

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

New section 45F of the Medical Act 1983 – interpretation of Part 5A

374. Section 45F sets out the meaning of various terms used within this new Part 5A of the Medical Act 1983.

Section 120: Additional responsibilities of responsible officers: England and Wales and Northern Ireland

375. **Section 120** allows the Secretary of State in relation to England, the Welsh Ministers in relation to Wales, and DHSSPSNI in relation to Northern Ireland, by regulations to confer further responsibilities on responsible officers nominated or appointed under Part 5A of the Medical Act 1983. *Subsection (1)* sets out that these additional responsibilities may relate to the initial employment of doctors, the monitoring of the performance or conduct of doctors, and ensuring appropriate action is taken when concerns are raised in relation to such performance or conduct (in circumstances which would not call into question the doctor's fitness to practise under the Medical Act 1983). *Subsection (5)* applies sections 45A(5)(d), 45B(2) to (5) and 45C(1), (3) and (4) of the Medical Act 1983 (relating to the provision of resources, organisations having more than one responsible officer, the connection between a medical practitioner and a designated body, designated bodies conferring powers and additional functions on responsible officers, the creation of offences and procedures for enforcement and the provision of information) to regulations made under this section in the same way as those sections apply to regulations made under section 45A of that Act. *Subsection (6)* enables regulations to require designated bodies or their responsible officers to take account of guidance issued by or on behalf of the appropriate authority.

Section 121: Co-operation between prescribed bodies

376. *Subsection (1)* allows the appropriate Minister to make regulations requiring specified bodies:
- to share information relating to health care workers whose conduct or performance could be a threat to the health and safety of patients;
 - to respond to appropriate requests for information from other specified bodies about the conduct or performance of any health care worker;
 - to consider appropriate action and to take specified steps.
377. The bodies that may be specified for these purposes are those required to have responsible officers under the new Part 5A of the Medical Act 1983 (see the notes on section 119 above) and any other organisations specified by the regulations (it is intended that all organisations employing or contracting with health care or social care workers, public bodies exercising regulatory functions in relation to the work of such

persons, social services authorities, other health related organisations, and the police will be specified for these purposes).

378. *Subsection (2)* allows the regulations to require specified bodies to take active steps to disclose information in specified circumstances whether or not the information has been requested. The types of circumstances which might be specified include situations where one body has concerns about a healthcare professional and believes that another body might have information that would help its investigation, or where an investigation uncovers information that shows that a worker may be a danger to public safety. *Subsection (3)* allows the appropriate Minister to create, in the regulations, offences for non-compliance, or other procedures for enforcement. *Subsection (4)* allows for the regulations to require specified bodies to take account of guidance given by or on behalf of the appropriate Minister. The intention is that guidance will cover issues such as the need to treat information received as confidential, the proper conduct of investigations, and factors to be taken into account when deciding whether or not to share information. *Subsection (5)* requires the appropriate Minister, when making regulations under this section, to have regard to the importance of avoiding unfair prejudice to health care workers against whom unsubstantiated allegations are made.
379. *Subsection (6)* defines a number of terms used in the section. The “appropriate Minister” is defined as 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.

Section 122: Ss.120 and 121: Crown application

380. **Section 122** applies sections 120 and 121 to the Crown and to people in the service of the Crown. *Subsection (2)* provides that the Crown will not be criminally liable for contravention of any provision of those sections or regulations made under them but any such contravention may be declared unlawful by the relevant court.