



National Health Service Reform and Health Care Professions Act 2002

2002 CHAPTER 17

PART 1

NATIONAL HEALTH SERVICE, ETC

Financial arrangements: England and Wales

7 Funding of Strategic Health Authorities and Health Authorities

- (1) Section 97 of the 1977 Act (means of meeting expenditure of Health Authorities etc out of public funds) is amended as follows.
- (2) Before subsection (1) there is inserted—
 - “(A1) It is the duty of the Secretary of State to pay in respect of each financial year to each Strategic Health Authority sums not exceeding the amount allotted for that year by the Secretary of State to the Authority towards meeting the expenditure of the Authority which is attributable to the performance by the Authority of their functions in that year.”
- (3) In subsection (3C), after “any year” there is inserted “to a Strategic Health Authority under subsection (A1) above or”.
- (4) In subsection (3D), after “given to” there is inserted “the Strategic Health Authority or”.
- (5) In subsection (3F), after “any year to” there is inserted “a Strategic Health Authority or”.
- (6) In subsection (5), after “allotted to a” there is inserted “Strategic Health Authority,”.
- (7) In subsection (6)—
 - (a) after “directions to a” there is inserted “Strategic Health Authority,”,

- (b) at the end of paragraph (a) there is inserted “or”, and
 - (c) paragraphs (bb) and (c) are omitted.
- (8) Subsection (8) is omitted.
- (9) In subsection (9), after “paid to” there is inserted “Strategic Health Authorities,”.

8 Funding of Primary Care Trusts

For section 97C of the 1977 Act (public funding of Primary Care Trusts) there is substituted—

“97C Public funding of Primary Care Trusts

- (1) It is the duty of the Secretary of State, in respect of each financial year, to pay to each Primary Care Trust—
 - (a) sums equal to their general Part 2 expenditure; and
 - (b) sums not exceeding the amount allotted by the Secretary of State to the Primary Care Trust for that year towards meeting the Trust’s main expenditure in that year.
- (2) In determining the amount to be allotted for any year to a Primary Care Trust under subsection (1)(b) above (or in varying the amount under subsection (7) below), the Secretary of State may take into account, in whatever way he thinks appropriate—
 - (a) the Trust’s general Part 2 expenditure; and
 - (b) expenditure which would have been the Trust’s general Part 2 expenditure but for an order under section 103(1) below,
 during any period he thinks appropriate (or such elements of that expenditure as he thinks appropriate).
- (3) Where the Secretary of State has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Primary Care Trust under subsection (1)(b) above, he may increase the initial amount by a further sum if it appears to him that over a period notified to the Trust—
 - (a) it satisfied any objectives notified to it as objectives to be met in performing its functions; or
 - (b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).
- (4) In subsection (3) above, “notified” means specified or referred to in a notice given to the Primary Care Trust by the Secretary of State.
- (5) In making any increase under subsection (3) above, the Secretary of State may (whether by directions under subsection (8) below or otherwise) impose any conditions he thinks fit on the application or retention by the Primary Care Trust of the sum in question.
- (6) Where the Secretary of State has, under subsection (3) above, increased by any sum the amount to be allotted for any year to a Primary Care Trust and notified the Trust of the allotment and it subsequently appears to him that the Trust

has failed (wholly or in part) to satisfy any conditions imposed in making that increase, he may—

- (a) reduce the allotment made to the Trust for that year; or
- (b) when he has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the Trust under subsection (1)(b) above, reduce the initial amount,

by any amount not exceeding that sum.

- (7) An amount is allotted to a Primary Care Trust for a year under this section when the Trust is notified by the Secretary of State that the amount is allotted to the Trust for that year; and the Secretary of State may make an allotment under this section increasing or reducing (subject to subsection (6) above) an allotment previously so made, and the reference to a determination in subsection (3) above includes a determination made with a view to increasing or reducing an allotment previously so made.
- (8) The Secretary of State may give directions to a Primary Care Trust with respect to—
 - (a) the application of sums paid to it under this section, or
 - (b) the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.
- (9) Sums falling to be paid to Primary Care Trusts under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.”

9 Funding of Local Health Boards

- (1) After section 97E of the 1977 Act there is inserted—

“97F Public funding of Local Health Boards

- (1) It is the duty of the National Assembly for Wales, in respect of each financial year, to pay to each Local Health Board—
 - (a) sums equal to their general Part 2 expenditure; and
 - (b) sums not exceeding the amount allotted by the National Assembly for Wales to the Local Health Board for that year towards meeting the Board’s main expenditure in that year.
- (2) In determining the amount to be allotted for any year to a Local Health Board under subsection (1)(b) above (or in varying the amount under subsection (7) below), the National Assembly for Wales may take into account, in whatever way the Assembly thinks appropriate—
 - (a) the Board’s general Part 2 expenditure; and
 - (b) expenditure which would have been the Board’s general Part 2 expenditure but for an order under section 103(1) below,during any period the Assembly thinks appropriate (or such elements of that expenditure as it thinks appropriate).
- (3) Where the National Assembly for Wales has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Local Health Board under subsection (1)(b) above, the Assembly may increase the initial

amount by a further sum if it appears to it that over a period notified to the Board—

- (a) the Board satisfied any objectives notified to it as objectives to be met in performing its functions; or
 - (b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).
- (4) In subsection (3) above, “notified” means specified or referred to in a notice given to the Local Health Board by the National Assembly for Wales.
- (5) In making any increase under subsection (3) above, the National Assembly for Wales may (whether by directions under subsection (8) below or otherwise) impose any conditions it thinks fit on the application or retention by the Local Health Board of the sum in question.
- (6) Where the National Assembly for Wales has, under subsection (3) above, increased by any sum the amount to be allotted for any year to a Local Health Board and notified the Board of the allotment and it subsequently appears to the Assembly that the Board has failed (wholly or in part) to satisfy any conditions imposed in making that increase, the Assembly may—
- (a) reduce the allotment made to the Board for that year; or
 - (b) when the Assembly has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the Board under subsection (1)(b) above, reduce the initial amount, by any amount not exceeding that sum.
- (7) An amount is allotted to a Local Health Board for a year under this section when the Board is notified by the National Assembly for Wales that the amount is allotted to the Board for that year; and the National Assembly for Wales may make an allotment under this section increasing or reducing (subject to subsection (6) above) an allotment previously so made, and the reference to a determination in subsection (3) above includes a determination made with a view to increasing or reducing an allotment previously so made.
- (8) The National Assembly for Wales may give directions to a Local Health Board with respect to—
- (a) the application of sums paid to the Board under this section, or
 - (b) the payment of sums by the Board to the National Assembly for Wales in respect of charges or other sums referable to the valuation or disposal of assets.
- (9) Sums falling to be paid to Local Health Boards under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the National Assembly for Wales may determine.

97G Financial duties of Local Health Boards

- (1) It is the duty of every Local Health Board, in respect of each financial year, to perform its functions so as to secure that the expenditure of the Board which is attributable to the performance by the Board of its functions in that year (not

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including expenditure within subsection (1)(a) of section 97F above) does not exceed the aggregate of—

- (a) the amount allotted to it for that year under subsection (1)(b) of that section;
- (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section); and
- (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.

(2) The National Assembly for Wales may give such directions to a Local Health Board as appear to be requisite to secure that the Board complies with the duty imposed on it by subsection (1) above.

(3) Directions under subsection (2) may be specific in character.

(4) To the extent to which—

- (a) any expenditure is defrayed by a Local Health Board as trustee or on behalf of a Local Health Board by special trustees; or
- (b) any sums are received by a Local Health Board as trustee or under section 96A above,

that expenditure and, subject to subsection (6) below, those sums shall be disregarded for the purposes of this section.

(5) For the purposes of this section sums which, in the hands of a Local Health Board, cease to be trust funds and become applicable by the Local Health Board otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Local Health Board otherwise than as trustee.

(6) Of the sums received by a Local Health Board under section 96A above so much only as accrues to the Local Health Board after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.

(7) Subject to subsection (4) above, the National Assembly for Wales may by directions determine—

- (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Local Health Board;
- (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Local Health Board; or
- (c) the extent to which, and the circumstances in which, sums received by a Local Health Board under section 97F above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Local Health Board and to which financial year's expenditure they are to be attributed.

(8) In subsection (7) above, “specified” means of a description specified in the directions.

97H Resource limits for Local Health Boards

- (1) It is the duty of every Local Health Board to ensure that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the National Assembly for Wales.
- (2) For the purpose of subsection (1) above no account shall be taken of any use of resources for the purposes of a Board's general Part 2 expenditure (within the meaning of paragraph 6A of Schedule 12A).
- (3) But in specifying an amount for a Local Health Board under subsection (1) above (or in varying the amount under subsection (5) below), the National Assembly for Wales may take into account (in whatever way it thinks appropriate)—
 - (a) any such use of resources; and
 - (b) the use of any resources which would have been for the purpose of the Board's general Part 2 expenditure but for an order under section 103(1) below,
 during any period the Assembly thinks appropriate (or such elements of such uses of resources as it thinks appropriate).
- (4) For the purpose of subsection (1) above the National Assembly for Wales may give directions—
 - (a) specifying uses of resources which are to be, or not to be, taken into account;
 - (b) making provision for determining to which Local Health Board certain uses of resources are to be attributed;
 - (c) specifying descriptions of resources which are to be, or not to be, taken into account.
- (5) Where an amount has been specified under this section in respect of a financial year, it may be varied by a later specification.
- (6) Subsections (4) to (6) of section 97G above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.
- (7) The provisions in section 97G(2) and (3) above about the giving of directions by the National Assembly for Wales shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1).
- (8) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.”

10 Expenditure of NHS bodies

- (1) The 1977 Act is amended as follows.
- (2) In section 97 (means of meeting expenditure of Health Authorities etc out of public funds), in subsection (3BB), for “section 97C” there is substituted “sections 97C and 97F”.

- (3) Schedule 12A to the 1977 Act (expenditure of Health Authorities and Primary Care Trusts) is amended as follows.
- (4) In paragraph 3—
- (a) in each of sub-paragraphs (1), (4) and (5), for “Secretary of State” there is substituted “National Assembly for Wales”,
 - (b) in sub-paragraph (1), for “he” there is substituted “it”,
 - (c) in sub-paragraph (4)—
 - (i) for “his discretion” there is substituted “its discretion”, and
 - (ii) for “his opinion” there is substituted “the Assembly’s opinion”, and
 - (d) in sub-paragraph (5), for “he” there is substituted “the Assembly”.
- (5) In paragraph 4(2), the word “or” at the end of paragraph (a) is omitted, and after paragraph (a) there is inserted—
- “(aa) remuneration referable to the cost of drugs,
 - (ab) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or”.
- (6) In paragraph 5(1)—
- (a) the “and” at the end of paragraph (a) is omitted,
 - (b) in paragraph (b), for “(other than general Part II expenditure),” there is substituted “(other than general Part 2 expenditure and remuneration referable to the cost of drugs), and”, and
 - (c) for the words following paragraph (b) there is substituted—
 - “(c) expenditure attributable to remuneration referable to the cost of drugs for which the trust is accountable in that year (whether paid by it or by another trust).”
- (7) In paragraph 5(2), the “or” at the end of paragraph (a) is omitted, and after paragraph (a) there is inserted—
- “(aa) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or”.
- (8) For paragraph 6 there is substituted—
- “6 (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Primary Care Trusts the total of the remuneration referable to the cost of drugs which is paid by each Primary Care Trust in that year.
 - (2) A Primary Care Trust is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (1) above.
 - (3) Where in any financial year any remuneration referable to the cost of drugs for which a Primary Care Trust is accountable is paid by another Primary Care Trust, the remuneration is to be treated (for the purposes of sections 97C and 97D above) as having been paid by the first trust in the performance of its functions.

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- (4) The Secretary of State may, in particular, exercise his discretion under sub-paragraph (1) above—
- (a) so that any apportionment reflects, in the case of each Primary Care Trust, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the trust in question,
 - (b) by reference to averaged or estimated amounts.
- (5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Primary Care Trust other than the trust which is accountable for the payment to be reimbursed in such manner as he may determine.”
- (9) After paragraph 6 there is inserted—

“Local Health Boards: general Part 2 expenditure

- 6A (1) In section 97F above and this Schedule, general Part 2 expenditure, in relation to a Local Health Board, means expenditure of the Board which—
- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part 2 of this Act, and
 - (b) is not excluded by sub-paragraph (2) below.
- (2) Expenditure is excluded if it is attributable to—
- (a) the reimbursement of expenses of persons providing services in pursuance of Part 2 which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
 - (b) remuneration referable to the cost of drugs,
 - (c) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
 - (d) remuneration of a designated description which is determined by the Board and paid to persons providing general medical services in pursuance of Part 2.

Local Health Boards: main expenditure

- 6B (1) In section 97F above, main expenditure, in relation to a Local Health Board and the year in question, means—
- (a) expenditure of the Board mentioned in sub-paragraph (2) below,
 - (b) any other expenditure of the Board attributable to the performance of its functions in that year (other than general Part 2 expenditure and remuneration referable to the cost of drugs), and
 - (c) expenditure attributable to remuneration referable to the cost of drugs for which the Board is accountable in that year (whether paid by it or by another Board).
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—

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- (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part 2 which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
 - (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
 - (c) remuneration of a designated description which is determined by the Board and paid in that year to persons providing general medical services in pursuance of Part 2.
- 6C
 - (1) For each financial year, the National Assembly for Wales shall apportion, in such manner as it thinks appropriate, among all Local Health Boards the total of the remuneration referable to the cost of drugs which is paid by each Local Health Board in that year.
 - (2) A Local Health Board is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (1) above.
 - (3) Where in any financial year any remuneration referable to the cost of drugs for which a Local Health Board is accountable is paid by another Local Health Board, the remuneration is to be treated (for the purposes of sections 97F and 97G above) as having been paid by the first Board in the performance of its functions.
 - (4) The National Assembly for Wales may, in particular, exercise its discretion under sub-paragraph (1) above—
 - (a) so that any apportionment reflects, in the case of each Local Health Board, the financial consequences of orders for the provision of drugs, being orders which in the Assembly’s opinion are attributable to the Board in question,
 - (b) by reference to averaged or estimated amounts.
 - (5) The National Assembly for Wales may make provision for any remuneration referable to the cost of drugs 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 Assembly may determine.”
- (10) In paragraph 7—
 - (a) in sub-paragraph (1)—
 - (i) in the definition of “designated”, after “Secretary of State” there is inserted “or, as the case may be, the National Assembly for Wales”, and
 - (ii) in the definition of “remuneration referable to the cost of drugs”, for “paragraph 1(2)(b)” there is substituted “paragraphs 1(2)(b), 4(2)(aa) and 6A(2)(b)”,
 - (b) in sub-paragraph (2), for “Health Authorities” there is substituted “Primary Care Trusts”, and at the end there is inserted “and the National Assembly for Wales shall make the corresponding determination in relation to Health Authorities and Local Health Boards.”, and
 - (c) in sub-paragraph (3)—

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- (i) for “Health Authorities” there is substituted “Primary Care Trusts”,
- (ii) “or Primary Care Trust” is omitted, and
- (iii) at the end there is inserted “, and the National Assembly for Wales may so treat all remuneration paid by Health Authorities to such persons, so far as it is so met.”