



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART I

#### THE NATIONAL HEALTH SERVICE: ENGLAND AND WALES

##### *Local management*

#### **1 Regional and District Health Authorities.**

- (1) In the <sup>M1</sup>National Health Service Act 1977 (in this Part of this Act referred to as “the principal Act”), in section 8 (Regional and District Health Authorities etc.)—
  - (a) in subsection (1) for the words “Schedule 5 to this Act” there shall be substituted “Schedule 1 to the National Health Service and Community Care Act 1990”;
  - (b) any reference to an area or an Area Health Authority shall be omitted; and
  - (c) subsection (5) (consultation before making orders under subsection (2)) shall be omitted.
- (2) Part I of Schedule 1 to this Act shall have effect in place of Part I of Schedule 5 to the principal Act (membership of health authorities etc.).
- (3) Part III of Schedule 5 to the principal Act (supplementary provisions as to authorities) shall be amended in accordance with Part III of Schedule 1 to this Act.
- (4) Subject to subsection (5) below, at the end of the day appointed for the coming into force of this subsection,—
  - (a) any person who became a member of a Regional or District Health Authority under Part I of Schedule 5 to the principal Act shall cease to be such a member; and
  - (b) any person who, by virtue of an order under section 11 of the principal Act, became a member of a special health authority which is a relevant authority

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for the purposes of paragraph 9(1) of Schedule 5 to that Act (as amended by Part III of Schedule 1 to this Act) shall cease to be such a member.

- (5) Subsection (4) above does not apply to a person holding office as chairman of a Regional, District or Special Health Authority.

#### **Marginal Citations**

**M1** 1977 c. 49.

## **2 Family Health Services Authorities.**

- (1) On and after the day appointed for the coming into force of this subsection—
- (a) each existing Family Practitioner Committee shall be known as a Family Health Services Authority; and
  - (b) any reference in any enactment to a Family Practitioner Committee shall be construed as a reference to a Family Health Services Authority;
- and the generality of this subsection is not affected by any express amendment made by this Act.
- (2) In subsection (1) above “enactment” means—
- (a) an enactment passed before the day appointed for the coming into force of subsection (1) above; and
  - (b) an enactment comprised in subordinate legislation made before that day.
- (3) In section 10 of the principal Act (Family Health Services Authorities)—
- (a) for the words “Schedule 5 to this Act” there shall be substituted “Schedule 1 to the National Health Service and Community Care Act 1990”; and
  - (b) subsection (7) (consultation before making orders under subsection (4)) shall be omitted.
- (4) Part II of Schedule 1 to this Act shall have effect in place of Part II of Schedule 5 to the principal Act (membership of Family Practitioner Committees).
- (5) At the end of the day appointed for the coming into force of this subsection, any person who became a member of a Family Practitioner Committee under Part II of Schedule 5 to the principal Act (including a person holding office as chairman of such a committee) shall cease to be a member and, accordingly, in the case of a chairman, shall also cease to be chairman.
- (6) Nothing in this section shall cause a Family Health Services Authority to be included in the expression “health authority”, as defined in the principal Act.

## **3 Primary and other functions of health authorities etc. and exercise of functions.**

- (1) Any reference in this Act to the primary functions of a Regional, District or Special Health Authority is a reference to those functions for the time being exercisable by the authority by virtue of directions under section 11, section 13 or section 14 of the principal Act; and any reference in this Act to the primary functions of a Family Health Services Authority is a reference to the functions for the time being exercisable by the authority by virtue of this Act or section 15 of the principal Act.

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- (2) In addition to carrying out its primary functions, a Regional, District or Special Health Authority or a Family Health Services Authority may, as the provider, enter into an NHS contract (as defined in section 4 below) under which the goods or services to be provided are of the same description as goods or services which the authority already provides or could provide for the purposes of carrying out its primary functions.
- (3) In section 16 of the principal Act (exercise of functions), in subsection (1) for the words from “an Area”, in the first place where they occur, to “Health Authority” in the second place where those words occur, there shall be substituted “a Regional or District Health Authority, or exercisable by a Regional or District Health Authority by virtue of any prescribed provision of this or any other Act, or exercisable by a Family Health Services Authority under Part I of the National Health Service and Community Care Act 1990”.
- (4) In section 17 of the principal Act (directions as to exercise of functions), in subsection (1) after the words “sections 13 to 16 above” there shall be inserted “and may also give directions with respect to the exercise by health authorities or Family Health Services Authorities of functions under the National Health Service and Community Care Act 1990”.
- (5) Nothing in this section or in the principal Act affects the power of a Regional, District or Special Health Authority at any time to provide goods or services under the principal Act for the benefit of an individual where—
  - (a) the provision of those goods or services is neither within the primary functions of the authority nor carried out pursuant to an NHS contract; but
  - (b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an NHS contract for their provision.
- (6) In any case where—
  - (a) a Regional, District or Special Health Authority provides goods or services for the benefit of an individual as mentioned in subsection (5) above, and
  - (b) the provision of those goods or services is within the primary functions of another health authority or is a function of a health board,the authority providing the goods or services shall be remunerated in respect of that provision by that other health authority or health board.
- (7) The rate of any remuneration payable by virtue of subsection (6) above shall be calculated in such manner or on such basis as may be determined by the Secretary of State.
- (8) In any case where—
  - (a) a Regional, District or Special Health Authority provides goods or services for the benefit of an individual, and
  - (b) the provision of those goods or services is not pursuant to an NHS contract, and
  - (c) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this subsection by a direction made by the Secretary of State,the authority shall be remunerated by the Secretary of State in respect of the provision of the goods or services in question at such rate or rates as he considers appropriate.

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#### 4 NHS contracts.

- (1) In this Act the expression “NHS contract” means an arrangement under which one health service body (“the acquirer”) arranges for the provision to it by another health service body (“the provider”) of goods or services which it reasonably requires for the purposes of its functions.
- (2) In this section “health service body” means any of the following, namely,—
- (a) a health authority;
  - (b) a health board;
  - (c) the Common Services Agency for the Scottish Health Service;
  - (d) a Family Health Services Authority;
  - (e) an NHS trust;
  - (f) a recognised fund-holding practice;
  - (g) the Dental Practice Board or the Scottish Dental Practice Board;
  - (h) the Public Health Laboratory Service Board; <sup>F1</sup> . . .
  - (i) the Secretary of State
  - [<sup>F2</sup>(j) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland Order 1972;
  - (k) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
  - (l) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991; and
  - (m) the Department of Health and Social Services for Northern Ireland.]
- (3) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.
- (4) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—
- (a) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement, or
  - (b) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,
- that health service body may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.
- (5) Where a reference is made to the Secretary of State under subsection (3) or subsection (4) above, the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.
- (6) By his determination of a reference under subsection (4) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may specify

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terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.

(7) A determination of a reference under subsection (3) above may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.

(8) Without prejudice to the generality of his powers on a reference under subsection (3) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where an arrangement is so varied or brought to an end—

- (a) subject to paragraph (b) below, the variation or termination shall be treated as being effected by agreement between the parties; and
- (b) the directions included in the determination by virtue of subsection (7) above may contain such provisions as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

(9) In subsection (2) above “NHS trust” includes—

- (a) such a trust established under the <sup>M2</sup>National Health Service (Scotland) Act 1978; <sup>F3</sup> . . .
- <sup>F3</sup>(b) . . . . .

[<sup>F4</sup>(10) Where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 or a body mentioned in subsection (2) (j), (k), (l) or (m) above is a party or prospective party to an arrangement or proposed arrangement which—

- (a) falls within the definition of NHS contract in subsection (1) above; and
- (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,

subsections (3) to (8) above shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.]

**Textual Amendments**

- F1** Word at end of s. 4(2)(h) repealed (1.4.1991) by [S.I. 1991/195, art. 7\(3\)](#)
- F2** [S. 4\(2\)\(j\)\(k\)\(l\)\(m\)](#) added (1.4.1991) by [S.I. 1991/195, art. 7\(3\)](#)
- F3** [S. 4\(9\)\(b\)](#) and word in s. 4(9)(a) repealed (1.4.1991) by [S.I. 1991/195, art. 7\(4\)](#)
- F4** [S. 4\(10\)](#) added (1.4.1991) by [S.I. 1991/195, art. 7\(5\)](#)

**Commencement Information**

- I1** [S. 4\(1\)\(2\)\(5\)\(6\)\(9\)](#) brought into force 6.3.1991 (in so far as they relate to a reference under s. 4(4)) by [S.I. 1991/388](#)
- I2** [S. 4\(4\)](#) brought into force 6.3.1991 by [S.I. 1991/388](#)

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### Marginal Citations

M2 1978 c. 29.

VALID FROM 01/09/1997

### [<sup>F5</sup>4A Provision of certain services under NHS contracts.

- (1) This section applies to any arrangement under which a Health Authority or such other health service body as may be prescribed arrange for the provision to them—
- (a) by a person on an ophthalmic list, or
  - (b) by a person on a pharmaceutical list,
- of goods or services that they reasonably require for the purposes of functions which they are exercising under Part I of the principal Act.
- (2) Any such arrangement is to be treated as an NHS contract for the purposes of section 4 (other than subsections (4) and (6)).
- (3) In this section—
- “health service body” means a body which is a health service body for the purposes of section 4;
- “ophthalmic list” means a list published in accordance with regulations made under—
- (a) section 39(a) of the principal Act;
  - (b) section 26(2)(a) of the <sup>M3</sup>National Health Service (Scotland) Act 1978; or
  - (c) Article 62(2)(a) of the <sup>M4</sup>Health and Personal Social Services (Northern Ireland) Order 1972; and
- “pharmaceutical list” means a list published in accordance with regulations made under—
- (a) section 42(2)(a) of the principal Act;
  - (b) section 27(2) of the National Health Service (Scotland) Act 1978; or
  - (c) Article 63(2A)(a) of the 1972 Order.]

### Textual Amendments

F5 S. 4A inserted (1.9.1997) by 1997 c. 46, s. 31(1); S.I. 1997/1780,

### Marginal Citations

M3 1978 c. 29.

M4 S.I. 1972/1265 (N.I.14).

## National Health Service trusts

### 5 NHS trusts.

- (1) Subject to subsection (2) or, as the case may be, subsection (3) below the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in

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this Act referred to as NHS trusts), [<sup>F6</sup>to provide goods and services for the purposes of the health service].

(2) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in England, he shall direct the relevant Regional Health Authority to consult, with respect to the proposal to establish the trust,—

(a) the relevant Community Health Council and such other persons or bodies as may be specified in the direction; and

(b) such other persons or bodies as the Authority considers appropriate;

and, within such period (if any) as the Secretary of State may determine, the relevant Regional Health Authority shall report the results of those consultations to the Secretary of State.

(3) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in Wales, he shall consult the relevant Community Health Council and such other persons and bodies as he considers appropriate.

(4) In subsections (2) and (3) above—

(a) any reference to the relevant Regional Health Authority is a reference to that Authority in whose region the hospital, establishment or other facility concerned is, or is to be, situated; and

(b) any reference to the relevant Community Health Council is a reference to the Council for the district, or part of the district, in which that hospital, establishment or other facility is, or is to be, situated.

(5) Every NHS trust—

(a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Secretary of State and, subject to paragraph 5(2) of Schedule 2 to this Act, executive and non-executive directors (that is to say, directors who, subject to subsection (7) below, respectively are and are not employees of the trust); and

(b) shall have the functions conferred on it by an order under subsection (1) above and by Schedule 2 to this Act.

[<sup>F7</sup>(6) The functions which may be specified in an order under subsection (1) above include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.]

(7) The Secretary of State may by regulations make general provision with respect to—

(a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);

(b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;

(c) the maximum and minimum numbers of the directors;

(d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director;

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- (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment); and
  - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board) and, without prejudice to the generality of the power, any such regulations, may make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.
- (8) Part I of Schedule 2 to this Act shall have effect with respect to orders under subsection (1) above; Part II of that Schedule shall have effect, subject to subsection (9) below, with respect to the general duties and the powers and status of NHS trusts; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.
- (9) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 2 to this Act may be exercised only to the extent that—
- (a) the exercise will not interfere with the duties of the trust to comply with directions under paragraph 6 of that Schedule; and
  - (b) the exercise will not to any significant extent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1) above.
- (10) The Secretary of State may by order made by statutory instrument confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 2 to this Act.

#### Textual Amendments

- F6** Words in s. 5(1) substituted (*retrospectively*) for s. 5(1)(a)(b) by 1999 c. 8, s. 13(1)(10); S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 1999/3184, art. 2(1), **Sch. 1**
- F7** S. 5(6) substituted (*retrospectively*) by 1999 c. 8, s. 13(1)(10); S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 1999/3184, art. 2(1), **Sch. 1**

## 6 Transfer of staff to NHS trusts.

- (1) Subject to subsection (5) below, this section applies to any person who, immediately before an NHS trust's operational date—
- (a) is employed by a health authority to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or
  - (b) is employed by a health authority to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this section by a scheme made by the health authority specified as mentioned in paragraph 3(1)(f) of Schedule 2 to this Act.
- (2) A scheme under this section shall not have effect unless approved by the Secretary of State.



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- (3) Subject to section 7 below, the contract of employment between a person to whom this section applies and the health authority by whom he is employed shall have effect from the operational date as if originally made between him and the NHS trust.
- (4) Without prejudice to subsection (3) above—
  - (a) all the health authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the NHS trust on its operational date; and
  - (b) anything done before that date by or in relation to the health authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the NHS trust.
- (5) In any case where—
  - (a) an order under section 5(1) above provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust, and
  - (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the trust to a person who at that time is employed by a health authority to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust, and
  - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,subsections (3) and (4) above shall have effect in relation to that person's contract of employment as if he were a person to whom this section applies and any reference in those subsections to the operational date of the trust were a reference to the date on which he takes up employment with the trust.
- (6) Subsections (3) and (4) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this section.
- (7) A scheme under this section may designate a person either individually or as a member of a class or description of employees.

## **7 Supplementary provisions as to transfer of staff.**

- (1) In the case of a person who falls within section 6(1)(b) above, a scheme under that section may provide that, with effect from the NHS trust's operational date, his contract of employment (in this section referred to as "his original contract") shall be treated in accordance with the scheme as divided so as to constitute—
  - (a) a contract of employment with the NHS trust; and
  - (b) a contract of employment with the health authority by whom he was employed before that date (in this section referred to as "the transferor authority").
- (2) Where a scheme makes provision as mentioned in subsection (1) above,—
  - (a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that subsection, when taken together, are not less favourable than the benefits under his original contract;
  - (b) section 6 above shall apply in relation to the contract referred to in subsection (1)(a) above as if it were a contract transferred under that section from the transferor authority to the NHS trust;

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- (c) so far as necessary to preserve any rights and obligations, the contract referred to in subsection (1)(b) above shall be regarded as a continuation of the employee's original contract; and
  - (d) for the purposes of section 146 of and Schedule 13 to the <sup>M5</sup>Employment Protection (Consolidation) Act 1978, the number of hours normally worked, or, as the case may be, the hours for which the employee is employed in any week under either of those contracts shall be taken to be the total of the hours normally worked or, as the case may be, for which he is employed under the two contracts taken together.
- (3) Where, as a result of the provisions of section 6 above, by virtue of his employment during any period after the operational date of the NHS trust,—
- (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
  - (b) he also has statutory rights against the trust 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.

#### Marginal Citations

M5 1978 c. 44.

## 8 Transfer of property, rights and liabilities to NHS trust.

- (1) The Secretary of State may by order transfer or provide for the transfer to an NHS trust, with effect from such date as may be specified in the order, of such of the property, rights and liabilities of a health authority or of the Secretary of State as, in his opinion, need to be transferred to the trust for the purpose of enabling it to carry out its functions.
- (2) An order under this section may create or impose such new rights or liabilities in respect of what is transferred or what is retained by a health authority or the Secretary of State as appear to him to be necessary or expedient.
- (3) Nothing in this section affects the power of the Secretary of State or any power of a health authority to transfer property, rights or liabilities to an NHS trust otherwise than under subsection (1) above.
- (4) Stamp duty shall not be chargeable in respect of any transfer to an NHS trust effected by or by virtue of an order under this section.
- (5) Where an order under this section provides for the transfer—
  - (a) of land held on lease from a third party, that is to say, a person other than the Secretary of State or a health authority, or
  - (b) of any other asset leased or hired from a third party or in which a third party has an interest,
 the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.

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- (6) Any property, rights and liabilities which are to be transferred to an NHS trust shall be identified by agreement between the trust and a health authority or, in default of agreement, by direction of the Secretary of State.
- (7) Where, for the purpose of a transfer pursuant to an order under this section, it becomes necessary to apportion any property, rights or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose; and where any such property or rights fall within subsection (5) above, the order shall contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (8) In the case of any transfer made by or pursuant to an order under this section, a certificate issued by the Secretary of State that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order shall be conclusive evidence of that fact for all purposes.
- (9) Without prejudice to subsection (4) of section 126 of the principal Act, an order under this section may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

## **9 Originating capital debt of, and other financial provisions relating to NHS trusts.**

- (1) Each NHS trust shall have an originating capital debt of an amount specified in an order made by the Secretary of State, being an amount representing, subject to subsection (2) below, the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.
- (2) In determining the originating capital debt of an NHS trust, there shall be left out of account such assets or, as the case may be, liabilities as are, or are of a class, determined for the purposes of this section by the Secretary of State, with the consent of the Treasury.
- (3) An NHS trust's originating capital debt shall be deemed to have been issued out of moneys provided by Parliament and shall constitute an asset of the Consolidated Fund.
- (4) In accordance with an order under subsection (1) above, an NHS trust's originating capital debt shall be divided between—
  - (a) a loan on which interest shall be paid at such variable or fixed rates and at such times as the Treasury may determine; and
  - (b) public dividend capital.
- (5) The loan specified in subsection (4)(a) above is in this Part of this Act referred to as an NHS trust's "initial loan" and a rate of interest on the initial loan shall be determined as if section 5 of the <sup>M6</sup>National Loans Act 1968 had effect in respect of it and subsections (5) to (5B) of that section shall apply accordingly.
- (6) Subject to subsections (4)(a) and (5) above, the terms of the initial loan shall be such as the Secretary of State, with the consent of the Treasury, may determine; and, in the event of the early repayment of the initial loan, the terms may require the payment of a premium or allow a discount.

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- (7) With the consent of the Treasury, the Secretary of State may determine the terms on which any public dividend capital forming part of an NHS trust's originating capital debt is to be treated as having been issued, and, in particular, may determine the dividend which is to be payable at any time on any public dividend capital.
- (8) An order under subsection (1) above shall be made—
- (a) with the consent of the Treasury; and
  - (b) by statutory instrument.
- (9) Schedule 3 to this Act shall have effect with respect to—
- (a) borrowing by NHS trusts;
  - (b) the limits on their indebtedness;
  - (c) the payment of additional public dividend capital to them; and
  - (d) the application of any surplus funds of NHS trusts.

**Modifications etc. (not altering text)**

**C1** [S. 9](#): Treasury consent requirements continued (W.) (1.7.1999) by [S.I. 1999/672](#), [arts. 1\(2\), 2](#), [Sch. 1](#)

**Marginal Citations**

**M6** 1968. c. 13.

**10 Financial obligations of NHS trusts.**

- (1) Every NHS trust shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.
- (2) It shall be the duty of every NHS trust to achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it; and any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.

**Modifications etc. (not altering text)**

**C2** [S. 10](#): Treasury consent requirement continued (W.) (1.7.1999) by [S.I. 1999/672](#), [arts. 1\(2\), 2](#), [Sch. 1](#)

**11 Trust funds and trustees for NHS trusts.**

- (1) The Secretary of State may by order made by statutory instrument provide for the appointment of trustees for an NHS trust; and any trustees so appointed shall have power to accept, hold and administer any property on trust for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital or other establishment or facility [<sup>F8</sup>at or from which services are provided] by the trust) or for all or any purposes relating to the health service.
- (2) An order under subsection (1) above 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);

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- (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 subsection (1) above, trustees have been appointed for an NHS trust, the Secretary of State may by order made by statutory instrument provide for the transfer of any trust property from the NHS trust to the trustees so appointed.
- (4) In section 91 of the principal Act (private trusts for hospitals) in subsection (3) (definition of “the appropriate hospital authority”) after paragraph (a) there shall be inserted the following paragraphs—
  - “(aa) where the hospital is owned and managed by an NHS trust and trustees have been appointed for the NHS trust, those trustees;
  - (ab) where the hospital is owned and managed by an NHS trust and neither paragraph (a) nor paragraph (aa) above applies, the NHS trust;”.
- (5) In section 92 of the principal Act (further transfers of trust property)—
  - (a) in subsection (1) after the word “hospital” there shall be inserted “or other establishment or facility” and for the words “or special trustees”, in each place where they occur, there shall be substituted “NHS trust, special trustees or trustees for an NHS trust”;
  - (b) in subsections (2) to (4), after the word “authorities”, in each place where it occurs, there shall be inserted “or NHS trusts”;
  - (c) in subsection (2) after the word “authority”, there shall be inserted “or NHS trust”; and
  - (d) at the end of the section there shall be added the following subsection—
    - “(6) If it appears to the Secretary of State at any time that—
      - (a) the functions of any special trustees should be discharged by the trustees for an NHS trust, or
      - (b) the functions of the trustees for an NHS trust should be discharged by special trustees,then, whether or not there has been any such change as is mentioned in subsection (1) above, he may, after consulting the special trustees and the trustees for the NHS trust, by order provide for the transfer of all trust property from or to the special trustees to or from the trustees for the NHS trust.”
- (6) In section 96 of the principal Act (trusts: supplementary provisions)—
  - (a) any reference to sections 90 to 95 of the principal Act includes a reference to subsections (1) to (3) above; and
  - (b) after subsection (1) there shall be inserted the following subsection—
    - “(1A) Where any transfer of property by virtue of those sections is of, or includes,—
      - (a) land held on lease from a third party, that is to say, a person other than the Secretary of State or a health authority, or
      - (b) any other asset leased or hired from a third party or in which a third party has an interest,

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the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence.”

(7) In section 98(1) of the principal Act (accounts and audit) after paragraph (d) there shall be inserted—

“(dd) any trustees for an NHS trust appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990; and”.

#### Textual Amendments

**F8** Words in s. 11(1) substituted (*retrospectively*) by 1999 c. 8, s. 13(6)(10); S.I. 1999/2540, art. 2(a), Sch. 1; S.I. 1999/3184(W.42), art. 2(1), Sch. 1

### *Family Health Services Authorities*

## 12 Functions of Family Health Services Authorities.

(1) In section 15 of the principal Act (duty of Family Health Services Authority)—

- (a) in subsection (1), after the word “regulations” there shall be inserted “and subject to any directions from the relevant Regional Health Authority”;
- (b) in paragraph (b) of that subsection, after the words “perform such” there shall be inserted “management and”; and
- (c) at the end of that subsection there shall be inserted the following subsections—

“(1A) In relation to a Family Health Services Authority for a locality in England, any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Regional Health Authority is a reference to that Authority in whose region lies the whole or the greater part of the Authority’s locality.

(1B) In relation to a medical practitioner, any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Family Health Services Authority shall be construed as follows,—

- (a) if he practices in partnership with other medical practitioners, the relevant Authority is that Authority on whose medical list the members of the practice are included and, if some are included on one Authority’s medical list and some on another’s or if any of the members is included in the medical lists of two or more Authorities, the relevant Authority is that Authority in whose locality resides the largest number of individuals who are on the lists of patients of the members of the practice; and
- (b) in any other case, the relevant Authority is that Authority on whose medical list he is included and, if there is more than one, that one of them in whose locality resides the largest number of individuals who are on his list of patients.”

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- (2) In section 17 of the principal Act (directions as to exercise of functions), in subsection (1) before the words “by a District Health Authority”, there shall be inserted “(a)” and at the end of the subsection there shall be added “and
- (b) by a Family Health Services Authority in relation to which it is the relevant Regional Health Authority, of any functions exercisable by the Family Health Services Authority by virtue of section 15 above or the National Health Service and Community Care Act 1990.”
- (3) In section 42 of the principal Act (regulations as to pharmaceutical services), in subsection (3)—
- (a) in paragraph (d) for the words following “approved by” there shall be substituted “reference to prescribed criteria by the Family Health Services Authority in whose locality those premises are situated; and”; and
- (b) in paragraph (e) for the words “the prescribed body” there shall be substituted “that Family Health Services Authority”.
- (4) In section 44 of the principal Act (recognition by Secretary of State of certain local committees), in subsection (1)—
- (a) for the words from “the Secretary of State” to “is representative” there shall be substituted “a Family Health Services Authority is satisfied that a committee formed for its locality is representative”; and
- (b) for the word “he” there shall be substituted “the Family Health Services Authority”;
- and in subsection (2) of that section, for the words “Secretary of State’s approval” there shall be substituted “approval of the Family Health Services Authority”.
- (5) Section 55 of the principal Act (reference of certain disputes affecting Family Practitioner Committees to the Secretary of State) shall cease to have effect.

VALID FROM 01/04/1991

### **13 Financial duties in relation to Family Health Services Authorities.**

- (1) Section 97A of the principal Act (financial duties of health authorities) shall be amended in accordance with subsections (2) to (4) below.
- (2) In subsection (1) for the words from “the expenditure attributable” to the end of the subsection there shall be substituted—
- “(a) the expenditure attributable to the performance by the Regional Health Authority of its functions in that year, and
- (b) the expenditure attributable to the performance by the District Health Authorities whose districts are in the region of their functions in that year, and
- (c) the expenditure attributable to the performance by each Family Health Services Authority in relation to which the Regional Health Authority is the relevant Regional Health Authority of the Family Health Services Authority’s functions in that year, other than expenditure falling within section 97(1)(aa) above,

does not exceed the aggregate of—

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- (i) the amounts allotted to the Regional Health Authority for that year under section 97(1)(a) above;
  - (ii) any other sums received under this Act, other than under section 97(1)(aa) above, in that year by the Regional Health Authority or by the District Health Authorities or Family Health Services Authorities concerned; and
  - (iii) any sums received otherwise than under this Act in that year by any of those Authorities for the purpose of enabling them to defray any such expenditure”.
- (3) In subsection (2)—
- (a) for the words “Area Health Authority and every District Health Authority” there shall be substituted “District Health Authority and every Family Health Services Authority”;
  - (b) in paragraph (a) of that subsection after the word “above” there shall be inserted “other than section 97(1)(aa)”.
- (4) In subsection (4) after the words “health authority” there shall be inserted “or Family Health Services Authority”.
- (5) In section 97B of the principal Act, in subsection (1)—
- (a) for the words “Family Practitioner Committee” there shall be substituted “Family Health Services Authority whose locality is in Wales”; and
  - (b) at the end there shall be added the words “and any reference in subsections (2) and (4) below to a Family Health Services Authority is a reference to an Authority whose locality is in Wales”.

#### Commencement Information

**I3** S. 13 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1329, art. 2(8), **Sch. 3**.

### *Fund-holding practices*

#### **14 Recognition of fund-holding practices of doctors.**

- (1) Any one or more medical practitioners who are providing general medical services in accordance with arrangements under section 29 of the principal Act may apply to the relevant Regional Health Authority for recognition as a fund-holding practice.
- (2) The relevant Regional Health Authority shall not grant recognition as a fund-holding practice unless the medical practitioner or, as the case may be, each of the medical practitioners concerned fulfils such conditions as may be prescribed.
- (3) Subject to subsection (4) below, in relation to a medical practitioner, any reference in this Part of this Act to the relevant Regional Health Authority is a reference to that Authority which, in relation to the practitioner’s relevant Family Health Services Authority, is the relevant Regional Health Authority.
- (4) Where two or more medical practitioners wish to make an application under subsection (1) above and, apart from this subsection, the relevant Family Health Services Authority in respect of one or more of them would be different from that in respect of the other or others, then, for the purposes of this section and any other



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provisions relating to fund-holding practices, the relevant Family Health Services Authority for each of them shall be determined as if they were all practising in a single partnership.

- (5) In the application of this section to any medical practitioner whose relevant Family Health Services Authority has a locality in Wales, for any reference to the relevant Regional Health Authority there shall be substituted a reference to the Secretary of State.
- (6) Regulations may make provision with respect to—
- (a) the making of applications under subsection (1) above;
  - (b) the granting and refusal of recognition as a fund-holding practice;
  - (c) the conditions to be fulfilled for obtaining and continuing to be entitled to such recognition;
  - (d) appeals against any refusal of such recognition by a Regional Health Authority;
  - (e) withdrawing from, or becoming a member of, an existing recognised fund-holding practice;
  - (f) the continuity or otherwise of a recognised fund-holding practice in the event of the death or withdrawal of a member or the addition of a new member; and
  - (g) the operation of this section in a case where one or more of the medical practitioners wishing to make an application under subsection (1) above is also on the medical list of a health board;

and regulations making the provision referred to in paragraph (g) above may make such modifications of the preceding provisions of this section as the Secretary of State considers appropriate.

## **15 Payments to recognised fund-holding practices.**

- (1) In respect of each financial year, every Regional Health Authority shall be liable to pay to the members of each recognised fund-holding practice in relation to which it is the relevant Regional Health Authority a sum determined in such manner and by reference to such factors as the Secretary of State may direct (in this section referred to as an ^allotted sum”).
- (2) In respect of each financial year, the Secretary of State shall be liable to pay to the members of each recognised fund-holding practice whose relevant Family Health Services Authority has a locality in Wales a sum determined in such manner and by reference to such factors as the Secretary of State may direct (in this section referred to as an ^allotted sum”).
- (3) The liability to pay an allotted sum under subsection (1) or subsection (2) above may be discharged, in whole or in part, in either of the following ways—
- (a) by making payments on account of the allotted sum at such times and in such manner as the Secretary of State may direct; and
  - (b) by discharging liabilities of the members of the practice to any other person (including, in particular, liabilities under NHS contracts);

and any reference in the following provisions of this Part of this Act to payment of or of a part of an allotted sum includes a reference to the discharge, in accordance with this subsection, of the whole or part of the liability to pay that sum.

- (4) In any case where—

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- (a) a Regional Health Authority makes a payment of or of any part of an allotted sum to the members of a recognised fund-holding practice, and
- (b) some of the individuals on the list of patients of any of the members of the practice reside in the region of another Regional Health Authority, or in Wales, or in the area of a Health Board,

the Authority making the payment shall be entitled to recover from that other Authority or, as the case may be, from the Secretary of State or that Health Board an amount equal to such portion of the payment as may be determined in accordance with directions given by the Secretary of State.

(5) In any case where—

- (a) the Secretary of State makes a payment of or of any part of an allotted sum to the members of a recognised fund-holding practice, and
- (b) some of the individuals on the list of patients of any of the members of the practice reside in the region of a Regional Health Authority,

the Secretary of State shall be entitled to recover from that Authority an amount equal to such portion of the payment as may be determined in accordance with directions given by the Secretary of State.

(6) The members of a recognised fund-holding practice may apply an allotted sum only for purposes specified in regulations under subsection (7) below.

(7) Regulations shall make provision with respect to the purposes for which allotted sums are to be or may be applied and may make provision generally with respect to the operation of recognised fund-holding practices in relation to allotted sums; and the regulations may, in particular,—

- (a) require the members of a practice to pay to the relevant Regional Health Authority out of allotted sums paid to them an amount determined in accordance with the regulations as the basic cost of the drugs, medicines and listed appliances supplied pursuant to orders given by or on behalf of members of the practice;
- (b) provide that the goods and services, other than general medical services, which may be purchased by or on behalf of the members of a practice out of allotted sums for the individuals on the lists of patients of the members of the practice shall be such as may be specified in a list approved for the purpose under the regulations; and
- (c) impose a limit on the amount which may be spent out of an allotted sum on the provision of goods and services for any one individual, being a limit above which the cost of any goods and services for that individual in the financial year in question will fall to be met by the District Health Authority whose primary functions include the provision of goods and services (not necessarily the goods and services in question) to the individual concerned.

(8) In the application of subsection (7) above to the members of a practice whose relevant Family Health Services Authority has a locality in Wales, for the reference in paragraph (a) of that subsection to the relevant Regional Health Authority there shall be substituted a reference to the Secretary of State.

(9) In accordance with directions under section 17 of the principal Act, the relevant Family Health Services Authority shall monitor the expenditure of the members of a recognised fund-holding practice and may institute an audit and review in any case where the Authority consider it necessary to do so.

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## **16 Renunciation and removal of recognition as a fund-holding practice and withholding of funds.**

- (1) Regulations may make provision as to the circumstances in which the members of a recognised fund-holding practice may renounce that status and such regulations may, in particular, make provision as to—
  - (a) the notice to be given and the number of members of the practice by whom it is to be given;
  - (b) the procedure to be followed; and
  - (c) the consequences of such a renunciation.
- (2) Regulations may make provision as to the circumstances in which and the grounds on which the relevant Regional Health Authority or, as the case may be, the Secretary of State may remove recognition from the members of a fund-holding practice,—
  - (a) with immediate effect; or
  - (b) with effect from the end of a particular financial year; or
  - (c) with effect from such other date as may be specified by the Regional Health Authority or, as the case may be, the Secretary of State.
- (3) Where provision is made as mentioned in subsection (2) above, regulations shall make provision with respect to—
  - (a) the procedure for the removal of recognition;
  - (b) appeals against the removal of recognition by a Regional Health Authority; and
  - (c) the consequences of the removal of recognition.
- (4) Without prejudice to the generality of the powers conferred by subsection (3) above, regulations making provision as mentioned in paragraph (c) of that subsection—
  - (a) may provide for the transfer of rights and obligations from the members of the fund-holding practice to one or more District Health Authorities determined in accordance with the regulations;
  - (b) may provide for the recovery of sums from the members of the practice; and
  - (c) may require the members of the practice to furnish such information as may reasonably be required by the Regional Health Authority or, as the case may be, the Secretary of State.
- (5) The bringing of an appeal against the removal of recognition by a Regional Health Authority shall not be regarded as preserving the recognised status of the members of the fund-holding practice and, accordingly, subject to the outcome of the appeal, the relevant Regional Health Authority shall not be required, after the removal takes effect, to make any (or, as the case may be, any further) payment to the members of the practice of any part of the allotted sum for the financial year in question or, as the case may be, to determine and pay any allotted sum for a future financial year.
- (6) Where any part of an allotted sum has been applied by the members of a recognised fund-holding practice (or any one or more of them) for purposes other than those specified in regulations under section 15(7) above, regulations may make provision for and in connection with the recovery by the relevant Regional Health Authority or, as the case may be, the Secretary of State of an amount equal to that part.
- (7) Where provision is made as mentioned in subsection (6) above, regulations shall make provision with respect to appeals against the recovery of any amount by a Regional Health Authority.

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## **17 Transfer of functions relating to recognised fund-holding practices.**

- (1) If the Secretary of State by regulations so provides, such of the functions of a Regional Health Authority or, in Wales, the Secretary of State under sections 14 to 16 above as are specified in, or determined in accordance with, the regulations shall become functions of a Family Health Services Authority with effect from such date as may be prescribed.
- (2) Regulations under this section shall make provision for determining the Family Health Services Authority which is to exercise any of the functions concerned in relation to the members of any existing recognised fund-holding practice and in relation to any medical practitioners wishing to apply for recognition.
- (3) Without prejudice to the generality of section 126(4) of the principal Act, regulations under this section may make such incidental and consequential modifications of the principal Act and of sections 14 to 16 above as appear to the Secretary of State to be necessary or expedient in consequence of the transfer of functions effected by the regulations.

### *Indicative amounts*

## **18 Indicative amounts for doctors' practices.**

- (1) Subject to subsection (2) below, for each financial year, every Family Health Services Authority shall, by notice in writing given to each practice in relation to the members of which it is the relevant Family Health Services Authority, specify an amount of money (in this Act referred to as an “indicative amount”) representing the basic price of the drugs, medicines and listed appliances which, in the opinion of the Authority, it is reasonable to expect will be supplied in that year pursuant to orders given by or on behalf of the members of that practice.
- (2) Subsection (1) above does not apply with respect to a practice which is or forms part of a fund-holding practice recognised under section 14 above.
- (3) For the purposes of this section, a “practice” means—
  - (a) a single medical practitioner who practises otherwise than in partnership; or
  - (b) any two or more medical practitioners who practise in partnership;
 and any reference to the members of a practice shall be construed accordingly.
- (4) The members of a practice shall seek to secure that, except with the consent of the relevant Family Health Services Authority or for good cause, the orders for drugs, medicines and listed appliances given by them or on their behalf are such that the basic price of the items supplied pursuant to those orders in any financial year does not exceed the indicative amount notified to the practice for that year under subsection (1) above.
- (5) For the purpose of measuring the extent to which a practice is operating within the indicative amount notified to it under subsection (1) above for any financial year, a Family Health Services Authority shall set against that indicative amount an amount equal to the basic price of the drugs, medicines and listed appliances supplied in that year pursuant to orders given by or on behalf of members of the practice.
- (6) For the purposes of this section, regulations may make provision as to the specification of, or means of calculating, the basic price of any drugs, medicines or listed appliances.

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- (7) If, in the case of any practice, a member is on the medical list of a Health Board constituted under section 2 of the <sup>M7</sup>National Health Service (Scotland) Act 1978 (as well as on that of a Family Health Services Authority), any question whether this section applies in relation to the members of the practice shall be determined in accordance with regulations made by the Secretary of State; and any such regulations may modify the preceding provisions of this section in their application to such a practice.

#### Marginal Citations

M7 1978 c. 29.

### *Funding, audit and liabilities*

VALID FROM 01/04/1991

#### **19 Amendments relating to funding of health authorities etc.**

- (1) Section 97 of the principal Act (means of meeting expenditure of health authorities out of public funds) shall be amended in accordance with this section.
- (2) In subsection (1) (payments to health authorities etc. by the Secretary of State)—
- (a) at the end of paragraph (a) there shall be added “including, in the case of a Regional Health Authority, its functions with respect to such expenditure of Family Health Services Authorities in relation to which it is the relevant Regional Health Authority as—
- (i) is attributable to the reimbursement of expenses of persons providing services in pursuance of Part II of this Act and is of a description specified in the allotment, and
- (ii) is attributable to the performance by the Family Health Services Authority of their functions in that year”;
- (b) after paragraph (a) there shall be inserted the following paragraph—
- “(aa) to each Regional Health Authority sums equal to any such expenditure of Family Health Services Authorities in relation to which it is the relevant Regional Health Authority as is attributable to the remuneration of persons providing services in pursuance of Part II of this Act and is not of a description specified as mentioned in paragraph (a) above”; and
- (c) in paragraph (b) for the words “Family Practitioner Committee” there shall be inserted “Family Health Services Authority whose locality is in Wales”.
- (3) In subsection (2) (payments by Regional Health Authorities) for the words following “each financial year” there shall be substituted—
- “(a) to each District Health Authority whose district is included in the region sums not exceeding the amount allotted by the Regional Health Authority to the District Health Authority for that year

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- towards meeting the expenditure attributable to the performance by the District Health Authority of their functions in that year; and
- (b) to each Family Health Services Authority in relation to which it is the relevant Regional Health Authority—
- (i) sums equal to the expenditure referred to in subsection (1) (aa) above; and
- (ii) sums not exceeding the amount allotted by the Regional Health Authority to the Family Health Services Authority for that year towards meeting other expenditure attributable to the reimbursement of expenses of persons providing services in pursuance of Part II of this Act and to the performance by the Family Health Services Authority of their functions in that year.”
- (4) In subsection (3) (directions of Secretary of State)—
- (a) after the word “directions” there shall be inserted “(a)”;
- (b) after the word “Regional” there shall be inserted “or Special” and for the words “Practitioner Committee” there shall be substituted “Health Services Authority whose locality is in Wales”; and
- (c) at the end of the subsection there shall be added “and
- (b) to a District Health Authority in England with respect to the payment of sums by them to the Regional Health Authority in respect of charges or other sums referable to the valuation or disposal of assets; and
- (c) to a Regional Health Authority with respect to the application of sums received by them by virtue of paragraph (b) above or by virtue of section 15(7)(a) of the National Health Service and Community Care Act 1990.”
- (5) In subsection (4) (directions of Regional Health Authorities) for the words from “an Area Health Authority” onwards there shall be substituted “a District Health Authority whose district is included in the region or a Family Health Services Authority in relation to which it is the relevant Regional Health Authority with respect to the application of any sum paid out of those sums to the District Health Authority or the Family Health Services Authority under subsection (2) above”.

#### Commencement Information

**I4** S. 19 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1329, art. 2(8), Sch. 3.

## 20 Extension of functions etc. of Audit Commission to cover the health service.

- (1) Part III of the <sup>M8</sup>Local Government Finance Act 1982 (the Audit Commission for Local Authorities in England and Wales—in this section referred to as “the Commission”) shall have effect subject to the amendments in Schedule 4 to this Act, being amendments—
- (a) to extend the functions of the Commission to cover health authorities and other bodies established under this Act or the principal Act;
- (b) to alter the title and constitution of the Commission to reflect its wider role; and

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- (c) to make provision consequential on or supplemental to the amendments referred to in paragraphs (a) and (b) above.
- (2) In section 98 of the principal Act (accounts and audit),—
- (a) in subsection (1), in the words following paragraph (e) for the words from “appointed” to “Comptroller” there shall be substituted “appointed by the Audit Commission for Local Authorities and the National Health Service in England and Wales and the Comptroller”;
  - (b) after subsection (2A) of that section there shall be inserted the following subsection—
    - “(2B) So far as relates to allotted sums paid to the members of a fund-holding practice—
    - (a) accounts shall be kept in such form as the Secretary of State may with the approval of the Treasury direct;
    - (b) the Comptroller and Auditor General may examine the accounts and the records relating to them and any report of the auditor on them;
    - (c) in respect of each financial year, annual accounts in such form as the Secretary of State may with the approval of the Treasury direct shall be prepared and submitted to the relevant Family Health Services Authority; and
    - (d) in respect of each financial year, each Family Health Services Authority shall prepare, in such form as the Secretary of State may with the approval of the Treasury direct, and include in its own accounts, a summarised version of the accounts submitted to the Authority under paragraph (c) above.”;
  - (c) subsection (3) (regulations of the Secretary of State with respect to audit) shall be omitted; and
  - (d) after subsection (4) there shall be inserted—
    - “(5) In subsection (2B) above “recognised fund-holding practice” and “allotted sum” have the same meaning as in section 15 of the National Health Service and Community Care Act 1990.”
- (3) If the person who is for the time being the auditor, within the meaning of Part III of the <sup>M9</sup>Local Government Finance Act 1982, in relation to the accounts of a health service body, within the meaning of that Part, has reason to believe that the body, or any officer of the body,—
- (a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful, or
  - (b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,
- he shall refer the matter forthwith to the Secretary of State.
- (4) It shall be the duty of the Commission to make, by such date as the Secretary of State may determine, an offer of employment by the Commission to each person employed in the civil service of the State in connection with the audit of the accounts of any of the bodies specified in section 98(1) of the principal Act whose name is notified to the Commission by the Secretary of State for the purposes of this subsection; and the terms of the offer must be such that they are, taken as a whole, not less favourable to

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the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

- (5) An offer made in pursuance of subsection (4) above shall not be revocable during the period of three months beginning with the date on which it is made.
- (6) Where a person becomes an officer or servant of the Commission in consequence of subsection (4) above, then, for the purposes of the <sup>M10</sup>Employment Protection (Consolidation) Act 1978, his period of employment in the civil service of the State shall count as a period of employment by the Commission and the change of employment shall not break the continuity of the period of employment.
- (7) Where a person ceases to be employed as mentioned in subsection (4) above—
  - (a) on becoming an officer or servant of the Commission in consequence of an offer made in pursuance of that subsection, or
  - (b) having unreasonably refused such an offer,
 he shall not, on ceasing to be so employed, be treated for the purposes of any scheme under section 1 of the <sup>M11</sup>Superannuation Act 1972 as having been retired on redundancy.
- (8) Without prejudice to any express amendment made by this Act, on and after the day appointed for the coming into force of this subsection, any reference in any enactment (including an enactment comprised in subordinate legislation) to the Audit Commission for Local Authorities in England and Wales shall be construed as a reference to the Audit Commission for Local Authorities and the National Health Service in England and Wales.

#### Marginal Citations

- M8** 1982 c. 32.  
**M9** 1982 c. 32.  
**M10** 1978 c. 44.  
**M11** 1972 c. 11.

## 21 Schemes for meeting losses and liabilities etc. of certain health service bodies.

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies specified in subsection (2) below may make provision to meet—
  - (a) expenses arising from any loss of or damage to their property; and
  - (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies concerned.
- (2) The bodies referred to in subsection (1) above are—
  - (a) health authorities;
  - (b) NHS trusts; and
  - (c) the Public Health Laboratory Service Board;
 but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.
- (3) Without prejudice to the generality of the power conferred by subsection (1) above, a scheme under this section may—



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- (a) provide for the scheme to be administered by the Secretary of State or by a health authority or NHS trust specified in the scheme;
  - (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
  - (c) provide for the making of payments for the purposes of the scheme by the Secretary of State.
- (4) Without prejudice to any other power of direction conferred on the Secretary of State,
- (a) if the Secretary of State so directs, a body which is eligible to participate in a scheme shall do so; and
  - (b) where a scheme provides for it to be administered by the Secretary of State, a health authority or NHS trust shall carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct.
- (5) Neither the Secretary of State nor any health authority or NHS trust administering a scheme under this section shall, by virtue of their activities under the scheme, be regarded as carrying on insurance business for the purposes of the <sup>M12</sup>Insurance Companies Act 1982.

#### Marginal Citations

M12 1982 c. 50.

### *Further amendments of the principal Act*

#### **22 The Medical Practices Committee.**

- (1) Section 7 of the principal Act (the Medical Practices Committee) shall be amended in accordance with this section.
- (2) At the beginning of subsection (1) there shall be inserted “Subject to subsection (1A) below”.
- (3) After subsection (1) there shall be inserted the following subsection—

“(1A) The Secretary of State may by order make such modifications as he considers appropriate of paragraphs (a) and (b) of subsection (1) above.”
- (4) At the end of the section there shall be added the following subsection—

“(4) After consulting the Medical Practices Committee, the Secretary of State may give the Committee directions with respect to the exercise of its functions; and it shall be the duty of the Committee to comply with any such directions.”

#### **23 Distribution of general medical services.**

- (1) In section 33 of the principal Act (distribution of general medical services) after subsection (1) there shall be inserted the following subsections—

“(1A) The Secretary of State may by order specify—

  - (a) the maximum number of medical practitioners with whom, in any year, all the Family Health Services Authorities for localities in

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England, taken as a whole, may enter into arrangements under section 29 above for the provision of general medical services; and

- (b) the maximum number of medical practitioners with whom, in any year, all the Family Health Services Authorities for localities in Wales, taken as a whole, may enter into such arrangements.

(1B) An order under subsection (1A) above may contain such incidental and consequential provisions (including provisions amending this Part of this Act) as appear to the Secretary of State to be appropriate including, in particular, provisions as to the basis on which the Medical Practices Committee are to refuse applications under section 30 above in order to secure that any maximum number specified in the order is not exceeded.”

- (2) At the beginning of subsection (2) of that section (the Medical Practices Committee to select the persons whose applications are to be granted) there shall be inserted “Subject to subsection (2A) below” and after that subsection there shall be inserted the following subsection—

“(2A) If, in the opinion of the Medical Practices Committee, a medical practitioner is required for a particular part of the locality of a Family Health Services Authority, then, in such circumstances as may be prescribed,—

- (a) the Authority (instead of the Committee) shall, in accordance with regulations, select the medical practitioner whose application they wish to be considered by the Committee; and
- (b) the Committee shall not consider any application from a medical practitioner who is not so selected; and
- (c) any medical practitioner who has made an application but is not so selected may appeal to the Secretary of State on a point of law;

and if the Secretary of State allows an appeal under paragraph (c) above he shall remit the application to the Authority for reconsideration.”

- (3) In subsection (4) of that section (applications under section 30 may be granted subject to certain conditions), after the word “but” there shall be inserted—

“(a) in granting an application shall specify, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which the applicant will be entitled to be remunerated; and

(b)”;

and at the end of the subsection there shall be inserted the words “and an order under subsection (1A) above may make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions imposed under paragraph (a) above”.

- (4) In subsection (5) of that section (appeals to the Secretary of State) for the words “such conditions” there shall be substituted “conditions under paragraph (a) or paragraph (b) of subsection (4) above” and for the words following “Secretary of State”, in the first place where those words occur, there shall be substituted “on a point of law; and, if the Secretary of State allows such an appeal, he shall remit the application to the Medical Practices Committee for reconsideration”.

- (5) Subsection (7) of that section (directions on a successful appeal) shall be omitted.

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- (6) In subsection (8) of that section (matters to be taken into account) for the words from the beginning to “in any such case” there shall be substituted “In any case where medical practitioners have to be selected from a number of applicants, the Medical Practices Committee or, where subsection (2A) above applies, the Family Health Services Authority shall”.
- (7) In section 34 of the principal Act (regulations for Medical Practices Committee)—
- (a) in paragraph (b)(ii) after the words “under section 33 above” there shall be inserted “and where such an appeal is allowed, the reconsideration of any application”; and
- (b) at the end of the section there shall be added the following subsection—
- “(2) Regulations under this section may make provision for, and in connection with, the variation of any condition imposed under subsection (4) or subsection (5) of section 33 above, including provision for appeals to the Secretary of State on a point of law”.
- (8) In the case of a medical practitioner who, on the day appointed for the coming into force of this section, is providing general medical services in accordance with arrangements under section 29 of the principal Act, regulations may make transitional provisions by virtue of which those services shall be treated for the purposes of that Act as provided subject to such of the prescribed conditions referred to in section 33(4)(a) of that Act as are determined under the regulations and, accordingly, for enabling any such condition to be varied in accordance with regulations under section 34(2) of that Act.

**Modifications etc. (not altering text)**

C3 S. 23(2) restricted by S.I. 1990/2511, art. 4(1)

**24 Limitations on right to be included on list of dental practitioners.**

- (1) Section 36 of the principal Act (regulations as to arrangements for general dental services) shall be amended in accordance with this section.
- (2) In subsection (1)(b) (regulations to include provision conferring a right, subject to certain qualifications, to be entered on a list of dental practitioners providing general dental services) for the words “subsection (2)” there shall be substituted “subsections (2) and (3)”.
- (3) At the end of the section there shall be added the following subsection—
- “(3) Regulations may make the exercise of the right conferred by virtue of paragraph (b) of subsection (1) above subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in paragraph (a) of that subsection.”

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VALID FROM 01/04/1991

## **25 Transfer to DHA of certain functions relating to private patients.**

- (1) Section 65 of the principal Act (accommodation and services for private patients) shall be amended in accordance with this section.
- (2) In subsection (1) (power of Secretary of State to authorise accommodation and services at hospitals to be made available for private patients etc.)—
  - (a) for the words from the beginning to “as he may determine”, in the first place where those words occur, there shall be substituted “Subject to the provisions of this section, to such extent as they may determine, a District or Special Health Authority may make available at a hospital or hospitals for which they have responsibility accommodation and services”;
  - (b) for any subsequent reference to the Secretary of State in the words preceding paragraph (a) there shall be substituted a reference to the District Health Authority or Special Health Authority, as the case may require; and
  - (c) in paragraph (a) for the words “him of any duty imposed on him by” there shall be substituted “the Authority of any function conferred on the Authority under”;
- (3) After subsection (1) there shall be inserted the following subsection—
 

“(1A) Before determining to make any accommodation or services available as mentioned in subsection (1) above, a District or Special Health Authority shall consult organisations representative of the interests of persons likely to be affected by the determination.”
- (4) In subsection (2)—
  - (a) for the words “The Secretary of State” there shall be substituted “A District or Special Health Authority”; and
  - (b) for the words from “to which an authorisation” to “made available” there shall be substituted “which are made available under subsection (1) above to be so made available”.
- (5) For subsection (3) of that section there shall be substituted the following subsection—
 

“(3) The Secretary of State may give directions to a District or Special Health Authority in relation to the exercise of its functions under this section; and it shall be the duty of an authority to whom directions are so given to comply with them.”

### **Commencement Information**

**I5** S. 25 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1329, art. 2(8), **Sch. 3**.

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## Interpretation

### 26 Interpretation of Part I.

- (1) Subsection (2) below has effect with respect to the interpretation of this Part of this Act and the <sup>M13</sup>National Health Service Act 1977 (the principal Act).
- (2) In section 128 of the principal Act, in subsection (1)—
  - (a) after the words “this Act” there shall be inserted “and Part I of the National Health Service and Community Care Act 1990”;
  - (b) for the definition beginning “Area Health Authority” there shall be substituted—

““District Health Authority” means the authority for a district, whether or not its name incorporates the word “District””;
  - (c) in the definition of “health service hospital” after the words “this Act” there shall be inserted “or vested in an NHS trust”;
  - (d) after the definition of “modifications” there shall be inserted—

““NHS contract” has the meaning assigned by section 4(1) of the National Health Service and Community Care Act 1990;

“National Health Service trust” has the meaning assigned by section 5 of the National Health Service and Community Care Act 1990 and “NHS trust” shall be construed accordingly”;
  - (e) after the definition of “officer” there shall be inserted—

““operational date”, in relation to an NHS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 2 to the National Health Service and Community Care Act 1990”;
  - (f) after the definition of “patient” there shall be inserted—

““pharmaceutical services” has the meaning assigned by section 41 of this Act”;
  - (g) in the definition of “prescribed” after the words “this Act” there shall be inserted “or Part I of the National Health Service and Community Care Act 1990”;
  - (h) after the definition of “prescribed” there shall be inserted—

““primary functions” shall be construed in accordance with section 3 of the National Health Service and Community Care Act 1990”; and
  - (i) in the definition of “regulations” after the words “this Act” there shall be inserted “or Part I of the National Health Service and Community Care Act 1990”.
- (3) In this Part of this Act—

“goods” includes accommodation;

“health board” means a Health Board constituted under section 2 of the <sup>M14</sup>National Health Service (Scotland) Act 1978 or a Health and Social Services Board constituted under the <sup>M15</sup>Health and Personal Social Services (Northern Ireland) Order 1972; and

[<sup>F9</sup>“provide” includes manage]

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“services” includes services of any description, whether or not being services under the principal Act.

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**Textual Amendments**

**F9** S. 26(3): definition of “provide” inserted (*retrospectively*) by 1999 c. 8, s. 13(2)(10); S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 1999/3184, art. 2(1), **Sch. 1**

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**Marginal Citations**

**M13** 1977 c. 49.

**M14** 1978 c. 29.

**M15** S.I. 1972/1265 (N.I.14).

**Status:**

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