



Health and Social Care Act 2008

2008 CHAPTER 14

PART 2

REGULATION OF HEALTH PROFESSIONS AND HEALTH AND SOCIAL CARE WORKFORCE

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.

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- (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
 - (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

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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.
- (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

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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.
- (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 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.”

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
 - (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.

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—

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- (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, 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—

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- (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.

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.