assent, see s. 170

I165 S. 97 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(m)**

PART 2

REGULATION OF HEALTH PROFESSIONS AND HEALTH AND SOCIAL CARE WORKFORCE

The Office of the Health Professions Adjudicator

98 The Office of the Health Professions Adjudicator

(1) There is to be a body corporate known as the Office of the Health Professions Adjudicator (referred to in this Part as "the OHPA").

(2) The OHPA is to have functions in relation to the professions regulated by—
  (a) the Medical Act 1983 (c. 54), and
  (b) the Opticians Act 1989 (c. 44).

(3) Schedule 6 (which makes further provision about the OHPA) has effect.

Commencement Information

I166 S. 98(1) in force at 25.1.2010 by S.I. 2010/23, **art. 2(a)**

I167 S. 98(3) in force at 28.9.2009 for specified purposes by S.I. 2009/2567, **art. 2(a)**

I168 S. 98(3) in force at 25.1.2010 for specified purposes by S.I. 2010/23, **art. 2(b)**

PROSPECTIVE

99. [F5]Functions under Medical Act 1983 and Opticians Act 1989

. . . . . .

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

PROSPECTIVE

100. [F5] Fitness to practise panels

. . . . . .

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

PROSPECTIVE

101. [F5]Lists of persons eligible for membership of fitness to practise panels

. . . . . .

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

PROSPECTIVE

102. [F5] Further provisions about listed persons

. . . . . .

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

PROSPECTIVE

103. [F5] Legal assessors

. . . . . .

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

104. .[F5]Clinical and other specialist advisers

. . . . . .

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

PROSPECTIVE

105. [F5]Procedural rules

. . . . . .

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

PROSPECTIVE

106. [F5] Administration of oaths and issuing of witness summonses etc.

. . . . . .

Textual Amendments

F5 Ss. 98-110 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

107 Duty to inform the public

(1) For the purpose of ensuring that members of the public are informed about the OHPA and the exercise by it of its functions, the OHPA must publish or provide in such manner as it thinks fit information about the OHPA and the exercise of its functions.

(2) Without prejudice to the generality of subsection (1), the OHPA must publish in such manner as it thinks fit, and within such time as may be specified in rules, decisions of its fitness to practise panels.

(3) But the OHPA may withhold from publication—

(a) information concerning the physical or mental health of a person which the OHPA considers to be confidential, and

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(b) other information which is of a description specified in rules.

(4) Nothing in subsection (1) or (2) authorises or requires the publication or provision of information if the publication or provision of that information—
(a) is prohibited by any enactment, or
(b) would constitute or be punishable as a contempt of court.

(5) In this section "rules" means rules made by the OHPA.

Commencement Information
I169 S. 107(1) in force at 25.1.2010 by S.I. 2010/23, **art. 2(c)**
I170 S. 107(4) in force at 25.1.2010 for specified purposes by S.I. 2010/23, **art. 2(d)**

108 Duty to consult

The OHPA must from time to time seek the views of—
(a) members of the public,
(b) bodies which appear to the OHPA to represent the interests of patients,
(c) the General Medical Council and the General Optical Council, and
(d) any other bodies which appear to the OHPA to represent the professions regulated by the Medical Act 1983 (c. 54) or the Opticians Act 1989 (c. 44),

on matters relevant to the exercise by it of its functions.

Commencement Information
I171 S. 108 in force at 25.1.2010 by S.I. 2010/23, **art. 2(e)**

109 OHPA rules: supplementary

(1) This section applies to the power of the OHPA to make rules under any of sections 100, 101, 103, 104, 105 and 107.

(2) The power may be exercised—
(a) so as to make different provision for different cases or different classes of case or different provision in respect of the same case or class of case for different purposes of this Act,
(b) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or
(c) so as to make any supplementary, incidental, consequential, transitional, transitory or saving provision which the OHPA considers necessary or expedient.

(3) Before making rules the OHPA must consult—
(a) the Council for Healthcare Regulatory Excellence,
(b) if the rules affect the profession regulated by the Medical Act 1983, the General Medical Council and any other bodies which appear to the OHPA to represent that profession,

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) if the rules affect the professions regulated by the Opticians Act 1989, the General Optical Council and any other bodies which appear to the OHPA to represent those professions,

(d) bodies which appear to the OHPA to represent the interests of patients, and

(e) such other persons as the OHPA considers appropriate.

(4) Rules do not come into force until they have been approved by order of the Privy Council.

(5) The Privy Council may approve rules—

(a) as submitted to them, or

(b) subject to such modifications as appear to them to be necessary.

(6) Where the Privy Council propose to approve rules subject to modifications, they must—

(a) notify the OHPA of the modifications they propose to make, and

(b) consider any observations which the OHPA may make on the modifications.

Commencement Information

I172 S. 109 partly in force; S. 109 in force for specified purposes at Royal Assent, see s. 170

110 Fees payable by General Medical Council and General Optical Council

(1) The Secretary of State must with the approval of the Treasury make regulations requiring each of the regulatory bodies to pay to the OHPA periodic fees in respect of the discharge by the OHPA of its functions.

(2) The regulations must provide for the amount of the fees to be determined by the OHPA in accordance with the regulations.

(3) The regulations must require the OHPA to exercise its powers under the regulations with a view to ensuring that its chargeable costs are met by fees payable under the regulations and, accordingly, that the fees payable by each regulatory body cover—

(a) so much of the OHPA's chargeable costs as are treated by the regulations as being attributable to the OHPA's functions under the relevant regulatory Act, and

(b) an apportionment between the regulatory bodies of so much of the OHPA's chargeable costs as are not treated by the regulations as being attributable to the OHPA's functions under that Act or the other relevant regulatory Act.

(4) For the purposes of subsection (3), the OHPA's “chargeable costs” are the costs incurred by the OHPA under or for the purposes of this Act or any other enactment, other than costs—

(a) incurred before such day as may be specified in the regulations, or

(b) incurred for a purpose specified in the regulations.

(5) The regulations must provide that no fee is to be payable unless the OHPA has—

(a) notified the regulatory bodies of its proposed determination as to the amount of the fees payable by them,

(b) considered any representations made by the regulatory bodies in relation to the proposed determination, and

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(c) notified each of the regulatory bodies of the OHPA's determination of the amount payable by that body (which may be more or less than the amount proposed).

(6) The regulations may require the OHPA to obtain the approval of the Treasury in relation to the amount of any fee.

(7) The regulations may—

(a) make provision as to the times at which fees are to be paid;

(b) enable a determination to be varied, replaced or revoked;

(c) provide that if the whole or any part of a fee payable under the regulations is not paid by the time when it is required to be paid under the regulations, the unpaid balance from that time carries interest at the rate determined by or in accordance with the regulations;

(d) make provision as to the recovery of fees.

(8) Before making regulations under this section, the Secretary of State must consult the regulatory bodies and such other persons as the Secretary of State considers appropriate.

(9) In this section—

"regulatory body" means the General Medical Council or the General Optical Council;

"relevant regulatory Act" means—

(a) in relation to the General Medical Council, the Medical Act 1983 (c. 54), and

(b) in relation to the General Optical Council, the Opticians Act 1989 (c. 44).

Commencement Information

I173 S. 110 partly in force; S. 110 in force for specified purposes at Royal Assent, see s. 170

Amendments of Part 3 of Health Act 1999

111 Extension of powers under s. 60 of Health Act 1999

Schedule 8 (which contains amendments of section 60 of, and Schedule 3 to, the 1999 Act) has effect.

Commencement Information

I174 S. 111 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 3(a)**

I175 S. 111 in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 3(a)**

112 Standard of proof in fitness to practise proceedings

After section 60 of the 1999 Act insert—

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"**60A Standard of proof in fitness to practise proceedings**

(1) The standard of proof applicable to any proceedings to which this subsection applies is that applicable to civil proceedings.

(2) Subsection (1) applies to any proceedings before—
  (a) the Office of the Health Professions Adjudicator, or
  (b) a committee of a regulatory body, a regulatory body itself or any officer of a regulatory body,

which relate to a person's fitness to practise a profession to which section 60(2) applies.

(3) In subsection (2) "regulatory body" means the body (or main body) responsible for the regulation of a profession to which section 60(2) applies.

(4) An Order in Council under section 60 may not—
  (a) amend this section, or
  (b) make any provision that is inconsistent with subsection (1)."

Commencement Information
I176 S. 112 in force at 3.11.2008 for specified purposes by S.I. 2008/2717, **art. 2**

The Council for Healthcare Regulatory Excellence

113 The Council for Healthcare Regulatory Excellence

(1) The Council for the Regulation of Health Care Professionals is to be known instead as the Council for Healthcare Regulatory Excellence.

(2) Accordingly, in section 25 of the 2002 Act (which establishes the Council), in subsection (1), for "the Council for the Regulation of Health Care Professionals" substitute " the Council for Healthcare Regulatory Excellence ".

(3) After subsection (2) of that section insert—

"(2A) The main objective of the Council in exercising its functions under subsection (2)(b) to (d) is to promote the health, safety and well-being of patients and other members of the public."

Commencement Information
I177 S. 113 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(a)**

114 Constitution etc. of Council

(1) Schedule 7 to the 2002 Act (which contains provisions relating to the Council) is amended as follows.

(2) For paragraph 4 substitute—

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"4 The Council is to consist of—

(a) a chair appointed by the Privy Council,

(b) one non-executive member appointed by the Scottish Ministers,

(c) one non-executive member appointed by the Welsh Ministers,

(d) one non-executive member appointed by the Department of Health, Social Services and Public Safety in Northern Ireland,

(e) three non-executive members appointed by the Secretary of State, and

(f) two executive members appointed in accordance with paragraph 11."

(3) In paragraph 6—

(a) for paragraph (a) substitute—

"(a) the conditions to be fulfilled for appointment as chair or other member of the Council,",

(b) in paragraph (b), for "chairman and other members" substitute " chair and non-executive members ", and

(c) before the "and" at the end of paragraph (b) insert—

"(ba) the appointment of a member as deputy chair and the circumstances in which that member ceases to hold, or may be removed from, office as deputy chair,".

(4) In paragraph 10, for "chairman" (wherever occurring) substitute " chair ".

(5) For paragraph 11 substitute—

"11 (1) The Council may appoint the executive members referred to in paragraph 4(f) on such terms and conditions as the Council may determine.

(2) The executive members must be employees of the Council.

(3) Any decision of the Council under sub-paragraph (1) must be taken by the members appointed under paragraph 4(a) to (e).

(4) The Council may appoint such other employees as it considers appropriate on such terms and conditions as it may determine."

(6) In paragraph 16 after sub-paragraph (1) insert—

"(1A) The report must state—

(a) how the Council, in exercising its functions, has promoted the health, safety and well-being of patients and other members of the public, and

(b) how far, in the opinion of the Council, each regulatory body has complied with any duty imposed on it to promote the health, safety and well-being of such persons."

Commencement Information

I178 S. 114 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3244, **art. 2(b)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

115 Powers and duties of Council

In section 26 of the 2002 Act (powers and duties of the Council: general), for subsection (4) substitute—

"(4) Subsection (3) does not prevent the Council from—

(a) taking action under section 28,

(b) where section 29 applies, taking action under that section after the regulatory body's proceedings have ended, or

(c) investigating particular cases with a view to making general reports on the performance by the regulatory body of its functions or making general recommendations to the regulatory body affecting future cases."

Commencement Information

I179 S. 115 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(c)**

116 Powers of Secretary of State and devolved administrations

(1) After section 26 of the 2002 Act insert—

"**26A Powers of Secretary of State and devolved administrations**

(1) The Secretary of State, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may request the Council for advice on any matter connected with a profession appearing to the person making the request to be a health care profession; and the Council must comply with such a request.

(2) The Secretary of State, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may require the Council to investigate and report on a particular matter in respect of which the Council's functions are exercisable.

(3) In this section "the relevant Northern Ireland department" means the Department of Health, Social Services and Public Safety in Northern Ireland."

(2) In section 26 of the 2002 Act (powers and duties of the Council: general), omit subsections (7) and (8) (which are superseded by subsection (1) of this section).

Commencement Information

I180 S. 116 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(c)**

117 Duty to inform and consult the public

After section 26A of the 2002 Act insert—

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"**26B Duty to inform and consult the public**

(1) For the purpose of ensuring that members of the public are informed about the Council and the exercise by it of its functions, the Council must publish or provide in such manner as it thinks fit information about the Council and the exercise of its functions.

(2) Nothing in subsection (1) authorises or requires the publication or provision of information if the publication or provision of that information—
  (a) is prohibited by any enactment, or
  (b) would constitute or be punishable as a contempt of court.

(3) In subsection (2) "enactment" has the same meaning as in Part 2 of the Health and Social Care Act 2008.

(4) The Council must from time to time seek the views of—
  (a) members of the public, and
  (b) bodies which appear to the Council to represent the interests of patients,
  on matters relevant to the exercise by it of its functions."

Commencement Information
I181 S. 117 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(c)**

118 Reference of cases by Council to court

(1) Section 29 of the 2002 Act (reference of disciplinary cases by Council to court) is amended as follows.

(2) In subsection (1)—
  (a) for paragraph (a) substitute—
    "(a) a direction of—
      (i) the Health Committee of the Royal Pharmaceutical Society of Great Britain under article 51 of the Pharmacists and Pharmacy Technicians Order 2007 (powers concerning registration), or
      (ii) the Disciplinary Committee of that Society under article 52 of that Order (powers concerning registration) or under section 80 of the Medicines Act 1968 (power to disqualify and direct removal from register),",
  (b) omit paragraph (c),
  (c) in paragraph (e) omit the words from "(other than a determination" to the end,
  (d) omit paragraph (f),
  (e) for paragraph (g) substitute—
    "(g) any step taken—
      (i) by the Professional Conduct Committee of the General Osteopathic Council under section 22 of the Osteopaths Act 1993 (which relates to action

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to be taken in cases of allegations referred to the Professional Conduct Committee), or

(ii) by the Health Committee of the General Osteopathic Council under section 23 of that Act (which relates to action to be taken in cases of allegations referred to the Health Committee),",

(f) for paragraph (h) substitute—

"(h) any step taken—

(i) by the Professional Conduct Committee of the General Chiropractic Council under section 22 of the Chiropractors Act 1994 (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee), or

(ii) by the Health Committee of the General Chiropractic Council under section 23 of that Act (which relates to action to be taken in cases of allegations referred to the Health Committee),", and

(g) for paragraph (j) substitute—

"(j) any corresponding measure taken in relation to a member of a profession regulated by the Health Professions Order 2001, under that Order."

(3) For subsection (5) substitute—

"(5) In subsection (4), the "relevant court" —

(a) in the case of a person who (in accordance with the rules applying to the body making the relevant decision) was, or was required to be, notified of the relevant decision at an address in Scotland, means the Court of Session,

(b) in the case of a person who (in accordance with the rules applying to the body making the relevant decision) was, or was required to be, notified of the relevant decision at an address in Northern Ireland, means the High Court of Justice in Northern Ireland, and

(c) in the case of any other person, means the High Court of Justice in England and Wales."

(4) In subsection (6) for the words from "four weeks beginning with the last date" to the end substitute " 40 days beginning with the day which is the last day on which the practitioner concerned can appeal against the relevant decision ".

(5) Section 29(1)(c) of the 2002 Act has effect until the coming into force of the repeal of that provision by this Act as if the words "otherwise than by reason of his physical or mental health" were omitted.

(6) Section 29(1)(f) of the 2002 Act has effect until the coming into force of the repeal of that provision by this Act as if the words from ", other than a direction" to the end were omitted.

Commencement Information

I182 S. 118(1) in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 2(d)**

I183 S. 118(2)(a)(c)(e)-(g) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(e)**

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I184 S. 118(3)-(6) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(f)**

Conduct and performance of medical practitioners and other health care workers

119 Responsible officers and their duties relating to medical profession

After Part 5 of the Medical Act 1983 (c. 54) insert—

"PART 5A

RESPONSIBLE OFFICERS

45A Requirement to nominate or appoint responsible officer

(1) The appropriate authority may by regulations make provision for or in connection with requiring designated bodies to nominate or appoint persons who are to have such responsibilities as may be conferred on them by virtue of section 45B.

(2) A person who is so nominated or appointed by a designated body is to be known as its responsible officer (but this is subject to any provision made by virtue of subsection (5)(e)).

(3) In this Part "designated body" means—
- (a) a body falling within any description of bodies prescribed for the purposes of this section, or
- (b) any other body prescribed for those purposes.

(4) The descriptions of bodies, or particular bodies, that may be so prescribed are descriptions of bodies, or particular bodies, appearing to the appropriate authority—
- (a) to provide, or arrange for the provision of, health care, or
- (b) to employ or contract with medical practitioners.

(5) Regulations under this section may make provision—
- (a) for conditions that must be satisfied in relation to a person if that person is to be nominated or appointed as, or remain as, a responsible officer of a designated body,
- (b) authorising or requiring a designated body to nominate or appoint more than one responsible officer,
- (c) for a single person to be nominated or appointed as the responsible officer for each of two or more designated bodies where those bodies are satisfied as to the prescribed matters,
- (d) requiring a designated body that has a responsible officer to provide to the officer, or, if that designated body does not employ the officer, to the employer of the officer, funds and other resources necessary for enabling the officer to discharge the officer's prescribed responsibilities as a responsible officer for the designated body,
- (e) for the persons nominated or appointed as mentioned in subsection (1) to be known by such name as is prescribed, and

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(f) for making such amendments of any enactment as appear to the appropriate authority to be required in connection with any provision made by virtue of paragraph (e).

(6) The conditions imposed under subsection (5)(a) may in particular include a requirement for the designated body to consult the General Council before nominating or appointing any person as a responsible officer for the body.

(7) Regulations under this section may in prescribed cases provide that a responsible officer for a designated body is to be nominated by the appropriate authority instead of the designated body.

(8) In this section—

"enactment" includes any provision of, or any instrument made under, Northern Ireland legislation;

"health care" means services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness;

"illness" has the same meaning as in section 25(1) of the Health Act 2006.

45B **Responsibilities of responsible officer**

(1) Regulations under section 45A may make provision for or in connection with—

(a) conferring on the responsible officer or officers for a designated body responsibilities relating to the evaluation of the fitness to practise of medical practitioners having a prescribed connection with that body, and

(b) requiring a responsible officer for a designated body to co-operate with the General Council, any of its committees, or any persons authorised by the General Council, in connection with the exercise by any of them of functions under Part 3A or 5 of this Act.

(2) Where a designated body has more than one responsible officer, regulations under section 45A may make provision for or in connection with the division of prescribed responsibilities among those officers, including provision for the division to be determined by the designated body.

(3) The power by virtue of subsection (1)(a) to prescribe the connection between a medical practitioner and a designated body includes, in particular, power to prescribe a connection based on any of the following circumstances—

(a) the practitioner being employed by the designated body,

(b) the practitioner providing services to the designated body,

(c) the practitioner being employed by a person who provides services to the designated body,

(d) the practitioner providing services in the geographical area in relation to which the designated body exercises functions in relation to the provision of the health service, or

(e) the practitioner being employed by or providing services to, or pursuant to arrangements made by, a body which is located in the geographical area in relation to which the designated body exercises functions in relation to the provision of the health service but is not itself a designated body.

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(4) A designated body may confer on any of its responsible officers such powers as it considers appropriate to enable the officer to discharge any of the officer's prescribed responsibilities as a responsible officer for the body.

(5) If a designated body requires any of its responsible officers to carry out any functions other than the officer's prescribed responsibilities, it must in doing so have regard to the officer's prescribed responsibilities.

(6) In this section "the health service" means—
- (a) the health service as defined by section 275(1) of the National Health Service Act 2006 or section 206(1) of the National Health Service (Wales) Act 2006,
- (b) the health service as defined by section 108(1) of the National Health Service (Scotland) Act 1978, or
- (c) any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the National Health Service Act 2006.

45C Regulations under section 45A: further provisions

(1) Regulations under section 45A may—
- (a) create offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale, and
- (b) create other procedures for enforcing any provisions of the regulations.

(2) Regulations under section 45A may require a designated body or a responsible officer to have regard to any guidance given from time to time by the appropriate authority or any other prescribed person in relation to the nomination or appointment of responsible officers or their prescribed responsibilities.

(3) Regulations under section 45A may make provision requiring—
- (a) a body which employs, or is provided with services by, a medical practitioner, or which arranges for others to be provided with services by a medical practitioner, but which is not a designated body, or
- (b) a medical practitioner,

to provide, to the responsible officer with prescribed responsibilities relating to that medical practitioner or to the designated body for which the officer is a responsible officer or, if that designated body does not employ the responsible officer, to the employer of the officer, funds and other resources necessary for enabling the responsible officer to discharge the officer's prescribed responsibilities relating to that medical practitioner.

(4) Regulations under section 45A may make provision for or in connection with requiring prescribed persons to supply information or produce documents to a responsible officer in connection with the discharge of the prescribed responsibilities of the responsible officer.

45D Crown application

(1) This Part binds the Crown.

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

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

(4) Nothing in this section affects Her Majesty in her private capacity; and this subsection is to be read as if section 38(3) of the Crown Proceedings Act 1947 (meaning of Her Majesty in her private capacity) were contained in this Act.

45E Regulations under section 45A: supplementary provisions

(1) The power of the Secretary of State to make regulations under section 45A is exercisable by statutory instrument.

(2) Before making any regulations under section 45A, the Secretary of State must consult—
  (a) the Scottish Ministers, if the regulations extend to Scotland, and
  (b) the Welsh Ministers, if the regulations apply to Wales.

(3) A statutory instrument that—
  (a) contains regulations made by the Secretary of State under section 45A, and
  (b) is not subject to a requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,

  is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The Secretary of State may not make a statutory instrument containing (whether alone or with other provision) the first regulations under section 45A that include provision made by the Secretary of State by virtue of section 45B unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(5) The power of the Department of Health, Social Services and Public Safety in Northern Ireland to make regulations under section 45A is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(6) A statutory rule that—
  (a) contains regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 45A, and
  (b) is not subject to a requirement that a draft of the statutory rule be laid before, and approved by a resolution of, the Northern Ireland Assembly,

  is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

(7) The Department of Health, Social Services and Public Safety in Northern Ireland may not make a statutory rule containing (whether alone or with other provision) the first regulations under section 45A that include provision made

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by the Department by virtue of section 45B unless a draft of the statutory rule has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

(8) Regulations under section 45A may make different provision for different cases.

45F Interpretation of Part 5A

In this Part—

"the appropriate authority" means—

(a) in relation to England and Wales or Scotland, the Secretary of State, or

(b) in relation to Northern Ireland, the Department of Health, Social Services and Public Safety in Northern Ireland;

"designated body" has the meaning given by section 45A(3);

"prescribed" means prescribed by regulations under section 45A."

Commencement Information

I185 S. 119 partly in force; S. 119 in force for specified purposes at Royal Assent, see s. 170

I186 S. 119 in force at 1.4.2010 for E.W.S. by S.I. 2010/708, **art. 3(a)**

120 Additional responsibilities of responsible officers: England and Wales and Northern Ireland

(1) Regulations under this section may confer on a responsible officer nominated or appointed for the purposes of regulations under section 45A of the Medical Act 1983 (c. 54) (requirement to nominate or appoint responsible officer) additional responsibilities that relate to—

(a) the entry by the designated body into contracts of employment with medical practitioners or into contracts for the provision of services by such practitioners,

(b) the monitoring of the conduct or performance of medical practitioners who have a prescribed connection with the designated body, or

(c) ensuring that appropriate action is taken in response to concerns about such conduct or performance,

but do not relate to the regulation under that Act of the medical profession.

(2) Subject to subsection (3), the power to make regulations under this section is exercisable—

(a) in relation to England, by the Secretary of State,

(b) in relation to Wales, by the Welsh Ministers, or

(c) in relation to Northern Ireland, by the Department of Health, Social Services and Public Safety in Northern Ireland.

(3) In relation to cross-border bodies, the power to make regulations under this section is exercisable by the Secretary of State after consultation with the Welsh Ministers.

(4) For the purposes of this section a "cross-border body" is a body which—

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

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

(5) Sections 45A(5)(d), 45B(2) to (5) and 45C(1), (3) and (4) of the Medical Act 1983 (c. 54) (provisions that may be included in regulations under section 45A of that Act and responsibilities of responsible officers) apply in relation to regulations under this section as they apply in relation to regulations under section 45A of that Act but as if—

(a) references to prescribed responsibilities were references to responsibilities conferred by regulations under this section,

(b) the reference in section 45B(2) to regulations under section 45A were a reference to regulations under this section, and

(c) the reference in section 45B(3) to subsection (1)(a) of that section were a reference to subsection (1)(b) of this section.

(6) Subject to subsection (7), regulations under this section may require a designated body or a responsible officer to have regard to any guidance given from time to time by the Secretary of State, the Welsh Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland (as the case may be), or by any other person prescribed by the regulations, in relation to responsibilities conferred on responsible officers by the regulations.

(7) In relation to cross-border bodies, the reference in subsection (6) to the Secretary of State is to be read as a reference to the Secretary of State after consultation with the Welsh Ministers.

(8) Expressions used in this section and in Part 5A of the Medical Act 1983 (responsible officers) have the same meaning in this section as in that Part.

Commencement Information

I187 S. 120 partly in force; s. 120 in force for specified purposes at Royal Assent, see s. 170

I188 S. 120 in force at 1.4.2010 for E.W. by S.I. 2010/708, **art. 3(b)**

121 Co-operation between prescribed bodies

(1) The appropriate Minister may by regulations make provision for or in connection with requiring a designated body to co-operate with any other designated body in connection with—

(a) the sharing of information which relates to the conduct or performance of any health care worker and which may show that that worker is likely to constitute a threat to the health and safety of patients,

(b) the provision of information in response to requests for information from any other designated body about the conduct or performance of any health care worker,

(c) the consideration of any issues which arise as a result of the acts mentioned in paragraphs (a) and (b), and

(d) the taking of any prescribed steps following such consideration.

(2) Regulations under this section may make provision requiring a designated body to disclose the information referred to in subsection (1)(a) and any information disclosed under subsection (1)(b) to any other designated body in prescribed circumstances,

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or in circumstances where it appears to that body that the prescribed conditions are satisfied, whether or not the disclosure of information has been requested.

(3) Regulations under this section may—

(a) create offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale, and

(b) create other procedures for enforcing any provisions of the regulations.

(4) Regulations under this section may require a designated body to have regard to any guidance given from time to time by the appropriate Minister or any other prescribed person.

(5) In making regulations under this section the appropriate Minister must have regard to the importance of avoiding unfair prejudice to health care workers against whom unsubstantiated allegations are made.

(6) In this section—

"the appropriate Minister" means the Secretary of State except that, in relation to co-operation by a Welsh health body or a Welsh social services body, it means the Welsh Ministers;

"designated body" means—

(a) any body which is a designated body for the purposes of Part 5A of the Medical Act 1983 (c. 54), and

(b) any other body prescribed for the purposes of this section;

"health care" has the meaning given by section 45A(8) of the Medical Act 1983;

"health care worker" means—

(a) any person who is a member of a prescribed profession concerned with the physical or mental health of individuals, or

(b) any person who—

(i) is employed by a designated body,

(ii) provides services to a designated body, or

(iii) is employed by a person who provides services to a designated body,

for purposes connected with the provision of health care;

"prescribed" means prescribed by regulations under this section;

"Welsh health body" means—

(a) a Welsh NHS body, as defined by section 148 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), or

(b) any other person providing or arranging for the provision of health care in Wales;

"Welsh social services body" means—

(a) the council of a county or county borough in Wales, or

(b) a body engaged in the provision of Welsh local authority social services, as defined by section 148 of the Health and Social Care (Community Health and Standards) Act 2003.

Commencement Information

I189 S. 121 partly in force; s. 121 in force for specified purposes at Royal Assent, see s. 170

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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I190 S. 121 in force at 1.4.2010 by S.I. 2010/708, **art. 3(c)**

122 Ss. 120 and 121: Crown application

(1) Sections 120 and 121 bind the Crown.

(2) No contravention by the Crown of any provision of either of those sections or regulations made under them makes the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) The provisions of those sections apply to persons in the service of the Crown as they apply to other persons.

(4) Nothing in this section affects Her Majesty in her private capacity; and this subsection is to be read as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Act.

Commencement Information
I191 S. 122 in force at 1.4.2010 for E.W. by S.I. 2010/708, **art. 3(d)**

Hearing Aid Council

123 Dissolution of Hearing Aid Council

(1) The Hearing Aid Council is dissolved.

(2) The Hearing Aid Council Act 1968 (c. 50) and the Hearing Aid Council (Extension) Act 1975 (c. 39) cease to have effect.

(3) An order under section 170(3) may not appoint a day for the coming into force of—
  (a) subsection (1), or
  (b) subsection (2), so far as relating to the profession mentioned in section 60(2)(ca) of the Health Act 1999 (c. 8),

unless the following conditions are met.

(4) Those conditions are—
  (a) that an Order in Council under section 60 of the Health Act 1999 (regulation of health care and associated professions) has made provision by virtue of subsection (2)(ca) of that section (regulation of dispensers of hearing aids), and
  (b) that the day appointed under section 170(3) is not earlier than the day on which the Order in Council, so far as making such provision, comes into force.

(5) The Secretary of State may by order make provision for the transfer of property, rights and liabilities of the Hearing Aid Council to any relevant regulatory body or to the Secretary of State.

(6) For that purpose a "relevant regulatory body" is any body which under an Order in Council under section 60 of the Health Act 1999 (c. 8) is responsible for the regulation of the profession mentioned in subsection (2)(ca) of that section.

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Commencement Information

I192 S. 123 partly in force; S. 123 in force for specified purposes at Royal Assent, see s. 170

I193 S. 123(2) in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 4(1)(a)**

I194 S. 123(3)-(6) in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 4**

Regulation of social care workforce

124 Regulation of social care workers

(1) The appropriate Minister may by regulations make provision modifying the regulation of social care workers, so far as appears to the appropriate Minister to be necessary or expedient for the purpose of securing or improving their regulation or the services which they provide or to which they contribute.

(2) Schedule 9 (which makes further provision about regulations under this section) has effect.

(3) In this section and that Schedule—

"the appropriate Minister" means—

(a) in relation to England, the Secretary of State, and

(b) in relation to Wales, the Welsh Ministers;

"social care worker" means a person who falls within any of paragraphs (a) to (d) of subsection (2) of, or paragraphs (a) to (g) of subsection (3) of, section 55 of the Care Standards Act 2000 (c. 14) (which sets out the persons who are, or may by virtue of regulations be treated as, social care workers for the purposes of Part 4 of that Act).

(4) The references in subsection (1) to the regulation of social care workers include references to—

(a) the regulation of social care workers of a description in relation to which no provision for registration for the time being applies,

(b) the regulation of those seeking registration as social care workers of any description or of persons who were, but are no longer, registered as social care workers of any description, and

(c) the regulation of activities carried on by persons who are not social care workers but which are carried on in connection with the activities carried on by social care workers.

Commencement Information

I195 S. 124 partly in force; s. 124 in force for specified purposes at Royal Assent, see s. 170

PROSPECTIVE

[F6]125 Standard of proof in proceedings relating to registration of social care worker

. . . . . .

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F6 S. 125 repealed (3.4.2017) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 58(b)**; S.I. 2017/309, art. 2(j) (with arts. 3, 4, Sch.)

Approved mental health professionals

126 Education and training of approved mental health professionals

(1) The appropriate Minister may by regulations make provision modifying the functions of the General Social Care Council or the Care Council for Wales in relation to the education and training of persons who are or wish to become approved mental health professionals.

(2) The power to make regulations under subsection (1) may be exercised by amending, repealing or applying (with or without modifications) any provision of any enactment and any other instrument or document.

(3) Paragraphs 4 to 6 and 9 and 10 of Schedule 9 apply to the making of regulations under subsection (1) as they apply to the making of regulations under section 124 but as if the references in paragraphs 9 and 10 to social care workers were references to approved mental health professionals.

(4) In this section—

"the appropriate Minister" means—

(a) in relation to the General Social Care Council, the Secretary of State, and

(b) in relation to the Care Council for Wales, the Welsh Ministers;

"approved mental health professional" has the same meaning as in section 114 of the Mental Health Act 1983 (c. 20);

"functions" includes powers and duties.

Commencement Information

I196 S. 126 partly in force; s. 126 in force for specified purposes at Royal Assent, see s. 170

General

127 Further amendments relating to Part 2

Schedule 10 (which contains further amendments relating to this Part) has effect.

Commencement Information

I197 S. 127 in force at 25.8.2008 for specified purposes by S.I. 2008/2214, **art. 2(a)**

I198 S. 127 in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 2(g)**

I199 S. 127 in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 3(a)**

I200 S. 127 in force at 4.6.2009 for specified purposes by S.I. 2009/1310, **art. 2(b)**

I201 S. 127 in force at 28.9.2009 for specified purposes by S.I. 2009/2567, **art. 2(b)**

I202 S. 127 in force at 25.1.2010 for specified purposes by S.I. 2010/23, **art. 2(f)**

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PROSPECTIVE

128 Interpretation of Part 2

In this Part—

"the 1999 Act" means the Health Act 1999 (c. 8);

"the 2002 Act" means the National Health Service Reform and Health Care Professions Act 2002 (c. 17);

"enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation;

F7 …

Textual Amendments

F7 Words in s. 128 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 75(2)**; S.I. 2012/1319, art. 2(3)

PART 3

PUBLIC HEALTH PROTECTION

129 Public health protection

Before Part 3 of the Public Health (Control of Disease) Act 1984 (c. 22) insert—

"PART 2A

PUBLIC HEALTH PROTECTION

Introductory

45A Infection or contamination

(1) The following provisions have effect for the interpretation of this Part.

(2) "Contamination" includes radiation.

(3) Any reference to infection or contamination is a reference to infection or contamination which presents or could present significant harm to human health.

(4) Any reference to the spread of contamination includes a reference to the spread of any source of contamination.

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(5) Any reference to disinfection or decontamination includes a reference to the removal of any vector, agent or source of the infection or contamination.

(6) Related expressions are to be read accordingly.

Power to make regulations

45B **Health protection regulations: international travel etc.**

(1) The appropriate Minister may by regulations make provision—
- (a) for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place,
- (b) for preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place, and
- (c) for giving effect to any international agreement or arrangement relating to the spread of infection or contamination.

(2) Regulations under subsection (1) may in particular include provision—
- (a) for the detention of conveyances,
- (b) for the medical examination, detention, isolation or quarantine of persons,
- (c) for the inspection, analysis, retention, isolation, quarantine or destruction of things,
- (d) for the disinfection or decontamination of conveyances, persons or things or the application of other sanitary measures,
- (e) for prohibiting or regulating the arrival or departure of conveyances and the entry or exit of persons or things,
- (f) imposing duties on masters, pilots, train managers and other persons on board conveyances and on owners and managers of ports, airports and other points of entry, and
- (g) requiring persons to provide information or answer questions (including information or questions relating to their health).

45C **Health protection regulations: domestic**

(1) The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere).

(2) The power in subsection (1) may be exercised—
- (a) in relation to infection or contamination generally or in relation to particular forms of infection or contamination, and
- (b) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to a particular set of circumstances.

(3) Regulations under subsection (1) may in particular include provision—

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(a) imposing duties on registered medical practitioners or other persons to record and notify cases or suspected cases of infection or contamination,

(b) conferring on local authorities or other persons functions in relation to the monitoring of public health risks, and

(c) imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health.

(4) The restrictions or requirements mentioned in subsection (3)(c) include in particular—

(a) a requirement that a child is to be kept away from school,

(b) a prohibition or restriction relating to the holding of an event or gathering,

(c) a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains, and

(d) a special restriction or requirement.

(5) The power in subsection (1) is subject to section 45D.

(6) For the purposes of this Part—

(a) a "special restriction or requirement" means a restriction or requirement which can be imposed by a justice of the peace by virtue of section 45G(2), 45H(2) or 45I(2), but

(b) a restriction or requirement mentioned in subsection (4)(a), (b) or (c) is not to be regarded as a special restriction or requirement.

45D **Restrictions on power to make regulations under section 45C**

(1) Regulations under section 45C may not include provision imposing a restriction or requirement by virtue of subsection (3)(c) of that section unless the appropriate Minister considers, when making the regulations, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.

(2) Regulations under section 45C may not include provision enabling the imposition of a restriction or requirement by virtue of subsection (3)(c) of that section unless the regulations provide that a decision to impose such a restriction or requirement may only be taken if the person taking it considers, when taking the decision, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.

(3) Regulations under section 45C may not include provision imposing a special restriction or requirement mentioned in section 45G(2)(a), (b), (c) or (d).

(4) Regulations under section 45C may not include provision enabling the imposition of a special restriction or requirement unless—

(a) the regulations are made in response to a serious and imminent threat to public health, or

(b) imposition of the restriction or requirement is expressed to be contingent on there being such a threat at the time when it is imposed.

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(5) For the purposes of this section—
  (a) regulations "enable the imposition of a restriction or requirement" if the restriction or requirement is imposed by virtue of a decision taken under the regulations by the appropriate Minister, a local authority or other person;
  (b) regulations "impose a restriction or requirement" if the restriction or requirement is imposed without any such decision.

45E Medical treatment

(1) Regulations under section 45B or 45C may not include provision requiring a person to undergo medical treatment.

(2) "Medical treatment" includes vaccination and other prophylactic treatment.

45F Health protection regulations: supplementary

(1) This section makes further provision about regulations under section 45B or 45C ("health protection regulations").

(2) Health protection regulations may—
  (a) confer functions on local authorities and other persons;
  (b) create offences;
  (c) enable a court to order a person convicted of any such offence to take or pay for remedial action in appropriate circumstances;
  (d) provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations;
  (e) provide for appeals from and reviews of decisions taken under the regulations;
  (f) permit or prohibit the levy of charges;
  (g) permit or require the payment of incentive payments, compensation and expenses;
  (h) provide for the resolution of disputes.

(3) Health protection regulations may, for the purposes of giving effect to an international agreement or arrangement, amend any enactment.

(4) Health protection regulations may not confer functions on officers of Revenue and Customs unless the regulations are made with the consent of the Commissioners for Her Majesty's Revenue and Customs.

(5) Health protection regulations may not create an offence triable on indictment or punishable with—
  (a) imprisonment,
  (b) a fine exceeding £20,000, or
  (c) a further fine exceeding an amount equal to 2% of level 5 on the standard scale for each day on which the default continues after conviction.

(6) Regulations under section 45C must provide for a right of appeal to a magistrates' court against any decision taken under the regulations by virtue

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of which a special restriction or requirement is imposed on or in relation to a person, thing or premises.

(7) Regulations under section 45C which enable a special restriction or requirement to be imposed by virtue of a decision taken under the regulations must also provide that, if the restriction or requirement is capable of remaining in force in relation to any person, thing or premises for more than a specified period, a specified person may require the continuation of the restriction or requirement to be reviewed in accordance with the regulations at specified intervals by a person determined in accordance with the regulations.

(8) In relation to a special restriction or requirement mentioned in section 45G(2)(c) or (d)—
   (a) the period specified by virtue of subsection (7) and the intervals specified by virtue of that subsection must be 28 days or less, and
   (b) the regulations must require the continuation of the restriction or requirement to be reviewed without an application being made.

Orders that may be made by justice of the peace

45G Power to order health measures in relation to persons

(1) A justice of the peace may make an order under subsection (2) in relation to a person ("P") if the justice is satisfied that—
   (a) P is or may be infected or contaminated,
   (b) the infection or contamination is one which presents or could present significant harm to human health,
   (c) there is a risk that P might infect or contaminate others, and
   (d) it is necessary to make the order in order to remove or reduce that risk.

(2) The order may impose on or in relation to P one or more of the following restrictions or requirements—
   (a) that P submit to medical examination;
   (b) that P be removed to a hospital or other suitable establishment;
   (c) that P be detained in a hospital or other suitable establishment;
   (d) that P be kept in isolation or quarantine;
   (e) that P be disinfected or decontaminated;
   (f) that P wear protective clothing;
   (g) that P provide information or answer questions about P's health or other circumstances;
   (h) that P's health be monitored and the results reported;
   (i) that P attend training or advice sessions on how to reduce the risk of infecting or contaminating others;
   (j) that P be subject to restrictions on where P goes or with whom P has contact;
   (k) that P abstain from working or trading.

(3) A justice of the peace may make an order under subsection (4) in relation to a person ("P") if the justice is satisfied that—
   (a) P is or may be infected or contaminated,

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(b) the infection or contamination is one which presents or could present significant harm to human health,

(c) there is a risk that a related party might infect or contaminate others, and

(d) it is necessary to make the order in order to remove or reduce that risk.

(4) The order may impose on or in relation to P a requirement that P provide information or answer questions about P's health or other circumstances (including, in particular, information or questions about the identity of a related party).

(5) "Related party" means—

(a) a person who has or may have infected or contaminated P, or

(b) a person whom P has or may have infected or contaminated.

(6) An order under this section may also order a person with parental responsibility (within the meaning of the Children Act 1989) for P to secure that P submits to or complies with the restrictions or requirements imposed by the order.

(7) The appropriate Minister must by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned in subsection (1) or (3).

(8) Any reference in this section to a person who is infected or contaminated includes a reference to a person who carries the source of an infection or contamination, and any reference to infecting or contaminating others includes a reference to passing that source to others.

45H Power to order health measures in relation to things

(1) A justice of the peace may make an order under subsection (2) in relation to a thing if the justice is satisfied that—

(a) the thing is or may be infected or contaminated,

(b) the infection or contamination is one which presents or could present significant harm to human health,

(c) there is a risk that the thing might infect or contaminate humans, and

(d) it is necessary to make the order in order to remove or reduce that risk.

(2) The order may impose in relation to the thing one or more of the following restrictions or requirements—

(a) that the thing be seized or retained;

(b) that the thing be kept in isolation or quarantine;

(c) that the thing be disinfected or decontaminated;

(d) in the case of a dead body, that the body be buried or cremated;

(e) in any other case, that the thing be destroyed or disposed of.

(3) A justice of the peace may make an order under subsection (4) in relation to a thing if the justice is satisfied that—

(a) the thing is or may be infected or contaminated,

(b) the infection or contamination is one which presents or could present significant harm to human health,

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(c) there is a risk that a related person or related thing might infect or contaminate humans, and

(d) it is necessary to make the order in order to remove or reduce that risk.

(4) The order may require—

(a) the owner of the thing, or

(b) any person who has or has had custody or control of the thing,

to provide information or answer questions about the thing (including, in particular, information or questions about where the thing has been or about the identity of any related person or the whereabouts of any related thing).

(5) "Related person" means—

(a) a person who has or may have infected or contaminated the thing mentioned in subsection (3)(a), or

(b) a person whom the thing has or may have infected or contaminated.

(6) "Related thing" means—

(a) a thing which has or may have infected or contaminated the thing mentioned in subsection (3)(a), or

(b) a thing which the thing mentioned in subsection (3)(a) has or may have infected or contaminated.

(7) The appropriate Minister may by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned in subsection (1) or (3).

(8) In this section—

(a) any reference to being infected or contaminated includes a reference to carrying the source of an infection or contamination, and

(b) any reference to infecting or contaminating humans, or a person or thing, includes a reference to passing the source of an infection or contamination to humans, or to the person or thing.

45I Power to order health measures in relation to premises

(1) A justice of the peace may make an order under subsection (2) in relation to premises if the justice is satisfied that—

(a) the premises are or may be infected or contaminated,

(b) the infection or contamination is one which presents or could present significant harm to human health,

(c) there is a risk that the premises might infect or contaminate humans, and

(d) it is necessary to make the order in order to remove or reduce that risk.

(2) The order may impose in relation to the premises one or more of the following restrictions or requirements—

(a) that the premises be closed;

(b) that, in the case of a conveyance or movable structure, the conveyance or structure be detained;

(c) that the premises be disinfected or decontaminated;

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(d) that, in the case of a building, conveyance or structure, the premises be destroyed.

(3) A justice of the peace may make an order under subsection (4) in relation to premises if the justice is satisfied that—

(a) the premises are or may be infected or contaminated or are or may be a place where infection or contamination was spread between persons or things,

(b) the infection or contamination is one which presents or could present significant harm to human health,

(c) there is a risk that a related person or related thing might infect or contaminate humans, and

(d) it is necessary to make the order in order to remove or reduce that risk.

(4) The order may require the owner or any occupier of the premises to provide information or answer questions about the premises (including, in particular, information about the identity of any related person or the whereabouts of any related thing).

(5) "Related person" means—

(a) a person who has or may have infected or contaminated the premises,

(b) a person who has or may have infected or contaminated a person who or thing which is or has been on the premises,

(c) a person whom the premises have or may have infected or contaminated, or

(d) a person who has or may have been infected or contaminated by a person who or thing which is or has been on the premises.

(6) "Related thing" means—

(a) a thing which has or may have infected or contaminated the premises,

(b) a thing which has or may have infected or contaminated a person who or thing which is or has been on the premises,

(c) a thing which the premises have or may have infected or contaminated, or

(d) a thing which has or may have been infected or contaminated by a person who or thing which is or has been on the premises.

(7) The appropriate Minister may by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned in subsection (1) or (3).

(8) In this section—

(a) any reference to being infected or contaminated includes a reference to carrying the source of an infection or contamination, and

(b) any reference to infecting or contaminating humans, or a person, thing or premises, includes a reference to passing the source of an infection or contamination to humans, or to the person, thing or premises.

45J Orders in respect of groups

(1) The powers in sections 45G, 45H and 45I include power to make an order in relation to a group of persons, things or premises.

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(2) For those purposes, the sections have effect as follows.

(3) In section 45G—

(a) in subsections (1)(a) and (c) and (3)(a), the reference to P is a reference to each person in the group, and

(b) in subsections (2) and (4), any reference to P is a reference to any one or more of the persons in the group.

(4) In section 45H—

(a) in subsections (1)(a) and (c) and (3)(a), the reference to the thing is a reference to each thing in the group, and

(b) in subsections (2) and (4) any reference to the thing is a reference to any one or more of the things in the group.

(5) In section 45I—

(a) in subsections (1)(a) and (c) and (3)(a), the reference to the premises is a reference to each set of premises in the group, and

(b) in subsections (2) and (4), any reference to the premises is a reference to any one or more of the sets of premises in the group.

45K **Part 2A orders: supplementary**

(1) This section makes further provision about orders under sections 45G, 45H and 45I (referred to in this Part as "Part 2A orders").

(2) A Part 2A order may include, in addition to the restrictions or requirements mentioned in the provision under which it is made, such other restrictions or requirements as the justice considers necessary for the purpose of reducing or removing the risk in question.

(3) A restriction or requirement contained in a Part 2A order may be expressed to take effect subject to conditions specified in the order.

(4) Two or more Part 2A orders may be combined in a single order.

(5) A Part 2A order may contain such directions as the justice considers appropriate to give effect to it.

(6) Without prejudice to subsection (5)—

(a) a Part 2A order may, if the justice is satisfied as mentioned in subsection (4) of section 61, authorise anything which may be authorised by warrant under subsection (3) of that section, and

(b) if the order does so, section 62(1) and (1A) have effect as if—

(i) the order were a warrant issued under section 61, and

(ii) the person so authorised were a proper officer.

(7) A Part 2A order may order the payment of compensation or expenses in connection with the taking of measures pursuant to the order.

(8) A Part 2A order is authority for those persons to whom it is addressed to do such things as may be necessary to give effect to it.

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45L Period for which Part 2A order may be in force

(1) A Part 2A order must specify the period for which any restriction or requirement imposed by or under the order is to remain in force.

(2) That period may be extended by further order of a justice of the peace.

(3) In relation to restrictions or requirements mentioned in section 45G(2)(c) or (d), neither the period specified under subsection (1) nor the period of any extension under subsection (2) may exceed 28 days or such shorter period as the appropriate Minister may by regulations prescribe.

(4) The appropriate Minister may by regulations prescribe, in relation to any other restrictions or requirements, the maximum period which may be specified under subsection (1) and the maximum period of any extension under subsection (2).

45M Procedure for making, varying and revoking Part 2A orders

(1) The power of a justice of the peace to make a Part 2A order is exercisable on the application of a local authority.

(2) Local authorities must co-operate with each other in deciding which of them should apply for a Part 2A order in any particular case.

(3) The appropriate Minister must by regulations require a local authority to give notice to such persons as may be prescribed by the regulations of the making of an application for a Part 2A order, but this is subject to subsection (4).

(4) If a justice of the peace considers it necessary to do so, the justice may make a Part 2A order without a person having been given such notice as is otherwise required to be given to that person under rules of court or regulations under subsection (3).

(5) A Part 2A order may be varied or revoked by a justice of the peace on the application of—
   (a) an affected person,
   (b) a local authority, or
   (c) any other authority with the function of executing or enforcing the order in question.

(6) In the case of an order under section 45G, the following persons are affected persons—
   (a) P,
   (b) a person with parental responsibility (within the meaning of the Children Act 1989) for P,
   (c) P's husband, wife or civil partner,
   (d) a person living with P as P's husband, wife or civil partner, and
   (e) such other persons as may be prescribed by regulations.

(7) In the case of an order under section 45H(2), the following persons are affected persons—
   (a) the owner of the thing,

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(b) any person with custody or control of the thing, and
(c) such other persons as may be prescribed by regulations.

(8) In the case of an order under section 45I(2), the following persons are affected persons—
(a) the owner of the premises,
(b) any occupier of the premises, and
(c) such other persons as may be prescribed by regulations.

(9) In the case of an order under section 45H(4) or 45I(4), the person required to provide information or answer questions and such other persons as may be prescribed by regulations are affected persons.

(10) Variation or revocation of a Part 2A order does not invalidate anything done under the order prior to the variation or revocation.

(11) In this section "regulations" means regulations made by the appropriate Minister.

45N Power to make further provision by regulations

(1) The appropriate Minister may by regulations make provision about the taking of measures pursuant to Part 2A orders.

(2) The regulations may in particular make provision about—
(a) the type of investigation which may be carried out as part of a medical examination;
(b) the manner in which measures are to be taken;
(c) who is to be responsible for executing and enforcing measures;
(d) who is to be liable for the costs of measures;
(e) the payment of compensation or expenses in connection with the taking of measures.

(3) But the regulations may not confer functions on officers of Revenue and Customs to execute or enforce Part 2A orders unless the regulations are made with the consent of the Commissioners for Her Majesty's Revenue and Customs.

45O Enforcement of Part 2A orders

(1) A person commits an offence if the person—
(a) fails without reasonable excuse to comply with a restriction or requirement imposed by or under a Part 2A order, or
(b) wilfully obstructs anyone acting in the execution of a Part 2A order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £20,000.

(3) If—
(a) a person is convicted of an offence under subsection (1), and
(b) the court by which the person is convicted is satisfied that the failure or wilful obstruction constituting the offence has caused premises or

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things to become infected or contaminated or otherwise damaged them in a material way,

the court may, if it considers it appropriate to do so, order the person to take or pay for such remedial action as may be specified in the order.

(4) Subsection (5) applies if—

(a) a Part 2A order imposes a requirement that a person be detained or kept in isolation or quarantine in a place, and

(b) the person leaves that place contrary to the requirement.

(5) A constable may take the person into custody and return the person to that place.

(6) But a person may not be taken into custody under subsection (5) after expiry of the period for which the requirement is in force.

Regulations under Part 2A: general

45P General provision about regulations

(1) A power to make regulations under this Part is exercisable by statutory instrument.

(2) A power to make regulations under this Part includes power to make different provision for different cases or different areas.

45Q Parliamentary control

(1) An instrument containing regulations under this Part, except one to which subsection (4) applies, is subject to annulment—

(a) in the case of English regulations, in pursuance of a resolution of either House of Parliament;

(b) in the case of Welsh regulations, in pursuance of a resolution of the National Assembly for Wales.

(2) Subject to subsection (3), subsection (4) applies to an instrument containing (whether alone or with other provisions)—

(a) regulations under section 45C,

(b) regulations which amend an enactment pursuant to section 45F(3),

(c) the first regulations to be made under section 45G(7),

(d) the first regulations to be made under section 45L(4), or

(e) the first regulations to be made under section 45N.

(3) Subsection (4) does not apply by virtue of subsection (2)(a) if the instrument contains a declaration that the person making it is of the opinion that the instrument does not contain any provision made by virtue of section 45C(3)(c) which imposes or enables the imposition of—

(a) a special restriction or requirement, or

(b) any other restriction or requirement which has or would have a significant effect on a person's rights.

(4) Subject to section 45R, an instrument to which this subsection applies may not be made unless—

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(a) in the case of English regulations, a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament;

(b) in the case of Welsh regulations, a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(5) If an instrument, or a draft of an instrument, containing regulations under section 45B or 45C would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

(6) In this section—

"English regulations" means regulations made by the Secretary of State;

"Welsh regulations" means regulations made by the Welsh Ministers.

45R Emergency procedure

(1) This section applies to an instrument to which subsection (4) of section 45Q applies by virtue of subsection (2)(a) or (b) of that section.

(2) The instrument may be made without a draft having been laid and approved as mentioned in subsection (4) of that section if the instrument contains a declaration that the person making it is of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(3) After an instrument is made in accordance with subsection (2), it must be laid—

(a) in the case of English regulations, before each House of Parliament;

(b) in the case of Welsh regulations, before the National Assembly for Wales.

(4) Regulations contained in an instrument made in accordance with subsection (2) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved—

(a) in the case of English regulations, by a resolution of each House of Parliament;

(b) in the case of Welsh regulations, by a resolution of the National Assembly for Wales.

(5) But if on any day during that period, on proceedings on a motion that (or to the effect that) the instrument be so approved, either House of Parliament or, as the case may be, the National Assembly for Wales comes to a decision rejecting the instrument, the regulations cease to have effect at the end of that day instead.

(6) In reckoning any such period of 28 days, no account is to be taken—

(a) in the case of English regulations, of any time during which Parliament is prorogued or dissolved or during which both Houses are adjourned for more than 4 days;

(b) in the case of Welsh regulations, of any time during which the National Assembly for Wales is dissolved or is in recess for more than 4 days.

(7) Subsections (4) and (5) do not—

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) affect anything done in reliance on the regulations before they ceased to have effect, or

(b) prevent the making of new regulations.

(8) In this section "English regulations" and "Welsh regulations" have the same meaning as in section 45Q.

General

45S **Application to territorial sea**

The provisions of this Part have effect in relation to the territorial sea adjacent to England or Wales.

45T **Part 2A: further definitions**

(1) This Part is to be read in accordance with this section.

(2) "Enactment" means an enactment whenever passed or made, and includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978).

(3) "Medical examination" includes microbiological, radiological and toxicological tests.

(4) "Special restriction or requirement" has the meaning given by section 45C(6).

(5) "Thing" includes—

(a) human tissue,

(b) a dead body or human remains,

(c) animals, and

(d) plant material.

(6) "The appropriate Minister" means—

(a) the Secretary of State, as respects England (including the sea adjacent to England out as far as the seaward boundary of the territorial sea);

(b) the Welsh Ministers, as respects Wales (including the sea adjacent to Wales out as far as that boundary).

(7) An order made under section 158(3) of the Government of Wales Act 2006 (orders to determine boundary of the sea adjacent to Wales) applies for the purposes of subsection (6) as it applies for the purposes of that Act.

(8) Any reference to amending an enactment includes a reference to repealing, revoking or modifying the application of an enactment, and "amendment" is to be read accordingly.

(9) Any reference to giving effect to an international agreement or arrangement includes a reference to giving effect to a recommendation issued under such an agreement or arrangement."

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I203 S. 124 partly in force; s. 124 in force for specified purposes at Royal Assent, see s. 170
I204 S. 129 in force at 1.4.2009 for specified purposes for E. by S.I. 2009/462, **art. 3**
I205 S. 129 in force at 6.4.2010 for E. in so far as not already in force by S.I. 2010/708, **art. 6(a)**
I206 S. 129 in force at 26.7.2010 for W. in so far as not already in force by S.I. 2010/1547, **art. 2(a)**

130 Further amendments relating to public health protection

(1) Part 2 of the Public Health (Control of Disease) Act 1984 (c. 22) (which is superseded by the new Part 2A inserted by section 129) ceases to have effect.

(2) Schedule 11 (which contains further amendments of that Act and other Acts) has effect.

Commencement Information

I207 S. 130(1) in force at 6.4.2010 for specified purposes for E. by S.I. 2010/708, **art. 6(b)** (with Sch. 2)
I208 S. 130(1) in force at 26.7.2010 for specified purposes for W. by S.I. 2010/1547, **art. 2(b)** (with Sch. 1)
I209 S. 130(2) in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(c)**
I210 S. 130(2) in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(c)**

PART 4

HEALTH IN PREGNANCY GRANT

England, Wales and Scotland

131 Entitlement: Great Britain

After Part 8 of the Social Security Contributions and Benefits Act 1992 (c. 4) insert—

"PART 8A

HEALTH IN PREGNANCY GRANT

140A **Entitlement**

(1) A woman who satisfies prescribed conditions in relation to a pregnancy of hers is entitled to payment of a lump sum (to be known as "health in pregnancy grant").

(2) A condition prescribed under subsection (1) may, in particular, require a woman to have reached a specified stage of her pregnancy.

(3) A woman is not entitled to health in pregnancy grant unless—

(a) she has received advice on matters relating to maternal health from a health professional;

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) she is in Great Britain at the time she makes a claim for the grant in accordance with the Administration Act.

(4) Circumstances may be prescribed in which a woman is to be treated for the purposes of subsection (3)(b) as being, or as not being, in Great Britain.

(5) In this section—

"health professional" has such meaning as may be prescribed,

"prescribed" means prescribed by regulations, and

"woman" means a female of any age.

(6) The power to make regulations under this section is exercisable by the Treasury.

140B **Amount**

(1) Health in pregnancy grant is to be of an amount prescribed by regulations made by the Treasury.

(2) Different amounts may be prescribed in relation to different cases."

Commencement Information

I211 S. 131 partly in force; s. 131 in force for specified purposes at Royal Assent, see s. 170

I212 S. 131 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3137, **art. 2**

132 Administration: Great Britain

(1) In section 5 of the Social Security Administration Act 1992 (c. 5) (claims and payments regulations), in subsection (2), after paragraph (f), insert—

"(fa) health in pregnancy grant;".

(2) The power to make regulations under that section in relation to health in pregnancy grant is exercisable by the Commissioners for Her Majesty's Revenue and Customs.

(3) After section 12 of that Act insert—

"Health in pregnancy grant

12A Necessity of application for health in pregnancy grant

(1) No person is entitled to health in pregnancy grant unless she claims it in the manner, and within the time, prescribed in relation to health in pregnancy grant by regulations under section 5.

(2) No person is entitled to health in pregnancy grant unless subsection (3) or (4) is satisfied in relation to her.

(3) This subsection is satisfied in relation to a person if her claim for health in pregnancy grant is accompanied by—

(a) a statement of her national insurance number and information or evidence establishing that that number has been allocated to her; or

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) information or evidence enabling the national insurance number that has been allocated to her to be ascertained.

(4) This subsection is satisfied in relation to a person if she makes an application for a national insurance number to be allocated to her which is accompanied by information or evidence enabling a national insurance number to be allocated to her.

(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision disapplying subsection (2) in the case of prescribed descriptions of persons making a claim."

(4) In section 71 of that Act (benefits in relation to which overpayments may be recovered), in subsection (11), after paragraph (e), insert—

"(ea) health in pregnancy grant; and".

(5) In the application of that section in relation to health in pregnancy grant, references to the Secretary of State are to be read as references to the Commissioners for Her Majesty's Revenue and Customs.

(6) In section 121E of that Act (supply of information by Her Majesty's Revenue and Customs), in subsection (1), after "contributions," insert " health in pregnancy grant, ".

(7) In section 121F of that Act (supply of information to Her Majesty's Revenue and Customs), in subsection (2), after "contributions," insert " health in pregnancy grant, ".

(8) Chapter 2 of Part 1 of the Social Security Act 1998 (c. 14) (decisions and appeals) is to have effect as if health in pregnancy grant were a relevant benefit for the purposes of that Chapter; and the functions of the Secretary of State under that Act are, in relation to that grant, exercisable by the Commissioners for Her Majesty's Revenue and Customs.

Commencement Information

I213 S. 132 partly in force; s. 132 in force for specified purposes at Royal Assent, see s. 170

I214 S. 132 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3137, **art. 2**

133 Penalty: Great Britain

(1) After section 113B of the Social Security Administration Act 1992 (c. 5) insert—

"**113C Health in pregnancy grant: civil penalty for fraud, etc.**

Schedule 3A (health in pregnancy grant: civil penalty for fraud, etc.) has effect."

(2) Before Schedule 4 to that Act, insert—

"SCHEDULE 3A

HEALTH IN PREGNANCY GRANT: CIVIL PENALTY FOR FRAUD, ETC.

Penalty

1 (1) This paragraph applies where a person fraudulently or negligently—

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) makes an incorrect statement or declaration in or in connection with a claim for health in pregnancy grant, or

(b) gives incorrect information or evidence in response to a requirement imposed on the person by virtue of section 5.

(2) The Commissioners for Her Majesty's Revenue and Customs may make a determination imposing a penalty on the person.

(3) The amount of a penalty imposed under this paragraph—

(a) is to be determined by the Commissioners, but

(b) may not exceed the amount of the grant.

(4) A penalty imposed under this paragraph becomes payable at the end of the period of 30 days beginning with the date on which the notice is given.

(5) The Commissioners must give notice of a determination imposing a penalty under this paragraph to the person on whom it is imposed.

(6) The notice must—

(a) state the date on which the notice is given,

(b) state the date on or before which payment is due in accordance with sub-paragraph (4), and

(c) give details of the right to appeal under paragraph 2.

Appeal

2 (1) A person on whom a penalty is imposed under paragraph 1 may appeal to an appeal tribunal against the determination imposing it.

(2) On an appeal under sub-paragraph (1), an appeal tribunal may—

(a) set the determination aside,

(b) confirm the determination,

(c) reduce the amount of the penalty, or

(d) increase the amount of it (but not so as to exceed the amount of the grant).

(3) An appeal lies to a Commissioner from a decision of an appeal tribunal under sub-paragraph (2).

(4) On an appeal under sub-paragraph (3), a Commissioner has a similar jurisdiction to that conferred on an appeal tribunal by sub-paragraph (2).

(5) In sub-paragraphs (1) to (4), “appeal tribunal” and “Commissioner” have the same meaning as in Chapter 2 of Part 1 of the Social Security Act 1998 (decisions, etc.).

(6) The Commissioners for Her Majesty's Revenue and Customs may by regulations apply provision contained in that Act in relation to an appeal under this paragraph (with such modifications as are prescribed).

Mitigation

3 The Commissioners for Her Majesty's Revenue and Customs may mitigate or entirely remit a penalty under this Schedule.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Time limit

4 (1) The Commissioners for Her Majesty's Revenue and Customs may make a determination imposing a penalty under paragraph 1 at any time before the end of the period of two years beginning with the relevant day.

(2) In sub-paragraph (1), the "relevant day" is the day on which the statement or declaration, or information or evidence, referred to in paragraph 1(1) is made or given.

Recovery

5 A penalty payable under this Schedule is to be treated for the purposes of Part 6 of the Taxes Management Act 1970 (collection and recovery) as if it were tax charged in an assessment and due and payable."

Commencement Information

I215 S. 133 partly in force; s. 133 in force for specified purposes at Royal Assent, see s. 170

I216 S. 133 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3137, **art. 2**

Northern Ireland

134 Entitlement: Northern Ireland

After Part 8 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) insert—

"**PART 8A**

HEALTH IN PREGNANCY GRANT

136A **Entitlement**

(1) A woman who satisfies prescribed conditions in relation to a pregnancy of hers is entitled to payment of a lump sum (to be known as "health in pregnancy grant").

(2) A condition prescribed under subsection (1) may, in particular, require a woman to have reached a specified stage of her pregnancy.

(3) A woman is not entitled to health in pregnancy grant unless—

(a) she has received advice on matters relating to maternal health from a health professional;

(b) she is in Northern Ireland at the time she makes a claim for the grant in accordance with the Administration Act.

(4) Circumstances may be prescribed in which a woman is to be treated for the purposes of subsection (3)(b) as being, or as not being, in Northern Ireland.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In this section—

"health professional" has such meaning as may be prescribed,

"prescribed" means prescribed by regulations, and

"woman" means a female of any age.

(6) The power to make regulations under this section is exercisable by the Treasury.

136B **Amount**

(1) Health in pregnancy grant is to be of an amount prescribed by regulations made by the Treasury.

(2) Different amounts may be prescribed in relation to different cases."

Commencement Information

I217 S. 134 partly in force; s. 134 in force for specified purposes at Royal Assent, see s. 170

I218 S. 134 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3137, **art. 2**

135 Administration: Northern Ireland

(1) In section 5 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (claims and payments regulations), in subsection (2), after paragraph (f), insert—

"(fa) health in pregnancy grant;".

(2) The power to make regulations under that section in relation to health in pregnancy grant is exercisable by the Commissioners for Her Majesty's Revenue and Customs.

(3) After section 10 of that Act insert—

"Health in pregnancy grant

10A Necessity of application for health in pregnancy grant

(1) No person is entitled to health in pregnancy grant unless she claims it in the manner, and within the time, prescribed in relation to health in pregnancy grant by regulations under section 5.

(2) No person is entitled to health in pregnancy grant unless subsection (3) or (4) is satisfied in relation to her.

(3) This subsection is satisfied in relation to a person if her claim for health in pregnancy grant is accompanied by—

(a) a statement of her national insurance number and information or evidence establishing that that number has been allocated to her; or

(b) information or evidence enabling the national insurance number that has been allocated to her to be ascertained.

(4) This subsection is satisfied in relation to a person if she makes an application for a national insurance number to be allocated to her which is accompanied by information or evidence enabling a national insurance number to be allocated to her.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision disapplying subsection (2) in the case of prescribed descriptions of persons making a claim."

(4) In section 69 of that Act (benefits in relation to which overpayments may be recovered), in subsection (11), after paragraph (e), insert—

"(ea) health in pregnancy grant; and".

(5) In the application of that section in relation to health in pregnancy grant, references to the Northern Ireland Department are to be read as references to the Commissioners for Her Majesty's Revenue and Customs.

(6) In section 115D of that Act (supply of information by Her Majesty's Revenue and Customs), in subsection (1), after "contributions," insert " health in pregnancy grant, ".

(7) In section 115E of that Act (supply of information to Her Majesty's Revenue and Customs), in subsection (2), after "contributions," insert " health in pregnancy grant, ".

(8) Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) (decisions and appeals) is to have effect as if health in pregnancy grant were a relevant benefit for the purposes of that Chapter; and the functions of the Northern Ireland Department under that Order are, in relation to that grant, exercisable by the Commissioners for Her Majesty's Revenue and Customs.

(9) In subsections (5) and (8), "the Northern Ireland Department" means the Department for Social Development in Northern Ireland.

Commencement Information

I219 S. 135 partly in force; s. 135 in force for specified purposes at Royal Assent, see s. 170

I220 S. 135 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3137, **art. 2**

136 Penalty: Northern Ireland

(1) After section 107B of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) insert—

"**107C Health in pregnancy grant: civil penalty for fraud, etc.**

Schedule 3A (health in pregnancy grant: civil penalty for fraud, etc.) has effect."

(2) Before Schedule 4 to that Act, insert—

"SCHEDULE 3A

HEALTH IN PREGNANCY GRANT: CIVIL PENALTY FOR FRAUD, ETC.

Penalty

1 (1) This paragraph applies where a person fraudulently or negligently—

(a) makes an incorrect statement or declaration in or in connection with a claim for health in pregnancy grant, or

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) gives incorrect information or evidence in response to a requirement imposed on the person by virtue of section 5.

(2) The Commissioners for Her Majesty's Revenue and Customs may make a determination imposing a penalty on the person.

(3) The amount of a penalty imposed under this paragraph—
(a) is to be determined by the Commissioners, but
(b) may not exceed the amount of the grant.

(4) A penalty imposed under this paragraph becomes payable at the end of the period of 30 days beginning with the date on which the notice is given.

(5) The Commissioners must give notice of a determination imposing a penalty under this paragraph to the person on whom it is imposed.

(6) The notice must—
(a) state the date on which the notice is given,
(b) state the date on or before which payment is due in accordance with sub-paragraph (4), and
(c) give details of the right to appeal under paragraph 2.

Appeal

2 (1) A person on whom a penalty is imposed under paragraph 1 may appeal to an appeal tribunal against the determination imposing it.

(2) On an appeal under sub-paragraph (1), an appeal tribunal may—
(a) set the determination aside,
(b) confirm the determination,
(c) reduce the amount of the penalty, or
(d) increase the amount of it (but not so as to exceed the amount of the grant).

(3) An appeal lies to a Commissioner from a decision of an appeal tribunal under sub-paragraph (2).

(4) On an appeal under sub-paragraph (3), a Commissioner has a similar jurisdiction to that conferred on an appeal tribunal by sub-paragraph (2).

(5) In sub-paragraphs (1) to (4), "appeal tribunal" has the same meaning as in Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 (decisions, etc.).

(6) The Commissioners for Her Majesty's Revenue and Customs may by regulations apply provision contained in that Order in relation to an appeal under this paragraph (with such modifications as are prescribed).

Mitigation

3 The Commissioners for Her Majesty's Revenue and Customs may mitigate or entirely remit a penalty under this Schedule.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Time limit

4 (1) The Commissioners for Her Majesty's Revenue and Customs may make a determination imposing a penalty under paragraph 1 at any time before the end of the period of two years beginning with the relevant day.

(2) In sub-paragraph (1), the "relevant day" is the day on which the statement or declaration, or information or evidence, referred to in paragraph 1(1) is made or given.

Recovery

5 A penalty payable under this Schedule is to be treated for the purposes of Part 6 of the Taxes Management Act 1970 (collection and recovery) as if it were tax charged in an assessment and due and payable."

Commencement Information

I221 S. 136 partly in force; s. 136 in force for specified purposes at Royal Assent, see s. 170

I222 S. 136 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3137, **art. 2**

137 Northern Ireland: health in pregnancy grant to be excepted matter

In Schedule 2 to the Northern Ireland Act 1998 (c. 47) (excepted matters), at the beginning of paragraph 10B insert " Health in pregnancy grant, ".

Commencement Information

I223 S. 137 in force at 1.1.2009 by S.I. 2008/3137, **art. 2**

General and supplementary

138 General and supplementary

(1) The Commissioners for Her Majesty's Revenue and Customs are responsible for the payment and management of health in pregnancy grant.

(2) In section 115 of the Immigration and Asylum Act 1999 (c. 33) (exclusion from entitlement to benefits), in subsection (1), after paragraph (h), insert—

"(ha) health in pregnancy grant,".

(3) In subsections (5) and (6) of that section, before "child benefit" insert " health in pregnancy grant or ".

(4) In section 677(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (benefits wholly exempt from income tax), in Part 1 of Table B, at the appropriate place insert—

"Health in pregnancy grant	SSCBA 1992	Section 140A
	SSCB(NI)A 1992	Section 136A".

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I224 S. 138 in force at 1.1.2009 by S.I. 2008/3137, **art. 2**

PART 5

MISCELLANEOUS

Amendments relating to National Health Service

139 Duty of Primary Care Trusts

After section 23 of the National Health Service Act 2006 (c. 41) insert—

"**23A Arrangements for improving quality of health care**

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

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

(3) "Health care" means—
(a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
(b) the promotion and protection of public health."

Commencement Information
I225 S. 139 in force at 1.4.2010 by S.I. 2010/708, **art. 13(c)**

140 Pharmaceutical services

Schedule 12 (which contains amendments of the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 (c. 42) relating to expenditure in connection with the provision of pharmaceutical services) has effect.

Commencement Information
I226 S. 140 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 2(a)**
I227 S. 140 in force at 21.5.2010 for specified purposes by S.I. 2010/1457, **art. 2(a)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/04/2013

141 Remuneration for persons providing pharmaceutical services

(1) In section 164 of the National Health Service Act 2006 (remuneration for persons providing pharmaceutical services)—

(a) after subsection (4) insert—

"(4A) An instrument of appointment—

(a) must be contained in regulations if it provides for the appointment of a Primary Care Trust or other person as a determining authority in relation to the remuneration to be paid to persons who provide services under section 126, and

(b) if paragraph (a) does not apply, may be contained in regulations.", and

(b) in subsection (5), omit paragraph (b) and the word "and" immediately preceding it.

(2) In section 88 of the National Health Service (Wales) Act 2006 (c. 42) (remuneration for persons providing pharmaceutical services)—

(a) after subsection (4) insert—

"(4A) An instrument of appointment—

(a) must be contained in regulations if it provides for the appointment of a Local Health Board or other person as a determining authority in relation to the remuneration to be paid to persons who provide services under section 80, and

(b) if paragraph (a) does not apply, may be contained in regulations.", and

(b) in subsection (5), omit paragraph (b) and the word "and" immediately preceding it.

142 Indemnity schemes in connection with provision of health services

(1) Section 71 of the National Health Service Act 2006 (c. 41) (schemes for meeting losses and liabilities of health service bodies) is amended as follows.

(2) In subsection (1), after "the bodies" (in each place) insert " or other persons ".

(3) In subsection (2)—

(a) after "The bodies" insert " and other persons ",

(b) after paragraph (g) insert—

"(h) the Secretary of State, and

(i) a body or other person (other than a body or other person within any of paragraphs (a) to (h)) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h),", and

(c) after "bodies which" insert " , or other persons who, ".

(4) After subsection (2) insert—

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(2A) In subsection (1)(b) "functions"—

(a) in relation to the Secretary of State, means the Secretary of State's functions in connection with the health service;

(b) in relation to a body or other person within paragraph (i) of subsection (2), means the body's or person's functions of providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of paragraphs (a) to (h) of that subsection."

(5) In subsection (3)—

(a) in paragraph (b), after "body which" insert " , or other person who, ", and

(b) in paragraph (c), after "Secretary of State" insert " (whether or not a participator in the scheme and, if a participator, whether or not required to make payments as a participator) ".

(6) For subsection (5) substitute—

"(5) The Secretary of State may make a direction under subsection (4) in respect of a body only if the body is within any of paragraphs (a) to (d), (f) and (g) of subsection (2)."

(7) After subsection (8) insert—

"(9) In subsection (2)(i), the reference to a person providing health services does not include a person providing health services under a contract of employment.

(10) In this section "health services" means services provided as part of the health service."

Commencement Information

I228 S. 142 in force at 1.10.2008 by S.I. 2008/2497, **art. 5**

Weighing and measuring of children

143 Weighing and measuring of children: England

(1) In Schedule 1 to the National Health Service Act 2006 (c. 41) (further provision about the Secretary of State and services under that Act) after paragraph 7 insert—

"**Weighing and measuring of children**

7A (1) The Secretary of State may, by arrangement with any local education authority, provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.

(2) The Secretary of State may, by arrangement with the proprietor of any school which is not maintained by a local education authority, provide for the weighing and measuring of junior pupils in attendance at that school.

(3) The Secretary of State may, by arrangement with any person who is registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect

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of early years provision, provide for the weighing and measuring of young children for whom childcare is provided by that person.

(4) In sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of Part 3 of the Childcare Act 2006 has the same meaning as in that Part.

7B (1) The Secretary of State may by regulations—

(a) authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,

(b) require any weighing and measuring provided for by the Secretary of State under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,

(c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and

(d) make other provision regulating the processing of information resulting from any weighing or measuring provided for by the Secretary of State under paragraph 7A.

(2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring to have regard to any guidance given from time to time by the Secretary of State.

(3) In sub-paragraph (1)(d), "processing", in relation to information, has the same meaning as in the Data Protection Act 1998.

(4) Regulations under this paragraph cannot include provision by virtue of section 272(8)(a) amending or repealing an Act."

(2) Until the commencement of Chapter 2 of Part 3 of the Childcare Act 2006 (c. 21), the reference in paragraph 7A(3) of Schedule 1 to the National Health Service Act 2006 (c. 41) (as inserted by subsection (1) of this section) to a person registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect of early years provision is to be read as a reference to a person registered under Part 10A of the Children Act 1989 (c. 41) in respect of child minding or the provision of day care (within the meaning of that Part).

Commencement Information

I229 S. 143 partly in force; s. 143 in force for specified purposes at Royal Assent, see s. 170

I230 S. 143 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 6**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

144 Weighing and measuring of children: Wales

In Schedule 1 to the National Health Service (Wales) Act 2006 (c. 42) (further provision about the Welsh Ministers and services under that Act) after paragraph 7 insert—

"**Weighing and measuring of children**

7A (1) The Welsh Ministers may, by arrangement with any **[**[F8]local authority**]**, provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.

(2) The Welsh Ministers may, by arrangement with the proprietor of any school which is not maintained by a **[**[F8]local authority**]**, provide for the weighing and measuring of junior pupils in attendance at that school.

(3) The Welsh Ministers may, by arrangement with any person who is registered under Part 10A of the Children Act 1989 (child minding and day care for children in Wales) in respect of child minding or the provision of day care, provide for the weighing and measuring of children looked after by that person.

(4) In sub-paragraphs (1) and (2) any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and in sub-paragraph (3) any expression to which a meaning is given for the purposes of Part 10A of the Children Act 1989 has the same meaning as in that Part.

7B (1) The Welsh Ministers may by regulations—

(a) authorise the disclosure by any person with whom arrangements under paragraph 7A are made, to any person carrying out the weighing or measuring, of prescribed information relating to the children concerned,

(b) require any weighing and measuring provided for by the Welsh Ministers under paragraph 7A to be carried out in a prescribed manner and after compliance with any prescribed requirements,

(c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and

(d) make other provision regulating the processing of information resulting from any weighing or measuring provided for by the Welsh Ministers under paragraph 7A.

(2) Regulations made under sub-paragraph (1) may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring to have regard to any guidance given from time to time by the Welsh Ministers.

(3) In sub-paragraph (1)(d), "processing", in relation to information, has the same meaning as in the Data Protection Act 1998.

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(4) Regulations under this paragraph cannot include provision by virtue of section 203(10)(a) amending or repealing an Act."

Textual Amendments

F8 Words in s. 144 substituted (5.5.2010) by The Local Education Authorities and Children'€™s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 64**

Commencement Information

I231 S. 144 partly in force; s. 144 in force for specified purposes at Royal Assent, see s. 170

Social care

145 Human Rights Act 1998: provision of certain social care to be public function

(1) A person ("P") who provides accommodation, together with nursing or personal care, in a care home for an individual under arrangements made with P under the relevant statutory provisions is to be taken for the purposes of subsection (3)(b) of section 6 of the Human Rights Act 1998 (c. 42) (acts of public authorities) to be exercising a function of a public nature in doing so.

(2) The "relevant statutory provisions" are—

(a) in relation to England and Wales, sections 21(1)(a) and 26 of the National Assistance Act 1948 (c. 29),

(b) in relation to Scotland, section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49), and

(c) in relation to Northern Ireland, Articles 15 and 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).

(3) In subsection (1) "care home"—

(a) in relation to England and Wales, has the same meaning as in the Care Standards Act 2000 (c. 14), and

(b) in relation to Northern Ireland, means a residential care home as defined by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) or a nursing home as defined by Article 11 of that Order.

(4) In relation to Scotland, the reference in subsection (1) to the provision of accommodation, together with nursing or personal care, in a care home is to be read as a reference to the provision of accommodation, together with nursing, personal care or personal support, as a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8).

(5) Subsection (1) does not apply to acts (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) taking place before the coming into force of this section.

Commencement Information

I232 S. 145 in force at 1.12.2008 for specified purposes by S.I. 2008/2994, **art. 2**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

146 Direct payments in lieu of provision of care services

(1) Section 57 of the Health and Social Care Act 2001 (c. 15) (regulations may require or authorise direct payments to a person, with the person's consent, in respect of the person securing the provision to the person of certain care services) is amended as follows.

(2) After subsection (1) insert—

"(1A) Regulations may make provision for and in connection with requiring or authorising the responsible authority in the case of a person ("P") of a prescribed description—

(a) who falls within subsection (2)(a), and

(b) who falls within subsection (5A) or is reasonably believed by the authority to fall within that subsection,

to make, with the requisite consent, such payments as the authority may determine in accordance with the regulations to a suitable person other than P in respect of the other person's securing the provision for P of the service mentioned in subsection (2)(a).

(1B) In subsection (1A) "the requisite consent" means—

(a) the consent of the other person; and

(b) where the other person is not a surrogate of P but there is at least one person who is a surrogate of P, the consent also of a surrogate of P.

(1C) For the purposes of subsection (1A), a person (whether or not an individual) is "suitable" if—

(a) that person is a representative of P;

(b) that person is not a representative of P (or there is no-one who is a representative of P), but—

(i) a surrogate of P, and

(ii) the responsible authority,

consider that person to be a suitable person to receive the payments for the purpose of securing provision for P of the service concerned; or

(c) that person is not a representative of P (or there is no-one who is a representative of P), and there is no-one who is a surrogate of P, but the responsible authority considers that person to be a suitable person to receive the payments for that purpose."

(3) In subsection (3) (provision which may be included in regulations under the section)—

(a) in paragraph (a) (provision as to circumstances in which payments not to be made), after "to a person" insert " or in respect of a person ",

(b) in paragraph (c)(i) (provision about determination of payee's means), after "the payee's means" insert " in the case of direct payments under subsection (1) or, in the case of direct payments under subsection (1A), the means of the person ("the beneficiary") in respect of whom the payments are required or authorised to be made ",

(c) in each of paragraphs (d) and (e)(ii) (provision as to conditions to be complied with by payee, and provision as to repayments by payee or otherwise), after "payee" insert " in the case of direct payments under subsection (1), or by the payee or by the beneficiary in the case of direct payments under subsection (1A), " and

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(d) after paragraph (h) insert—

"(j) as to matters to which the responsible authority must, or may, have regard when making a decision for the purposes of a provision of the regulations;

(k) as to steps which the responsible authority must, or may, take before, or after, the authority makes a decision for the purposes of a provision of the regulations;

(l) specifying circumstances in which a person who has fallen within subsection (5A) but no longer does so (whether because of fluctuating capacity, or regaining or gaining of capacity) is to be treated, or may be treated, as falling within subsection (5A) for purposes of this section or for purposes of regulations under this section."

(4) In subsection (4)(b) (gross payments: condition that payee pays amounts by way of reimbursement), after "payee" insert " in the case of direct payments under subsection (1), or the beneficiary in the case of direct payments under subsection (1A), ".

(5) In subsection (5) (payments made net on basis that payee will contribute to cost of service)—

(a) in paragraph (a), after "the payee will himself" insert " in the case of direct payments under subsection (1), or the beneficiary will in the case of direct payments under subsection (1A), " and

(b) in paragraph (b), after "payee" insert " or (as the case may be) the beneficiary ".

(6) After subsection (5) insert—

"(5A) A person falls within this subsection if the person lacks capacity, within the meaning of the Mental Capacity Act 2005, to consent to the making of direct payments.

(5B) In this section "representative", in relation to a person, means such other person (whether or not an individual) as may be prescribed.

(5C) In this section "surrogate", in relation to a person, means—

(a) a deputy appointed for the person by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005, or

(b) a donee of a lasting power of attorney created by the person,

whose powers, as deputy or donee, consist of or include such powers as may be prescribed."

(7) After subsection (7) insert—

"(7A) For the purposes of subsection (3)(d), the conditions that are to be taken to be conditions in relation to direct payments include, in particular, conditions in relation to—

(a) the securing of the provision of the service concerned,

(b) the provider of the service,

(c) the person to whom payments are made in respect of the provision of the service, or

(d) the provision of the service."

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(8) In section 64 of the Health and Social Care Act 2001 (c. 15) (regulations and orders), after subsection (4) insert—

"(4A) A statutory instrument containing—

(a) regulations made by the Welsh Ministers under section 57, or

(b) regulations made by the Welsh Ministers under section 65 that make provision for the purposes of, in consequence of or for giving full effect to section 57,

is subject to annulment in pursuance of a resolution of the National Assembly for Wales."

Commencement Information

I233 S. 146 in force for specified purposes at Royal Assent, see s. 170

I234 S. 146(1)-(7) in force at 9.11.2009 for E. in so far as not already in force by S.I. 2009/2567, **art. 3**

147 Abolition of maintenance liability of relatives

(1) The following provisions cease to have effect—

(a) section 43 of the National Assistance Act 1948 (c. 29) (recovery from liable relative of local authority's costs of assistance),

(b) in section 47(9) of that Act (liability of maintained person, or person's relatives, for expenditure incurred under section 47(8)), the words "or from any person who for the purposes of this Act is liable to maintain that person",

(c) in section 48(3) of that Act (liability of person in hospital etc., or person's relatives, for costs of protecting person's property), the words ", or from any person who for the purposes of this Act is liable to maintain him,",

(d) in section 51(1) of that Act (offence where person fails to maintain himself or any person he is liable to maintain), the words "or any person whom he is liable to maintain for the purposes of this Act",

(e) in paragraph 19(1) of Schedule 6 to that Act (which ended a saved liability to maintain a person where there was no liability to maintain that person for the purposes of that Act), the words "whom he is not liable to maintain for the purposes of this Act",

(f) paragraph 19(2) of that Schedule (which gave continuing effect to certain saved liabilities not ended by paragraph 19(1)), and

(g) in section 46(5) of the Public Health (Control of Disease) Act 1984 (c. 22) (liability of person's estate, or person's relatives, for cost of burial or cremation under the section), the words "or from any person who for the purposes of the National Assistance Act 1948 was liable to maintain the deceased person immediately before his death".

(2) In section 29(4A)(c) of the National Assistance Act 1948 (c. 29) (which provides for section 43 to apply where accommodation in a hostel is provided under section 29(4)(c)), for "sections 32 and 43 of this Act shall apply as they apply" substitute " section 32 shall apply as it applies ".

(3) In section 51(1) of that Act, for ", himself or any other person" substitute " him ".

(4) In section 87(3) of the Social Work (Scotland) Act 1968 (c. 49) (provision of accommodation treated as being under Part 3 of the National Assistance Act 1948),

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for the words from "(as amended", where first occurring, to "etc.)" substitute " (as amended by any enactment within the meaning of the Scotland Act 1998 (c. 46)) of the said Act of 1948 ".

(5) In Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (definition of "social services functions" for purposes of the 1970 Act), in the entry relating to sections 43 to 45 of the National Assistance Act 1948, for "Sections 43 to" substitute " Section ".

(6) The provisions of this section have effect subject to, and in accordance with, Schedule 13.

Commencement Information

I235 S. 147 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(a)**

I236 S. 147 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(a)**

148 Ordinary residence for certain purposes of National Assistance Act 1948 etc.

(1) In section 24 of the National Assistance Act 1948 (authority liable for provision of accommodation) for subsections (6) and (7) substitute—

"(6) For the purposes of the provision of residential accommodation under this Part, a patient ("P") for whom NHS accommodation is provided shall be deemed to be ordinarily resident in the area, if any, in which P was resident before the NHS accommodation was provided for P, whether or not P in fact continues to be ordinarily resident in that area.

(6A) In subsection (6) "NHS accommodation" means—

(a) accommodation (at a hospital or elsewhere) provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or

(b) accommodation provided under section 117 of the Mental Health Act 1983 by a Primary Care Trust or Local Health Board, other than accommodation so provided jointly with a local authority."

(2) In section 32 of that Act (adjustments between authority providing accommodation, etc., and authority of area of residence) for subsection (3) substitute—

"(3) Any question arising under this Part as to a person's ordinary residence shall be determined by the Secretary of State or by the Welsh Ministers.

(4) The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the Welsh Ministers.

(5) Those arrangements may include provision for the Secretary of State and the Welsh Ministers to agree, in relation to any question that has arisen, which of them is to deal with the case."

(3) In section 2 of the Chronically Sick and Disabled Persons Act 1970 (c. 44) (provision of welfare services) after subsection (1) insert—

"(1A) Subsections (3) to (5) of section 32 of the National Assistance Act 1948 (which relate to the determination of any question arising under Part 3 of

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that Act as to a person's ordinary residence) apply in relation to any question arising under this section as to a person's ordinary residence as they apply in relation to such a question arising under Part 3 of that Act."

Commencement Information

I237 S. 148 in force at 19.4.2010 for E. by S.I. 2010/708, **art. 11** (with art. 12)

I238 S. 148 in force at 19.4.2010 for W. by S.I. 2010/989, **art. 2** (with arts. 3, 4)

Financial assistance related to provision of health or social care services

149 Power of Secretary of State to give financial assistance

(1) The Secretary of State may give financial assistance to qualifying bodies which are engaged in—

(a) the provision in England of health services or of social care services, or

(b) the provision to other persons of services that are connected with the provision in England by those other persons of health services or of social care services.

(2) The Secretary of State may also give financial assistance to persons for the purposes of the establishment by them of qualifying bodies which satisfy any conditions prescribed for the purposes of this subsection and which are to be engaged in—

(a) the provision in England of health services or of social care services, or

(b) the provision to other persons of services that will be connected with the provision in England by those other persons of health services or of social care services.

Commencement Information

I239 S. 149 in force at 1.4.2009 by S.I. 2008/2994, **art. 3(2)(a)**

150 Qualifying bodies

(1) A body is a qualifying body for the purposes of this group of sections if—

(a) a reasonable person might consider that its activities are being carried on for the benefit of the community in England,

(b) except in the case of a body of a prescribed kind, it satisfies prescribed conditions relating to the distribution of its profits,

(c) it is carrying on a business, and

(d) it satisfies such other conditions as may be prescribed.

(2) Regulations may provide that—

(a) a body may only be a qualifying body if it is of a prescribed kind;

(b) activities of a prescribed description are to be treated as being, or as not being, activities which a reasonable person might consider are activities carried on for the benefit of the community in England.

(3) "Community" includes a section of the community; and regulations may make provision about what does, does not or may constitute a section of the community.

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Commencement Information

I240 S. 150 partly in force; s. 150 in force for specified purposes at Royal Assent, see s. 170

I241 S. 150 in force at 1.4.2009 in so far as not already in force by S.I. 2008/2994, **art. 3(2)(b)**

151 Forms of assistance under s. 149

(1) Subject to subsection (3), financial assistance under section 149 may be given in any form.

(2) Assistance may, in particular, be given by way of—

(a) grants,

(b) loans,

(c) guarantees, or

(d) in the case of assistance under section 149(1) given to a company, purchasing share capital of the company.

(3) Financial assistance under section 149(2) given to a company may not be given by way of purchasing share capital of the company.

Commencement Information

I242 S. 151 in force at 1.4.2009 by S.I. 2008/2994, **art. 3(2)(c)**

152 Terms on which assistance under s. 149 is given

(1) Financial assistance under section 149 may be given on such terms as the Secretary of State considers appropriate.

(2) The terms may, in particular, include provisions as to—

(a) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State, and the manner in which that is to be done;

(b) the keeping, and making available for inspection, of accounts and other records.

(3) The person receiving assistance under section 149 must comply with the terms on which it is given, and compliance may be enforced by the Secretary of State.

Commencement Information

I243 S. 152 in force at 1.4.2009 by S.I. 2008/2994, **art. 3(2)(d)**

153 Directions to certain NHS bodies

(1) The Secretary of State may direct—

(a) a Primary Care Trust,

(b) a Strategic Health Authority,

(c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England, or

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(d) a Special Health Authority performing functions only or mainly in respect of England,

to exercise any functions of the Secretary of State in relation to financial assistance under section 149.

(2) The Secretary of State may give directions to any of the bodies mentioned in subsection (1) about the exercise by it of any function of the Secretary of State which it exercises by virtue of that subsection.

Commencement Information
I244 S. 153 in force at 1.4.2009 by S.I. 2008/2994, **art. 3(2)(e)**

154 Arrangements with other third parties

(1) The Secretary of State may make arrangements for—
(a) financial assistance under section 149 to be given, or
(b) other functions relating to such assistance to be exercised,

by a person other than a body mentioned in section 153(1) or an English local authority.

(2) A person with whom the Secretary of State makes arrangements under subsection (1) is referred to in this section as P.

(3) Arrangements under subsection (1) may provide for the functions concerned to be exercised by P—
(a) either wholly or to such extent as may be specified in the arrangements, and
(b) either generally or in such cases or circumstances as may be so specified.

(4) Arrangements under subsection (1) may make provision—
(a) subject to section 151(3), as to the forms of financial assistance which may be given by P, and
(b) as to the terms on which financial assistance may be given by P.

(5) Arrangements under subsection (1) may—
(a) provide for the Secretary of State to make payments to P, and
(b) make provision as to the circumstances in which any such payments are to be repaid to the Secretary of State.

(6) In subsection (1) "English local authority" includes a non-metropolitan district council for an area for which there is a county council.

Commencement Information
I245 S. 154 in force at 1.4.2009 by S.I. 2008/2994, **art. 3(2)(f)**

155 Power to form company

The Secretary of State may form, or participate in forming, one or more companies with a view to making arrangements under section 154(1) with the companies for financial assistance under section 149 to be given, or other functions relating to such assistance to be exercised, by the company.

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Commencement Information

I246 S. 155 in force at 1.12.2008 by S.I. 2008/2994, **art. 3(1)(a)**

156 Interpretation of group of sections

(1) In this section and sections 149 to 155 "this group of sections" means this section and those sections.

(2) In this group of sections—

"company" means a company as defined by section 1 of the Companies Act 2006 (c. 46);

"English local authority" means—

(a) a county council in England,

(b) a metropolitan district council,

(c) a non-metropolitan district council for an area for which there is no county council,

(d) a London borough council,

(e) the Common Council of the City of London, or

(f) the Council of the Isles of Scilly;

"health services" means services which must or may be provided for the purposes of the health service continued under section 1(1) of the National Health Service Act 2006 (c. 41) or services which are similar to such services;

"prescribed" means prescribed by regulations;

"qualifying body" has the meaning given by section 150;

"regulations" means regulations made by the Secretary of State;

"social care services" means services which an English local authority must or may provide or arrange to be provided under any of the following provisions—

(a) Part 3 of the National Assistance Act 1948 (c. 29),

(b) section 45 of the Health Services and Public Health Act 1968 (c. 46),

(c) section 117 of the Mental Health Act 1983 (c. 20), and

(d) section 254 of, and Schedule 20 to, the National Health Service Act 2006 (c. 41),

or services which are similar to such services.

Modifications etc. (not altering text)

C36 S. 156 modified (temp.) (1.4.2009) by The Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009 (S.I. 2009/462), arts. 1(1)(b), **14**

Commencement Information

I247 S. 156 partly in force; s. 156 in force for specified purposes at Royal Assent, see s. 170

I248 S. 156(1) in force at 1.12.2008 in so far as not already in force by S.I. 2008/2994, **art. 3(1)(b)(i)**

I249 S. 156(2) in force at 1.12.2008 for specified purposes by S.I. 2008/2994, **art. 3(1)(b)(ii)**

I250 S. 156(2) in force at 1.4.2009 in so far as not already in force by S.I. 2008/2994, **art. 3(2)(g)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

National Information Governance Board for Health and Social Care

157 National Information Governance Board for Health and Social Care

(1) After section 250 of the National Health Service Act 2006 insert—

"The National Information Governance Board for Health and Social Care

250A National Information Governance Board: functions

(1) There is to be a board known as the National Information Governance Board for Health and Social Care.

(2) The functions of the Board are—
- (a) to monitor the practice followed by relevant bodies in relation to the processing of relevant information,
- (b) to keep the Secretary of State, and such bodies as the Secretary of State may designate by direction, informed about the practice being followed by relevant bodies in relation to the processing of relevant information,
- (c) to publish guidance on the practice to be followed in relation to the processing of relevant information,
- (d) to advise the Secretary of State on particular matters relating to the processing of relevant information by any person, and
- (e) to advise persons who process relevant information on such matters relating to the processing of relevant information by them as the Secretary of State may from time to time designate by direction.

(3) The Board must, in exercising its functions, seek to improve the practice followed by relevant bodies in relation to the processing of relevant information.

(4) In this section "relevant information" means—
- (a) patient information,
- (b) any other information obtained or generated in the course of the provision of the health service, and
- (c) any information obtained or generated in the course of the exercise by a local social services authority in England of its adult social services functions.

(5) In subsection (4) "patient information" means—
- (a) information (however recorded) which relates to the physical or mental health or condition of an individual ("P"), to the diagnosis of P's condition or to P's care or treatment, and
- (b) information (however recorded) which is to any extent derived, directly or indirectly, from that information,

whether or not the identity of the individual in question is ascertainable from the information.

(6) The Board must provide advice under subsection (2)(d) if requested to do so by the Secretary of State; and may provide advice under subsection (2)(d) or

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(e) without being requested to do so by the person to whom the advice is to be provided.

(7) A relevant body must have regard to any guidance published under subsection (2)(c) and any advice given to it under subsection (2)(e); and the Secretary of State must have regard to any advice given under subsection (2)(d).

(8) The Board may request any relevant body to provide the Board with specified information for the purpose of enabling the Board to ascertain whether the relevant body has had proper regard to—

(a) guidance given under subsection (2)(c),

(b) advice given under subsection (2)(e), and

(c) any advice given to the relevant body by the Secretary of State.

(9) In this section—

"adult social services functions", in relation to a local social services authority, means the authority's social services functions (within the meaning of the Local Authority Social Services Act 1970), other than those for which the authority's director of children's services is responsible under section 18 of the Children Act 2004;

"processing", in relation to information, has the same meaning as in the Data Protection Act 1998;

"relevant body" means—

(a) any body or person engaged in the provision of the health service, including a body or person so engaged under contract, or

(b) any body or person providing social care services;

"social care services" means services provided by a local social services authority in England in the exercise of its adult social services functions.

250B National Information Governance Board: Wales

(1) The functions of the National Information Governance Board for Health and Social Care, except—

(a) its functions under section 252 in relation to regulations under section 251, and

(b) its functions under subsection (2),

are exercisable only in relation to England.

(2) In relation to Wales, the Secretary of State may seek the views of the Board on such matters concerned with the processing of information falling within section 250A(4)(a) or (b) as the Secretary of State considers appropriate.

250C National Information Governance Board: further provisions.

(1) The Secretary of State may by regulations make provision about the National Information Governance Board for Health and Social Care.

(2) The regulations may, in particular, make provision as to—

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(a) the appointment of the chair and other members of the Board by the Secretary of State or such other person as may be prescribed,
(b) the terms of appointment of members,
(c) the establishment and membership of committees or sub-committees of the Board,
(d) the delegation by the Board of its functions, and
(e) the proceedings of the Board.

(3) The regulations may make provision as to the payment by the Secretary of State of such expenses incurred by the Board or any committee or sub-committee of the Board as the Secretary of State may determine.

(4) The regulations may also make provision for the payment to members of the Board or any committee or sub-committee of the Board of such remuneration or allowances as the Secretary of State may determine.

(5) Regulations under this section cannot include provision by virtue of section 272(8)(a) amending or repealing an Act.

250D National Information Governance Board: annual reports

(1) The National Information Governance Board for Health and Social Care must, not later than 3 months after the end of each reporting year—
(a) prepare a report on its activities during the year, and
(b) send a copy of the report to the Secretary of State.

(2) In subsection (1) "reporting year" means—
(a) such period of not more than 12 months beginning with the day on which the Board is first established as the Board may determine, and
(b) each successive period of 12 months."

(2) The Patient Information Advisory Group (as continued by section 252 of the National Health Service Act 2006 (c. 41)) is abolished.

Commencement Information

I251 S. 157 partly in force; s. 157 in force for specified purposes at Royal Assent, see s. 170
I252 S. 157 in force at 1.1.2009 in so far as not already in force by S.I. 2008/2497, **art. 7(2)(a)**
I253 S. 157(1) in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 7(1)(a)**

158 Duty to consult Board in relation to regulations about patient information

For section 252 of the National Health Service Act 2006 substitute—

"**252 Consultation with National Information Governance Board**

(1) Before laying before Parliament a draft of any statutory instrument containing regulations under section 251(1), or making any regulations pursuant to section 251(5)(b), the Secretary of State must seek and have regard to the views of the National Information Governance Board for Health and Social Care on the proposed regulations.

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(2) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, any views received from the Board on the proposed regulations."

Commencement Information

I254 S. 158 in force at 1.1.2009 by S.I. 2008/2497, **art. 7(2)(b)**

Functions of Health Protection Agency in relation to biological substances

159 Functions of Health Protection Agency in relation to biological substances

(1) The National Biological Standards Board is abolished (and, accordingly, the Biological Standards Act 1975 (c. 4) ceases to have effect).

(2) The Health Protection Agency Act 2004 (c. 17) is amended as follows.

(3) After section 2 insert—

"**2A Functions in relation to biological substances**

(1) The Agency has such functions in relation to a matter specified in subsection (2) as the relevant authority directs.

(2) Those matters are—

(a) the establishment of standards for biological substances;

(b) the preparation, approval and provision of standard preparations of biological substances;

(c) the testing of biological substances.

(3) The relevant authority shall be deemed to have directed under subsection (1) that the Agency is to have the functions specified in paragraphs (a) to (f) of Article 2 of the 1976 Order (the pre-abolition functions of the National Biological Standards Board).

(4) The direction under subsection (3)—

(a) shall be deemed to have been given on the commencement of that subsection;

(b) may be varied in the same way as any other direction under subsection (1);

(c) is not affected by the repeal of the Biological Standards Act 1975 or by the 1976 Order ceasing to have effect as a result of that repeal.

(5) In this section—

"biological substance" means a substance whose purity or potency cannot, in the opinion of the Secretary of State, be adequately tested by chemical means;

"the relevant authority" means—

(a) the Secretary of State, and

(b) the Department of Health, Social Services and Public Safety in Northern Ireland,

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acting jointly;

"the 1976 Order" means the National Biological Standards Board (Functions) Order 1976.

(6) The generality of section 2(1) is to be taken not to be prejudiced by this section; and the generality of subsections (1) to (4) is to be taken not to be prejudiced by section 2."

(4) In section 6 (meaning of "appropriate authority"), after subsection (5) insert—

"(6) Subsections (2) to (5) do not apply in relation to biological-substances functions.

(7) In relation to any biological-substances function, the appropriate authority is—

(a) the Secretary of State, and

(b) the Department of Health, Social Services and Public Safety in Northern Ireland,

acting jointly.

(8) In subsections (6) and (7) "biological-substances function" means—

(a) a function of the Agency under section 2A, or

(b) a function of the Agency under section 2(1), (2)(a) or (b), (3), (4) or (10) that is a function in relation to a matter specified in section 2A(2)."

(5) In section 8 (power to make transfer schemes)—

(a) after subsection (4) insert—

"(4A) The Secretary of State and the Department of Health, Social Services and Public Safety in Northern Ireland, acting jointly, may make a scheme for the transfer of property, rights and liabilities of the National Biological Standards Board to the Agency.", and

(b) in subsection (7), after "section 2" insert " , 2A ".

(6) In section 9 (directions)—

(a) in subsection (2) (certain directions to be given in regulations made by statutory instrument), after "section 2(2), (3) or (4)" insert " or 2A(1), "; and

(b) in subsection (3) (certain statutory instruments making regulations giving directions to be subject to annulment), after "section 2(2)(a) or (3)" insert " or 2A(1) ".

Commencement Information

I255 S. 159(1)-(4) (5)(b) (6) in force at 1.4.2009 by S.I. 2009/270, **art. 2(2)(a)**

I256 S. 159(5)(a) in force at 1.3.2009 by S.I. 2009/270, **art. 2(1)**

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Further amendments

160 Minor and consequential amendments relating to Part 5

Schedule 14 (which contains further amendments related to the provisions of this Part) has effect.

Commencement Information

I257 S. 160 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 7(1)(b)**

I258 S. 160 in force at 1.1.2009 for specified purposes by S.I. 2008/2497, **art. 7(2)(c)**

PART 6

GENERAL

161 Orders, regulations and directions: general provisions

(1) Orders and regulations made under this Act by the Secretary of State, the Treasury, the Privy Council or the Welsh Ministers are to be made by statutory instrument.

(2) Regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 120 and orders made by that Department under section 170(3) are to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(3) Any power to make orders or regulations mentioned in subsection (1) or (2) and any power of the Secretary of State to give directions under this Act—

(a) may be exercised either in relation to all cases to which the power extends, or in relation to all cases subject to specified exceptions, or in relation to any specified cases or classes of case,

(b) may be exercised so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition, and

(c) may, in particular, be exercised so as to make different provision for different areas.

(4) Any such power includes power—

(a) to make such supplementary, incidental, consequential or transitional provision or savings as the person exercising the power considers to be appropriate, and

(b) to provide for a person to exercise a discretion in dealing with any matter.

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162 Orders and regulations: Parliamentary control

(1) Subject to subsection (2), a statutory instrument containing—

(a) an order or regulations made by the Secretary of State under this Act,

(b) an order made by the Privy Council under section 109 (rules of Office of the Health Professions Adjudicator), or

(c) regulations made by the Privy Council under Schedule 6 (Office of the Health Professions Adjudicator),

is subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Subsection (1) does not apply to—

(a) a statutory instrument to which subsection (3) or (4) applies, or

(b) a statutory instrument containing an order made only under section 170(3) (commencement).

(3) The Secretary of State may not make a statutory instrument containing (whether alone or with other provision)—

(a) regulations under section 8(1) (regulated activities),

(b) regulations under section 20 (regulation of regulated activities) which provide that a contravention of or failure to comply with a specified provision of the regulations is an offence punishable with a maximum fine exceeding level 4 on the standard scale,

(c) regulations under section 43 (power to modify Chapter 2 of Part 1 in relation to newly regulated activities),

(d) regulations under section 87(1)(b) (penalty notices: monetary amount of the penalty) which make provision for a penalty payable under a penalty notice to be of an amount which exceeds that equal to level 4 on the standard scale,

(e) the first regulations made by the Secretary of State under section 120 (additional responsibilities of responsible officers),

(f) regulations under section 124 (regulation of social care workers) or section 126 (education and training of approved mental health professionals), or

(g) an order under section 167 which amends or repeals any provision of an Act of Parliament,

unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) The Privy Council may not, under section 109 (rules of Office of the Health Professions Adjudicator), make a statutory instrument approving rules of the Office of the Health Professions Adjudicator that contain (whether alone or with other provision) provision for pilot schemes made by virtue of section 100(4) (legally qualified chairs) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

163 Orders and regulations: control by National Assembly for Wales

(1) Subject to subsection (2), a statutory instrument containing—

(a) regulations made under this Act by the Welsh Ministers, or

(b) an order under section 167(2) (transitional provision etc.) made by the Welsh Ministers,

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is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(2) Subsection (1) does not apply to a statutory instrument to which subsection (3) applies.

(3) The Welsh Ministers may not make a statutory instrument containing (whether alone or with other provision)—

(a) the first regulations made by the Welsh Ministers under section 120 (additional responsibilities of responsible officers), or

(b) regulations under section 124 (regulation of social care workers) or section 126 (education and training of approved mental health professionals),

unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

164 Regulations: control by Northern Ireland Assembly

(1) A statutory rule containing regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 120 (additional responsibilities of responsible officers), other than a statutory rule to which subsection (2) applies, is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

(2) The Department of Health, Social Services and Public Safety in Northern Ireland may not make a statutory rule containing (whether alone or with other provision) the first regulations made by the Department under section 120 unless a draft of the statutory rule has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

165 Directions

(1) Any power of the Secretary of State or the Privy Council to give directions under this Act includes power to vary or revoke the directions by subsequent directions.

(2) A direction under this Act by the Secretary of State or the Privy Council must be given by an instrument in writing.

166 Repeals

The enactments mentioned in Schedule 15 are repealed to the extent specified.

Commencement Information

I259 S. 166 in force at 1.1.2009 for specified purposes by S.I. 2008/2497, **art. 7(2)(d)**
I260 S. 166 in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 2(h)**
I261 S. 166 in force at 1.4.2009 for specified purposes by S.I. 2009/270, **art. 2(2)(b)**
I262 S. 166 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 32**
I263 S. 166 in force at 6.4.2009 for specified purposes except in relation to local authorities in W. by S.I. 2009/462, **art. 4(c)**
I264 S. 166 in force at 6.4.2009 for specified purposes for W. by S.I. 2009/631, **art. 2(c)**
I265 S. 166 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 13(d)**
I266 S. 166 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 2(b)**
I267 S. 166 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 4(1)(b)**

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I268 S. 166 in force at 6.4.2010 for specified purposes by S.I. 2010/807, art. 2(1), **Sch. 1 para. 16** (with Pt. 3)
I269 S. 166 in force at 6.4.2010 for specified purposes for E. by S.I. 2010/708, **art. 6(d)** (with Sch. 2)
I270 S. 166 in force at 21.5.2010 for specified purposes by S.I. 2010/1457, **art. 2(b)**
I271 S. 166 in force at 26.7.2010 for specified purposes for W. by S.I. 2010/1547, **art. 2(d)** (with Sch. 1)

167 Power to make transitional and consequential provision etc.

(1) The Secretary of State may by order make—
  (a) such transitional or transitory provisions or savings as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act in relation to which the Secretary of State is the appropriate authority for the purposes of section 170(3), and
  (b) such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) The Welsh Ministers may by order make such transitional or transitory provisions or savings as the Welsh Ministers consider appropriate in connection with the coming into force of any provision of this Act in relation to which the Welsh Ministers are the appropriate authority for the purposes of section 170(3).

(3) An order under this section may amend, repeal, revoke or otherwise modify any enactment.

(4) An order under this section may, in particular, provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order.

(5) Before making an order under this section containing provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament, the Secretary of State must consult the Scottish Ministers.

(6) The power under this section is not restricted by any other provision of this Act.

(7) In this section "enactment" means an enactment contained in, or in an instrument made under—
  (a) an Act of Parliament,
  (b) an Act of the Scottish Parliament,
  (c) a Measure or Act of the National Assembly for Wales, or
  (d) Northern Ireland legislation.

168 Financial provisions

(1) There is to be paid out of money provided by Parliament—
  (a) any expenditure incurred by virtue of this Act by a Minister of the Crown or government department, and
  (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

(2) There are to be paid into the Consolidated Fund sums received by a Minister of the Crown or government department by virtue of this Act.

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169 Extent

(1) Subject to the following provisions of this section, this Act extends to England and Wales only.

(2) The following provisions extend to England and Wales, Scotland and Northern Ireland—

(a) section 73 (arrangements between Care Quality Commission and Ministers),

(b) section 97 (general interpretation of Part 1),

(c) sections 98 to 119, 123, 127 and 128 and Schedules 6, 7, 8 and 10 (regulation of the health professions),

(d) sections 137 and 138 (health in pregnancy grant),

(e) section 145 (Human Rights Act 1998: provision of certain social care to be public function),

(f) section 159 (functions of Health Protection Agency in relation to biological substances), and

(g) sections 161, 162, 165, 167, 168, this section and sections 170 to 173 (general provisions).

(3) The following provisions extend to England and Wales and Scotland only—

(a) sections 131 to 133 (health in pregnancy grant: Great Britain),

(b) the repeal effected by this Act in section 16(2)(a)(v) of the Maintenance Orders Act 1950 (c. 37), and

(c) section 147(6), and Schedule 13, so far as relating to that repeal.

(4) The following provisions extend to England and Wales and Northern Ireland only—

(a) section 74 (arrangements between Care Quality Commission and Northern Ireland Ministers), and

(b) section 120 (additional responsibilities of responsible officers: England and Wales and Northern Ireland) and section 122 (Crown application) so far as relating to that section.

(5) The following provisions extend to Northern Ireland only—

(a) sections 134 to 136 (health in pregnancy grant: Northern Ireland), and

(b) section 164 (regulations: control by Northern Ireland Assembly).

(6) The amendment, repeal or revocation by this Act of any enactment has the same extent as the enactment amended, revoked or repealed, but subject to subsection (7).

(7) Subsection (6) does not apply to the repeals in Part 5 of Schedule 15; and accordingly those repeals, apart from the repeal mentioned in subsection (3)(b), extend to England and Wales only.

170 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

(a) the provisions of this Part, except section 166 and Schedule 15 (repeals), and

(b) any other provision of this Act—

(i) so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power to make orders or regulations that is conferred by the provision or by any amendment made by the provision, or

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(ii) so far as the provision, or any amendment made by the provision, defines any expression relevant to the exercise of any such power.

(2) Subsection (1)(b) does not apply to section 111 or Schedule 8 (extension of powers under s. 60 of Health Act 1999).

(3) Except as provided by subsection (1), the provisions of this Act come into force on such day as the appropriate authority (as determined by section 171) may by order appoint.

(4) Different days may be appointed under subsection (3) for different purposes.

171 The appropriate authority by whom commencement order is made

(1) This section has effect to determine who is the appropriate authority for the purposes of section 170(3).

(2) Except as provided by subsections (3) to (5), the appropriate authority is the Secretary of State.

(3) In relation to sections 119, 120 and 122 (responsible officers), so far as they relate to Northern Ireland, the appropriate authority is the Department of Health, Social Services and Public Safety in Northern Ireland.

(4) In relation to the following provisions—

(a) Part 3 (public health protection), including Schedule 11, and Part 3 of Schedule 15 so far as they relate to Wales (and section 166 so far as it relates to that Part of Schedule 15 in its application to Wales),

(b) section 140 (pharmaceutical services), so far as relating to Part 2 of Schedule 12, together with that Part of that Schedule,

(c) section 141(2) (remuneration for persons providing pharmaceutical services: appointment of determining authorities in relation to Wales),

(d) section 144 (weighing and measuring of children: Wales),

(e) subsections (1) to (7) of section 146 (direct payments in lieu of provision of care services), so far as they relate to Wales,

(f) subsection (8) of that section,

(g) section 147 (abolition of maintenance liability of relatives), Schedule 13 and Part 5 of Schedule 15, so far as they relate to local authorities in Wales (and section 166 so far as relating to Part 5 of Schedule 15 in its application to local authorities in Wales),

(h) section 148 (ordinary residence for certain purposes of National Assistance Act 1948 (c. 29) etc.), so far as relating to Wales, and

(i) the repeals in the National Health Service (Wales) Act 2006 (c. 42) in Part 4 of Schedule 15 (and section 166 so far as relating to those repeals),

the appropriate authority is the Welsh Ministers.

(5) In relation to Part 4 (health in pregnancy grant), the appropriate authority is the Treasury.

172 Consultation in relation to commencement

(1) Before making a commencement order relating to—

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(a) section 111 and Schedule 8 (extension of powers under section 60 of the Health Act 1999 (c. 8)) so far as relating to—
  (i) subsection (2A) of section 60 of the Health Act 1999,
  (ii) the repeal of paragraph 7(3) of Schedule 3 to that Act,
  (iii) the amendments of paragraphs 8 and 9 of Schedule 3 to that Act, so far as relating to a profession that is not a reserved profession for Scotland, or
  (iv) the meaning of "enactment" for the purposes of Schedule 3 to that Act,

(b) section 112 (standard of proof in fitness to practise proceedings) so far as relating to a profession that is not a reserved profession for Scotland, or

(c) section 116 (powers of Secretary of State and devolved administrations), so far as relating to the functions of the Scottish Ministers,

the Secretary of State must consult the Scottish Ministers.

(2) For the purposes of subsection (1)(a)(iii) and (b), a profession is a reserved profession for Scotland if it falls within Section G2 (health professions) of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46).

(3) Before making a commencement order relating to—

(a) paragraph 13, 14(a), (b)(i) or (c), 16, 17, 18, 19, 20, 22, 23, 24(b) or (c), 25, 26, 32 or 33 of Schedule 5,

(b) section 95 so far as relating to those paragraphs, or

(c) Part 1 of Schedule 15 so far as relating to those paragraphs (or section 166 so far as relating to that Part of that Schedule),

the Secretary of State must consult the Welsh Ministers.

(4) Before making a commencement order relating to section 148 (ordinary residence for certain purposes of National Assistance Act 1948 etc.) in relation to England, the Secretary of State must consult the Welsh Ministers; and, before making a commencement order relating to that section in relation to Wales, the Welsh Ministers must consult the Secretary of State.

(5) Before making a commencement order relating to—

(a) section 159 (functions of Health Protection Agency in relation to biological substances), or

(b) Part 7 of Schedule 15 (or section 166 so far as relating to that Part of that Schedule),

the Secretary of State must consult the Department of Health, Social Services and Public Safety in Northern Ireland.

(6) In this section "commencement order" means an order under section 170(3).

173 Short title

This Act may be cited as the Health and Social Care Act 2008.

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULES

SCHEDULE 1

Section 1

THE CARE QUALITY COMMISSION

Status

1 (1) The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The Commission's property is not to be regarded as property of, or property held on behalf of, the Crown.

Commencement Information
I272 Sch. 1 para. 1 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(i)**

General powers and duties

2 (1) The Commission 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) This includes, in particular—
- (a) co-operating with other public authorities in the United Kingdom,
- (b) acquiring and disposing of land and other property,
- (c) entering into contracts,
- (d) providing training, and
- (e) doing things outside (as well as within) the United Kingdom.

(3) It is the duty of the Commission to carry out its functions effectively, efficiently and economically.

Commencement Information
I273 Sch. 1 para. 2 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(i)**

Membership

3 (1) The Commission is to consist of—
- (a) a chair appointed by the Secretary of State, and
- (b) other members so appointed.

(2) The Secretary of State must exercise the powers in sub-paragraph (1) so as to secure that the knowledge and experience of the members of the Commission (taken

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together) includes knowledge and experience relating to health care, social care and the Mental Health Act 1983 (c. 20).

(3) The Secretary of State may, in the prescribed manner, remove the chair or any other member from office if (but only if) the Secretary of State is satisfied that the person—
  (a) is unable or unfit to carry out the duties of that office,
  (b) is failing to carry out those duties, or
  (c) is disqualified from holding office (or was disqualified at the time of appointment).

(4) The Secretary of State may by regulations make provision as to—
  (a) the appointment of the chair and other members (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment), and
  (b) subject to this paragraph of this Schedule, the tenure of office of the chair and other members (including the circumstances in which they are to cease to hold office, are disqualified from holding office or may be suspended from office).

(5) Regulations under sub-paragraph (4)(b) relating to the suspension of a person from office may only provide for suspension where it appears to the Secretary of State that one of the conditions in sub-paragraph (3) is or may be satisfied in relation to that person.

Commencement Information
I274 Sch. 1 para. 3 partly in force; Sch. 1 para. 3 in force for specified purposes at Royal Assent, see s. 170
I275 Sch. 1 para. 3 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(n)(i)**

Remuneration and allowances

4 (1) The Commission must pay to its chair, or to any other member, such remuneration and allowances as the Secretary of State may determine.

(2) If the Secretary of State so determines, the Commission must pay or make provision for the payment of such pension, allowances or gratuities as the Secretary of State may determine to or in respect of a person who is or has been the chair or any other member of the Commission.

(3) If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chair of the Commission to receive compensation, the Commission must—
  (a) pay to that person, or
  (b) make provision for the payment to that person of,
such compensation as the Secretary of State may determine.

Commencement Information
I276 Sch. 1 para. 4 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(i)**

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Employees

5 (1) The Commission must appoint a chief executive, who is to be an employee of the Commission.

(2) The Commission may appoint such other employees as it considers appropriate.

(3) Employees of the Commission are to be appointed on such terms and conditions as the Commission may determine.

(4) Without prejudice to its other powers, the Commission may pay, or make provision for the payment of—

(a) pensions, allowances and gratuities, or

(b) compensation for loss of employment or reduction of remuneration,

to or in respect of its employees.

Commencement Information

I277 Sch. 1 para. 5 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(i)**

Procedure

6 (1) The Commission must appoint an advisory committee ("the advisory committee") for the purpose of giving advice or information to it about matters connected with its functions.

(2) In considering how to exercise its functions, the Commission must have regard to relevant advice and information given to it by the advisory committee (whether or not given at its request).

(3) The Commission may appoint such other committees and sub-committees as it thinks fit.

(4) The advisory committee and any committee or sub-committee appointed under sub-paragraph (3) may consist of or include persons who are not members of the Commission.

(5) The advisory committee must include persons of a prescribed description.

(6) The Commission may pay such remuneration and allowances as it thinks fit to persons who—

(a) are members of its committees and sub-committees, but

(b) are not members of the Commission.

(7) The Commission may in all other respects regulate its own procedure.

(8) The validity of proceedings of the Commission is not affected—

(a) by any vacancy in its membership,

(b) by any defect in the appointment of a member, or

(c) by any person—

(i) acting as a member even though ineligible for appointment when purportedly appointed, or

(ii) acting as a member after having ceased to be a member.

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Commencement Information

I278 Sch. 1 para. 6 partly in force; Sch. 1 para. 6 in force for specified purposes at Royal Assent, see s. 170

I279 Sch. 1 para. 6(1)(2)(5) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 2**

I280 Sch. 1 para. 6(3)Sch. 1 para. 6(6)-(8) in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(n)(ii)**

I281 Sch. 1 para. 6(4) in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(n)(iii)**

I282 Sch. 1 para. 6(4) in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 2**

Exercise of functions

7 (1) The Commission may arrange for—

(a) any of its committees, sub-committees, members or employees, or

(b) any other person,

to exercise any of its functions on its behalf.

(2) If the Commission arranges for the exercise of any function as mentioned in sub-paragraph (1)(b), the arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, any such person.

(3) The reference in sub-paragraph (1) to any of the Commission's committees does not include the advisory committee.

Commencement Information

I283 Sch. 1 para. 7(1)(2) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(v)**

I284 Sch. 1 para. 7(3) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 2**

Assistance

8 (1) The Commission may arrange for such persons as it thinks fit to assist it in the exercise of any of its functions in relation to—

(a) a particular case, or

(b) cases of a particular description.

(2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

Commencement Information

I285 Sch. 1 para. 8 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(vi)**

Payments and loans to the Commission

9 (1) The Secretary of State may make payments to the Commission of such amounts, at such times and on such conditions (if any) as the Secretary of State considers appropriate.

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(2) The Secretary of State may, with the approval of the Treasury, lend money to the Commission on such terms (including terms as to repayment and interest) as the Secretary of State may determine.

(3) Except as provided by sub-paragraph (2), the Commission has no power to borrow money.

Commencement Information
I286 Sch. 1 para. 9 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(vi)**

Accounts

10 (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—
(a) the Secretary of State, and
(b) 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 the report on them, before Parliament.

(5) In this paragraph "financial year" means—
(a) the period beginning with the day on which the Commission is established and ending with the next 31 March following that day, and
(b) each successive period of 12 months ending with 31 March.

Commencement Information
I287 Sch. 1 para. 10 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(vi)**

Seal and evidence

11 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.

Commencement Information
I288 Sch. 1 para. 11 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(vi)**

12 A document—

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(a) purporting to be duly executed under the seal of the Commission, or
(b) purporting to be signed on behalf of the Commission,

is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Commencement Information
I289 Sch. 1 para. 12 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(n)(vi)**

SCHEDULE 2

Section 6

TRANSFERS OF PROPERTY AND STAFF ETC.

Transfer schemes

1 (1) The Secretary of State may make one or more transfer schemes for—
(a) the transfer of property, rights and liabilities of the Commission for Healthcare Audit and Inspection to the Care Quality Commission or the Crown;
(b) the transfer of property, rights and liabilities of the Commission for Social Care Inspection to the Care Quality Commission or the Crown;
(c) the transfer of property, rights and liabilities of the Mental Health Act Commission—
(i) to the Care Quality Commission or the Welsh Ministers, or
(ii) to the Crown;
(d) the transfer of property, rights and liabilities of the Crown to the Care Quality Commission.

(2) The property, rights and liabilities which may be the subject of a scheme include—
(a) any that would otherwise be incapable of being transferred or assigned,
(b) rights and liabilities under a contract of employment, and
(c) criminal liabilities.

(3) A scheme under this paragraph may define the property, rights and liabilities to be transferred by specifying or describing them (including describing them by reference to a specified part of the transferor's undertaking).

(4) A scheme under this paragraph may contain provision for the payment of compensation by the Secretary of State to any person or body (other than one mentioned in sub-paragraph (1)) whose interests are adversely affected by the scheme.

(5) A scheme under this paragraph may include supplementary, incidental, transitional and consequential provision.

(6) The Secretary of State may not make a scheme under this paragraph for the transfer of property, rights or liabilities to the Welsh Ministers unless the scheme is made with the consent of the Welsh Ministers.

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Commencement Information
I290 Sch. 2 para. 1 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(o)**

Transfer

2 The property, rights and liabilities which are the subject of a scheme under paragraph 1 are, by virtue of this paragraph, transferred on the day appointed by the scheme in accordance with the provisions of the scheme.

Commencement Information
I291 Sch. 2 para. 2 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(o)**

Employment

3 The transfer by paragraph 2 of the rights and liabilities relating to an individual's contract of employment does not break the continuity of the individual's employment and, accordingly—

(a) the individual is not to be regarded for the purposes of Part 2 of the Employment Rights Act 1996 (c. 18) as having been dismissed by virtue of the transfer, and

(b) the individual's period of employment with the transferor counts as a period of employment with the transferee for the purposes of that Act.

Commencement Information
I292 Sch. 2 para. 3 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(o)**

4 (1) Paragraph 2 does not operate to transfer the rights and liabilities under an individual's contract of employment if, before the transfer takes effect, the individual informs the transferor or transferee that the individual objects to the transfer.

(2) Where an individual does inform the transferor or transferee as specified in sub-paragraph (1), the individual's contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but the individual is not, for any purpose, to be regarded as having been dismissed by the transferor.

(3) This paragraph is without prejudice to any right of an individual employed by a transferor to terminate the individual's contract of employment if (apart from the change of employer) a substantial change is made to the individual's detriment in the individual's working conditions.

Commencement Information
I293 Sch. 2 para. 4 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(o)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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Transitional

5 (1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by paragraph 2 which is in effect immediately before it is transferred is to be treated as if done by or in relation to the transferee.

(2) There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred.

(3) A reference to the transferor in any document relating to anything so transferred is to be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the transferee.

(4) A transfer under paragraph 2 does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

Commencement Information
I294 Sch. 2 para. 5 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(o)**

SCHEDULE 3

Section 52

Amendments of Mental Health Act 1983

1 In this Schedule "the MHA" means the Mental Health Act 1983 (c. 20).

Commencement Information
I295 Sch. 3 para. 1 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

2 In section 57 of the MHA (treatment requiring consent and a second opinion), in subsection (2)(a), for "the Secretary of State" (in both places) substitute " the regulatory authority ".

Commencement Information
I296 Sch. 3 para. 2 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

3 In section 58 of the MHA (treatment requiring consent or a second opinion), in subsection (3)(a), for "the Secretary of State" substitute " the regulatory authority ".

Commencement Information
I297 Sch. 3 para. 3 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

4 (1) Section 61 of the MHA (review of treatment) is amended as follows.

(2) For "the Secretary of State" (wherever occurring) substitute " the regulatory authority ".

(3) In subsection (3), after "to him" insert " (whether in England or Wales) ".

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Commencement Information
I298 Sch. 3 para. 4 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

5 In section 64H of the MHA (certificates: supplementary provision), in subsections (4) and (5), for "appropriate national authority" substitute " regulatory authority ".

Commencement Information
I299 Sch. 3 para. 5 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

6 (1) Section 118 of the MHA (code of practice) is amended as follows.

(2) In subsection (2), for "appointed for the purposes of this section by the Secretary of State" substitute " appointed for the purposes of this section by the regulatory authority ".

(3) After subsection (6) insert—

"(7) The Care Quality Commission may at any time make proposals to the Secretary of State as to the content of the code of practice which the Secretary of State must prepare, and from time to time revise, under this section in relation to England."

Commencement Information
I300 Sch. 3 para. 6 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

7 (1) Section 119 of the MHA (practitioners approved for Part 4 and section 118) is amended as follows.

(2) In subsection (1)—

(a) for "The Secretary of State" substitute " The regulatory authority ",
(b) for "he" substitute " it ", and
(c) for "by him" substitute " by the authority ".

(3) In subsection (2), omit "by the Secretary of State".

Commencement Information
I301 Sch. 3 para. 7 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

8 For section 120 of the MHA substitute—

"**120 General protection of relevant patients**

(1) The regulatory authority must keep under review and, where appropriate, investigate the exercise of the powers and the discharge of the duties conferred or imposed by this Act so far as relating to the detention of patients or their reception into guardianship or to relevant patients.

(2) Relevant patients are—

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(a) patients liable to be detained under this Act,
(b) community patients, and
(c) patients subject to guardianship.

(3) The regulatory authority must make arrangements for persons authorised by it to visit and interview relevant patients in private—
(a) in the case of relevant patients detained under this Act, in the place where they are detained, and
(b) in the case of other relevant patients, in hospitals and regulated establishments and, if access is granted, other places.

(4) The regulatory authority must also make arrangements for persons authorised by it to investigate any complaint as to the exercise of the powers or the discharge of the duties conferred or imposed by this Act in respect of a patient who is or has been detained under this Act or who is or has been a relevant patient.

(5) The arrangements made under subsection (4)—
(a) may exclude matters from investigation in specified circumstances, and
(b) do not require any person exercising functions under the arrangements to undertake or continue with any investigation where the person does not consider it appropriate to do so.

(6) Where any such complaint as is mentioned in subsection (4) is made by a Member of Parliament or a member of the National Assembly for Wales, the results of the investigation must be reported to the Member of Parliament or member of the Assembly.

(7) For the purposes of a review or investigation under subsection (1) or the exercise of functions under arrangements made under this section, a person authorised by the regulatory authority may at any reasonable time—
(a) visit and interview in private any patient in a hospital or regulated establishment,
(b) if the authorised person is a registered medical practitioner or approved clinician, examine the patient in private there, and
(c) require the production of and inspect any records relating to the detention or treatment of any person who is or has been detained under this Act or who is or has been a community patient or a patient subject to guardianship.

(8) The regulatory authority may make provision for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any review or investigation for which it is responsible under subsection (1) or functions under arrangements made by it under this section.

(9) In this section “regulated establishment” means—
(a) an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or
(b) premises used for the carrying on of a regulated activity (within the meaning of Part 1 of the Health and Social Care Act 2008) in respect of which a person is registered under Chapter 2 of that Part.”

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Commencement Information

I302 Sch. 3 para. 8 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

9 After section 120 of the MHA insert—

"**120A Investigation reports**

(1) The regulatory authority may publish a report of a review or investigation carried out by it under section 120(1).

(2) The Secretary of State may by regulations make provision as to the procedure to be followed in respect of the making of representations to the Care Quality Commission before the publication of a report by the Commission under subsection (1).

(3) The Secretary of State must consult the Care Quality Commission before making any such regulations.

(4) The Welsh Ministers may by regulations make provision as to the procedure to be followed in respect of the making of representations to them before the publication of a report by them under subsection (1).

120B Action statements

(1) The regulatory authority may direct a person mentioned in subsection (2) to publish a statement as to the action the person proposes to take as a result of a review or investigation under section 120(1).

(2) The persons are—
  (a) the managers of a hospital within the meaning of Part 2 of this Act;
  (b) a local social services authority;
  (c) persons of any other description prescribed in regulations.

(3) Regulations may make further provision about the content and publication of statements under this section.

(4) "Regulations" means regulations made—
  (a) by the Secretary of State, in relation to England;
  (b) by the Welsh Ministers, in relation to Wales.

120C Provision of information

(1) This section applies to the following persons—
  (a) the managers of a hospital within the meaning of Part 2 of this Act;
  (b) a local social services authority;
  (c) persons of any other description prescribed in regulations.

(2) A person to whom this section applies must provide the regulatory authority with such information as the authority may reasonably request for or in connection with the exercise of its functions under section 120.

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(3) A person to whom this section applies must provide a person authorised under section 120 with such information as the person so authorised may reasonably request for or in connection with the exercise of functions under arrangements made under that section.

(4) This section is in addition to the requirements of section 120(7)(c).

(5) "Information" includes documents and records.

(6) "Regulations" means regulations made—

(a) by the Secretary of State, in relation to England;

(b) by the Welsh Ministers, in relation to Wales.

120D Annual reports

(1) The regulatory authority must publish an annual report on its activities in the exercise of its functions under this Act.

(2) The report must be published as soon as possible after the end of each financial year.

(3) The Care Quality Commission must send a copy of its annual report to the Secretary of State who must lay the copy before Parliament.

(4) The Welsh Ministers must lay a copy of their annual report before the National Assembly for Wales.

(5) In this section "financial year" means—

(a) the period beginning with the date on which section 52 of the Health and Social Care Act 2008 comes into force and ending with the next 31 March following that date, and

(b) each successive period of 12 months ending with 31 March."

Commencement Information

I303 Sch. 3 para. 9 partly in force; Sch. 3 para. 9 in force for specified purposes at Royal Assent, see s. 170

I304 Sch. 3 para. 9 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

10 In section 129 of the MHA (obstruction), in subsection (1), after paragraph (c) insert—

"(ca) fails to comply with a request made under section 120C; or".

Commencement Information

I305 Sch. 3 para. 10 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

11 (1) Section 134 of the MHA (correspondence of patients) is amended as follows.

(2) In subsection (3), after paragraph (c) insert—

"(ca) the Care Quality Commission;".

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(3) In subsection (6), for "section 121(7) and (8) above" substitute " section 134A(1) to (4) ".

(4) In subsection (9), after "this section" insert " and section 134A ".

Commencement Information

I306 Sch. 3 para. 11 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

12 After section 134 of the MHA insert—

"**134A Review of decisions to withhold correspondence**

(1) The regulatory authority must review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 134 if an application for a review of the decision is made—

(a) in a case under subsection (1)(b) of that section, by the patient; or

(b) in a case under subsection (2) of that section, either by the patient or by the person by whom the postal packet was sent.

(2) An application under subsection (1) must be made within 6 months of receipt by the applicant of the notice referred to in section 134(6).

(3) On an application under subsection (1), the regulatory authority may direct that the postal packet (or anything contained in it) is not to be withheld.

(4) The managers of the hospital concerned must comply with any such direction.

(5) The Secretary of State may by regulations make provision in connection with the making to and determination by the Care Quality Commission of applications under subsection (1), including provision for the production to the Commission of any postal packet which is the subject of such an application.

(6) The Welsh Ministers may by regulations make provision in connection with the making to them of applications under subsection (1), including provision for the production to them of any postal packet which is the subject of such an application."

Commencement Information

I307 Sch. 3 para. 12 partly in force; Sch. 3 para. 12 in force for specified purposes at Royal Assent, see s. 170

I308 Sch. 3 para. 12 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

13 In section 145 of the MHA (general interpretation), in subsection (1), insert at the appropriate place—

""the regulatory authority" means—

(a) in relation to England, the Care Quality Commission;

(b) in relation to Wales, the Welsh Ministers;".

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I309 Sch. 3 para. 13 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

SCHEDULE 4

Section 66

INTERACTION WITH OTHER AUTHORITIES

PART 1

INTERPRETATION

Inspection authorities

1 (1) In this Schedule references to inspection authorities are to be read in accordance with sub-paragraph (2) or (3), as the case may be.

(2) For the purposes of paragraph 5 or 6 the inspection authorities are—
- (a) Her Majesty's Chief Inspector of Prisons,
- (b) Her Majesty's Chief Inspector of Constabulary,
- (c) Her Majesty's Chief Inspector of the Crown Prosecution Service,
- (d) Her Majesty's Chief Inspector of the National Probation Service for England and Wales,
- (e) Her Majesty's Chief Inspector of Court Administration,
- (f) Her Majesty's Chief Inspector of Education, Children's Services and Skills, and
- (g) the Audit Commission for Local Authorities and the National Health Service in England.

(3) For the purposes of paragraph 7 the inspection authorities are—
- (a) Her Majesty's Chief Inspector of Prisons,
- (b) Her Majesty's Inspectors of Constabulary,
- (c) Her Majesty's Chief Inspector of the Crown Prosecution Service,
- (d) Her Majesty's Inspectorate of the National Probation Service for England and Wales,
- (e) Her Majesty's Inspectorate of Court Administration,
- (f) Her Majesty's Chief Inspector of Education, Children's Services and Skills, and
- (g) the Audit Commission for Local Authorities and the National Health Service in England.

Commencement Information
I310 Sch. 4 para. 1 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(p)(i)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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Inspection functions

2 In this Schedule "inspection functions" means functions relating to, or connected with, inspections carried out by the Commission under section 60.

Commencement Information
I311 Sch. 4 para. 2 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 34(a)**

Public authorities

3 (1) In this Schedule "public authority"—
(a) includes any person certain of whose functions are functions of a public nature, but
(b) does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

(2) Subject to paragraph 9(3), references in this Schedule to a public authority do not include a public authority outside the United Kingdom.

(3) In relation to a particular act, a person is not a public authority by virtue of sub-paragraph (1) if the nature of the act is private.

Commencement Information
I312 Sch. 4 para. 3 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(p)(ii)**

PART 2

EXERCISE OF FUNCTIONS

Delegation of inspection functions to public authorities

4 (1) The Commission may delegate any of its inspection functions (to such extent as it may determine) to another public authority.

(2) If the carrying out of an inspection is delegated under sub-paragraph (1) it is nevertheless to be regarded for the purposes of any enactment as carried out by the Commission.

Commencement Information
I313 Sch. 4 para. 4 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 34(b)**

Inspection programmes and inspection frameworks

5 (1) The Commission must from time to time, or at such times as the Secretary of State may specify by order, prepare—
(a) a document setting out what inspections it proposes to carry out (an "inspection programme"), and

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(b) a document setting out the manner in which it proposes to exercise its functions of inspecting and reporting (an "inspection framework").

(2) Before preparing an inspection programme or an inspection framework the Commission must consult—

(a) the Secretary of State,

(b) the inspection authorities, and

(c) any other person or body specified by an order made by the Secretary of State,

and it must send to each of those persons or bodies a copy of each programme or framework once it is prepared.

(3) The Secretary of State may by order specify the form that inspection programmes or inspection frameworks are to take.

(4) The Commission may determine that any document or combination of documents prepared for the purposes of any other enactment or enactments is to be treated as a document prepared for the purposes of sub-paragraph (1)(b) (so long as any requirements applying under or by virtue of this paragraph are complied with in relation to the document or documents concerned).

(5) Nothing in any inspection programme or inspection framework is to be read as preventing the Commission from making visits without notice.

Commencement Information

I314 Sch. 4 para. 5 partly in force; Sch. 4 para. 5 in force for specified purposes at Royal Assent, see s. 170

I315 Sch. 4 para. 5 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(p)(iii)**

Inspections by other inspectors of activities within Commission's remit

6 (1) If—

(a) a specified inspector is proposing to carry out an inspection that would involve inspecting a specified organisation, and

(b) the Commission considers that the proposed inspection would impose an unreasonable burden on the specified organisation, or would do so if carried out in a particular way,

the Commission must, subject to sub-paragraph (6), give a notice to the specified inspector requiring the inspector not to carry out the proposed inspection, or not to carry it out in that way.

(2) In this paragraph "specified inspector" means—

(a) an inspection authority, or

(b) any other person or body specified by order made by the Secretary of State.

(3) In this paragraph "specified organisation" means a person or body specified by order made by the Secretary of State.

(4) A person or body may be specified under sub-paragraph (3) in relation to particular functions or particular activities.

(5) In the case of a person or body so specified, sub-paragraph (1)(a) is to be read as referring to an inspection that would involve inspecting the discharge by that person

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or body of any of the functions, or the carrying on by that person or body of any of the activities, in relation to which it is specified.

(6) The Secretary of State may by order specify cases or circumstances in which a notice need not, or may not, be given under this paragraph.

(7) Where a notice is given under this paragraph, the proposed inspection is not to be carried out, or (as the case may be) is not to be carried out in the manner mentioned in the notice; but this is subject to sub-paragraph (8).

(8) The Secretary of State, if satisfied that the proposed inspection—
  (a) would not impose an unreasonable burden on the specified organisation in question, or
  (b) would not do so if carried out in a particular manner,

may give consent to the inspection being carried out, or being carried out in that manner.

(9) The Secretary of State may by order make provision supplementing that made by this paragraph, including in particular—
  (a) provision about the form of notices;
  (b) provision prescribing the period within which notices are to be given;
  (c) provision prescribing circumstances in which notices are, or are not, to be made public;
  (d) provision for revising or withdrawing notices;
  (e) provision for setting aside notices not validly given.

Commencement Information

I316 Sch. 4 para. 6 partly in force; Sch. 4 para. 6 in force for specified purposes at Royal Assent, see s. 170

I317 Sch. 4 para. 6 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 34(c)**

Co-operation

7 The Commission must co-operate with—
  (a) the inspection authorities, and
  (b) any other public authority specified by order made by the Secretary of State,

where it is appropriate to do so for the efficient and effective exercise of the Commission's functions.

Commencement Information

I318 Sch. 4 para. 7 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(p)(iv)**

Joint action

8 (1) The Commission may act jointly with another public authority where it is appropriate to do so for the efficient and effective exercise of the Commission's functions.

(2) Sub-paragraph (1) is without prejudice to any other power the Commission may have to act jointly with another public authority.

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Commencement Information
I319 Sch. 4 para. 8 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(p)(iv)**

Advice or assistance for other public authorities

9 (1) The Commission may, if it thinks it appropriate to do so, provide advice or assistance to another public authority for the purpose of the exercise by that authority of that authority's functions.

(2) Advice or assistance under this paragraph may be provided on such terms, including terms as to payment, as the Commission thinks fit.

(3) In this paragraph the reference to another public authority includes a public authority in the Channel Islands or the Isle of Man.

Commencement Information
I320 Sch. 4 para. 9 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 34(d)**

Inspections carried out under arrangements

10 (1) The Commission may make arrangements with—

(a) an inspection authority, or

(b) any other public authority specified by order made by the Secretary of State,

to carry out, on behalf of the authority, inspections in England of any institution or matter which the Commission is not required or authorised to carry out by virtue of any other enactment.

(2) Inspections under this paragraph may be carried out on such terms, including terms as to payment, as the Commission thinks fit.

Commencement Information
I321 Sch. 4 para. 10 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 34(e)**

SCHEDULE 5

Section 95

FURTHER AMENDMENTS RELATING TO PART 1

PART 1

AMENDMENTS OF CARE STANDARDS ACT 2000

1 In this Part of this Schedule "the 2000 Act" means the Care Standards Act 2000 (c. 14).

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information
I322 Sch. 5 para. 1 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(a)**

2 (1) Section 1 of the 2000 Act (children's homes) is amended as follows.

(2) In subsection (4), after "establishment" insert " in Wales ".

(3) After that subsection insert—

"(4A) An establishment in England is not a children's home if it is—

(a) a hospital (within the meaning of the National Health Service Act 2006); or

(b) a residential family centre,

or if it is of a description excepted by regulations."

Commencement Information
I323 Sch. 5 para. 2 partly in force; Sch. 5 para. 2 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/10/2010

3 In section 2 of the 2000 Act (independent hospitals etc), in subsection (1), after "this Act" insert " as it applies in relation to Wales ".

4 (1) Section 3 of the 2000 Act (care homes) is amended as follows.

(2) In subsection (3), after "establishment" insert " in Wales ".

(3) After that subsection insert—

"(4) And an establishment in England is not a care home if it is—

(a) a hospital (within the meaning of the National Health Service Act 2006); or

(b) a children's home,

or if it is of a description excepted by regulations."

Commencement Information
I324 Sch. 5 para. 4 partly in force; Sch. 5 para. 4 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/10/2010

5 (1) Section 4 of the 2000 Act (other basic definitions) is amended as follows.

(2) In subsection (8), for paragraph (a) substitute—

"(a) any reference to a description of establishment is a reference to—

(i) a children's home,

(ii) a children's home providing accommodation for the purpose of restricting liberty,

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(iii) an independent hospital in Wales,

(iv) an independent hospital in Wales in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983,

(v) an independent clinic in Wales,

(vi) a care home in Wales, or

(vii) a residential family centre;".

(3) For subsection (9) substitute—

"(9) Below in this Act—

(a) any reference to a description of agency is a reference to—

(i) an independent medical agency in Wales or, where the activities of an independent medical agency are carried on from two or more branches, a branch in Wales of an independent medical agency,

(ii) a domiciliary care agency in Wales or, where the activities of a domiciliary care agency are carried on from two or more branches, a branch in Wales of a domiciliary care agency,

(iii) a nurses agency in Wales or, where the activities of a nurses agency are carried on from two or more branches, a branch in Wales of a nurses agency,

(iv) a fostering agency or, where the activities of a fostering agency are carried on from two or more branches, a branch of a fostering agency,

(v) a voluntary adoption agency, or

(vi) an adoption support agency or, where the activities of an adoption support agency are carried on from two or more branches, a branch of an adoption support agency;

(b) a reference to any agency is a reference to an agency or branch of any of those descriptions."

VALID FROM 01/10/2010

6 (1) Section 5 of the 2000 Act (registration authorities) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (a) substitute—

"(a) the registration authority in the case of establishments and agencies mentioned in subsection (1A) is Her Majesty's Chief Inspector of Education, Children's Services and Skills (referred to in this Act as "the CIECSS");", and

(b) in paragraph (b) for "in relation to Wales" substitute " in any other case ".

(3) After subsection (1) insert—

"(1A) The establishments and agencies are—

(a) children's homes in England,

(b) residential family centres in England,

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(c) fostering agencies in England or, where the activities of a fostering agency are carried on from two or more branches, the branches in England,

(d) voluntary adoption agencies whose principal office is in England, and

(e) adoption support agencies in England or, where the activities of an adoption support agency are carried on from two or more branches, the branches in England."

7 Omit section 5A (general duties of Commission for Healthcare Audit and Inspection) and section 5B (general duties of Commission for Social Care Inspection) of the 2000 Act.

Commencement Information
I325 Sch. 5 para. 7 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(b)**

8 (1) Section 8 of the 2000 Act (general functions of the Welsh Ministers) is amended as follows.

(2) For subsection (3A) substitute—

"(3A) But the functions which may be so specified do not include functions of making, confirming or approving subordinate legislation (as defined by section 158(1) of the Government of Wales Act 2006)."

(3) In subsection (6)(b)(i), for "the CSCI" substitute " the Care Quality Commission ".

(4) In subsection (7), omit the words from ", other than" to the end.

Commencement Information
I326 Sch. 5 para. 8 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(c)**

9 In section 10 of the 2000 Act (inquiries), omit subsection (6).

Commencement Information
I327 Sch. 5 para. 9 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(d)**

VALID FROM 01/10/2010

10 In section 11 of the 2000 Act (requirement to register)—

(a) omit subsection (2),

(b) in subsection (3), for "subsections (1) and (2)" substitute " subsection (1) ", and

(c) in subsection (4), omit "the CHAI, the CSCI or".

11 In section 12 of the 2000 Act (applications for registration), in subsection (2), for the words from "the amount determined" to the end substitute " the prescribed amount ".

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Commencement Information

I328 Sch. 5 para. 11 in force at 2.11.2009 for specified purposes for E. by S.I. 2009/2862, **art. 2(a)**

VALID FROM 01/10/2010

12 In section 14 of the 2000 Act (cancellation of registration), in subsection (2), after paragraph (e) insert—

"(f) an offence under Part 1 of the Health and Social Care Act 2008 or regulations made under that Part."

13 After section 14 of the 2000 Act insert—

"**14A Suspension of registration**

(1) The Welsh Ministers may at any time suspend for a specified period the registration of a person in respect of an establishment or agency for which the Welsh Ministers are the registration authority.

(2) Except where the Welsh Ministers give notice under section 20B, the power conferred by subsection (1) is exercisable only on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements.

(3) The suspension of a person's registration does not affect the continuation of the registration (but see sections 24A and 26 as to offences).

(4) A period of suspension may be extended under subsection (1) on one or more occasions.

(5) Reference in this Part to the suspension of a person's registration is to suspension under this section, and related expressions are to be read accordingly.

(6) In this section "relevant requirements" has the same meaning as in section 14."

Commencement Information

I329 Sch. 5 para. 13 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(e)**

14 In section 15 of the 2000 Act (applications by registered persons)—

(a) in subsection (1), at the end of paragraph (b) insert "; or

(c) for the cancellation of, or the variation of the period of, any suspension of the registration.",

(b) in subsection (3)—

(i) after "(a)" insert " or (c) ", and

(ii) for the words from "a fee of—" to the end substitute " a fee of the prescribed amount ",

(c) after subsection (4) insert—

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"(4A) If the Welsh Ministers decide to grant an application under subsection (1)(c), they must serve notice in writing of their decision on the applicant (stating, where applicable, the period as varied).", and

(d) for subsection (5) substitute—

"(5) If different amounts are prescribed under subsection (3), the regulations may provide for the appropriate Minister to determine which amount is payable in a particular case."

Commencement Information

I330 Sch. 5 para. 14(a)(b)(i)(c) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(f)**

I331 Sch. 5 para. 14(b)(ii) in force at 2.11.2009 for specified purposes for E. by S.I. 2009/2862, **art. 2(b)**

15 In section 16 of the 2000 Act (regulations about registration), in subsection (3), for the words from "an annual fee—" to the end substitute " an annual fee of the prescribed amount ".

Commencement Information

I332 Sch. 5 para. 15 in force at 2.11.2009 for specified purposes for E. by S.I. 2009/2862, **art. 2(c)**

16 In section 17 of the 2000 Act (notice of proposals)—

(a) in subsection (4), after "section 20" insert " or 20A or gives notice under section 20B ",

(b) after paragraph (a) of that subsection insert—

"(aa) to suspend the registration or extend a period of suspension;", and

(c) in subsection (5), after "(a)" insert " or (c) ".

Commencement Information

I333 Sch. 5 para. 16(b)(c) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(g)**

17 In section 19 of the 2000 Act (notice of decisions), in subsection (4)—

(a) omit the word "and" at the end of paragraph (b), and

(b) after that paragraph insert—

"(ba) in the case of a decision to adopt a proposal under section 17(4)(aa), state the period (or extended period) of suspension; and".

Commencement Information

I334 Sch. 5 para. 17 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(h)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/10/2010

18 (1) Section 20 of the 2000 Act (urgent procedure for cancellation etc) is amended as follows.

(2) In subsection (1)—

(a) after "If" insert " in respect of an establishment or agency for which the CIECSS is the registration authority ",

(b) in paragraph (a), for "the registration authority" substitute " the CIECSS ", and

(c) in sub-paragraph (i) of that paragraph, for "an" substitute " the ".

(3) In subsection (3), for "the registration authority" substitute " the CIECSS ".

(4) In subsection (5), for "the registration authority" substitute " the CIECSS ".

(5) For subsection (6) substitute—

"(6) For the purposes of this section the appropriate authorities are—

(a) the local authority in whose area the establishment or agency is situated; and

(b) any other statutory authority whom the CIECSS thinks it appropriate to notify."

(6) Accordingly, for the heading of section 20 substitute " Urgent procedure for cancellation, variation etc: England "

VALID FROM 01/10/2010

19 After section 20 of the 2000 Act insert—

"**20A Urgent procedure for cancellation: Wales**

(1) If in respect of an establishment or agency for which the Welsh Ministers are the registration authority—

(a) the Welsh Ministers apply to a justice of the peace for an order cancelling the registration of a person in respect of the establishment or agency, and

(b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,

the justice may make the order, and the cancellation has effect from the time when the order is made.

(2) An application under subsection (1) may, if the justice thinks fit, be made without notice.

(3) As soon as practicable after the making of an application under this section, the Welsh Ministers must notify the appropriate authorities of the making of the application.

(4) An order under subsection (1) is to be in writing.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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(5) Where such an order is made, the Welsh Ministers must, as soon as practicable after the making of the order, serve on the person registered in respect of the establishment or agency—
  (a) a copy of the order, and
  (b) notice of the right of appeal conferred by section 21.

(6) For the purposes of this section the appropriate authorities are—
  (a) the local authority in whose area the establishment or agency is situated,
  (b) the Local Health Board in whose area the establishment or agency is situated, and
  (c) any statutory authority not falling within paragraph (a) or (b) whom the Welsh Ministers think it appropriate to notify.

(7) In this section "statutory authority" has the same meaning as in section 20.

20B Urgent procedure for suspension or variation etc: Wales

(1) Subsection (2) applies where—
  (a) a person is registered under this Part in respect of an establishment or agency for which the Welsh Ministers are the registration authority, and
  (b) the Welsh Ministers have reasonable cause to believe that unless they act under this section any person will or may be exposed to the risk of harm.

(2) Where this subsection applies, the Welsh Ministers may, by giving notice in writing under this section to the person registered in respect of the establishment or agency, provide for any decision of the Welsh Ministers that is mentioned in subsection (3) to take effect from the time when the notice is given.

(3) Those decisions are—
  (a) a decision under section 13(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;
  (b) a decision under section 14A to suspend the registration or extend the period of suspension.

(4) The notice must—
  (a) state that it is given under this section,
  (b) state the Welsh Ministers' reasons for believing that the circumstances fall within subsection (1)(b),
  (c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and
  (d) explain the right of appeal conferred by section 21."

20 (1) Section 21 of the 2000 Act (appeals to the Tribunal) is amended as follows.

(2) In subsection (1)(b), after "20" insert " or 20A ".

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In subsection (3), after "authority" insert " , other than a decision to which a notice under section 20B relates, ".

(4) After subsection (4) insert—

"(4ZA) On an appeal against a decision to which a notice under section 20B relates, the Tribunal may confirm the decision or direct that it shall cease to have effect."

(5) In subsection (5)—

(a) omit the word "or" at the end of paragraph (b), and

(b) after paragraph (c) insert "; or

(d) to vary the period of any suspension."

(6) After subsection (5) insert—

"(6) Subsection (1) does not apply to a decision of the Welsh Ministers under section 30ZA (penalty notices)."

Commencement Information

I335 Sch. 5 para. 20(1) in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(i)**

I336 Sch. 5 para. 20(5)(6) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(i)**

VALID FROM 01/10/2010

21 In section 22 of the 2000 Act (regulation of establishments and agencies), in subsection (7)(i), for the words from "a fee of—" to the end substitute " a fee of the prescribed amount; ".

22 After section 24 of the 2000 Act insert—

"**24A Offences relating to suspension**

(1) If a person who is registered under this Part in respect of an establishment or agency carries on or (as the case may be) manages the establishment or agency while the person's registration is suspended, the person is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale."

Commencement Information

I337 Sch. 5 para. 22 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(j)**

23 In section 26 of the 2000 Act (false descriptions of establishments and agencies), after subsection (1) insert—

"(1A) If a person's registration under this Part has been suspended, the registration is to be treated for the purposes of subsection (1) as if it had not been effected."

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Commencement Information
I338 Sch. 5 para. 23 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(j)**

24 In section 29 of the 2000 Act (proceedings for offences)—

(a) for subsection (1) substitute—

"(1) Proceedings in respect of an offence under this Part or regulations made under it shall not, without the written consent of the Attorney General, be taken by any person other than the CIECSS or the Welsh Ministers.",

(b) in subsection (2), for "a period of six months" substitute " the permitted period ", and

(c) after subsection (2) insert—

"(3) "The permitted period" means—

(a) in the case of proceedings brought by the Welsh Ministers, a period of 12 months;

(b) in any other case, a period of 6 months."

Commencement Information
I339 Sch. 5 para. 24(b)(c) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(k)**

25 After section 30 of the 2000 Act insert—

"Penalty notices

30ZA Penalty notices

(1) Where the Welsh Ministers are satisfied that a person has committed a fixed penalty offence, they may give the person a penalty notice in respect of the offence.

(2) A fixed penalty offence is any relevant offence which—

(a) relates to an establishment or agency for which the Welsh Ministers are the registration authority, and

(b) is prescribed for the purposes of this section.

(3) A relevant offence is—

(a) an offence under this Part or under regulations made under this Part, or

(b) an offence under regulations made under section 9 of the Adoption and Children Act 2002.

(4) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice.

(5) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.

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(6) Where a person is given a penalty notice, the person cannot be convicted of the offence to which the notice relates if the person pays the penalty in accordance with the notice.

(7) Penalties under this section are payable to the Welsh Ministers.

(8) In this section "prescribed" means prescribed by regulations made by the Welsh Ministers.

30ZB Penalty notices: supplementary provision

(1) The Welsh Ministers may by regulations make—

(a) provision as to the form and content of penalty notices,

(b) provision as to the monetary amount of the penalty and the time by which it is to be paid,

(c) provision determining the methods by which penalties may be paid,

(d) provision as to the records to be kept in relation to penalty notices,

(e) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—

(i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and

(ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates,

(f) provision for a certificate—

(i) purporting to be signed by or on behalf of a prescribed person, and

(ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,

to be received in evidence of the matters so stated,

(g) provision as to action to be taken if a penalty is not paid in accordance with a penalty notice, and

(h) such other provision in relation to penalties or penalty notices as the Welsh Ministers think necessary or expedient.

(2) Regulations under subsection (1)(b)—

(a) may make provision for penalties of different amounts to be payable in different cases, including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid, but

(b) must secure that the amount of any penalty payable in respect of any offence does not exceed one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction.

(3) In this section—

"penalty" means a penalty under a penalty notice;

"penalty notice" has the meaning given by section 30ZA(4)."

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Commencement Information

I340 Sch. 5 para. 25 partly in force; Sch. 5 para. 25 in force for specified purposes at Royal Assent, see s. 170

I341 Sch. 5 para. 25 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(l)**

VALID FROM 01/10/2010

26 (1) In section 30A of the 2000 Act (notification of matters relating to persons carrying on or managing certain establishments or agencies), inserted by the Children and Young Persons Act 2008, subsection (2) is amended as follows.

(2) After paragraph (a) insert—

"(aa) has decided to adopt a proposal under section 17(4)(aa) to suspend the registration of P in respect of the establishment or agency or to extend any such suspension,

(ab) has given a notice under section 20B to suspend the registration of P in respect of the establishment or agency or to extend any such suspension,".

(3) Omit the word "or" at the end of paragraph (b).

(4) At the end of paragraph (c) insert "or

(d) has given P a penalty notice under section 30ZA in respect of an offence which it alleges P committed in relation to the establishment or agency and P has paid the penalty in accordance with the notice,".

VALID FROM 01/10/2010

27 In section 31 of the 2000 Act (inspections by persons authorised by registration authority), in subsection (7), for the words from "require" to "the CIECSS" substitute " require the CIECSS ".

VALID FROM 01/10/2010

28 (1) Section 42 of the 2000 Act (power to extend the application of Part 2) is amended as follows.

(2) In subsection (1), after "(2)" insert " , (2A) ".

(3) For subsection (2) substitute—

"(2) This subsection applies to—

(a) Welsh local authorities providing services in the exercise of their social services functions, and

(b) persons who provide services which are similar to services which—

(i) may or must be so provided by Welsh local authorities, or

(ii) may or must be provided by Welsh NHS bodies.

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(2A) This subsection applies to—

(a) English local authorities providing services in the exercise of their social services functions so far as relating to persons aged under 18, and

(b) persons who provide services which are similar to services which may or must be so provided by English local authorities."

(4) In subsection (4), after "(2)" insert " or (2A) ".

(5) Omit subsection (5).

(6) After subsection (5) insert—

"(6) For the purposes of this section, functions mentioned in section 135(1)(e) of the Education and Inspections Act 2006 are taken to be social services functions relating to persons aged under 18.

(7) In this section—

"cross-border Special Health Authorities" means Special Health Authorities not performing functions only or mainly in respect of England or only or mainly in respect of Wales,

"English local authorities" means local authorities in England,

"Welsh local authorities" means local authorities in Wales, and

"Welsh NHS bodies" means—

(a) Local Health Boards,

(b) National Health Service trusts all or most of whose hospitals, establishments and facilities are situated in Wales,

(c) Special Health Authorities performing functions only or mainly in respect of Wales, and

(d) cross-border Special Health Authorities but only so far as their functions are performed in respect of Wales."

29 (1) Section 55 of the 2000 Act (interpretation of Part 4) is amended as follows.

(2) In subsection (2)(c), for "an establishment, or an agency, of a description" substitute " a home, centre or agency of a kind ".

(3) In subsection (3)—

(a) in paragraph (e) omit "the CSCI,", and

(b) after that paragraph insert—

"(ea) staff of the Care Quality Commission who inspect premises under Part 1 of the Health and Social Care Act 2008 used for or in connection with the provision of social care (within the meaning of that Part) or who are responsible for persons who do so;".

Commencement Information

I342 Sch. 5 para. 29 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(m)**

30 In section 113 of the 2000 Act (default powers of appropriate Minister) omit subsection (1A).

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Commencement Information
I343 Sch. 5 para. 30 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(m)**

VALID FROM 01/10/2010

31 Omit section 113A of the 2000 Act (fees payable under Part 2).

32 After section 118 of the 2000 Act insert—

"**118A Regulations: Wales**

(1) This section has effect where a power to make regulations under this Act is conferred on the Welsh Ministers other than by or by virtue of the Government of Wales Act 2006.

(2) Subsections (1) and (5) to (7) of section 118 apply to the exercise of that power as they apply to the exercise of a power conferred on the Welsh Ministers by or by virtue of that Act.

(3) A statutory instrument containing regulations made in the exercise of that power is subject to annulment in pursuance of a resolution of the Assembly."

Commencement Information
I344 Sch. 5 para. 32 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(n)**

33 In section 120 of the 2000 Act (Wales) omit subsection (1).

Commencement Information
I345 Sch. 5 para. 33 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(n)**

34 In section 121 of the 2000 Act (general interpretation etc), in the Table in subsection (13), omit the entries for the expressions "CHAI" and "CSCI".

Commencement Information
I346 Sch. 5 para. 34 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(n)**

PART 2

AMENDMENTS OF HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

35 In this Part of this Schedule "the 2003 Act" means the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

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Commencement Information
I347 Sch. 5 para. 35 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(n)**

36 Omit sections 41 to 44 of the 2003 Act (regulatory bodies).

Commencement Information
I348 Sch. 5 para. 36 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(n)**

37 In section 45 of the 2003 Act (quality in health care), in subsection (1), after "each" insert " Welsh ".

Commencement Information
I349 Sch. 5 para. 37 in force at 1.4.2010 by S.I. 2010/708, **art. 13(e)**

38 Omit section 46 of the 2003 Act (standards set by Secretary of State).

Commencement Information
I350 Sch. 5 para. 38 in force at 1.4.2010 by S.I. 2010/708, **art. 13(e)**

39 Omit sections 47A to 47C of the 2003 Act (code of practice relating to health care associated infections).

Commencement Information
I351 Sch. 5 para. 39 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(o)**

40 Omit sections 48 to 69A of the 2003 Act (NHS health care: functions of CHAI).

Commencement Information
I352 Sch. 5 para. 40 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(p)** (with art. 11, Sch. 3)
I353 Sch. 5 para. 40 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 17** (with Pt. 3)

41 Omit sections 76 to 91 of the 2003 Act (social services: functions of CSCI).

Commencement Information
I354 Sch. 5 para. 41 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(q)** (with art. 11, Sch. 3)
I355 Sch. 5 para. 41 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 17** (with Pt. 3)

42 In section 96 of the 2003 Act (additional functions of Welsh Ministers), in subsection (2), for paragraph (a) substitute—

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"(a) functions of the Care Quality Commission under Part 1 of the Health and Social Care Act 2008, and".

Commencement Information
I356 Sch. 5 para. 42 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(r)**

43 In section 100 of the 2003 Act (power of Welsh Ministers to require information), in subsection (2)(c), for "NHS body" substitute " Welsh NHS body or cross-border SHA ".

Commencement Information
I357 Sch. 5 para. 43 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(r)**

44 Omit sections 102 to 104 of the 2003 Act (functions of CHAI and CSCI under Care Standards Act).

Commencement Information
I358 Sch. 5 para. 44 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(r)**

45 In section 113 of the 2003 Act (complaints about health care), in subsection (3), omit paragraph (b).

Commencement Information
I359 Sch. 5 para. 45 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(r)**

46 In section 114 of the 2003 Act (complaints about social services), in subsection (2), omit paragraph (b).

Commencement Information
I360 Sch. 5 para. 46 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(r)**

47 Omit sections 120 to 141 of the 2003 Act (supplementary provision about CHAI and CSCI).

Commencement Information
I361 Sch. 5 para. 47 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(s)**
I362 Sch. 5 para. 47 in force at 6.4.2010 in so far as not already in force by S.I. 2010/807, art. 2(1), **Sch. 1 para. 17** (with Pt. 3)

48 For section 143 of the 2003 Act substitute—

"**143 Use by Welsh Ministers of information**

(1) The Welsh Ministers may use any information they obtain, or documents produced to them, in the course of exercising any function of the Welsh

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Ministers referred to in any paragraph of subsection (2) for the purposes of any function of the Welsh Ministers referred to in any other paragraph of that subsection.

(2) The functions of the Welsh Ministers referred to in subsection (1) are—

(a) their functions under Chapter 4 of this Part;

(b) their functions under Chapter 6 of this Part;

(c) their functions exercisable by virtue of section 5(1)(b) or 8(1) to (3) of the Care Standards Act 2000;

(d) their functions under section 80 of the Children Act 1989;

(e) their functions under the Mental Health Act 1983 in their capacity as the regulatory authority (within the meaning of that Act);

(f) any functions exercisable by them by virtue of paragraph 163(1) of Schedule A1 to the Mental Capacity Act 2005.

(3) References to functions in subsection (2) do not include functions of making regulations."

Commencement Information

I363 Sch. 5 para. 48 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(t)**

49 Omit section 144 of the 2003 Act (inquiries: Wales).

Commencement Information

I364 Sch. 5 para. 49 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(t)**

50 Omit sections 145 and 145A of the 2003 Act (CHAI duties to co-operate).

Commencement Information

I365 Sch. 5 para. 50 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(t)**

51 In section 148 of the 2003 Act (interpretation of Part 2), omit the following definitions—

(a) "the CHAI",

(b) "the CSCI",

(c) "financial year", and

(d) "Minister of the Crown".

Commencement Information

I366 Sch. 5 para. 51 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(t)**

52 Omit Schedules 6 to 8 to the 2003 Act (supplementary provision about CHAI and CSCI).

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Commencement Information
I367 Sch. 5 para. 52 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(t)**

PART 3

AMENDMENTS OF OTHER ACTS

Prison Act 1952 (c. 52)

53 (1) Schedule A1 to the Prison Act 1952 (further provision about Her Majesty's Chief Inspector of Prisons) is amended as follows.

(2) In paragraph 2(2)—
(a) omit paragraph (f), and
(b) for paragraph (g) substitute—
"(g) the Care Quality Commission,".

(3) In paragraph 3(2)—
(a) omit paragraph (c), and
(b) for paragraph (d) substitute—
"(d) the Care Quality Commission;".

Commencement Information
I368 Sch. 5 para. 53 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(t)**

Public Records Act 1958 (c. 51)

54 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3—
(a) omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection, and
(b) at the appropriate place insert— " the Care Quality Commission. "

Commencement Information
I369 Sch. 5 para. 54(a) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(u)**
I370 Sch. 5 para. 54(b) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(i)**

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

55 In paragraph 1 of the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies in England and Wales to which the Act applies)—
(a) omit paragraphs (bg) and (bh), and
(b) after paragraph (bh) insert—
"(bj) the Care Quality Commission;".

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Commencement Information

I371 Sch. 5 para. 55 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(v)**

Parliamentary Commissioner Act 1967 (c. 13)

56 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation)—

(a) omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection, and

(b) at the appropriate place insert— " Care Quality Commission. "

Commencement Information

I372 Sch. 5 para. 56(a) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(w)**

I373 Sch. 5 para. 56(b) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(ii)**

House of Commons Disqualification Act 1975 (c. 24)

57 (1) Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualified for membership) is amended as follows.

(2) In Part 2 (bodies of which all members are disqualified)—

(a) omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection, and

(b) at the appropriate place insert— " The Care Quality Commission. "

(3) In Part 3 (other disqualifying offices), omit the entry for members of the Mental Health Act Commission in receipt of remuneration.

Commencement Information

I374 Sch. 5 para. 57(1) in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(q)(iii)**

I375 Sch. 5 para. 57(1) in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(w)**

I376 Sch. 5 para. 57(2)(a)(3) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(w)**

I377 Sch. 5 para. 57(2)(b) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(vi)**

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

58 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified)—

(a) omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection, and

(b) at the appropriate place insert— " The Care Quality Commission. "

Commencement Information

I378 Sch. 5 para. 58(a) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(w)**

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I379 Sch. 5 para. 58(b) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(v)**

Race Relations Act 1976 (c. 74)

59 (1) Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty) is amended as follows.

(2) In Part 2 (bodies and other persons added after commencement of duty)—

(a) omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection, and

(b) at the appropriate place under the heading "Health" insert— " The Care Quality Commission. "

(3) In Part 4 (bodies and other persons added on 31 December 2004), omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection.

Commencement Information

I380 Sch. 5 para. 59(1) in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(q)(vi)**

I381 Sch. 5 para. 59(1) in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(w)**

I382 Sch. 5 para. 59(2)(a)(3) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(w)**

I383 Sch. 5 para. 59(2)(b) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(vii)**

Copyright, Designs and Patents Act 1988 (c. 48)

60 In section 48(6) of the Copyright, Designs and Patents Act 1988 ("the Crown" includes certain bodies with health-related functions), for "the Commission for Social Care Inspection, the Commission for Healthcare Audit and Inspection" substitute " the Care Quality Commission ".

Commencement Information

I384 Sch. 5 para. 60 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Road Traffic Act 1988 (c. 52)

61 In section 144 of the Road Traffic Act 1988 (exceptions from requirement of third-party insurance or security), in subsection (2)—

(a) in paragraph (da) for the words from ", by a Local Health Board" to "Inspection" substitute " or by a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 ", and

(b) in paragraph (g) for "the Commission for Social Care Inspection" substitute " the Care Quality Commission ".

Commencement Information

I385 Sch. 5 para. 61 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

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Vehicle Excise and Registration Act 1994 (c. 22)

62 In paragraph 7 of Schedule 2 to the Vehicle Excise and Registration Act 1994 (exempt health service vehicles)—

(a) omit paragraph (c) (together with the word "or" at the end of it), and

(b) for paragraph (f) substitute—

"(f) the Care Quality Commission."

Commencement Information

I386 Sch. 5 para. 62 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Police Act 1996 (c. 16)

63 (1) Schedule 4A to the Police Act 1996 (further provision about Her Majesty's Inspectors of Constabulary) is amended as follows.

(2) In paragraph 2(2)—

(a) omit paragraph (f), and

(b) for paragraph (g) substitute—

"(g) the Care Quality Commission,".

(3) In paragraph 3(2), for paragraph (d) substitute—

"(d) the Care Quality Commission;".

(4) In paragraph 4—

(a) omit paragraph (f), and

(b) for paragraph (g) substitute—

"(g) the Care Quality Commission,".

Commencement Information

I387 Sch. 5 para. 63 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Audit Commission Act 1998 (c. 18)

64 (1) Section 4 of the Audit Commission Act 1998 (code of audit practice) is amended as follows.

(2) In subsection (7)—

(a) in paragraph (a) omit "the Commission for Healthcare Audit and Inspection and",

(b) in paragraph (b) omit "the Commission for Social Care Inspection and", and

(c) in paragraph (c) before "and such bodies" insert " , the Care Quality Commission ".

(3) In subsection (8), for "the Commission for Healthcare Audit and Inspection" substitute " the Care Quality Commission ".

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I388 Sch. 5 para. 64 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

65 (1) Section 7 of the Audit Commission Act 1998 (fees) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a) for "the Commission for Healthcare Audit and Inspection and such other" substitute " such ", and

(b) in paragraph (c) before "such bodies" insert " the Care Quality Commission and ".

(3) In subsection (9) for paragraph (aa) substitute—

"(aa) the Care Quality Commission,".

Commencement Information
I389 Sch. 5 para. 65 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

66 (1) In section 33 of the Audit Commission Act 1998 (studies for improving economy etc in services), subsection (6) is amended as follows.

(2) In paragraph (c), for "the Commission for Healthcare Audit and Inspection" substitute " the Care Quality Commission ".

(3) For paragraph (d) substitute—

"(d) in the case of a study which has a connection with adult social services (within the meaning of Part 1 of the Health and Social Care Act 2008), also consult the Care Quality Commission; and".

(4) In paragraph (e) for "that Part of that Act" substitute " Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 ".

Commencement Information
I390 Sch. 5 para. 66 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

67 (1) In section 34 of the Audit Commission Act 1998 (reports on impact of statutory provisions), subsection (6) is amended as follows.

(2) For paragraph (ba) substitute—

"(ba) in the case of a study which has a connection with adult social services (within the meaning of Part 1 of the Health and Social Care Act 2008), the Care Quality Commission;".

(3) In paragraph (bb) for "that Part of that Act" substitute " Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 ".

Commencement Information
I391 Sch. 5 para. 67 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

68 (1) In section 49 of the Audit Commission Act 1998 (disclosure), subsection (1) is amended as follows.

(2) Omit paragraph (ba).

(3) In paragraph (bb), for "that Part of that Act" substitute " Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 ".

(4) In paragraph (c) omit the words from "or for the purposes of the functions of the Commission" to the end.

(5) After paragraph (ca) insert—

"(cb) for the purposes of the functions of the Care Quality Commission under Part 1 of the Health and Social Care Act 2008;".

Commencement Information

I392 Sch. 5 para. 68 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

69 In Schedule 2A to the Audit Commission Act 1998 (interaction with other authorities), in paragraph 1(1)—

(a) at the end of paragraph (f) insert the word " or ",

(b) omit paragraph (g) (together with the word "or" at the end of it), and

(c) for paragraph (h) substitute—

"(h) the Care Quality Commission."

Commencement Information

I393 Sch. 5 para. 69 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Local Government Act 1999 (c. 27)

70 In section 25 of the Local Government Act 1999 (co-ordination of inspections etc.), in subsection (2)(e), for "Commission for Social Care Inspection" substitute " Care Quality Commission ".

Commencement Information

I394 Sch. 5 para. 70 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Crown Prosecution Service Inspectorate Act 2000 (c. 10)

71 (1) The Schedule to the Crown Prosecution Service Inspectorate Act 2000 (further provision about Her Majesty's Chief Inspector of the Crown Prosecution Service) is amended as follows.

(2) In paragraph 2(2)—

(a) omit paragraph (f), and

(b) for paragraph (g) substitute—

"(g) the Care Quality Commission,".

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(3) In paragraph 4—

(a) omit paragraph (f), and

(b) for paragraph (g) substitute—

"(g) the Care Quality Commission,".

Commencement Information

I395 Sch. 5 para. 71 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Regulation of Investigatory Powers Act 2000 (c. 23)

72 In Schedule 1 to the Regulation of Investigatory Powers Act 2000 (surveillance authorisation: relevant authorities), for paragraph 20F substitute—

"20F The Care Quality Commission."

Commencement Information

I396 Sch. 5 para. 72 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(x)**

Freedom of Information Act 2000 (c. 36)

73 In Schedule 1 to the Freedom of Information Act 2000 (public authorities), in Part 6 (other public bodies and offices: general)—

(a) omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection, and

(b) at the appropriate place insert— " The Care Quality Commission. "

Commencement Information

I397 Sch. 5 para. 73(a) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(y)**

I398 Sch. 5 para. 73(b) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(viii)**

Criminal Justice and Court Services Act 2000 (c. 43)

74 (1) Schedule 1A to the Criminal Justice and Court Services Act 2000 (further provision about the Inspectorate) is amended as follows.

(2) In paragraph 2(2)—

(a) omit paragraph (f), and

(b) for paragraph (g) substitute—

"(g) the Care Quality Commission,".

(3) In paragraph 3(2)—

(a) omit paragraph (c), and

(b) for paragraph (d) substitute—

"(d) the Care Quality Commission;".

(4) In paragraph 4—

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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(a) omit paragraph (f), and
(b) for paragraph (g) substitute—
"(g) the Care Quality Commission,".

Commencement Information
I399 Sch. 5 para. 74 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(z)**

Courts Act 2003 (c. 39)

75 (1) Schedule 3A to the Courts Act 2003 (further provision about the Inspectors of Court Administration) is amended as follows.

(2) In paragraph 2(2)—
(a) omit paragraph (f), and
(b) for paragraph (g) substitute—
"(g) the Care Quality Commission,".

(3) In paragraph 4—
(a) omit paragraph (f), and
(b) for paragraph (g) substitute—
"(g) the Care Quality Commission,".

Commencement Information
I400 Sch. 5 para. 75 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(z)**

Public Audit (Wales) Act 2004 (c. 23)

76 In section 62 of the Public Audit (Wales) Act 2004 (co-operation), for paragraph (c) substitute—
"(c) the Care Quality Commission,".

Commencement Information
I401 Sch. 5 para. 76 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(z)**

77 In section 64 of the Public Audit (Wales) Act 2004 (provision of information by CHAI)—
(a) in subsection (1), for "The Commission for Healthcare Audit and Inspection" substitute " The Care Quality Commission ",
(b) in subsection (2), for the words from "section 136" to the end substitute " section 76 of the Health and Social Care Act 2008 (disclosure of confidential personal information: offence). ", and
(c) for subsection (3) substitute—

"(3) In this section—
"English NHS body" has the meaning given by subsection (1) of section 97 of that Act; and

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"cross-border SHA" means a cross-border Special Health Authority as defined by that subsection."

Commencement Information
I402 Sch. 5 para. 77 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(z)**

Children Act 2004 (c. 31)

78 In section 20 of the Children Act 2004 (joint area reviews), in subsection (4), for paragraph (d) substitute—

"(d) the Care Quality Commission;".

Commencement Information
I403 Sch. 5 para. 78 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(z)**

Health Act 2006 (c. 28)

79 In section 61 of the Health Act 2006 (Commission to exercise Welsh Ministers' appointment functions), omit "the Commission for Healthcare Audit and Inspection or".

Commencement Information
I404 Sch. 5 para. 79 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(z)**

80 In Schedule 5 to the Health Act 2006 (list of statutory bodies referred to in section 58(3))—

(a) omit the entry for the Commission for Healthcare Audit and Inspection and the entry for the Commission for Social Care Inspection, and

(b) at the appropriate place insert— " The Care Quality Commission. "

Commencement Information
I405 Sch. 5 para. 80(a) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(aa)**
I406 Sch. 5 para. 80(b) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(ix)**

Education and Inspections Act 2006 (c. 40)

81 (1) Paragraph 1 of Schedule 13 to the Education and Inspections Act 2006 (interaction with other authorities) is amended as follows.

(2) In sub-paragraph (2)—

(a) omit paragraph (f), and

(b) for paragraph (g) substitute—

"(g) the Care Quality Commission, and".

(3) In sub-paragraph (3)(f), for "(2)(f) to (h)" substitute " (2)(g) and (h) ".

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information
I407 Sch. 5 para. 81 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

National Health Service Act 2006 (c. 41)

82 In section 9 of the National Health Service Act 2006 (NHS contracts), in subsection (4), for paragraph (k) substitute—

"(k) the Care Quality Commission,".

Commencement Information
I408 Sch. 5 para. 82 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

83 In section 35 of the National Health Service Act 2006 (authorisation of NHS foundation trusts), in subsection (3)(a), for "the Commission for Healthcare Audit and Inspection" substitute " the Care Quality Commission ".

Commencement Information
I409 Sch. 5 para. 83 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

84 In section 56 of the National Health Service Act 2006 (mergers), in subsection (6)(a), for "the Commission for Healthcare Audit and Inspection" substitute " the Care Quality Commission ".

Commencement Information
I410 Sch. 5 para. 84 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

85 In section 71 of the National Health Service Act 2006 (schemes for meeting losses and liabilities etc of certain health service bodies), in subsection (2)(f), for "the Commission for Healthcare Audit and Inspection" substitute " the Care Quality Commission ".

Commencement Information
I411 Sch. 5 para. 85 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

86 In Schedule 10 to the National Health Service Act 2006 (audit of accounts of NHS foundation trusts), in paragraph 8(1)(e), for the words from "the Commission" to the end substitute "the Care Quality Commission".

Commencement Information
I412 Sch. 5 para. 86 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

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National Health Service (Wales) Act 2006 (c. 42)

87 In section 7 of the National Health Service (Wales) Act 2006 (NHS contracts), in subsection (4), for paragraph (k) substitute—

"(k) the Care Quality Commission,".

Commencement Information
I413 Sch. 5 para. 87 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

88 In section 30 of the National Health Service (Wales) Act 2006 (schemes for meeting losses and liabilities etc of certain health service bodies), in subsection (2)—

(a) at the end of paragraph (c) insert " and ", and

(b) omit paragraph (d) (together with the word "and" at the end of it).

Commencement Information
I414 Sch. 5 para. 88 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

NHS Redress Act 2006 (c. 44)

89 In section 5 of the NHS Redress Act 2006 (duty to consider potential application of scheme), in subsection (2), for paragraph (b) substitute—

"(b) the Care Quality Commission."

Commencement Information
I415 Sch. 5 para. 89 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

90 In section 13 of the NHS Redress Act 2006 (duties of co-operation), in subsection (1), for "the Commission for Healthcare Audit and Inspection" substitute " the Care Quality Commission ".

Commencement Information
I416 Sch. 5 para. 90 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

Safeguarding Vulnerable Groups Act 2006 (c. 47)

91 In section 45 of the Safeguarding Vulnerable Groups Act 2006 (supervisory authorities: duty to refer), in subsection (7)—

(a) for paragraph (c) substitute—

"(c) the Care Quality Commission in respect of its functions under Part 1 of the Health and Social Care Act 2008;",

(b) omit paragraph (d), and

(c) in paragraph (e), for "that Act" substitute " the Health and Social Care (Community Health and Standards) Act 2003 ".

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Commencement Information
I417 Sch. 5 para. 91 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

92 (1) Paragraph 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to children) is amended as follows.

(2) In sub-paragraph (10)—

(a) for paragraph (e) substitute—

"(e) the Care Quality Commission;", and

(b) omit paragraph (f).

(3) In sub-paragraph (11), omit paragraph (a).

(4) After sub-paragraph (13) insert—

"(13A) The exercise of a function of the Care Quality Commission so far as the function relates to the inspection of anything which—

(a) is listed in section 60(1) of the Health and Social Care Act 2008, and

(b) involves the provision of any form of treatment or therapy for children,

is a regulated activity relating to children."

(5) In sub-paragraph (14), for "or (11)" substitute " , (11) or (13A) ".

Commencement Information
I418 Sch. 5 para. 92 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

93 (1) Paragraph 7 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to vulnerable adults) is amended as follows.

(2) In sub-paragraph (6), omit paragraphs (a) and (b).

(3) After sub-paragraph (8) insert—

"(8A) The exercise of a function of the Care Quality Commission so far as the function relates to the inspection of anything which—

(a) is listed in section 60(1) of the Health and Social Care Act 2008, and

(b) involves the provision of social services, care, treatment or therapy for vulnerable adults,

is a regulated activity relating to vulnerable adults."

Commencement Information
I419 Sch. 5 para. 93 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 35(bb)**

Local Government and Public Involvement in Health Act 2007 (c. 28)

94 In section 227 of the Local Government and Public Involvement in Health Act 2007 (local involvement networks: annual reports), in subsection (4), after paragraph (c) insert—

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"(ca) the Care Quality Commission;".

Commencement Information
I420 Sch. 5 para. 94 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(q)(x)**

SCHEDULE 6

Section 98

THE OFFICE OF THE HEALTH PROFESSIONS ADJUDICATOR

Interpretation

1 In this Schedule "the relevant Northern Ireland department" means the Department of Health, Social Services and Public Safety in Northern Ireland.

Commencement Information
I421 Sch. 6 para. 1 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(i)**

Status

2 (1) The OHPA is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The OHPA's property is not to be regarded as property of, or property held on behalf of, the Crown.

Commencement Information
I422 Sch. 6 para. 2 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(i)**

General powers

3 (1) The OHPA 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) This includes, in particular, the power to—
(a) acquire and dispose of land and other property, and
(b) enter into contracts.

Commencement Information
I423 Sch. 6 para. 3 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(i)**

Membership

4 The OHPA is to consist of the following members—

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(a) a chair appointed by the Privy Council,
(b) non-executive members appointed by the Privy Council, and
(c) executive members appointed in accordance with paragraph 8.

Commencement Information
I424 Sch. 6 para. 4 in force at 28.9.2009 by S.I. 2009/2567, **art. 2(c)**

5 No person may be appointed as a member unless the person satisfies such requirements as may be prescribed in regulations made by the Privy Council.

Commencement Information
I425 Sch. 6 para. 5 partly in force; Sch. 6 para. 5 in force for specified purposes at Royal Assent, see s. 170
I426 Sch. 6 para. 5 in force at 28.9.2009 in so far as not already in force by S.I. 2009/2567, **art. 2(c)**

6 A person may be appointed as the chair only if the person (as well as satisfying any requirements prescribed under paragraph 5)—
(a) has a 10 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
(b) is an advocate or solicitor in Scotland of at least 10 years' standing, or
(c) is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least 10 years' standing.

Commencement Information
I427 Sch. 6 para. 6 in force at 28.9.2009 by S.I. 2009/2567, **art. 2(c)**

7 (1) The Privy Council must by regulations make provision about the number of non-executive and executive members.

(2) The regulations must provide for there to be—
(a) at least one but no more than three non-executive members, and
(b) at least one but no more than three executive members.

(3) The regulations may not provide for the number of executive members to be greater than the number of non-executive members.

Commencement Information
I428 Sch. 6 para. 7 partly in force; Sch. 6 para. 7 in force for specified purposes at Royal Assent, see s. 170
I429 Sch. 6 para. 7 in force at 28.9.2009 in so far as not already in force by S.I. 2009/2567, **art. 2(c)**

8 (1) The first executive members are to be appointed by the Privy Council.

(2) Subsequent appointments of executive members are to be made by the OHPA.

(3) The executive members must be employees of the OHPA.

(4) Sub-paragraph (3) is to be taken to be complied with in relation to the first executive members appointed under sub-paragraph (1) if they are employed by the OHPA as soon as practicable after being appointed.

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Commencement Information
I430 Sch. 6 para. 8 in force at 28.9.2009 by S.I. 2009/2567, **art. 2(c)**

9 Each of the members mentioned in paragraph 4(a) to (c)—
(a) holds and vacates office in accordance with the terms of the member's appointment, and
(b) may be removed from office by the Privy Council on the grounds of incapacity or misbehaviour.

Commencement Information
I431 Sch. 6 para. 9 in force at 28.9.2009 by S.I. 2009/2567, **art. 2(c)**

10 (1) Subject to sub-paragraph (2), the terms of a member's appointment are to be determined by the person making the appointment.

(2) The terms of appointment of an executive member appointed by the OHPA are to be determined by the Privy Council in so far as the terms relate to tenure of office or suspension from office.

Commencement Information
I432 Sch. 6 para. 10 in force at 28.9.2009 by S.I. 2009/2567, **art. 2(c)**

Procedure

11 The OHPA may regulate its own procedure.

Commencement Information
I433 Sch. 6 para. 11 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(ii)**

12 The validity of proceedings of the OHPA is not affected—
(a) by any vacancy in its membership,
(b) by any defect in the appointment of a member, or
(c) by any person—
(i) acting as a member even though ineligible for appointment when purportedly appointed, or
(ii) acting as a member after having ceased to be a member.

Commencement Information
I434 Sch. 6 para. 12 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(ii)**

Members' interests

13 (1) The OHPA must establish and maintain a system for the declaration and registration of private interests of its members.

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(2) The OHPA must publish entries recorded in the register of members' interests.

Commencement Information
I435 Sch. 6 para. 13 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(ii)**

Remuneration and allowances

14 (1) The OHPA must pay to its chair, or to any other member, such remuneration and allowances as the Secretary of State may determine.

(2) If the Secretary of State so determines, the OHPA must pay or make provision for the payment of such pension, allowances or gratuities as the Secretary of State may determine to or in respect of a person who is or has been the chair or any other member of the OHPA.

(3) If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chair of the OHPA to receive compensation, the OHPA must—

(a) pay to that person, or

(b) make provision for the payment to that person of,

such compensation as the Secretary of State may determine.

Commencement Information
I436 Sch. 6 para. 14 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(ii)**

PROSPECTIVE

F9 …

Textual Amendments
F9 Sch. 6 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

F9F9 … . . . . . .

F9F9 … . . . . . .

Employees

17 (1) The OHPA may appoint such employees (in addition to the executive members) as it considers appropriate on such terms and conditions as it may determine.

(2) Without prejudice to its other powers, the OHPA may pay, or make provision for the payment of—

(a) pensions, allowances and gratuities, or

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(b) compensation for loss of employment or reduction of remuneration,

to or in respect of its employees.

Commencement Information

I437 Sch. 6 para. 17 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(iii)**

Payments and loans to the OHPA

18 (1) The Secretary of State may make payments to the OHPA of such amounts, at such times and on such conditions (if any) as the Secretary of State considers appropriate.

(2) The relevant Northern Ireland department may make payments to the OHPA of such amounts, at such times and on such conditions (if any) as it considers appropriate.

(3) The Secretary of State may make loans to the OHPA on such terms (including terms as to repayment and interest) as the Secretary of State may determine.

(4) The approval of the Treasury is required as to the amount and terms of any loan under sub-paragraph (3).

(5) The relevant Northern Ireland department may make loans to the OHPA on such terms (including terms as to repayment and interest) as it may determine.

(6) The approval of the Department of Finance and Personnel in Northern Ireland is required as to the amount and terms of any loan under sub-paragraph (5).

(7) Except as provided by sub-paragraphs (3) and (5), the OHPA has no power to borrow money.

(8) The Secretary of State may give directions to the OHPA as to the application of any sums received by it under sub-paragraph (1) or (3).

(9) The relevant Northern Ireland department may give directions to the OHPA as to the application of any sums received by it under sub-paragraph (2) or (5).

(10) The OHPA must comply with any directions under sub-paragraph (8) or (9).

Commencement Information

I438 Sch. 6 para. 18 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(iii)**

Accounts

19 (1) The OHPA must keep accounts in such form as the Secretary of State may determine.

(2) The OHPA must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.

(3) The OHPA must send copies of the annual accounts to—

(a) the Secretary of State, and

(b) 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.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Within that period the OHPA must also send copies of the annual accounts to the relevant Northern Ireland department.

(5) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts, and of the report on them, before Parliament.

(6) A copy of the accounts must be laid before the Northern Ireland Assembly by the relevant Northern Ireland department.

(7) In this paragraph and paragraph 20, "financial year" means—
  (a) the period beginning with the day on which the OHPA is established and ending with the next 31 March following that day, and
  (b) each successive period of 12 months ending with 31 March.

Commencement Information
I439 Sch. 6 para. 19 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(iii)**

Reports

20 (1) The OHPA must prepare a report on the exercise of its functions during each financial year.

(2) As soon as possible after the end of the financial year the OHPA must send copies of the report to—
  (a) the Secretary of State, and
  (b) the relevant Northern Ireland department.

(3) A copy of the report must be laid—
  (a) before Parliament, by the Secretary of State, and
  (b) before the Northern Ireland Assembly, by the relevant Northern Ireland department.

(4) The Privy Council may give directions to the OHPA as to the matters to be dealt with in the report.

Commencement Information
I440 Sch. 6 para. 20 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(iii)**

Seal and evidence

21 The application of the seal of the OHPA must be authenticated by the signature—
  (a) of any member of the OHPA, or
  (b) of any other person who has been authorised by the OHPA (whether generally or specifically) for that purpose.

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Commencement Information
I441 Sch. 6 para. 21 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(iii)**

22 A document—
(a) purporting to be duly executed under the seal of the OHPA, or
(b) purporting to be signed on behalf of the OHPA,
is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Commencement Information
I442 Sch. 6 para. 22 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(iii)**

Meetings of the OHPA in Northern Ireland

23 (1) Sections 23 to 27 of the Local Government Act (Northern Ireland) 1972 (c. 9) (which provide for public access to meetings of a district council, the publication of information concerning such meetings etc.) apply in relation to meetings of the OHPA in Northern Ireland as they apply in relation to meetings of a district council but subject to the following modifications.

(2) The modifications are that—
(a) any reference to a district council is to be read as a reference to the OHPA, and
(b) any reference to councillors or members of the council is to be read as a reference to members of the OHPA.

Commencement Information
I443 Sch. 6 para. 23 in force at 25.1.2010 by S.I. 2010/23, **art. 2(g)(iii)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

SCHEDULE 7

Section 99

ADJUDICATION FUNCTIONS UNDER MEDICAL ACT 1983 AND OPTICIANS ACT 1989

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Textual Amendments

F10 Sch. 7 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 231(2)**, 306(4) (with Sch. 15 para. 76); S.I. 2012/1319, art. 2(3)

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Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULE 8

Section 111

EXTENSION OF POWERS UNDER S. 60 OF HEALTH ACT 1999

1 (1) Section 60 of the 1999 Act (regulation of health care and associated professions) is amended as follows.

(2) In subsection (1), after paragraph (e) insert—

"(f) modifying the constitution, functions, powers or duties of the Office of the Health Professions Adjudicator."

(3) In subsection (2)—

(a) in paragraph (a), omit "the Pharmacy Act 1954,",

(b) after that paragraph insert—

"(aa) the professions regulated by the Pharmacists and Pharmacy Technicians Order 2007 and the Pharmacy (Northern Ireland) Order 1976,", and

(c) after paragraph (c) insert—

"(ca) the profession regulated by so much of the Hearing Aid Council Act 1968 as relates to dispensers of hearing aids,".

(4) After subsection (2) insert—

"(2A) Her Majesty may also by Order in Council make provision relating to, or connected with, the functions of the relevant regulatory body in relation to—

(a) the registration of premises under Part 4 of the Medicines Act 1968 (pharmacies),

(b) the regulation of the use of premises for the purposes of a retail pharmacy business, within the meaning of the Medicines Act 1968,

(c) compliance with the provisions of that Act,

(d) compliance with the provisions of the Poisons Act 1972 or the Poisons (Northern Ireland) Order 1976 by persons admitted to practice and persons carrying on a retail pharmacy business, and

(e) the grant of authorisations under section 28 of the Regulation of Investigatory Powers Act 2000 (authorisation of directed surveillance).

(2B) In subsection (2A) "the relevant regulatory body" means the body (or main body) responsible for the regulation of the professions referred to in subsection (2)(aa)."

Commencement Information

I444 Sch. 8 para. 1 in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(i)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2 In section 62 of the 1999 Act (regulations and orders), in subsection (10), after "that Parliament" insert " and is not merely incidental to, or consequential on, provision that (if so included) would be outside that competence ".

Commencement Information
I445 Sch. 8 para. 2 in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(i)**

3 Schedule 3 to the 1999 Act (which relates to the power in section 60 of the Act) is amended as follows.

Commencement Information
I446 Sch. 8 para. 3 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 3(b)(i)**
I447 Sch. 8 para. 3 in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 3(c)(ii)**

4 In paragraph 5 (exercise of power so as to confer and modify functions), in paragraph (a), after "the Scottish Ministers" insert " , a Northern Ireland department ".

Commencement Information
I448 Sch. 8 para. 4 in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(iii)**

5 (1) Paragraph 7 (matters outside the scope of the Orders) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) An Order may not abolish—

(a) the regulatory body of any profession to which section 60(2)(a) applies,

(b) the Royal Pharmaceutical Society of Great Britain or the Pharmaceutical Society of Northern Ireland,

(c) the Health Professions Council,

(d) the Nursing and Midwifery Council, or

(e) any other regulatory body established by an Order.

(1A) Sub-paragraph (1)(b) does not prevent an Order in Council from establishing a new regulatory body for the professions mentioned in section 60(2)(aa) and transferring to it any of the functions of the Royal Pharmaceutical Society of Great Britain or the Pharmaceutical Society of Northern Ireland."

(3) Omit sub-paragraph (2) (which prevents an Order in Council under section 60 of the 1999 Act from imposing a requirement which would have the effect that a majority of the members of the regulatory body of a profession would be persons not included in the register of members admitted to practice).

(4) Omit sub-paragraph (3) (which prevents an Order in Council under section 60 of the 1999 Act from providing for a function conferred on the Privy Council, in relation to any profession to which subsection (2)(a) of that section applies, to be exercised by a different person).

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I449 Sch. 8 para. 5(1)-(3) in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(iii)**
I450 Sch. 8 para. 5(4) in force at 1.10.2008 by S.I. 2008/2497, **art. 3(b)(ii)**

6 (1) Paragraph 8 (other matters outside the scope of the Orders) is amended as follows.

(2) In sub-paragraph (2) omit paragraph (d).

(3) After that sub-paragraph insert—

"(2A) Where an enactment provides, in relation to any profession, for any function of administering procedures (including making rules) relating to misconduct, unfitness to practise and similar matters to be exercised by the regulatory body or any of its committees or officers, an Order may not provide for any person other than that regulatory body or any of its committees or officers or the Office of the Health Professions Adjudicator to exercise that function.

(2B) In sub-paragraphs (1) and (2A) references to a regulatory body do not include references to any of the following—

(a) the Royal Pharmaceutical Society of Great Britain,
(b) the Pharmaceutical Society of Northern Ireland, and
(c) the Hearing Aid Council."

Commencement Information
I451 Sch. 8 para. 6 in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(iii)**

7 (1) Paragraph 9 (preliminary procedure for making Orders) is amended as follows.

(2) In sub-paragraph (1)(b)—

(a) for "the profession", where it first occurs, substitute " any profession ", and
(b) for "by the profession" substitute " by any profession to be regulated ".

(3) After sub-paragraph (1) insert—

"(1A) In the case of a draft Order which amends or repeals—

(a) an enactment contained in an Act of the Scottish Parliament or in an instrument made under such an Act, or
(b) any other enactment that extends to Scotland and relates to matters falling within the legislative competence of the Scottish Parliament,

but does not contain provision of the kind mentioned in sub-paragraph (3), the persons consulted by the Secretary of State under sub-paragraph (1)(b) must include the Scottish Ministers."

(4) In sub-paragraph (3) after "that Parliament" insert " and is not merely incidental to, or consequential on, provision that (if so included) would be outside that competence ".

Commencement Information
I452 Sch. 8 para. 7 in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(iii)**

8 In paragraph 10 (interpretation of the Schedule)—

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(a) before the definition of "Order" insert—

""dental practitioner" means a person registered in the dentists register under the Dentists Act 1984,

"enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament,
(b) an Act of the Scottish Parliament,
(c) a Measure or Act of the National Assembly for Wales, or
(d) Northern Ireland legislation,

"functions" includes powers and duties,

"medical practitioner" means a registered medical practitioner as defined by Schedule 1 to the Interpretation Act 1978,", and

(b) omit the words from "and other expressions" to the end.

Commencement Information

I453 Sch. 8 para. 8(a) in force at 1.10.2008 by S.I. 2008/2497, **art. 3(b)(iii)**

I454 Sch. 8 para. 8(b) in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(iii)**

9 In paragraph 11 (which contains further interpretative provisions), in sub-paragraph (2)—

(a) in paragraph (c), for "Part 1 of the 1977 Act" substitute " Part 4 of the National Health Service Act 2006 or Part 4 of the National Health Service (Wales) Act 2006 ", and

(b) in paragraph (d), for "Part 1 of the 1977 Act" substitute " Part 5 of the National Health Service Act 2006 or Part 5 of the National Health Service (Wales) Act 2006 ".

Commencement Information

I455 Sch. 8 para. 9 in force at 1.1.2009 by S.I. 2008/3244, **art. 3(c)(iii)**

VALID FROM 15/01/2015

10 Omit paragraph 12 (which confers limited powers in relation to the profession regulated by the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22))).

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SCHEDULE 9

Section 124

REGULATION OF SOCIAL CARE WORKERS

Interpretation

1 In this Schedule—

"functions" includes powers and duties;

"regulations" means regulations under section 124;

"the appropriate Council" means—

(a) in relation to regulations made by the Secretary of State, the General Social Care Council, and

(b) in relation to regulations made by the Welsh Ministers, the Care Council for Wales.

Commencement Information

I456 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

Matters generally within the scope of regulations

2 Regulations may make provision for the following matters (among others)—

(a) the functions of the appropriate Council;

(b) the keeping of registers of social care workers of any description;

(c) education and training;

(d) privileges of registered persons;

(e) standards of conduct and performance (including standards of conduct and performance of social care workers carrying out the functions of an approved mental health professional within the meaning of section 114 of the Mental Health Act 1983 (c. 20));

(f) discipline;

(g) removal or suspension from registration or the imposition of conditions on registration;

(h) investigation and enforcement by or on behalf of the appropriate Council;

(i) appeals;

(j) codes of practice or guidance for persons employing or seeking to employ social care workers.

Commencement Information

I457 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

Manner of exercise of power

3 The power to make regulations may be exercised by amending or repealing any provision (other than section 55) of the Care Standards Act 2000 (c. 14) and any other enactment and any other instrument or document.

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I458 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

4 The power may be exercised so as to make provision for the delegation of functions, including provision conferring power to make, confirm or approve subordinate legislation.

Commencement Information
I459 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

5 The power may be exercised so as to make provision—
(a) for the charging of fees, and
(b) for the making of payments by the appropriate Council.

Commencement Information
I460 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

6 The power may be exercised so as to—
(a) confer functions (including power to pay grants) on Ministers of the Crown or, in the case of regulations made by the Welsh Ministers, on the Welsh Ministers, or
(b) modify their functions.

Commencement Information
I461 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

7 The power may not be exercised so as to create any criminal offence, except an offence punishable on summary conviction with a fine not exceeding the amount specified as level 5 on the standard scale.

Commencement Information
I462 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

Matters outside the scope of regulations

8 (1) Regulations may not abolish the General Social Care Council or the Care Council for Wales.

(2) Where the Care Standards Act 2000 provides for any function mentioned in sub-paragraph (3) to be exercised by either of those Councils or any of its committees or officers, regulations may not provide for any person other than that Council or any of its committees or officers to exercise that function.

(3) Those functions are—
(a) keeping the register of social care workers of any description,

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(b) determining standards of education and training required as a condition of registration,

(c) giving advice about standards of conduct and performance, and

(d) administering procedures (including making rules) relating to misconduct, removal from registration and similar matters.

Commencement Information

I463 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

Preliminary procedure for making regulations: England

9 (1) If the Secretary of State proposes to lay a draft of regulations before Parliament, the Secretary of State must first—

(a) publish a draft of the regulations, and

(b) invite representations to be made to the Secretary of State about the draft by—

(i) persons appearing to the Secretary of State appropriate to represent social care workers affected by the regulations,

(ii) persons appearing to the Secretary of State appropriate to represent those provided with services by such social care workers, and

(iii) any other persons appearing to the Secretary of State appropriate to consult about the draft.

(2) After the end of the period of 3 months beginning with the publication of the draft, the Secretary of State may lay the draft as published, or that draft with any modifications the Secretary of State considers appropriate, together with a report about the consultation, before Parliament.

Commencement Information

I464 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

Preliminary procedure for making regulations: Wales

10 (1) If the Welsh Ministers propose to lay a draft of regulations before the National Assembly for Wales, the Welsh Ministers must first—

(a) publish a draft of the regulations, and

(b) invite representations to be made to the Welsh Ministers about the draft by—

(i) persons appearing to the Welsh Ministers appropriate to represent social care workers affected by the regulations,

(ii) persons appearing to the Welsh Ministers appropriate to represent those provided with services by such social care workers, and

(iii) any other persons appearing to the Welsh Ministers appropriate to consult about the draft.

(2) After the end of the period of 3 months beginning with the publication of the draft, the Welsh Ministers may lay the draft as published, or that draft with any modifications they consider appropriate, together with a report about the consultation, before the National Assembly for Wales.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I465 Sch. 9 partly in force; Sch. 9 in force for specified purposes at Royal Assent, see s. 170

SCHEDULE 10

Section 127

FURTHER AMENDMENTS RELATING TO PART 2

Provision consequential on section 113(1)

1 (1) Any reference in any instrument or document to the Council for the Regulation of Health Care Professionals is to be read, in relation to any time after the commencement of section 113(1), as a reference to the Council for Healthcare Regulatory Excellence.

(2) Any reference in this Act or in any other enactment, instrument or document to the Council for Healthcare Regulatory Excellence is to be read, in relation to any time before the commencement of section 113(1), as a reference to the Council for the Regulation of Health Care Professionals.

Commencement Information
I466 Sch. 10 para. 1 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(i)**

Public Records Act 1958 (c. 51)

2 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the table set out in paragraph 3 of that Schedule—

(a) for "Council for the Regulation of Health Care Professionals" substitute " Council for Healthcare Regulatory Excellence ", and

(b) at the appropriate place insert— " The Office of the Health Professions Adjudicator. "

Commencement Information
I467 Sch. 10 para. 2(a) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(ii)**
I468 Sch. 10 para. 2(b) in force at 25.1.2010 by S.I. 2010/23, **art. 2(h)(i)**

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

3 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960—

(a) in paragraph 1 (bodies to which in England and Wales Act applies), for the paragraph (bd) inserted by paragraph 21 of Schedule 7 to the 2002 Act substitute—

"(bca) the Council for Healthcare Regulatory Excellence;

(bcb) the Office of the Health Professions Adjudicator;", and

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(b) in paragraph 2 (bodies to which in Scotland Act applies), before paragraph (d) insert—

"(ca) the Council for Healthcare Regulatory Excellence;

(cb) the Office of the Health Professions Adjudicator;".

Commencement Information

I469 Sch. 10 para. 3 in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 2(i)(iii)**

I470 Sch. 10 para. 3 in force at 25.1.2010 in so far as not already in force by S.I. 2010/23, **art. 2(h)(ii)**

House of Commons Disqualification Act 1975 (c. 24)

4 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified)—

(a) for "The Council for the Regulation of Health Care Professionals" substitute " The Council for Healthcare Regulatory Excellence ", and

(b) at the appropriate place insert— " The Office of the Health Professions Adjudicator. "

Commencement Information

I471 Sch. 10 para. 4(a) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(iv)**

I472 Sch. 10 para. 4(b) in force at 28.9.2009 by S.I. 2009/2567, **art. 2(d)**

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

5 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified)—

(a) for "The Council for the Regulation of Health Care Professionals" substitute " The Council for Healthcare Regulatory Excellence ", and

(b) at the appropriate place insert— " The Office of the Health Professions Adjudicator. "

Commencement Information

I473 Sch. 10 para. 5(a) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(v)**

I474 Sch. 10 para. 5(b) in force at 28.9.2009 by S.I. 2009/2567, **art. 2(d)**

Race Relations Act 1976 (c. 74)

6 In Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty)—

(a) in Part 2, at the appropriate place under the heading "Health" insert— " The Office of the Health Professions Adjudicator. ", and

(b) in Part 3, for "The Council for the Regulation of Health Care Professionals" substitute " The Council for Healthcare Regulatory Excellence ".

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Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I475 Sch. 10 para. 6(a) in force at 25.1.2010 by S.I. 2010/23, **art. 2(h)(iii)**
I476 Sch. 10 para. 6(b) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(vi)**

Dentists Act 1984 (c. 24)

PROSPECTIVE

7 In section 27 of the Dentists Act 1984 (allegations against registered dentists), in subsection (2)(g), after "social care profession" insert " , or by the Office of the Health Professions Adjudicator, ".

8 In section 36A of the Dentists Act 1984 (professions complementary to dentistry), in subsection (1)(b), for "the Council for the Regulation of Health Care Professionals" substitute " the Council for Healthcare Regulatory Excellence ".

Commencement Information
I477 Sch. 10 para. 8 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(vii)**

PROSPECTIVE

F11 9 . . . . . .

Textual Amendments
F11 Sch. 10 para. 9 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 75(4)**; S.I. 2012/1319, art. 2(3)

Health Act 1999 (c. 8)

10 In section 60 of the 1999 Act (regulation of health care and associated professions), in subsection (1)(c), for "the Council for the Regulation of Health Care Professionals" substitute " the Council for Healthcare Regulatory Excellence ".

Commencement Information
I478 Sch. 10 para. 10 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(viii)**

11 In section 62 of the 1999 Act (regulations and orders), for subsection (4) substitute—

"(4) Any power under this Act to make Orders in Council or orders—

(a) may be exercised either in relation to all cases to which the power extends, or in relation to all cases subject to specified exceptions, or in relation to any specified cases or classes of case,

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(b) may be exercised so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition, and

(c) may, in particular, be exercised so as to make different provision for different areas.

(4A) Any such power includes power—

(a) to make such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking enactments) as the person exercising the power considers to be expedient, and

(b) to provide for a person to exercise a discretion in dealing with any matter."

Commencement Information

I479 Sch. 10 para. 11 partly in force; Sch. 10 para. 11 in force for specified purposes at Royal Assent, see s. 170

I480 Sch. 10 para. 11 in force at 1.1.2009 in so far as not already in force by S.I. 2008/3244, **art. 3(d)**

12 In Schedule 3 to the 1999 Act (regulation of health care and associated professions), in paragraph 7(4), for "the Council for the Regulation of Health Care Professionals" substitute " the Council for Healthcare Regulatory Excellence ".

Commencement Information

I481 Sch. 10 para. 12 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(ix)**

Freedom of Information Act 2000 (c. 36)

13 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities)—

(a) for "The Council for the Regulation of Health Care Professionals" substitute " The Council for Healthcare Regulatory Excellence ", and

(b) at the appropriate place insert— " The Office of the Health Professions Adjudicator. "

Commencement Information

I482 Sch. 10 para. 13(a) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(x)**

I483 Sch. 10 para. 13(b) in force at 25.1.2010 by S.I. 2010/23, **art. 2(h)(iv)**

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PROSPECTIVE

Nursing and Midwifery Order 2001 (S.I. 2002/253)

[F12]14 . . . . . .

Textual Amendments

F12 Sch. 10 para. 14 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 75(4)**; S.I. 2012/1319, art. 2(3)

PROSPECTIVE

Health Professions Order 2001 (S.I. 2002/254)

[F13]15 . . . . . .

Textual Amendments

F13 Sch. 10 para. 15 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 75(4)**; S.I. 2012/1319, art. 2(3)

National Health Service Reform and Health Care Professions Act 2002 (c. 17)

16 For the title to section 25 of the 2002 Act, and for the heading immediately preceding the section, substitute "The Council for Healthcare Regulatory Excellence".

Commencement Information

I484 Sch. 10 para. 16 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(xi)**

17 (1) Section 25 of the 2002 Act is amended as follows.

(2) In subsection (3), for paragraphs (h) and (i) substitute—

"(ga) the Nursing and Midwifery Council,

(gb) the Health Professions Council, and".

(3) In that subsection, for paragraph (j) substitute—

"(j) any other regulatory body (within the meaning of Schedule 3 to the 1999 Act) established by an Order in Council under section 60 of that Act."

(4) In subsection (6), omit "and (3)".

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Commencement Information

I485 Sch. 10 para. 17 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(xii)**

PROSPECTIVE

[F14]18 . . . . . .

Textual Amendments

F14 Sch. 10 para. 18 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 75(4)**; S.I. 2012/1319, art. 2(3)

19 For the title to Schedule 7 to the 2002 Act substitute "The Council for Healthcare Regulatory Excellence".

Commencement Information

I486 Sch. 10 para. 19 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(xiii)**

Health Act 2006 (c. 28)

20 In section 58 of the Health Act 2006 (which enables the Secretary of State to arrange for appointment functions of the Secretary of State to be exercised by the Appointments Commission), in subsection (3), for the words from "chairmen" to the end substitute—

"(a) chairmen and non-executive members of any of the statutory bodies listed in Schedule 5, and

(b) non-executive members of the Council for Healthcare Regulatory Excellence."

Commencement Information

I487 Sch. 10 para. 20 in force at 25.8.2008 by S.I. 2008/2214, **art. 2(b)**

21 In section 60 of the Health Act 2006 (which enables the Privy Council to arrange for its functions relating to the appointment of regulatory bodies to be exercised by the Appointments Commission), after subsection (2) insert—

"(3) The Commission is to exercise so much of any function of the Privy Council relating to the appointment of—

(a) the chair of the Council for Healthcare Regulatory Excellence, or

(b) members of the Office of the Health Professions Adjudicator,

as may be specified in a direction given by the Privy Council."

Commencement Information

I488 Sch. 10 para. 21 in force at 25.8.2008 for specified purposes by S.I. 2008/2214, **art. 2(c)**

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I489 Sch. 10 para. 21 in force at 4.6.2009 in so far as not already in force by S.I. 2009/1310, **art. 2(a)**

22 In section 63 of the Health Act 2006 (Appointments Commission to assist other bodies with appointments), after subsection (6) insert—

"(6A) The Commission may enter into arrangements under subsection (6B) with the Office of the Health Professions Adjudicator.

(6B) Arrangements under this subsection are arrangements providing for the Commission to assist the Office of the Health Professions Adjudicator in connection with the exercise of its powers relating to—

(a) the appointment of executive members of the Office of the Health Professions Adjudicator, or

(b) the appointment of persons to lists under section 101 of the Health and Social Care Act 2008 (lists of persons eligible for membership of the OHPA's fitness to practise panels)."

Commencement Information
I490 Sch. 10 para. 22 in force at 25.1.2010 by S.I. 2010/23, **art. 2(h)(v)**

23 In Schedule 5 to the Health Act 2006 (Appointments Commission: list of statutory bodies), omit the entry relating to the Council for the Regulation of Health Care Professionals.

Commencement Information
I491 Sch. 10 para. 23 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(xiv)**

National Health Service Act 2006 (c. 41)

24 In section 201 of the National Health Service Act 2006 (disclosure of information), in subsection (4)(b), for "Council for the Regulation of Health Care Professionals" substitute " Council for Healthcare Regulatory Excellence ".

Commencement Information
I492 Sch. 10 para. 24 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(xiv)**

National Health Service (Wales) Act 2006 (c. 42)

25 In section 149 of the National Health Service (Wales) Act 2006 (disclosure of information), in subsection (4)(b), for "Council for the Regulation of Health Care Professionals" substitute " Council for Healthcare Regulatory Excellence ".

Commencement Information
I493 Sch. 10 para. 25 in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(xiv)**

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National Assembly for Wales (Disqualification) Order 2006 (S.I. 2006/3335)

26 In Part 1 of the Schedule to the National Assembly for Wales (Disqualification) Order 2006 (bodies of which all members are disqualified)—

(a) for "Council for the Regulation of Health Care Professionals" substitute " Council for Healthcare Regulatory Excellence ", and

(b) at the appropriate place insert— " Office of the Health Professions Adjudicator; ".

Commencement Information

I494 Sch. 10 para. 26(a) in force at 1.1.2009 by S.I. 2008/3244, **art. 2(i)(xv)**

I495 Sch. 10 para. 26(b) in force at 28.9.2009 by S.I. 2009/2567, **art. 2(d)**

PROSPECTIVE

Pharmacists and Pharmacy Technicians Order 2007 (S.I. 2007/289)

F15 27 . . . . . .

Textual Amendments

F15 Sch. 10 para. 27 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 15 para. 71(4)**; S.I. 2012/1319, art. 2(3)

SCHEDULE 11

Section 130

PUBLIC HEALTH PROTECTION: FURTHER AMENDMENTS

Introductory

1 In this Schedule "the 1984 Act" means the Public Health (Control of Disease) Act 1984 (c. 22).

Commencement Information

I496 Sch. 11 para. 1 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I497 Sch. 11 para. 1 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

Local Government, Planning and Land Act 1980 (c. 65)

2 In section 159 of the Local Government, Planning and Land Act 1980 (public health etc.), in subsection (1), omit paragraph (e) and the word "and" immediately preceding it.

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Commencement Information

I498 Sch. 11 para. 2 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I499 Sch. 11 para. 2 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

Public Health (Control of Disease) Act 1984

3 (1) Section 1 (authorities administering Act) of the 1984 Act is amended as follows.

(2) For subsection (1) substitute—

"(1) In this Act "local authority" means any of the following—

(a) a district council;

(b) in England, a county council for an area for which there is no district council;

(c) in Wales, a county council or county borough council;

(d) a London borough council;

(e) the Common Council of the City of London;

(f) the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple;

(g) the Council of the Isles of Scilly."

(3) Omit subsections (2) and (4).

Commencement Information

I500 Sch. 11 para. 3 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I501 Sch. 11 para. 3 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

4 (1) Section 5 of the 1984 Act (financial provisions as to port health authorities) is amended as follows.

(2) In subsection (2), for the words from "shall" onwards substitute " shall be defrayed by the constituent districts in such proportions and in such manner as may be determined by or in accordance with the order. "

(3) In subsection (3), omit "or rating districts".

Commencement Information

I502 Sch. 11 para. 4 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I503 Sch. 11 para. 4 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

5 In section 7 of the 1984 Act (port health district and authority for Port of London), in subsection (4), omit paragraphs (c) and (d).

Commencement Information

I504 Sch. 11 para. 5 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I505 Sch. 11 para. 5 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

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6 Omit section 9 of the 1984 Act (vessels in inland or coastal waters).

Commencement Information
I506 Sch. 11 para. 6 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I507 Sch. 11 para. 6 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

7 In section 48 of the 1984 Act (removal of body to mortuary or for immediate burial), in subsection (1), for the words from "in any building" to "neighbouring building" substitute " in any place would endanger the health of any person ".

Commencement Information
I508 Sch. 11 para. 7 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I509 Sch. 11 para. 7 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

8 In section 49 of the 1984 Act (regulations as to canal boats), in subsection (1)—
(a) at the end of paragraph (a) insert " and ",
(b) omit paragraph (c) and the word "and" immediately preceding it.

Commencement Information
I510 Sch. 11 para. 8 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I511 Sch. 11 para. 8 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

9 In section 50 of the 1984 Act (power to enter and inspect canal boats), in subsection (2)—
(a) omit paragraph (b) and the word "or" immediately preceding it, and
(b) omit "or any person on board suffering from an infectious disease".

Commencement Information
I512 Sch. 11 para. 9 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I513 Sch. 11 para. 9 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

10 In section 51 of the 1984 Act (duties of local authorities and port health authorities under Part 4)—
(a) omit subsection (1), and
(b) in subsection (2) omit the words "the provisions of this Part of this Act and".

Commencement Information
I514 Sch. 11 para. 10 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I515 Sch. 11 para. 10 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

11 Omit section 52 of the 1984 Act (prosecution of offences under Part 4).

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Commencement Information

I516 Sch. 11 para. 11 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I517 Sch. 11 para. 11 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

12 Omit sections 54 to 57 of the 1984 Act.

Commencement Information

I518 Sch. 11 para. 12 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I519 Sch. 11 para. 12 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

13 In section 58 of the 1984 Act (form of notices and other documents), in subsection (1) for "local authority" (in each place it occurs) substitute " relevant health protection authority ".

Commencement Information

I520 Sch. 11 para. 13 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I521 Sch. 11 para. 13 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

14 In section 59 of the 1984 Act (authentication of documents)—

(a) for "local authority" (wherever it occurs) substitute " relevant health protection authority ", and

(b) in subsection (2) for "byelaws" substitute " regulations ".

Commencement Information

I522 Sch. 11 para. 14 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I523 Sch. 11 para. 14 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

15 In section 60 of the 1984 Act (service of notices and other documents) for "made by this Act" substitute " made by or under this Act ".

Commencement Information

I524 Sch. 11 para. 15 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I525 Sch. 11 para. 15 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

16 After section 60 of the 1984 Act insert—

"**60A Electronic communications**

(1) The appropriate Minister may by regulations make provision enabling notices, orders and other documents specified in the regulations to be given or served by an electronic communication.

(2) Such provision must however secure that the notices, orders and other documents specified in the regulations may only be so given or served if—

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(a) the person to whom they are to be given or on whom they are to be served has consented in writing to the receipt of notices, orders and other documents by an electronic communication, and

(b) the communication is sent to the number or address specified by that person when giving consent.

(3) The power to make regulations under this section is exercisable by statutory instrument.

(4) An instrument containing any such regulations is subject to annulment—

(a) in the case of regulations made by the Secretary of State, in pursuance of a resolution of either House of Parliament;

(b) in the case of regulations made by the Welsh Ministers, in pursuance of a resolution of the National Assembly for Wales.

(5) Sections 58 to 60 are to be read subject to any provision made in regulations under this section.

(6) In this section—

"electronic communication" has the same meaning as in the Electronic Communications Act 2000,

"notices, orders and other documents" means notices, orders and other documents authorised or required by or under this Act to be given or served, and

"the appropriate Minister" means—

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales."

Commencement Information

I526 Sch. 11 para. 16 partly in force; Sch. 11 para. 16 in force for specified purposes at Royal Assent, see s. 170

I527 Sch. 11 para. 16 in force at 6.4.2010 for E. in so far as not already in force by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I528 Sch. 11 para. 16 in force at 26.7.2010 for W. in so far as not already in force by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

17 (1) Section 61 of the 1984 Act (power to enter premises) is amended as follows.

(2) In subsection (1)—

(a) for "authorised officer of a local authority" substitute " proper officer of a relevant health protection authority ",

(b) for paragraph (a) substitute—

"(a) for the purposes of ascertaining whether there is, or has been, any contravention of a relevant provision of this Act, or of an order made by a justice of the peace under Part 2A of this Act, which it is the function of the relevant health protection authority to enforce,", and

(c) in each of paragraphs (b), (c) and (d)—

(i) for "or such byelaws" substitute " or in relation to such an order ", and

(ii) for "local authority" substitute " relevant health protection authority ".

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(3) In subsection (2) omit “, other than a factory or workplace,”.

(4) After subsection (2) insert—

“(2A) Subsection (1) does not authorise entry to any part of premises which is used as a private dwelling (but this does not affect the power of a justice of the peace under subsection (3) to issue a warrant authorising entry to a private dwelling or to any part of premises used as a private dwelling).”

(5) In subsection (3), for “the local authority by any authorised officer” substitute “ the relevant health protection authority by any proper officer ”.

Commencement Information

I529 Sch. 11 para. 17 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I530 Sch. 11 para. 17 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

18 (1) Section 62 of the 1984 Act (supplementary provisions as to entry) is amended as follows.

(2) In subsection (1)—

(a) for “An authorised officer” substitute “ A proper officer (“the officer”) ”, and

(b) after “other persons” insert “ and such equipment and materials ”.

(3) After subsection (1) insert—

“(1A) The officer may for the purpose for which entry is authorised—

(a) search the premises,

(b) carry out measurements and tests of the premises or of anything found on them,

(c) take and retain samples of the premises or of anything found on them,

(d) inspect and take copies or extracts of any documents or records found on the premises,

(e) require information stored in an electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form, and

(f) seize and detain or remove anything which the officer reasonably believes to be evidence of any contravention relevant to the purpose for which entry is authorised.”

(4) Omit subsection (3).

(5) For subsection (4) substitute—

“(4) Nothing in section 61 or this section limits the provisions of Parts 2A and 4, and of regulations made under Part 2A, with respect to entry into or upon, and inspection of, any premises.”

Commencement Information

I531 Sch. 11 para. 18 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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I532 Sch. 11 para. 18 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

19 For section 63 of the 1984 Act substitute—

"**63 Offence of wilful obstruction**

(1) A person commits an offence if the person wilfully obstructs any person acting in the execution of a provision of Part 3 or 4 or this Part, or of any regulations, order or warrant made or issued under such a provision.

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

(a) in the case of an offence of wilfully obstructing a person in the execution of a provision of Part 4 or of any regulations made under a provision of that Part, to a fine not exceeding level 1 on the standard scale, and

(b) in any other case, to a fine not exceeding £20,000."

Commencement Information

I533 Sch. 11 para. 19 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I534 Sch. 11 para. 19 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

20 After section 63 of the 1984 Act insert—

"**63A Offences by bodies corporate**

(1) If an offence created by or under this Act is committed by a body corporate and is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) "Officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

63B Unincorporated associations

(1) Proceedings for an offence alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members).

(2) Rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.

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(3) In proceedings for an offence brought against an unincorporated association, Schedule 3 to the Magistrates' Courts Act 1980 applies as it applies to a body corporate.

(4) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.

(5) If an offence committed by an unincorporated association is proved—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In this section, "offence" means an offence created by or under this Act."

Commencement Information

I535 Sch. 11 para. 20 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I536 Sch. 11 para. 20 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

21 (1) Section 64 of the 1984 Act (restriction on right to prosecute) is amended as follows.

(2) For subsection (1) substitute—

"(1) Proceedings in respect of an offence created by a provision of, or regulations under, this Act may not be taken by any person other than—

(a) a relevant health protection authority,

(b) a body whose function it is to enforce the provision or regulation in question, or

(c) a person who made (or whose predecessors made) the regulation in question."

(3) Subsection (2) is omitted.

Commencement Information

I537 Sch. 11 para. 21 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I538 Sch. 11 para. 21 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

22 After section 64 of the 1984 Act insert—

"**64A Time limits for prosecutions**

(1) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980, a magistrates' court may try an information (or written charge) relating to an offence created by or under this Act if the information is laid (or the charge is issued)—

(a) before the end of the period of 3 years beginning with the date of the commission of the offence, and

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(b) before the end of the period of 6 months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge.

(2) For the purposes of subsection (1)(b)—

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact, and

(b) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved."

Commencement Information

I539 Sch. 11 para. 22 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I540 Sch. 11 para. 22 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

23 (1) Section 67 of the 1984 Act (applications to, and appeals from, magistrates' courts) is amended as follows.

(2) In subsection (1), after "this Act" insert " or a provision contained in regulations made under this Act ".

(3) Omit subsection (3).

Commencement Information

I541 Sch. 11 para. 23 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I542 Sch. 11 para. 23 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

24 For section 69 of the 1984 Act substitute—

"**69 Protection from personal liability**

(1) Nothing done by a relevant health protection authority or by one of its officers, and no contract entered into by such an authority, is to subject the authority or officer to any action, liability, claim or demand whatsoever if the thing is done, or the contract is entered into, bona fide for the purposes of executing a relevant provision of this Act.

(2) Any expense incurred by any such authority or officer acting bona fide as mentioned in subsection (1) is to be borne and repaid out of the fund applicable by the authority to its functions of executing the provision in question.

(3) Reference in this section to an officer of a relevant health protection authority also includes a member of that authority and any person acting under the direction of that authority."

Commencement Information

I543 Sch. 11 para. 24 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I544 Sch. 11 para. 24 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

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25 Omit section 70 of the 1984 Act (local inquiries).

Commencement Information

I545 Sch. 11 para. 25 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I546 Sch. 11 para. 25 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

26 For section 71 of the 1984 Act substitute—

"**71 Default powers**

(1) Subsection (2) applies if the appropriate Minister is satisfied that a relevant health protection authority has failed to discharge its functions under a relevant provision of this Act in any case where it ought to have discharged them.

(2) The appropriate Minister may make an order—

(a) declaring the authority to be in default, and

(b) directing the authority to discharge such of its functions, and in such manner and within such time or times, as may be specified in the order.

(3) If the authority fails to comply with a requirement of the order within the specified time, the appropriate Minister may—

(a) enforce the order by mandatory order or otherwise, or

(b) make an order transferring such of the functions of the authority to the Minister or such other public authority as may be specified in the order.

(4) If functions are transferred by virtue of subsection (3)(b) to the Minister, the Minister may direct another public authority to discharge them on the Minister's behalf.

(5) An order under subsection (3)(b) may include provision about the funding of the functions, including provision requiring the relevant health protection authority to bear any costs associated with the discharge of those functions by or on behalf of the Minister or other public authority.

(6) The appropriate Minister may vary or revoke an order made by the Minister under subsection (3)(b), but without prejudice to anything previously done under it.

(7) If such an order is revoked, the appropriate Minister may, either by the revoking order or by a subsequent order, make provision with respect to the transfer, vesting and discharge of any property or liabilities acquired or incurred by or on behalf of the Minister or other public authority in discharging any functions to which the revoking order related."

Commencement Information

I547 Sch. 11 para. 26 partly in force; Sch. 11 para. 26 in force for specified purposes at Royal Assent, see s. 170

I548 Sch. 11 para. 26 in force at 6.4.2010 for E. in so far as not already in force by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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I549 Sch. 11 para. 26 in force at 26.7.2010 for W. in so far as not already in force by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

27 In section 72 of the 1984 Act (cumulative effect of Act) for "by this Act" substitute " by or under this Act ".

Commencement Information

I550 Sch. 11 para. 27 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I551 Sch. 11 para. 27 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

28 In section 73 of the 1984 Act (Crown property) after subsection (4) insert—

"(5) In this section "premises" does not include any vessel—

(a) belonging to Her Majesty, or

(b) under the command or charge of an officer holding Her Majesty's commission."

Commencement Information

I552 Sch. 11 para. 28 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)

I553 Sch. 11 para. 28 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

29 (1) Section 74 of the 1984 Act (interpretation) is amended as follows.

(2) For the definition of "district" substitute—

""district" means—

(a) in relation to a local authority in Greater London, a London borough, the City of London, the Inner Temple or the Middle Temple,

(b) in relation to a local authority in England for an area for which there is no district council, that area,

(c) in relation to a local authority in Wales, a county or county borough,

(d) in relation to the Council of the Isles of Scilly, those Isles;".

(3) In the definition of "local authority" for "section 1(2)" substitute " section 1(1) ".

(4) For the definition of "premises" substitute—

""premises" includes any place and, in particular, includes—

(a) any vehicle, train, vessel or aircraft,

(b) any tent or movable structure, and

(c) any offshore installation (as defined in section 12(1) of the Mineral Workings (Offshore Installations) Act 1971);".

(5) In the definition of "relevant provision of this Act", before "other" insert " (including a provision in regulations made under this Act) ".

(6) In the appropriate place, insert the following definitions—

""public authority" has the meaning given in section 6(3) of the Human Rights Act 1998;",

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""relevant health protection authority" means—

(a) a local authority, port health authority or joint board with functions under a relevant provision of this Act, and

(b) if regulations under Part 2A confer functions on a public authority of any other description and state that the authority is to be regarded as a relevant health protection authority with respect to those functions, that authority;".

(7) The following definitions are omitted—

(a) "coastal waters";
(b) "common lodging-house";
(c) "dustbin";
(d) "factory";
(e) "hospital";
(f) "house";
(g) "inland waters";
(h) "local Act";
(i) "NHS trust" and "NHS contract";
(j) "notifiable disease";
(k) "rating district";
(l) "school";
(m) "street".

Commencement Information

I554 Sch. 11 para. 29 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I555 Sch. 11 para. 29 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

30 Omit section 76 of the 1984 Act (Isle of Man and Channel Islands).

Commencement Information

I556 Sch. 11 para. 30 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I557 Sch. 11 para. 30 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

Planning and Compensation Act 1991 (c. 34)

31 In Part 1 of Schedule 18 to the Planning and Compensation Act 1991 (provisions that do not provide for interest) omit the entry for section 57 of the Public Health (Control of Disease) Act 1984.

Commencement Information

I558 Sch. 11 para. 31 in force at 6.4.2010 for E. by S.I. 2010/708, **art. 6(e)** (with Sch. 2)
I559 Sch. 11 para. 31 in force at 26.7.2010 for W. by S.I. 2010/1547, **art. 2(e)** (with Sch. 1)

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SCHEDULE 12

Section 140

FUNDING OF EXPENDITURE IN CONNECTION WITH PROVISION OF PHARMACEUTICAL SERVICES

PART 1

ENGLAND

1 In this Part of this Schedule "the NHS Act" means the National Health Service Act 2006 (c. 41).

Commencement Information
I560 Sch. 12 para. 1 in force at 1.4.2010 by S.I. 2010/708, **art. 2(c)**

2 (1) Section 228 of the NHS Act (public funding of Primary Care Trusts) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Secretary of State must pay in respect of each financial year to each Primary Care Trust sums not exceeding the amount allotted for that year by the Secretary of State to the Primary Care Trust towards meeting the expenditure of the Primary Care Trust which is attributable to the performance by it of its functions in that year."

(3) Omit subsection (2).

(4) In subsections (3) and (7)(b), for "(1)(b)" substitute " (1) ".

(5) Omit subsection (12).

Commencement Information
I561 Sch. 12 para. 2 in force at 1.4.2010 by S.I. 2010/708, **art. 2(c)**

3 In section 229 of the NHS Act (financial duties of Primary Care Trusts), in subsection (1)—

(a) omit "(not including its pharmaceutical services expenditure)", and

(b) in paragraph (a), for "section 228(1)(b)" substitute " section 228(1) ".

Commencement Information
I562 Sch. 12 para. 3 in force at 1.4.2010 by S.I. 2010/708, **art. 2(c)**

4 In section 230 of the NHS Act (resource limits for Primary Care Trusts) omit subsections (2) and (3).

Commencement Information
I563 Sch. 12 para. 4 in force at 1.4.2010 by S.I. 2010/708, **art. 2(c)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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5 (1) Schedule 14 to the NHS Act (further provision about expenditure of Primary Care Trusts) is amended as follows.

(2) Omit paragraphs 1 and 2.

(3) After paragraph 3 insert—

"3A (1) The Secretary of State may designate any element of the remuneration paid by Primary Care Trusts to persons providing pharmaceutical services or local pharmaceutical services which is not remuneration referable to the cost of drugs.

(2) If an element is so designated, the Secretary of State must for each financial year apportion among all Primary Care Trusts, in such manner as the Secretary of State considers appropriate, the total of the remuneration referable to that element which is paid by each Primary Care Trust in that year.

(3) A Primary Care Trust is accountable in any year for remuneration referable to that element to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (2).

(4) Where in any financial year any remuneration referable to that element for which a Primary Care Trust is accountable is paid by another Primary Care Trust, the remuneration must be treated (for the purposes of sections 228 and 229) as having been paid by the first Primary Care Trust in the performance of its functions.

(5) The Secretary of State may, in particular, exercise the discretion under sub-paragraph (2)—

(a) so that any apportionment relating to services associated with the provision of drugs reflects, in the case of each Primary Care Trust, the financial consequences of orders for the provision of drugs, being orders which in the opinion of the Secretary of State are attributable to the Primary Care Trust in question,

(b) by reference to averaged or estimated amounts.

(6) The Secretary of State may make provision for any remuneration referable to an element designated under sub-paragraph (1) which is paid by a Primary Care Trust other than the Primary Care Trust which is accountable for the payment to be reimbursed in such manner as the Secretary of State may determine."

(4) In paragraph 4(1)—

(a) for the definition of "designated" substitute—

""designate" means designate in writing (and different designations may be made for different purposes),",

(b) omit the definition of "pharmaceutical services", and

(c) in the definition of "remuneration referable to the cost of drugs", omit the words "except in paragraph 1(2)(b) and".

(5) After paragraph 4(3) insert—

"(4) If the Secretary of State does not treat such remuneration, so far as it is so met by an NHS trust or NHS foundation trust, as remuneration referable to

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the cost of drugs, the Secretary of State may treat it as remuneration falling within paragraph 3A(1).”

Commencement Information
I564 Sch. 12 para. 5 in force at 1.4.2010 by S.I. 2010/708, **art. 2(c)**

PART 2

WALES

6 In this Part of this Schedule “the NHS (Wales) Act” means the National Health Service (Wales) Act 2006 (c. 42).

Commencement Information
I565 Sch. 12 para. 6 in force at 21.5.2010 by S.I. 2010/1457, **art. 2(c)**

7 In section 174 of the NHS (Wales) Act (public funding of Local Health Boards) omit “and pharmaceutical” in—
(a) subsection (1)(a),
(b) subsection (2)(a) and (b), and
(c) subsection (12).

Commencement Information
I566 Sch. 12 para. 7 in force at 21.5.2010 by S.I. 2010/1457, **art. 2(c)**

8 In section 175 of the NHS (Wales) Act (financial duties of Local Health Boards), in subsection (1) omit “and pharmaceutical”.

Commencement Information
I567 Sch. 12 para. 8 in force at 21.5.2010 by S.I. 2010/1457, **art. 2(c)**

9 In section 176 of the NHS (Wales) Act (resource limits for Local Health Boards) omit “and pharmaceutical” in—
(a) subsection (2), and
(b) subsection (3)(b).

Commencement Information
I568 Sch. 12 para. 9 in force at 21.5.2010 by S.I. 2010/1457, **art. 2(c)**

10 (1) Schedule 8 to the NHS (Wales) Act (further provision about expenditure of Local Health Boards) is amended as follows.

(2) In paragraph 1(1)—
(a) omit “and pharmaceutical”, and

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(b) in paragraph (a) for the words from "services under" to "pharmaceutical services)" substitute " general ophthalmic services ".

(3) In paragraph 1(2)—

(a) in paragraph (a) for "services as mentioned in sub-paragraph (1)(a)" substitute " general ophthalmic services ", and

(b) omit paragraphs (b) and (c).

(4) Accordingly, in the heading immediately preceding paragraph 1, omit "and pharmaceutical".

(5) For paragraph 2 substitute—

"2 In section 174 "main expenditure", in relation to a Local Health Board and the year in question, means—

(a) expenditure of the Local Health Board attributable to the reimbursement in that year of expenses of persons providing general ophthalmic services which are designated expenses incurred in connection with the provision of those services (or in giving instruction in matters relating to those services), and

(b) any other expenditure of the Local Health Board attributable to the performance of its functions in that year (other than general ophthalmic services expenditure)."

(6) After paragraph 3 insert—

"3A (1) The Welsh Ministers may designate any element of the remuneration paid by Local Health Boards to persons providing pharmaceutical services or local pharmaceutical services which is not remuneration referable to the cost of drugs.

(2) If an element is so designated, the Welsh Ministers must for each financial year apportion among all Local Health Boards, in such manner as the Welsh Ministers consider appropriate, the total of the remuneration referable to that element which is paid by each Local Health Board in that year.

(3) A Local Health Board is accountable in any year for remuneration referable to that element to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (2).

(4) Where in any financial year any remuneration referable to that element for which a Local Health Board is accountable is paid by another Local Health Board, the remuneration must be treated (for the purposes of sections 174 and 175) as having been paid by the first Local Health Board in the performance of its functions.

(5) The Welsh Ministers may, in particular, exercise their discretion under sub-paragraph (2)—

(a) so that any apportionment relating to services associated with the provision of drugs reflects, in the case of each Local Health Board, the financial consequences of orders for the provision of drugs, being orders which in the opinion of the Welsh Ministers are attributable to the Board in question,

(b) by reference to averaged or estimated amounts.

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(6) The Welsh Ministers may make provision for any remuneration referable to an element designated under sub-paragraph (1) which is paid by a Local Health Board other than the Board which is accountable for the payment to be reimbursed in such manner as the Welsh Ministers may determine."

(7) In paragraph 4(1)—

(a) at the end of the definition of "designated" insert " and "designate" must be read accordingly ",

(b) omit the definition of "pharmaceutical services", and

(c) in the definition of "remuneration referable to the cost of drugs", omit the words "except in paragraph 1(2)(b) and".

(8) After paragraph 4(3) insert—

"(4) If the Welsh Ministers do not treat such remuneration, so far as it is so met by an NHS trust, as remuneration referable to the cost of drugs, they may treat it as remuneration falling within paragraph 3A(1)."

Commencement Information

I569 Sch. 12 para. 10 in force at 21.5.2010 by S.I. 2010/1457, **art. 2(c)**

SCHEDULE 13

Section 147(6)

TRANSITIONAL PROVISIONS RELATING TO S. 147

Interpretation of Schedule

1 In this Schedule "the 1948 Act" means the National Assistance Act 1948 (c. 29).

Commencement Information

I570 Sch. 13 para. 1 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

I571 Sch. 13 para. 1 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

Complaints, orders and payments under section 43 of the 1948 Act

2 (1) No complaint may be made under section 43 of the 1948 Act on or after the appointed day, not even—

(a) in respect of assistance given, or applied for, before that day, or

(b) in respect of expenditure incurred by virtue of section 47 of that Act—

(i) before the appointed day, or

(ii) in connection with the maintenance of a person who is maintained in pursuance of an order under section 47 of that Act (order for removing, to suitable premises, person in need of care and attention) made before the appointed day.

(2) No order may be made under section 43(2) of the 1948 Act on or after the appointed day, not even on a complaint made before that day.

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(3) No order made under section 43(2) of the 1948 Act—

(a) may be varied on or after the appointed day so as to—

(i) provide for any additional payment,

(ii) increase the amount of any payment, or

(iii) bring forward the time for making any payment;

(b) may be revived on or after the appointed day.

(4) Where an order has been made under section 43(2) of the 1948 Act, the only payments required to be made under the order on or after the appointed day are overdue pre-commencement payments.

(5) This Act does not prevent enforcement after the appointed day (whether by proceedings or otherwise) of an order under section 43(2) of the 1948 Act so far as the order relates to overdue pre-commencement payments.

(6) In this paragraph—

"the appointed day" means the day appointed under this Act for the coming into force of section 147(1)(a);

"overdue pre-commencement payment", in relation to an order under section 43(2) of the 1948 Act, means a payment that under the order should have been (but was not) made before that day.

(7) Sub-paragraphs (3) to (5) apply in relation to a registered order as to an order made under section 43(2) of the 1948 Act in England and Wales, except that in relation to a registered order "overdue pre-commencement payment" means a payment that under the registered order should have been (but was not) made before 5 October 2007.

(8) In sub-paragraph (7) "registered order" means—

(a) an order made in Scotland under section 43(2) of the 1948 Act, and

(b) registered in England and Wales under Part 2 of the Maintenance Orders Act 1950 (c. 37) (enforcement in one part of the United Kingdom of orders made in another part).

Commencement Information

I572 Sch. 13 para. 2 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

I573 Sch. 13 para. 2 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

Recovery of expenditure incurred under section 47(8) of the 1948 Act

3 (1) Sub-paragraphs (3) to (5) apply in relation to expenditure incurred under section 47(8) of the 1948 Act in connection with the maintenance of any particular person ("A").

(2) In sub-paragraphs (3) to (5) "liability proceedings" means proceedings for the expenditure's recovery under section 47(9) of the 1948 Act from a person other than A if the proceedings are brought against that other person ("B") on account of B having, at a time before the appointed day, been for the purposes of the 1948 Act liable to maintain A.

(3) No liability proceedings may be begun, or continued, on or after the appointed day; but this is subject to sub-paragraph (5).

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Sub-paragraph (3) applies (subject to sub-paragraph (5))—
  (a) even to expenditure incurred before the appointed day, and
  (b) even where A is maintained in pursuance of an order under section 47 of the 1948 Act made before the appointed day.

(5) Where liability proceedings begun before the appointed day resulted in a court making an order before that day for the recovery of the expenditure from B, this Act does not prevent the enforcement of the order (whether by proceedings or otherwise) on or after the appointed day.

(6) In this paragraph "the appointed day" means the day appointed under this Act for the coming into force of section 147(1)(b).

Commencement Information

I574 Sch. 13 para. 3 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

I575 Sch. 13 para. 3 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

Recovery of expenses incurred under section 48 of the 1948 Act

4 (1) Sub-paragraphs (3) to (5) apply in relation to reasonable expenses incurred under section 48(1) and (2) of the 1948 Act in relation to a person ("C") admitted, or removed, as mentioned in section 48(1) of that Act.

(2) In sub-paragraphs (3) to (5) "liability proceedings" means proceedings for the expenses' recovery under section 48(3) of the 1948 Act from a person other than C if the proceedings are brought against that other person ("D") on account of D having, at a time before the appointed day, been for the purposes of the 1948 Act liable to maintain C.

(3) No liability proceedings may be begun, or continued, on or after the appointed day; but this is subject to sub-paragraph (5).

(4) Sub-paragraph (3) applies (subject to sub-paragraph (5))—
  (a) even to expenses incurred before the appointed day, and
  (b) even where C was admitted, or removed, before the appointed day.

(5) Where liability proceedings begun before the appointed day resulted in a court making an order before that day for the recovery of the expenditure from D, this Act does not prevent the enforcement of the order (whether by proceedings or otherwise) on or after the appointed day.

(6) In this paragraph "the appointed day" means the day appointed under this Act for the coming into force of section 147(1)(c).

Commencement Information

I576 Sch. 13 para. 4 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

I577 Sch. 13 para. 4 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Prosecutions under section 51 of the 1948 Act

5 (1) Sub-paragraph (2) applies in relation to an offence under section 51 of the 1948 Act (offence where accommodation is provided under Part 3 of that Act in consequence of persistent refusal or neglect to maintain a person), other than an offence in respect of accommodation being provided to a person in consequence of that person's persistent refusal or neglect to maintain himself.

(2) Proceedings for the offence may be begun or continued on or after the appointed day, but only if the accommodation provided in consequence of the refusal or neglect (or alleged refusal or neglect) began to be provided before the appointed day.

(3) In this paragraph "the appointed day" means the day appointed under this Act for the coming into force of section 147(1)(d).

Commencement Information

I578 Sch. 13 para. 5 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

I579 Sch. 13 para. 5 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

Transitional cases under paragraph 19(1) of Schedule 6 to the 1948 Act

6 (1) Sub-paragraphs (2) and (3) apply where—

(a) a person was by virtue of an enactment repealed by the 1948 Act under a liability (whether under an order of a court or otherwise) to maintain another person,

(b) on the repeal of that enactment by the 1948 Act, that liability was saved by the operation of section 38(2) of the Interpretation Act 1889 (c. 63), and

(c) paragraph 19(1) of Schedule 6 to the 1948 Act (which ended a saved liability to maintain a person where there was no liability to maintain that person for the purposes of the 1948 Act) did not have effect to end that liability.

(2) If that liability has not come to an end before the appointed day, it comes to an end as from the beginning of that day; but this is subject to sub-paragraph (3).

(3) Where that liability is brought to an end by this Act and an order of a court made before the appointed day requires the making of payments on account of that liability, this Act—

(a) does not end liability to make payments under the order that should have been (but were not) made before the appointed day, and

(b) does not prevent enforcement after the appointed day (whether by proceedings or otherwise) of the order so far as it relates to payments required by it to be made before the appointed day.

(4) In this paragraph "the appointed day" means the day appointed under this Act for the coming into force of section 147(1)(e).

Commencement Information

I580 Sch. 13 para. 6 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

I581 Sch. 13 para. 6 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Transitional cases under paragraph 19(2) of Schedule 6 to the 1948 Act

7 (1) Sub-paragraphs (2) and (3) apply where an order of court, or agreement, such as is mentioned in sub-paragraph (2) of paragraph 19 of Schedule 6 to the 1948 Act has effect at any time on or after 5 July 1948 by virtue of that sub-paragraph.

(2) If the order or agreement has not ceased to have effect before the appointed day, it ceases to have effect as from the beginning of that day; but this is subject to sub-paragraph (3).

(3) Where the order or agreement ceases to have effect as a result of the operation of this Act, this Act—

(a) does not end liability to make payments under the order or agreement that should have been (but were not) made before the appointed day, and

(b) does not prevent enforcement after the appointed day (whether by proceedings or otherwise) of the order or agreement so far as it relates to payments required by virtue of the order or agreement to be made before the appointed day.

(4) In this paragraph "the appointed day" means the day appointed under this Act for the coming into force of section 147(1)(f).

Commencement Information

I582 Sch. 13 para. 7 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

I583 Sch. 13 para. 7 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

Recovery of expenses under section 46 of the Public Health (Control of Disease) Act 1984

8 (1) Sub-paragraphs (3) to (5) apply in relation to expenses incurred under subsection (1) or (2) of section 46 of the Public Health (Control of Disease) Act 1984 (c. 22) in relation to a person ("E") whose body has been buried, or cremated, as mentioned in that subsection.

(2) In sub-paragraphs (3) to (5) "liability proceedings" means proceedings for the expenses' recovery under section 46(5) of that Act from a person ("F") on account of F having, at a time before the appointed day, been for the purposes of the 1948 Act liable to maintain E.

(3) No liability proceedings may be begun, or continued, on or after the appointed day; but this is subject to sub-paragraph (5).

(4) Sub-paragraph (3) applies (subject to sub-paragraph (5))—

(a) even to expenses incurred before the appointed day, and

(b) even where E died before the appointed day.

(5) Where liability proceedings begun before the appointed day resulted in a court making an order before that day for the recovery of the expenditure from F, this Act does not prevent the enforcement of the order (whether by proceedings or otherwise) on or after the appointed day.

(6) In this paragraph "the appointed day" means the day appointed under this Act for the coming into force of section 147(1)(g).

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I584 Sch. 13 para. 8 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(b)**

I585 Sch. 13 para. 8 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(b)**

SCHEDULE 14

Section 160

FURTHER AMENDMENTS RELATING TO PART 5

PROSPECTIVE

Children Act 1989 (c. 41)

F16 1 . . . . . .

Textual Amendments

F16 Sch. 14 para. 1 omitted (1.4.2015) by virtue of The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 92** (with arts. 1(3), 3)

Parliamentary Commissioner Act 1967 (c. 13)

2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) insert at the appropriate place— " The National Information Governance Board for Health and Social Care. "

Commencement Information

I586 Sch. 14 para. 2 in force at 1.10.2008 by S.I. 2008/2497, **art. 7(1)(b)**

House of Commons Disqualification Act 1975 (c. 24)

3 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place— " The National Information Governance Board for Health and Social Care. "

Commencement Information

I587 Sch. 14 para. 3 in force at 1.10.2008 by S.I. 2008/2497, **art. 7(1)(b)**

Freedom of Information Act 2000 (c. 36)

4 In Schedule 1 to the Freedom of Information Act 2000 (public authorities) in Part 6 (other public bodies and offices) insert at the appropriate place— " The National Information Governance Board for Health and Social Care. "

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Commencement Information
I588 Sch. 14 para. 4 in force at 1.10.2008 by S.I. 2008/2497, **art. 7(1)(b)**

National Health Service Act 2006 (c. 41)

5 In section 271 of the National Health Service Act 2006 (territorial limit of exercise of functions), in subsection (3) (which lists the provisions in relation to which functions are not exercisable only in relation to England)—

(a) after paragraph (f) insert—

"(fa) sections 250B to 250D (National Information Governance Board),", and

(b) in paragraph (g), for "252 (Patient Information Advisory Group)" substitute " 252 (consultation with National Information Governance Board) ".

Commencement Information
I589 Sch. 14 para. 5 in force at 1.1.2009 by S.I. 2008/2497, **art. 7(2)(c)**

6 In Schedule 1 to the National Health Service Act 2006 (further provision about the Secretary of State and services under that Act), in paragraph 3, for "2(1)(b)" substitute " 2(2) ".

Commencement Information
I590 Sch. 14 para. 6 in force at 1.4.2009 by S.I. 2009/462, **art. 5**

National Health Service (Wales) Act 2006 (c. 42)

7 In Schedule 1 to the National Health Service (Wales) Act 2006 (further provision about the Welsh Ministers and services under that Act), in paragraph 3, for "2(1)(b)" substitute " 2(2) ".

Commencement Information
I591 Sch. 14 para. 7 in force at 1.4.2009 by S.I. 2009/462, **art. 5**

PROSPECTIVE

Safeguarding Vulnerable Groups Act 2006 (c. 47)

8 In section 6 of the Safeguarding Vulnerable Groups Act 2006 (regulated activity providers), after subsection (8) insert—

"(8A) An authority that is a local authority for the purposes of section 17A of the Children Act 1989 **[**[F17], section 57 of the Health and Social Care Act 2001 or sections 31 to 33 of the Care Act 2014**]** (direct payments) does not

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make arrangements for another to engage in a regulated activity by virtue of anything the authority does under **[**[F18]any of those sections**]**.

(8B) A person (S) who is someone's surrogate within the meaning of section 57 of the Health and Social Care Act 2001 does not make arrangements for another to engage in a regulated activity by virtue of anything that S does under subsection (1B)(b) or (1C)(b) of that section.

[[F19](8C) A person (S) who is authorised as mentioned in subsection (4)(a) of section 32 of the Care Act 2014 does not make arrangements for another to engage in a regulated activity by virtue of anything that S does under subsection (4)(b) of that section.”**]**

Textual Amendments

F17 Words in Sch. 14 para. 8 substituted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 93(2)(a)** (with arts. 1(3), 3)

F18 Words in Sch. 14 para. 8 substituted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 93(2)(b)** (with arts. 1(3), 3)

F19 Words in Sch. 14 para. 8 inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 93(3)** (with arts. 1(3), 3)

SCHEDULE 15

Section 166

REPEALS AND REVOCATIONS

PART 1

REPEALS AND REVOCATIONS RELATING TO PART 1

Commencement Information

I592 Sch. 15 Pt. 1 in force at 1.4.2009 for specified purposes by S.I. 2009/462, art. 2(1), **Sch. 1 para. 36** (with Schs. 3, 4)

I593 Sch. 15 Pt. 1 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 13(f)**

I594 Sch. 15 Pt. 1 in force at 6.4.2010 for specified purposes by S.I. 2010/807, art. 2(1), **Sch. 1 para. 18** (with Pt. 3)

Title and reference	*Extent of repeal or revocation*
Prison Act 1952 (c. 52)	In Schedule A1— (a) paragraph 2(2)(f), and (b) paragraph 3(2)(c).
Public Records Act 1958 (c. 51)	In Schedule 1, in Part 2 of the Table at the end of paragraph 3—

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	(a) the entry for the Commission for Healthcare Audit and Inspection, and (b) the entry for the Commission for Social Care Inspection.
Public Bodies (Admission to Meetings) Act 1960 (c. 67)	In paragraph 1 of the Schedule, paragraphs (bg) and (bh).
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2— (a) the entry for the Commission for Healthcare Audit and Inspection, and (b) the entry for the Commission for Social Care Inspection.
House of Commons Disqualification Act 1975 (c. 24)	In Part 2 of Schedule 1— (a) the entry for the Commission for Healthcare Audit and Inspection, and (b) the entry for the Commission for Social Care Inspection. In Part 3 of Schedule 1, the entry for members of the Mental Health Act Commission in receipt of remuneration.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part 2 of Schedule 1— (a) the entry for the Commission for Healthcare Audit and Inspection, and (b) the entry for the Commission for Social Care Inspection.
Race Relations Act 1976 (c. 74)	In Parts 2 and 4 of Schedule 1A— (a) the entry for the Commission for Healthcare Audit and Inspection, and (b) the entry for the Commission for Social Care Inspection.
Mental Health Act 1983 (c. 20)	In section 119(2), the words “by the Secretary of State”. Section 121.
Mental Health Act Commission (Establishment and Constitution) Order 1983 (S.I. 1983/892)	The whole instrument.
Mental Health Act Commission Regulations 1983 (S.I. 1983/894)	The whole instrument.
Vehicle Excise and Registration Act 1994 (c. 22)	In paragraph 7 of Schedule 2, paragraph (c) (together with the word “or” at the end of it).
Police Act 1996 (c. 16)	In Schedule 4A— (a) paragraph 2(2)(f), and (b) paragraph 4(f).
Audit Commission Act 1998 (c. 18)	In section 4(7)— (a) in paragraph (a), the words “the Commission for Healthcare Audit and Inspection and”, and

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	(b) in paragraph (b), the words "the Commission for Social Care Inspection and". In section 49(1)— (a) paragraph (ba), and (b) in paragraph (c), the words from "or for the purposes of the functions of the Commission" to the end. In Schedule 2A, paragraph 1(1)(g) (together with the word "or" at the end of it).
Crown Prosecution Service Inspectorate Act 2000 (c. 10)	In the Schedule— (a) paragraph 2(2)(f), and (b) paragraph 4(f).
Care Standards Act 2000 (c. 14)	Sections 5A and 5B. In section 8(7), the words from ", other than" to the end. Section 10(6). In section 11— (a) subsection (2), and (b) in subsection (4), the words "the CHAI, the CSCI or". In section 19(4)(b), the word "and" at the end. In section 21(5)(b), the word "or" at the end. In section 30A(2)(b), the word "or" at the end. Section 42(5). In section 55(3)(e), the words "the CSCI,". Section 113(1A). Section 113A. Section 120(1). In the Table in section 121(13), the entries for the expressions "CHAI" and "CSCI".
Freedom of Information Act 2000 (c. 36)	In Part 6 of Schedule 1— (a) the entry for the Commission for Healthcare Audit and Inspection, and (b) the entry for the Commission for Social Care Inspection.
Criminal Justice and Court Services Act 2000 (c. 43)	In Schedule 1A— (a) paragraph 2(2)(f), (b) paragraph 3(2)(c), and (c) paragraph 4(f).
Courts Act 2003 (c. 39)	In Schedule 3A— (a) paragraph 2(2)(f), and (b) paragraph 4(f).
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	Sections 41 to 44. Section 46. Sections 47A to 69A. Sections 76 to 91. Sections 102 to 104. Section 113(3)(b). Section 114(2)(b).

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	Sections 120 to 141. Sections 144 to 145A. In section 148, the definitions of "the CHAI", "the CSCI", "financial year" and "Minister of the Crown". Schedules 6 to 8.
Health Act 2006 (c. 28)	In section 61, the words "the Commission for Healthcare Audit and Inspection or". In Schedule 5— (a) the entry for the Commission for Healthcare Audit and Inspection, and (b) the entry for the Commission for Social Care Inspection.
Education and Inspections Act 2006 (c. 40)	In Schedule 13, paragraph 1(2)(f).
National Health Service (Wales) Act 2006 (c. 42)	In section 30(2), paragraph (d) (together with the word "and" at the end of that paragraph).
Safeguarding Vulnerable Groups Act 2006 (c. 47)	Section 45(7)(d). In Schedule 4— (a) paragraph 1(10)(f), (b) paragraph 1(11)(a), and (c) paragraph 7(6)(a) and (b).

PART 2

REGULATION OF HEALTHCARE PROFESSIONS

Commencement Information

I595 Sch. 15 Pt. 2 in force at 1.1.2009 for specified purposes by S.I. 2008/3244, **art. 2(j)**

I596 Sch. 15 Pt. 2 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 4(1)(c)**

Title and reference	*Extent of repeal or revocation*
Hearing Aid Council Act 1968 (c. 50)	The whole Act.
Hearing Aid Council (Extension) Act 1975 (c. 39)	The whole Act.
Supreme Court Act 1981 (c. 54)	In Schedule 5, the entry for the Hearing Aid Council Act 1968.
Medical Act 1983 (c. 54)	In section 1(3), paragraphs (b) and (f). Section 38(3)(a)(ii). In section 41— (a) in subsection (7), the words "in accordance with regulations made by the General Council under this subsection,", and (b) subsection (8).

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	In section 41A(4), the words from "; and for the purposes" to the end. Section 53(2)(c). In Part 3 of Schedule 1— (a) paragraphs 19A and 19E and the headings before those paragraphs, and (b) paragraph 23(b). In Schedule 4— (a) in the heading before paragraph 1, the words ", Interim Orders Panels and Fitness to Practise Panels", (b) in paragraph 1(1), the words ", Interim Orders Panels and Fitness to Practise Panels", (c) in paragraph 1(1)(a), the words ", an Interim Orders Panel or a Fitness to Practise Panel", (d) in paragraph 1(1)(b), the words "or such a Panel", (e) paragraph 1(3) and (4), (f) in paragraph 2(1), paragraphs (b) and (c) and the words "or Panel", (g) in paragraph 2(2), the words ", an Interim Orders Panel or a Fitness to Practise Panel", (h) in paragraph 2(3), the words ", an Interim Orders Panel or a Fitness to Practise Panel" and the words "or Panel" (in both places), (i) in paragraph 3(a), the words ", an Interim Orders Panel or a Fitness to Practise Panel" and the words ", a Panel", (j) in paragraph 3(b), the words "to a Fitness to Practise Panel or" and the words "the Panel or", (k) paragraph 5A(1)(a)(ii), (3) and (3A), (l) paragraph 7(1)(b) and (c), (m) in paragraph 7(4), the words ", an Interim Orders Panel or a Fitness to Practise Panel", (n) in paragraph 7(4)(a), the words "or a Panel", (o) in paragraph 7(4)(a)(ii) and (b), the words "or the Panel", and (p) in paragraph 13, the words ", an Interim Orders Panel or Fitness to Practise Panel".
Hearing Aid Council (Amendment) Act 1989 (c. 12)	The whole Act.
Opticians Act 1989 (c. 44)	Section 5C.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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	In section 5D(1), the words "the Fitness to Practise Committee and". In section 13L(11), the words "and rules made under section 23C below". In section 23B— (a) in the heading, the words "Fitness to Practise Committee and", and (b) subsection (1)(a) and the word "or" following it. In section 23C— (a) subsection (1)(a)(i) and the word "and" following it, and (b) subsection (2)(e) and (f). Section 23D(2)(a) and the word "and" following it. In section 23E(3) and (4), the words "the Fitness to Practise Committee and".
Courts and Legal Services Act 1990 (c. 41)	In Schedule 10, paragraph 29.
Value Added Tax Act 1994 (c. 23)	In Part 2 of Schedule 9, in Item 1 of Group 7, paragraph (e).
Health Act 1999 (c. 8)	In section 60(2)(a), the words "the Pharmacy Act 1954,". In Schedule 3— (a) paragraph 7(2) and (3), (b) in paragraph 10, the words from "and other expressions" to the end, and (c) paragraph 12.
Freedom of Information Act 2000 (c. 36)	In Part 6 of Schedule 1, the entry for the Hearing Aid Council.
National Health Service Reform and Health Care Professions Act 2002 (c. 17)	In section 25(6), the words "and (3)". Section 26(7) and (8). In section 29(1)— (a) paragraph (c), (b) in paragraph (e), the words from "(other than a determination" to the end, and (c) paragraph (f). In Schedule 7, paragraphs 20 to 24.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 343, in paragraph 1 of the Table at the end of subsection (2), sub-paragraph (g).
Constitutional Reform Act 2005 (c. 4)	In Schedule 7, in paragraph 4, in part A, the entry for the Hearing Aid Council Act 1968 (c. 50). In Part 3 of Schedule 11, in paragraph 6(3), the entry for the Hearing Aid Council (Extension) Act 1975 (c. 39).
Health Act 2006 (c. 28)	In Schedule 5, the entry relating to the Council for the Regulation of Health Care Professionals.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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PART 3

PUBLIC HEALTH PROTECTION

Commencement Information

I597 Sch. 15 Pt. 3 in force at 6.4.2010 for specified purposes for E. by S.I. 2010/708, **art. 6(f)** (with Sch. 2)

I598 Sch. 15 Pt. 3 in force at 26.7.2010 for specified purposes for W. by S.I. 2010/1547, **art. 2(f)** (with Sch. 1)

Reference	*Extent of repeal or revocation*
Local Government, Planning and Land Act 1980 (c. 65)	In section 159(1), paragraph (e) and the word "and" immediately preceding it.
Public Health (Control of Disease) Act 1984 (c. 22)	Section 1(2) and (4). In section 5(3), the words "or rating districts". Section 7(4)(c) and (d). Sections 9 to 45. In section 49(1), paragraph (c) and the word "and" immediately preceding it. In section 50(2)— (a) paragraph (b) and the word "or" immediately preceding it, and (b) the words "or any person on board suffering from an infectious disease". In section 51— (a) subsection (1), and (b) in subsection (2), the words "the provisions of this Part of this Act and". Section 52. Sections 54 to 57. In section 61(2), the words ", other than a factory or workplace,". Section 62(3). Section 64(2). Section 67(3). Section 70. In section 74, the definitions of "coastal waters", "common lodging-house", "dustbin", "factory", "hospital", "house", "inland waters", "local Act", "NHS trust", "NHS contract", "notifiable disease", "rating district", "school" and "street". Section 76.
Planning and Compensation Act 1991 (c. 34)	In Part 1 of Schedule 18, the entry for section 57 of the Public Health (Control of Disease) Act 1984.

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PART 4

NATIONAL HEALTH SERVICE

Commencement Information

I599 Sch. 15 Pt. 4 in force at 1.4.2010 for specified purposes by S.I. 2010/708, **art. 2(d)**

I600 Sch. 15 Pt. 4 in force at 21.5.2010 for specified purposes by S.I. 2010/1457, **art. 2(d)**

Title and reference	*Extent of repeal*
National Health Service Act 2006 (c. 41)	In section 71(2)(f), the word "and" at the end. In section 164(5), paragraph (b) and the word "and" immediately preceding it. Section 228(2) and (12). In section 229(1), the words "(not including its pharmaceutical services expenditure)". Section 230(2) and (3). In Schedule 14— (a) paragraphs 1 and 2, and (b) in paragraph 4(1), the definition of "pharmaceutical services" and, in the definition of "remuneration referable to the cost of drugs", the words "except in paragraph 1(2)(b) and".
National Health Service (Wales) Act 2006 (c. 42)	In section 88(5), paragraph (b) and the word "and" immediately preceding it. In section 174(1)(a), (2)(a) and (b) and (12), the words "and pharmaceutical". In section 175(1), the words "and pharmaceutical". In section 176(2) and (3)(b), the words "and pharmaceutical". In Schedule 8— (a) in paragraph 1(1) (and in the heading immediately preceding paragraph 1) the words "and pharmaceutical", (b) paragraph 1(2)(b) and (c), (c) in paragraph 4(1), the definition of "pharmaceutical services" and, in the definition of "remuneration referable to the cost of drugs", the words "except in paragraph 1(2)(b) and".

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Health and Social Care Act 2008 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 5

ABOLITION OF MAINTENANCE LIABILITY OF RELATIVES

Commencement Information

I601 Sch. 15 Pt. 5 in force at 6.4.2009 except in relation to local authorities in W. by S.I. 2009/462, **art. 4(c)**

I602 Sch. 15 Pt. 5 in force at 6.4.2009 for W. by S.I. 2009/631, **art. 2(c)**

Title and reference	*Extent of repeal*
National Assistance Act 1948 (c. 29)	Section 42. Section 43. In section 47(9), the words "or from any person who for the purposes of this Act is liable to maintain that person". In section 48(3), the words ", or from any person who for the purposes of this Act is liable to maintain him,". In section 51— (a) in subsection (1), the words "or any person whom he is liable to maintain for the purposes of this Act", (b) in subsection (2), the words "or any other person", and (c) in subsection (3), in paragraph (a), the words "where the accommodation provided for him," and paragraph (b). In section 56(1), the words "(other than a sum due under an order made under section 43 of this Act)". In Schedule 6, in paragraph 19— (a) in sub-paragraph (1), the words "whom he is not liable to maintain for the purposes of this Act", and (b) sub-paragraph (2).
Maintenance Orders Act 1950 (c. 37)	In section 4— (a) subsection (1)(b), and (b) in subsection (2), the words "the said section forty-three or". In section 9— (a) subsection (1)(b), and (b) in subsection (2), the words "or the said section forty-three". In section 16(2)— (a) in paragraph (a)(v), the words ", or section forty-three of the National Assistance Act 1948", and (b) paragraph (b)(v).
Administration of Justice Act 1970 (c. 31)	In Schedule 8, paragraph 7.

The repeals in this Part of this Schedule have effect subject to, and in accordance with, Schedule 13.

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Attachment of Earnings Act 1971 (c. 32)	In Schedule 1, paragraph 8.
Supplementary Benefits Act 1976 (c. 71)	In Schedule 7, paragraph 4.
Magistrates' Courts Act 1980 (c. 43)	In section 65(1), paragraph (b).
Civil Jurisdiction and Judgments Act 1982 (c. 27)	In Schedule 5, in paragraph 5(c), the words "section 43 of the National Assistance Act 1948,".
Public Health (Control of Disease) Act 1984 (c. 22)	In section 46(5), the words from "or from any person" to "death".
Social Security Act 1986 (c. 50)	In Schedule 10, paragraph 41(2)(c).
Family Law Reform Act 1987 (c. 42)	In section 2(1), paragraph (a). In Schedule 2— (a) in paragraph 5, the words "section 42 of" and the words after "1948", and (b) paragraphs 6 and 8.
Health and Social Care Act 2001 (c. 15)	In section 54(1), in paragraph (b), the words "(including persons liable to maintain residents by virtue of section 42 of the 1948 Act)".
Courts Act 2003 (c. 39)	In Schedule 8, paragraph 80.
Criminal Justice Act 2003 (c. 44)	In Schedule 26, in paragraph 12(2), the words "and (b)".

The repeals in this Part of this Schedule have effect subject to, and in accordance with, Schedule 13.

PART 6

ESTABLISHMENT OF NATIONAL INFORMATION GOVERNANCE BOARD

Commencement Information
I603 Sch. 15 Pt. 6 in force at 1.1.2009 by S.I. 2008/2497, **art. 7(2)(d)**

Title and reference	*Extent of repeal*
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the entry relating to the Patient Information Advisory Group.
House of Commons Disqualification Act 1975 (c. 24)	In Schedule 1, in Part 2, the entry relating to the Patient Information Advisory Group.
Freedom of Information Act 2000 (c. 36)	In Schedule 1, in Part 6, the entry relating to the Patient Information Advisory Group.
Health and Social Care Act 2001 (c. 15)	Part 3 of Schedule 5.

Status: *Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.*
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PART 7

ABOLITION OF NATIONAL BIOLOGICAL STANDARDS BOARD

Commencement Information

I604 Sch. 15 Pt. 7 in force at 1.4.2009 by S.I. 2009/270, **art. 2(2)(b)**

Title and reference	*Extent of repeal*
Parliamentary Commissioner Act 1967	In Schedule 2, the entry for the National Biological Standards Board (UK).
Biological Standards Act 1975 (c. 4)	The whole Act.
Race Relations Act 1976 (c. 74)	In Part 2 of Schedule 1A, the entry for the National Biological Standards Board.
Freedom of Information Act 2000	In Part 6 of Schedule 1, the entry for the National Biological Standards Board (UK).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Part 2 of Schedule 1, paragraphs 389 and 390.
Health Act 2006 (c. 28)	In Schedule 5, the entry for the National Biological Standards Board.

Status:
Point in time view as at 26/07/2010. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
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