



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART V

#### MISCELLANEOUS AND GENERAL

#### 59 Parliamentary disqualification

- (1) In Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership of the House of Commons), in Part III for the entry which begins “Chairman in receipt of remuneration of any Regional Health Authority” there shall be substituted the following entry—

“Chairman or any member, not being also an employee, of any Regional Health Authority, District Health Authority, Family Health Services Authority or special health authority which is a relevant authority for the purposes of paragraph 9(1) of Schedule 5 to the National Health Service Act 1977.”
- (2) In the said Part III there shall be inserted (at the appropriate place) the following entry—

“Chairman or non-executive member of a National Health Service trust established under the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978”.
- (3) In the said Part III—
  - (a) in the entry which begins “Paid Chairman of a Health Board”, for the words “Paid Chairman” there shall be substituted “Chairman or any member, not being also an employee,”;
  - (b) in the entry which begins “Chairman of the Management Committee of the Common Services Agency” after the word “Chairman” there shall be inserted “or any member, not being also an employee,”; and
  - (c) in the entry relating to the Chairman of a committee constituted under section 91 of the Mental Health (Scotland) Act 1984, after the word

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“Chairman” there shall be inserted “or any member, not being also an employee”.

## **60 Removal of Crown immunities**

- (1) Subject to the following provisions of this section, on and after the day appointed for the coming into force of this subsection, no health service body shall be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and so far as concerns land in which the Secretary of State has an interest, at any time when—
- (a) by virtue of directions under any provision of the National Health Service Act 1977, the Mental Health (Scotland) Act 1984 or the Health and Medicines Act 1988 or by virtue of orders under section 2 or section 10 of the National Health Service (Scotland) Act 1978, powers of disposal or management with respect to the land are conferred on a health service body, or
  - (b) the land is otherwise held, used or occupied by a health service body,
- the interest of the Secretary of State shall be treated for the purposes of any enactment or rule of law relating to Crown land or interests as if it were an interest held otherwise than by the Secretary of State (or any other emanation of the Crown).
- (2) In Schedule 8 to this Act—
- (a) Part I has effect to continue certain exemptions for health service bodies and property held, used or occupied by such bodies;
  - (b) the amendments in Part II have effect, being amendments consequential on subsection (1) above; and
  - (c) the transitional provisions in Part III have effect in connection with the operation of subsection (1) above.
- (3) Where, as a result of the provisions of subsection (1) above, by virtue of his employment during any period after the day appointed for the coming into force of that subsection—
- (a) an employee has contractual rights against a health service body to benefits in the event of his redundancy, and
  - (b) he also has statutory rights against the health service body under Part VI of the Employment Protection (Consolidation) Act 1978 (redundancy payments),
- any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) above shall be taken as satisfying his entitlement to benefits under the said Part VI.
- (4) Nothing in subsection (1) above affects the extent of the expression “the services of the Crown” where it appears in—
- (a) Schedule 1 to the Registered Designs Act 1949 (provisions as to the use of registered designs for the services of the Crown etc.); and
  - (b) sections 55 to 59 of the Patents Act 1977 (use of patented inventions for the services of the Crown);
- and, accordingly, services provided in pursuance of any power or duty of the Secretary of State under Part I of the National Health Service Act 1977 or Part I or Part III of the National Health Service (Scotland) Act 1978 shall continue to be regarded as included in that expression, whether the services are in fact provided by a health service body, a National Health Service trust or any other person.

- (5) The Secretary of State may by order made by statutory instrument provide that, in relation to any enactment contained in a local Act and specified in the order, the operation of subsection (1) above shall be excluded or modified to the extent specified in the order.
- (6) No order shall be made under subsection (5) above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this section “health service body” means—
- (a) a health authority, within the meaning of the National Health Service Act 1977;
  - (b) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
  - (c) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984;
  - (d) a Family Health Services Authority;
  - (e) the Common Services Agency for the Scottish Health Service;
  - (f) the Dental Practice Board;
  - (g) the Scottish Dental Practice Board; and
  - (h) the Public Health Laboratory Service Board.

## **61 Health service bodies: taxation**

- (1) In Part XII of the Income and Corporation Taxes Act 1988 (special classes of companies and business: miscellaneous businesses and bodies) after section 519 there shall be inserted the following section—

### **“519A Health service bodies**

- (1) A health service body—
- (a) shall be exempt from income tax in respect of its income, and
  - (b) shall be exempt from corporation tax,
- and, so far as the exemption from income tax conferred by this subsection calls for repayment of tax, effect shall be given thereto by means of a claim.
- (2) In this section “health service body” means—
- (a) a health authority, within the meaning of the National Health Service Act 1977;
  - (b) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990;
  - (c) a Family Health Services Authority;
  - (d) a Health Board or Special Health Board, the Common Services Agency for the Scottish Health Service and a National Health Service trust respectively constituted under sections 2, 10 and 12A of the National Health Service (Scotland) Act 1978;
  - (e) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984;
  - (f) the Dental Practice Board;
  - (g) the Scottish Dental Practice Board; and
  - (h) the Public Health Laboratory Service Board.”

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- (2) In section 149B of the Capital Gains Tax Act 1979 (miscellaneous exemptions from tax) in subsection (3) after the words “section 519 of the Taxes Act 1988” there shall be inserted “and a health service body, within the meaning of section 519A of that Act”.
- (3) Where any conveyance, transfer or lease is made or agreed to be made to a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, no stamp duty shall be chargeable by virtue of any of the following headings in Schedule 1 to the Stamp Act 1891—
- (a) “Conveyance or Transfer on Sale”,
  - (b) “Conveyance or Transfer of any kind not hereinbefore described”,
  - (c) “Lease or Tack”,
- on the instrument by which the conveyance, transfer or lease, or the agreement for it, is effected.
- (4) At the end of section 27 of the Value Added Tax Act 1983 (application to Crown) there shall be added the following subsection—
- “(5) For the purposes of subsection (4) above a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978 shall be regarded as a body of persons exercising functions on behalf of a Minister of the Crown.”
- (5) At the end of Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes) there shall be added—
- “A health service body, within the meaning of section 519A of the Income and Corporation Taxes Act 1988”.

## **62 Clinical Standards Advisory Group**

- (1) There shall be established in accordance with this section a Clinical Standards Advisory Group (in this section referred to as “the Advisory Group”) which shall have the following functions—
- (a) in accordance with a request made by the Health Ministers or any one of them, to provide advice on the standards of clinical care for, and the access to and availability of services to, national health service patients and, in this connection, to carry out such investigations into such matters (if any) and to make such reports in relation thereto as the Health Ministers may require;
  - (b) in accordance with a request made by one or more health service bodies, to provide advice on, to carry out investigations into and to report on the standards of clinical care for, and the access to and availability of services to, national health service patients for whom services are or are to be provided by or on behalf of the body or bodies concerned; and
  - (c) such other functions as may be prescribed by regulations.
- (2) The Advisory Group shall consist of a chairman and other members appointed by the Health Ministers and regulations may—
- (a) require that one or more members of the Advisory Group shall be appointed from persons nominated by such body or bodies as may be specified in the regulations; and

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- (b) provide that one or more of the members who are not appointed from persons so nominated must fulfil such conditions or hold such posts as may be so specified.
- (3) Regulations may make provision as to—
- (a) the appointment, tenure and vacation of office of the chairman and members of the Advisory Group;
  - (b) the appointment of and the exercise of functions by committees and sub-committees of the Advisory Group (including committees and sub-committees consisting wholly or partly of persons who are not members of the Advisory Group);
  - (c) the procedure of the Advisory Group and any committees or sub-committees thereof; and
  - (d) the attendance at meetings of the Advisory Group or any committee or sub-committee thereof of persons appointed by the Health Ministers and the extent of their participation in such meetings.
- (4) Proceedings of the Advisory Group, or of any committee or sub-committee of the Advisory Group, shall not be invalidated by any vacancy in membership or by any defect in a member's appointment or qualifications.
- (5) The Health Ministers—
- (a) may pay to the chairman and members of the Advisory Group, or of any committee or sub-committee of the Advisory Group or any persons appointed as mentioned in subsection (3)(d) above, such sums by way of remuneration and travelling and other allowances as the Health Ministers, with the consent of the Treasury, may determine;
  - (b) shall make available to the Advisory Group and to any committee or sub-committee thereof such staff and other services or facilities as are necessary to enable them to carry out their functions; and
  - (c) shall defray such expenditure as is reasonably incurred by the Advisory Group in carrying out their functions.
- (6) Where the Advisory Group carry out an investigation or make a report in accordance with a request made by a health service body, that body shall reimburse, in such manner as the Health Ministers may determine, so much of the expenditure incurred by them under paragraphs (a) and (c) of subsection (5) above as they certify as being attributable to the carrying out of that investigation or the making of that report.
- (7) In this section—
- “clinical care” means any action which is taken in connection with the diagnosis of illness or the care or treatment of a patient, and which is taken solely in consequence of the exercise of clinical judgment;
  - “the Health Ministers” means the Secretaries of State respectively concerned with health in England, in Wales and in Scotland;
  - “health service body” means—
    - (i) a health authority, within the meaning of the National Health Service Act 1977,
    - (ii) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,
    - (iii) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984,

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- (iv) the Common Services Agency for the Scottish Health Service,
- (v) a National Health Service trust constituted under Part I of this Act or under the National Health Service (Scotland) Act 1978, and
- (vi) a Family Health Services Authority;

“national health service patient” means any person for whom any services are or are to be provided by or on behalf of a health service body;

“regulations” means regulations made by the Health Ministers and any such regulations may make different provision for different cases or descriptions of case, including different provision for different areas; and

“services” means services provided—

- (a) in England and Wales, by virtue of directions under section 13 or section 14 of the National Health Service Act 1977 or section 5 of this Act; or
- (b) in Scotland, by a health service body under Part I or Part III of the National Health Service (Scotland) Act 1978; or
- (c) pursuant to an NHS contract, as defined in section 4(1) of this Act or section 17A of the National Health Service (Scotland) Act 1978.

### **63 Repeal of remaining provisions of Health Services Act 1976**

- (1) Part III (control of hospital building outside National Health Service) and Part IV (supplementary and general) of the Health Services Act 1976 shall cease to have effect.
- (2) Notwithstanding the repeal of Part III of the Health Services Act 1976 by this Act,—
  - (a) that Part shall continue to have effect in relation to any authorisation granted by the Secretary of State under section 13(2) of that Act which is in force when that repeal takes effect; and
  - (b) the amendment made by section 19(4)(b) of that Act shall continue to have effect.

### **64 Financial provisions**

- (1) There shall be paid out of moneys provided by Parliament—
  - (a) any sums required by the Secretary of State for making loans to a National Health Service trust;
  - (b) any sums required by the Secretary of State for fulfilling a guarantee of a sum borrowed by a National Health Service trust;
  - (c) any amount paid as public dividend capital under paragraph 5 of Schedule 3 to this Act;
  - (d) any expenses of the Secretary of State under this Act; and
  - (e) any increase attributable to this Act in the sums so payable under any other enactment.
- (2) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

## **65 Regulations, orders and directions**

- (1) Any power to make regulations conferred by this Act shall be exercisable by statutory instrument, and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) In section 126 of the National Health Service Act 1977 (orders and regulations and directions) in each of subsections (2) to (4) after the words “this Act” there shall be inserted “or Part I of the National Health Service and Community Care Act 1990” and at the end of that section there shall be added the following subsection—
  - “(5) Without prejudice to the generality of subsection (4) above, any power which may be exercised as mentioned in paragraphs (a) and (b) of that subsection may make different provision for different areas.”

## **66 Amendments and repeals**

- (1) Schedule 9 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.
- (2) The enactments specified in Schedule 10 to this Act, which include some that are spent, are hereby repealed to the extent specified in the third column of that Schedule.

## **67 Short title, commencement and extent**

- (1) This Act may be cited as the National Health Service and Community Care Act 1990.
- (2) This Act, other than this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions or for different purposes and for different areas or descriptions of areas.
- (3) An order under subsection (2) above may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Secretary of State necessary or expedient in connection with the provisions brought into force.
- (4) Part I of this Act, other than section 15(4), does not extend to Scotland; Part II, other than section 34, and Part IV of this Act do not extend to England and Wales; and Part III of this Act, other than subsections (3) and (4) of section 42, subsections (1) and (3) to (6) of section 44 and section 45, does not extend to Scotland.
- (5) This Act, other than sections 59 and 61, does not extend to Northern Ireland.
- (6) The Secretary of State may by order made by statutory instrument provide that so much of this Act as extends to England and Wales shall apply to the Isles of Scilly with such modifications, if any, as are specified in the order and, except as provided in pursuance of this subsection, Parts I and III of this Act do not apply to the Isles of Scilly.