

SCHEDULE 1

Amendments of health service legislation

PART 1

Amendments to the National Health Service Act 1977

1. The National Health Service Act 1977 is amended as follows.
2. In section 3(1) (services generally)—
 - (a) in paragraph (d) after “other” insert “services and”,
 - (b) in paragraph (e) after “such” insert “other services and”, and
 - (c) in paragraph (f) after “services” insert “and facilities”.
3. In section 15 (duties in relation to family health services) in subsection (1)(a), for “for the provision of” substitute “(or, in relation to local pharmaceutical services, of the Health and Social Care Act 2001) for the provision of local pharmaceutical services,”.
4. In section 16(1) (exercise of functions by health authorities and special health authorities) omit “or a Health Authority”.
5. In section 16BC(1) (exercise of functions by Local Health Boards) for “section 16BB above or this section or sections 16CA to 16CC below” substitute “this Act (including this section) or any prescribed provision of any other Act”.
6. In section 16D (directions as to distribution of functions)—
 - (a) in subsection (1) omit “Health Authority or”, and
 - (b) in subsection (2) omit “or Health Authority”.
7. In section 17 (directions as to exercise of functions) omit subsection (2)(a).
8. In section 18(3)(b) (directions and regulations) omit “given by an instrument in writing”.
9. In section 21 (local social services authorities) after subsection (3) insert—

“(4) The reference in subsection (2) to bodies constituted under this Act includes a reference to NHS trusts and NHS foundation trusts.”.
10. Omit sections 23(4) and 27(5) (power to provide for modifications of the Vehicle Excise Registration Act 1994 and Part 6 of the Road Traffic Act 1988).
11. In section 26 (supply of goods and services)—
 - (a) for subsection (2)(c) substitute—

“(c) providing services under LPS arrangements or an LPS scheme,”,
 - (b) in subsection (3)(b) and (c) for “or Primary Care Trust” substitute “, Primary Care Trust or Local Health Board”,
 - (c) for subsection (4)(ab) substitute—

“(ab) persons performing services under LPS arrangements or an LPS scheme, and”, and
 - (d) in subsection (4)(b) for “or Primary Care Trusts” substitute “, Primary Care Trusts or Local Health Boards”.
12. In section 28A(2)(b) (power to make payments towards expenditure on community services) omit “section 8 of the Residential Homes Act 1980 or”.

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13. In section 28D(2) (persons with whom agreements for the provision of primary medical or primary dental services may be made), in paragraph (b) of the definition of qualifying body, for “, in accordance with the provisions of Part 4 of the Dentists Act 1984, is entitled to carry on the business of dentistry” substitute “is carrying on the business of dentistry in accordance with the Dentists Act 1984”.

14. In section 28EE(2) (delegation of functions relating to section 28C arrangements) after “medical services” insert “or primary dental services”.

15. For section 28I (use of accommodation) substitute—

(1) If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with—

(a) the provision of primary medical services or primary dental services under this Part, or

(b) the provision of local pharmaceutical services,

he may make the accommodation available on such terms as he thinks fit to persons providing those services.

(2) If the National Assembly for Wales considers that any accommodation provided by it by virtue of this Act is suitable for use in connection with the provision of primary medical services or primary dental services under this Part, it may make the accommodation available on such terms as it thinks fit to persons providing those services.”.

16. In section 28M(4) (persons eligible to enter into GDS contracts) in the definition of dental corporation, for “, in accordance with the provisions of Part 4 of the Dentists Act 1984, is entitled to carry on the business of dentistry” substitute “is carrying on the business of dentistry in accordance with the Dentists Act 1984”.

17. In section 28X (persons performing primary medical and dental services)—

(a) after subsection (1) insert—

“(1A) Regulations may provide that a health care professional of a prescribed description may not perform any local pharmaceutical service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust.”, and

(b) in subsection (3) after paragraph (b) add—

“(c) a Primary Care Trust is responsible for a local pharmaceutical service if it secures its provision by or under any enactment.”.

18. In section 28Y(1) (assistance and support) after paragraph (b) add—

“(c) any person providing local pharmaceutical services under LPS arrangements or an LPS scheme”.

19. For sections 43A and 43B (remuneration for services) substitute—

“43A Remuneration for Part 2 services

(1) The remuneration to be paid to persons who provide general ophthalmic services or pharmaceutical services under this Part shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).

(2) For the purposes of this section and section 43B below determining authorities are—

(a) the Secretary of State, and

- (b) so far as authorised by him to exercise the functions of determining authorities, any Local Health Board, Primary Care Trust or other person appointed by him in an instrument (referred to in this section and section 43B below as an instrument of appointment).
- (3) An instrument of appointment—
 - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations, and
 - (b) may be contained in regulations.
- (4) Subject to this section and section 43B below, regulations may make provision about determining remuneration under subsection (1) above and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (5) Regulations may provide—
 - (a) that determinations may be made by reference to any of the following—
 - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1) above,
 - (ii) scales, indices or other data of any description specified in the regulations,
 - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) above falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
 - (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates,
 - (b) provide that any determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
 - (i) if it is required to be published, on the date of publication,
 - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this section or section 43B below to a determination is to a determination of remuneration under subsection (1) of this section.

43B Part 2 remuneration: supplementary

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 43A(1) above, he—
 - (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
 - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.

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- (3) Determinations may—
 - (a) be made in more than one stage,
 - (b) be made by more than one determining authority,
 - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—
 - (a) to correct an error, or
 - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
 - (a) is payable only if the determining authority is satisfied as to certain conditions, or
 - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Remuneration under section 43A above may consist of payments by way of—
 - (a) salary,
 - (b) fees,
 - (c) allowances,
 - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,
and may be determined from time to time.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time.
- (8) The matters which may be reserved include in particular—
 - (a) the amount of remuneration to be paid in particular cases,
 - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
 - (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 43A(1) above to which the determination will relate or of any category falling within that description,
 - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services,
 - (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons,
 - (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate,
 - (e) the desirability of promoting services which are—
 - (i) economic and efficient, and
 - (ii) of an appropriate standard.

(10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 43A(1) above, the reference in subsection (9)(a) above to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”.

20. In section 44 (recognition of local representative committees)—

(a) in subsection (B2) for paragraph (b) substitute—

“(b) of—

- (i) the persons providing pharmaceutical services from premises in the Primary Care Trust’s area,
- (ii) the persons mentioned in sub-paragraph (i) above and the persons providing local pharmaceutical services in the Primary Care Trust’s area,
- (iii) the persons mentioned in sub-paragraph (i) above and the persons providing local pharmaceutical services under LPS arrangements in the Primary Care Trust’s area, or
- (iv) the persons mentioned in sub-paragraph (i) above and the persons providing local pharmaceutical services under LPS schemes in the Primary Care Trust’s area,”

(b) in subsection (3) omit paragraph (e) and after “subsection (4) below” insert “is a person providing local pharmaceutical services in the area of a Primary Care Trust if he provides such services in accordance with LPS arrangements made by the Primary Care Trust (whether with himself or another).”.

(c) after subsection (3) insert—

“(3A) Additionally, for the purposes of this section and section 45 below, a person who meets the condition in subsection (4) below is a person providing local pharmaceutical services in a Primary Care Trust’s area if he provides those services under an LPS scheme.”, and

(d) in subsection (4), after “subsection (3)” insert “and subsection (3A)”.

21. In section 45 (functions of local representative committees)—

(a) for subsection (1ZA) substitute—

“(1ZA) Regulations may require—

- (a) Primary Care Trusts, in the exercise of their functions under this Part of this Act, to consult committees recognised by them under section 44 above,
- (b) Primary Care Trusts, in the exercise of any of their functions which relate to LPS arrangements, to consult committees recognised by them under section 44(B2) (b) above,
- (c) Primary Care Trusts, in the exercise of any of their functions which relate to LPS schemes, to consult committees recognised by them under section 44(B2) (b) above,” and

(b) in subsection (1C) for “(B2)(b)(ii)” substitute “(B2)(b)(ii), (iii) or (iv)”.

22. In section 49H(1)(b) (fraud and unsuitability cases: supplementary) for “carrying on a retail pharmacy business” substitute “providing pharmaceutical services”.

23. In section 83A(1) (remission and repayment of charges and payment of travelling expenses)

(a) in paragraph (b) after “Primary Care Trust,” insert “Local Health Board,” and

(b) in paragraph (ba) after “NHS trust” insert “or an NHS foundation trust”.

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- 24.** In section 85(1) (default powers) for “or Part 1 of the Health Act 1999” substitute “, Part 1 of the Health Act 1999, Parts 1 to 3 of the Health and Social Care Act 2001 or Part 1 of the National Health Service Reform and Health Care Professions Act 2002,”.
- 25.** In section 86 (emergency powers)—
- (a) for “, or the National Health Service (Primary Care) Act 1997, Part I” substitute “Part 1 of the Health Act 1999, Parts 1 to 3 of the Health and Social Care Act 2001 or Part 1 of the National Health Service Reform and Health Care Professions Act 2002”, and
 - (b) for “that Part” substitute “those Parts”.
- 26.** Omit section 89 (power of voluntary organisations to transfer property).
- 27.** In section 96 (trusts: supplementary provisions) after subsection (3) add—
- “(4) The reference in subsection (1) to sections 90 to 95 above includes a reference to paragraph 12B of Schedule 5.”.
- 28.** Omit section 99 (regulation of financial arrangements).
- 29.** In section 100 (payments)—
- (a) in subsection (1) omit “with the approval of the Treasury”, and
 - (b) in subsection (2) for the words from “made”, in the second place it appears, to the end substitute “subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.”.
- 30.** In section 102 (allowances and remuneration for members of certain bodies)—
- (a) in subsection (1) omit “, with the approval of the Minister for the Civil Service,”,
 - (b) in subsection (2) omit “, with the approval of the Minister for the Civil Service,”,
 - (c) omit subsection (3), and
 - (d) in subsection (4) omit “, with the approval of the Minister for the Civil Service,”.
- 31.** In section 103(1) (special arrangements as to payment of remuneration) for “or LPS arrangements” substitute “or LPS schemes or arrangements”.
- 32.** In section 123(2) (persons displaced by health service development) omit “of such amounts and for such purposes as may be approved by the Treasury”.
- 33.** In section 124(4) (special notices of births and deaths) for “twenty-eighth” substitute “twenty-fourth”.
- 34.** In section 125 (protection of members and officers of authorities), after “the National Health Service and Community Care Act 1990” insert “, Part 1 of the Health Act 1999, Parts 1 to 3 of the Health and Social Care Act 2001, Part 1 of the National Health Service Reform and Health Care Professions Act 2002”.
- 35.** In section 126(4) (orders and regulations, and directions) for “conferred by sections 16BB, 18 or 19A(7) above, or by section 28E(3A), 28N, 28T, 28U or 28WD above, to give directions by an instrument in writing,” substitute “to give directions,”.
- 36.** Omit both subsections (4A) of section 126.
- 37.** In section 127 (supplementary regulatory powers), omit paragraph (c).
- 38.** In section 128 (interpretation and construction)—
- (a) for the definition of “disabled persons” substitute—

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““disabled person” means a person who has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities or who has such other disability as may be prescribed;”,

- (b) for the definition of “local pharmaceutical services” substitute—

““local pharmaceutical services” means such services of a kind which may be provided under section 41 or by virtue of section 41A (except the provision of drugs, medicines or listed appliances (within the meaning given by section 41) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of section 43(1)) as are prescribed by regulations under section 28 of the Health and Social Care Act 2001 or under paragraph 1(3) of Schedule 8A;”, and

- (c) for the definition of “LPS arrangements” substitute—

““LPS arrangements” means arrangements made under a pilot scheme established under section 28 of the Health and Social Care Act 2001;

“LPS scheme” has the meaning given in paragraph 1(2) of Schedule 8A;”.

39. In Schedule 5 (provisions about Strategic Health Authorities and Special Health Authorities)

- (a) in paragraph 9(1) for “a relevant authority” substitute “an authority”,
(b) omit paragraph 9(7), and
(c) after paragraph 12A insert—

“**12B.**—(1) The Secretary of State may by order provide for the appointment of trustees for an authority to hold property on trust for the general or any specific purposes of the authority (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the authority), or for any purposes relating to the health service.

- (2) An order under sub-paragraph (1) may—

- (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate, and
(d) make provision with respect to the term of office of any trustee and his removal from office.

(3) Where under sub-paragraph (1) trustees have been appointed for an authority, the Secretary of State may by order provide for the transfer of any trust property from the authority to the trustees.”.

40. In Schedule 9A (Family Health Services Appeal Authority)—

- (a) in paragraph 6(a) after “section 28X above,” insert “other than as it has effect in relation to local pharmaceutical services;”,
(b) in paragraph 6(d) for the words after “registered pharmacist” to the end of the paragraph substitute—
 “(i) providing or assisting in the provision of pharmaceutical services, or
 (ii) providing or performing local pharmaceutical services;”, and

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- (c) in paragraph 10 after “section 28X above,” (in both places) insert “other than as it has effect in relation to local pharmaceutical services,”.

41. In Schedule 11 (additional provisions as to the control of maximum prices for medical supplies)—

- (a) omit paragraph 2(5),
- (b) in paragraph 3—
 - (i) for “citizens of the United Kingdom and Colonies or British protected persons” substitute “British citizens, British overseas territories citizens, British subjects under the British Nationality Act 1981, British Nationals (Overseas) (within the meaning of that Act) or British protected persons (within the meaning of that Act)”, and
 - (ii) omit the definition of “British protected person”.

42. In Schedule 12 (additional provisions as to charges)—

- (a) in paragraph 1(1)(b) for “or in accordance with LPS arrangements” substitute “or, in the case of regulations made in relation to England, in accordance with LPS schemes or arrangements”,
- (b) in paragraph 2(1) after “determined” insert “in regulations or”,
- (c) in paragraph 2(2) after “Regulations” insert “or directions”,
- (d) in paragraph 2A(1) for “authority established under this Act” substitute “relevant body”,
- (e) in paragraph 2A(3)(a) and (b)—
 - (i) for “authority established under this Act” substitute “relevant body”, and
 - (ii) for “prescribed authority” substitute “prescribed body”,
- (f) in paragraph 2A(4)—
 - (i) for “an authority established under this Act” substitute “a relevant body”,
 - (ii) for “authority” substitute “body”, and
 - (iii) for “authority's” substitute “body's”, and
- (g) after paragraph 2A(5) add—
 - “(6) “Relevant body“ means a Strategic Health Authority, a Primary Care Trust or a Special Health Authority.”.