

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

Approved mental health professionals

Section 126: Education and training of approved mental health professionals

397. The Mental Health Act (as amended by the Mental Health Act 2007) provides for the approval of persons to act as AMHPs and confers functions on the Councils in relation to the education and training of people who are or wish to become AMHPs. When the relevant provisions come into force, AMHPs will take on the functions previously exercised by approved social workers, including making applications for a patient's admission and detention in hospital under Part 2 of the Mental Health Act. In addition to social workers, a wider group of professionals (for example nurses, occupational therapists and psychologists) will potentially be eligible for approval as AMHPs as long as they have the right skills, experience and training.
398. [Section 126](#) allows the Secretary of State in relation to the GSCC and the Welsh Ministers in relation to the CCW to make regulations modifying the functions of the Councils that relate to the education and training of AMHPs. This might cover, for example, their functions that relate to the approval of courses for social workers when acting as AMHPs.
399. *Subsection (2)* provides that the regulation-making power may be used to amend, repeal or apply (with or without modifications) any provision of any enactment, instrument or document.
400. *Subsection (3)* provides that certain paragraphs of Schedule 9 also apply (with modifications) to regulations made under this section. For example, the regulations may provide for fees to be charged and payments to be made by the Councils (paragraph 5 of Schedule 9). The same procedure for making regulations under section 124 applies to regulations made under this section (paragraphs 9 and 10 of Schedule 9).

Part 3 – Public Health Protection

Section 129: Public health protection

401. [Section 129](#) inserts a new Part 2A into the Public Health Act 1984. This new Part 2A replaces the existing Part 2 of the Act.
402. *Newsection 45A* defines certain terms used in the new Part. It provides that reference to infection or contamination is to that which presents or could present significant harm to human health. It also provides that reference to disinfection or decontamination includes the removal of any vector, agent or source of infection or contamination.
403. *Newsection 45B* enables the appropriate Minister (defined in new *section 45T(6)* as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles

on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations. It gives examples of particular measures the regulations might include. The powers are needed to enable similar provision to be made to that contained in the [Public Health \(Aircraft\) Regulations 1979 \(S.I. 1979/1434\)](#), the [Public Health \(Ships\) Regulations 1979 \(S.I. 1979/1435\)](#), or the [Public Health \(International Trains\) Regulations 1994 \(S.I. 1994/311\)](#), all of which are made under section 13 of the Public Health Act 1984.

404. New *section 45C* provides a power for the appropriate Minister to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination in England and Wales. The threat can come from outside England and Wales.
405. Section 45C(3) and (4) give examples of particular provision which might be made. For example new section 45C(3)(a) would enable the Secretary of State or the Welsh Ministers to set out standing national requirements for notification of cases of specified diseases by registered medical practitioners to the local authority. Section 45C(3)(c) allows the Secretary of State or the Welsh Ministers to impose restrictions or requirements directly on persons, or in relation to things or premises, or to enable another body, such as the local authority, or indeed the Secretary of State or the Welsh Ministers, to do so. Section 45C(4)(a) to (d) provide examples of the restrictions or requirements that might be imposed, including special restrictions or requirements.
406. Section 45C(6)(a) defines special restrictions or requirements by reference to the measures that a justice of the peace can include in a court order by virtue of new section 45G(2), 45H(2) or 45I(2). The following measures are not regarded as special restrictions or requirements: a requirement to keep a child away from school; a restriction on the holding of an event; or a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains.
407. New *section 45D* contains restrictions on the exercise of the power under section 45C. Section 45D(1) prohibits the appropriate Minister from making regulations containing restrictions or requirements under section 45C(3)(c) unless the Minister considers when making the regulations that the measures are proportionate to what is being sought to be achieved. Similarly, under section 45D(2), regulations which enable imposition of a restriction or requirement under section 45C(3)(c) must provide that the person who decides to impose such a measure must consider when taking the decision that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.
408. Section 45D(3) prohibits regulations from directly imposing a special restriction or requirement restricting or requiring medical examination, removal to or detention in hospital or another suitable establishment, or isolation or quarantine. However, regulations may enable the imposition of these restrictions or requirements by a decision-maker, if either of the conditions in section 45D(4) are met. Those conditions are that there is a serious and imminent threat to public health when the regulations are made or the decision to impose the restrictions or requirements is expressed in the regulations to be contingent on there being such a threat at the time the decision to impose them is made.
409. New *section 45E* excludes compulsory medical treatment, including vaccination, from the ambit of the regulation-making powers in sections 45B and 45C.
410. New *section 45F* makes further provision about regulations under section 45B or 45C. This includes, at new section 45F(3), details of when the regulations may be used to amend primary or secondary legislation. Section 45F(5) outlines the penalties for the offences that can be created using the regulations. These are a fine not exceeding

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£20,000 and a daily penalty not exceeding an amount equal to 2% of level 5 on the standard scale (£100) for continuing to commit an offence after initial conviction. Under subsection (2)(f) regulations may permit or prohibit the levy of charges. It is intended that where charges are levied, the level of those charges will not exceed the costs incurred in exercising the function to which the charges relate.

411. New section 45F(6), (7) and (8) make provision about the reviews and appeals in relation to special restrictions or requirements imposed by virtue of a decision taken under regulations made under section 45C. Subsection (6) provides that, where a special restriction or requirement is imposed on or in relation to a person, thing or premises the regulations must include provision for an individual (or business) to have a right of appeal to a magistrates' court against the decision. Subsection (7) requires that the regulations also make available a right of review at specified intervals to specified persons for special restrictions or requirements which continue in force in relation to any person, thing or premises for more than a specified period. Furthermore, subsection (8) provides that where the restriction or requirement imposed is detention, isolation or quarantine, the period prior to review and the interval between reviews must not exceed 28 days, and the regulations must require the continuation to be reviewed without the need for an application.
412. New sections 45G to 45J make new provision for court orders. The powers conferred on justices of the peace are wider than previously provided for under the Public Health Act 1984. For example, court orders could not previously be made under the Act in relation to things or premises. In some cases, requirements which could previously be imposed by a local authority under the Public Health Act 1984 will now be subject to a court order.
413. New section 45G(1) sets out the criteria that must be met for a justice of the peace to make an order under the legislation in relation to a person. The justice of the peace must be satisfied that:
 - the person is or may be infected or contaminated;
 - the infection or contamination presents or could present significant harm to human health;
 - there is a risk that the person might infect or contaminate others; and
 - it is necessary to make the order to remove or reduce that risk.
414. The measures that an order can provide for are described at section 45G(2). They are that a person be required to submit to medical examination, be removed to or detained in a hospital or other suitable establishment, be kept in quarantine or isolation, be disinfected or decontaminated, wear protective clothing, provide information, have their health monitored, attend training or advice sessions, or be restricted as to where they go or with whom they have contact or from working or trading.
415. Section 45G(3) and (4) enable the justice of the peace to make an order requiring an individual who is, or may be, infected or contaminated to provide information about the identity of another individual where that other individual may also be infected or contaminated and there is a risk that that person might infect or contaminate others. This is known as contact tracing.
416. New section 45G(7) requires the appropriate Minister to make regulations setting out what evidence must be available to the justice of the peace before the justice can be satisfied that there are grounds for making an order. Sections 45H(7) and 45I(7) enable the appropriate Minister to make similar regulations in relation to evidence for orders regarding things and premises, and in relation to evidence for orders regarding contact tracing in relation to things and premises.

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417. New sections 45H(1) and 45I(1) enable a justice of the peace to make an order if conditions similar to those in section 45G(1) are satisfied, but in relation to things and premises respectively. An order in relation to a thing might require, under section 45H(2), that the thing be seized or retained, kept in isolation or quarantine or disinfected or decontaminated. It might also require, in the case of a dead body, that the body be buried or cremated or, in any other case, that the thing be destroyed or disposed of. Similar measures are available under section 45I(2) in relation to premises (which include conveyances) except that instead of quarantine or isolation an order could require premises to be closed. New sections 45H(3) and (4) and 45I(3) and (4) also enable contact tracing in relation to things and premises respectively.
418. New *section 45J* makes provision in relation to groups of people, things or premises with regard to the powers in new sections 45G, 45H and 45I. This will assist the justice of the peace to make the same provision in one order where, for example, more than one person has been contaminated by the same contaminant.
419. New *section 45K* makes supplementary provision about what can be included in an order of a justice of the peace, known as a “Part 2A order”. It includes at new section 45K(3) provision that a measure in a Part 2A order may be conditional. For example, an order might state that if an individual refuses to be decontaminated, he must stay in isolation until the risk of contaminating others has passed.
420. Section 45K(5) allows the justice of the peace to include in a Part 2A order directions as to any action that might be appropriate to give effect to the order. This might, for example, include putting in place support provisions for a person undergoing a measure such as quarantine.
421. Section 61 of the Public Health Act 1984 as amended by paragraph 17 of Schedule 11 to this Act provides for a right of entry or warrant authorising entry to enable a relevant health protection authority to enter premises other than a private dwelling, or a warrant authorising entry to premises including a private dwelling. Section 45K(6) provides that a Part 2A order can include authority to enter premises including a private dwelling instead of having to apply separately for a warrant under section 61. If an order includes such authority, subsections (1) and (1A) (as inserted by paragraph 18 of Schedule 11 to this Act) of section 62 of the Public Health Act 1984 apply as if a warrant had been issued under section 61. This means, for example, that there can be tests of the premises or of anything found on them and that samples of the premises or anything found on them can be taken and retained.
422. New *section 45L* makes provision with regard to the length of time for which any restriction or requirement imposed by or under a Part 2A order may be in force. Section 45L(1) requires any restriction or requirement in an order to have a specified time limit. Section 45L(2) enables further orders to be made extending the period for which the restriction or requirement is imposed beyond that time limit. Section 45L(3) provides a maximum period of 28 days where the order imposes detention in a hospital or other suitable establishment, or quarantine or isolation of a person. This applies both to the initial period specified in the order and any extension of it. There is a power by regulations to prescribe a shorter period. Section 45L(4) enables the appropriate Minister to specify in regulations the maximum period for which any restriction or requirement other than one for detention in hospital etc., quarantine or isolation may be imposed and the maximum period of any extension of that period.
423. New *section 45M* sets out the procedures for making, changing or revoking a Part 2A order. Only a local authority may apply for a Part 2A order (subsection (1) of section 45M), but an affected person, in addition to the local authority or any other authority with the function of executing or enforcing the order in question, can apply for the order to be varied or revoked (subsection (5)). Section 45M(6) sets out who is an affected person in the case of an order under section 45G, and enables regulations by the appropriate Minister to prescribe any other person as an affected person. Sections 45M(7)(c), (8)(c) and (9) provide similar regulation-making powers in relation to who

may be an affected person for applications in respect of orders under sections 45H(2) and (4) and 45I(2) and (4). Section 45M(10) provides that varying or revoking a Part 2A order does not invalidate any action already taken under the order. Section 45M(3) requires the appropriate Minister to prescribe in regulations the persons to whom a local authority is required to give notice of the making of an application for a Part 2A order. However, Part 2A orders can be made without a person being given the notice that would ordinarily be required under regulations made under section 45M(3) or under rules of court if the justice of the peace considers it necessary to do so (subsection (4) of section 45M).

424. *Newsection 45N* enables the Secretary of State or the Welsh Ministers to make regulations dealing with matters relating to the taking of measures pursuant to Part 2A orders including the provisions described at section 45N(2).
425. *New section 45O* provides that it is an offence to fail to comply, without reasonable excuse, with a restriction or requirement imposed by or under an order of a justice of the peace or to wilfully obstruct anyone executing the order. The offence is punishable with a fine of up to £20,000. Subsections (4) and (5) of section 45O provide that a constable may take into custody and return a person who leaves a place contrary to an order detaining or isolating or quarantining the person in that place.
426. *Newsection 45P* provides that regulations under Part 2A of the Public Health Act 1984 may make different provision for different cases or different areas.
427. *Newsection 45Q* sets out the different Parliamentary procedures for making regulations under the powers at new sections 45B and 45C and those covering Part 2A orders. In general, regulations, including those under section 45B, are made under the negative resolution procedure. Regulations made under section 45C are subject to the affirmative resolution procedure unless they contain a declaration under section 45Q(3) that the person making them is of the opinion that the regulations do not contain any provision made by virtue of section 45C(3)(c) imposing special restrictions or requirements, or other restrictions or requirements that would have a significant effect on a person's rights. Regulations which amend an enactment for the purpose of giving effect to an international agreement are also subject to the affirmative resolution procedure. The first set of regulations to be made under sections 45G(7), 45L(4) and 45N will be subject to the affirmative resolution procedure.
428. Regulations of a kind to which draft affirmative procedure would normally apply may be made and brought into effect immediately under section 45R(2) if they contain a declaration from the Minister who makes the regulations that the person making them is of the opinion that it is necessary by reason of urgency for them to be made without a draft being approved under that procedure. If either House of Parliament (for English regulations) or the National Assembly for Wales (for Welsh regulations) decides to reject the regulations, then they will cease to have effect at the end of the day on which they are rejected (section 45R(5)). They will also cease to have effect after 28 days if a resolution approving them has not been passed by each House of Parliament (for English regulations) or the National Assembly for Wales (for Welsh regulations) (section 45R(4)).
429. *Newsection 45S* provides that the provisions in Part 2A of the Public Health Act 1984 have effect in relation to the territorial sea adjacent to England or Wales.
430. *New section 45T* defines a number of terms used in new Part 2A of the Public Health Act 1984.

Section 130: Further amendments relating to public health protection

431. **Section 130** repeals Part 2 of the Public Health Act 1984 and gives effect to Schedule 11 to this Act.

Schedule 11: Public health protection: further amendments

432. *Schedule 11* amends or repeals provisions in other legislation consequent on changes made by the repeal and replacement of Part 2 of the Public Health Act 1984. It also amends other provisions of the Public Health Act 1984.
433. *Paragraph 2* removes from section 159 of the Local Government, Planning and Land Act 1980 a reference to provisions in Part 2 which refer to common lodging houses.
434. *Paragraphs 3 to 30* amend the Public Health Act 1984. Paragraphs 3 to 6 define local authorities in section 1 (authorities administering Act), update sections 5 (financial provisions as to port health authorities) and 7 (port health district and authority for Port of London) and make repeals consequent on the replacement of Part 2 (of sections 1(2) and (4) and 9).
435. *Paragraph 7* updates section 48 in line with modern scientific understanding of the spread of disease, so that the powers to deal with the removal of dead bodies are not limited to a particular building.
436. *Paragraphs 8 to 10* remove references to infectious disease from sections 49 to 51 of Part 4 of the Public Health Act 1984, which deals with canal boats. These references are unnecessary, as the powers in Part 2A will cover canal boats.
437. *Paragraph 11* repeals provision for criminal offences in section 52 under Part 4 which have become unnecessary in light of changes made to section 2 of the Magistrates' Courts Act 1980 by the Courts Act 2003.
438. *Paragraph 12* omits Part 5 (miscellaneous) and section 57 (general provision for compensation) in Part 6 of the Public Health Act 1984. The provisions are either out of date or are intended to be replaced by or under Part 2A.
439. *Paragraphs 13 to 15* bring sections 58 to 60 in line with new Part 2A by substituting for local authorities, relevant health protection authorities which include local authorities and making other consequential amendments.
440. *Paragraph 16* updates the Public Health Act 1984 by introducing a new section 60A which provides a regulation-making power to enable notices, orders and other documents to be given or served electronically.
441. *Paragraph 17* updates and amends the powers to enter premises in section 61 to bring them into line with Part 2A. New subsection (2A) of section 61 curtails the right of entry in subsection (1) of section 61 so that it does not apply in respect of a private dwelling, but without affecting the power of a justice of the peace to issue a warrant under subsection (3) of section 61.
442. *Paragraph 18* amends section 62 to elaborate on how the right of entry or authorisation by warrant to enter under section 61 can be used.
443. *Paragraph 19* substitutes a new section 63 to provide for the wilful obstruction offence that continues to apply to Parts 3, 4 and 6 of the Public Health Act 1984 and bring the maximum fine, other than in relation to Part 4, into line with the maximum fine payable under Part 2A.
444. *Paragraph 20* inserts new sections 63A and 63B which concern offences by bodies corporate and unincorporated associations respectively. An officer of a body corporate may be liable for an offence as well as the body corporate by virtue of new section 63A. An officer or member of an unincorporated association may be liable for an offence as well as the unincorporated association by virtue of new section 63B.
445. *Paragraph 21* updates and amends section 64 to restrict who can bring a prosecution under the Public Health Act 1984.

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- 446. *Paragraph 22* inserts new section 64A to extend time limits in the Magistrates' Courts Act 1980 for bringing a prosecution for an offence created by or under the Public Health Act 1984.
- 447. The amendment at *paragraph 23* to section 67 is needed to ensure that the right of appeal under section 67 applies to decisions of a magistrates' court under regulations made in Part 2A.
- 448. *Paragraph 24* substitutes a new section 69 to extend protection from personal liability in or under the Act to all those who could carry out functions by virtue of new Part 2A.
- 449. *Paragraph 25* removes the power for the Secretary of State to hold local inquiries under section 70 by omitting the section.
- 450. *Paragraph 26* substitutes a new section 71 to update the default powers setting out the process to be followed if the appropriate Minister believes a relevant health protection authority is not carrying out its functions correctly.
- 451. *Paragraph 27* extends the "cumulative effects" provision in section 72 to include regulations made under new Part 2A and other provision under the Act.
- 452. *Paragraph 28* makes a consequential amendment to the provisions on Crown property in section 73 to reflect the new definition of premises which includes vessels.
- 453. *Paragraph 29* makes consequential amendments and adds definitions to, or updates the definitions in, section 74 (interpretation) to reflect changes in Part 2A.
- 454. *Paragraph 30* repeals section 76, which made provision for the Isle of Man and the Channel Islands.
- 455. *Paragraph 31* repeals a reference to a repealed provision in the Public Health Act 1984 from the Planning and Compensation Act 1991.

Part 4 – Health in Pregnancy Grant

England, Wales and Scotland

Section 131: Entitlement: Great Britain

- 456. *Section 131* amends the Contributions and Benefits Act. It inserts new Part 8A to provide that a woman who has satisfied prescribed conditions in relation to a pregnancy is entitled to payment of the Health in Pregnancy Grant.
- 457. New *section 140A* of the Contributions and Benefits Act establishes conditions of entitlement to the grant. It covers such matters as prescribed conditions in relation to a woman's pregnancy, in particular, the specified stage that a woman must have reached in order to become entitled, residence conditions and the requirement that the woman receive maternal health advice from a health professional. It introduces the powers to enable HM Treasury to make regulations under this section.
- 458. New *section 140B(1)* and *(2)* enable HM Treasury to prescribe in regulations the amount of the grant and to prescribe different amounts in relation to different cases.

Section 132: Administration: Great Britain

- 459. *Subsections (1) and (2)* enable the Commissioners for HM Revenue and Customs to make regulations about the administration of the Health in Pregnancy Grant. The regulations may, for example, provide for a claim to be made in a manner, and within a time, prescribed by the regulations. The regulations may also require persons prescribed by the regulations to provide information to enable the Commissioners to determine if the conditions for eligibility are met.

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460. *Subsection (3)* inserts new section 12A (necessity of application for health in pregnancy grant) into the Social Security Administration Act 1992. The new section provides that entitlement to the grant depends on making a claim in the required manner. It specifies that no person is to have entitlement to the grant without having a National Insurance Number or providing the evidence in order for a National Insurance Number to be allocated. It also enables the Commissioners for HM Revenue and Customs to prescribe exceptions to this requirement.
461. *Subsections (4) and (5)* enable the Commissioners for HM Revenue and Customs to recover overpayments of the grant made as a result, for example, of fraud, mistake or failure to disclose accurate information.
462. *Subsections (6) and (7)* amend sections 121E and 121F of the Social Security Administration Act 1992, to include information obtained by HMRC in connection with its functions relating to the Health in Pregnancy Grant. This will allow DWP and HMRC to share information to help develop and refine policies for pregnant women.
463. *Subsection (8)* applies Chapter 2 of Part 1 of the Social Security Act 1998, which makes provision about decisions and appeals and provides for those functions to be exercised by the Commissioners for HM Revenue and Customs.

Section 133: Penalty: Great Britain

464. **Section 133** amends the Social Security Administration Act 1992. It inserts new Schedule 3A to set out circumstances in which the Commissioners for HM Revenue and Customs may impose civil penalties on a person and sets out the power for the amount of the penalty to be prescribed by the Commissioners for HM Revenue and Customs. It also introduces the right to appeal for those on whom a civil penalty has been imposed and establishes time limits in which a penalty may be imposed and recovered.
465. Paragraph 2(6) of the new Schedule 3A provides the power for the Commissioners for HM Revenue and Customs to apply, by regulations, provision contained in the Social Security Act 1998 in relation to an appeal against a penalty.