



# 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.**

<sup>F1</sup>(1) .....

<sup>F1</sup>(2) .....

(3) [<sup>F2</sup>In the <sup>M1</sup>National Health Service Act 1977 (in this Part of this Act referred to as “the principal Act”), Part III of Schedule 5] (supplementary provisions as to authorities) shall be amended in accordance with Part III of Schedule 1 to this Act.

<sup>F1</sup>(4) .....

<sup>F1</sup>(5) .....

#### **Textual Amendments**

**F1** S. 1(1)(2)(4)(5) repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, Sch. 3 (with Sch. 2 paras. 6, 16)

**F2** Words in s. 1(3) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), Sch. 1 Pt. II paras. 65, 66 (with Sch. 2 paras. 6, 16)

#### **Marginal Citations**

**M1** 1977 c. 49.

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F3<sup>2</sup> .....

#### Textual Amendments

F3 S. 2 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), Sch. 3

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

- [<sup>F4</sup>(1) Any reference in this Act to the primary functions of a Health Authority or Special Health Authority is a reference to those functions for the time being exercisable by the Health Authority or Special Health Authority by virtue of—
- (a) directions under section [<sup>F5</sup>16D] of the principal Act;
  - (b) section 15 or Part II of the principal Act; or
  - (c) any provision of this Act (apart from subsection (2) below).]
- (2) In addition to carrying out its primary functions, a [<sup>F6</sup>Health Authority or Special Health 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 [<sup>F6</sup>Health Authority or Special Health 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 [<sup>F7</sup>Health Authority 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 [<sup>F7</sup>Health Authority or Special Health 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 [<sup>F8</sup>Health Authority 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 [<sup>F8</sup>authority which is a Health Authority or Special Health Authority] or is a function of a health board,

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[<sup>F8</sup>the Health Authority or Special Health Authority] providing the goods or services shall be remunerated in respect of that provision by that [<sup>F8</sup>other authority] or health board.

[<sup>F9</sup>(6A) The reference in subsection (6) above to a function of a health board shall, in relation to a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972, be construed as a reference to a primary function of such a Board within the meaning of Article 9 of the Health and Personal Social Services (Northern Ireland) Order 1991.]

(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 [<sup>F10</sup>Health Authority 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 [<sup>F10</sup>Health Authority or Special Health 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.

#### Textual Amendments

- F4** S. 3(1) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 67(a)** (with Sch. 2 paras. 6, 16)
- F5** Words in s. 3(1)(a) substituted (1.9.1999 for E. and 1.12.1999 for W.) by 1999 c. 8, s. 65, Sch. 4 paras. 74, 75; S.I. 1999/2342, art. 2(1), **Sch. 1**; 1999/3184, art. 2(2), Sch. 2
- F6** Words in s. 3(2) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 67(b)** (with Sch. 2 paras. 6, 16)
- F7** Words in s. 3(5) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 67(c)** (with Sch. 2 paras. 6, 16)
- F8** Words in s. 3(6) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 67(d)** (with Sch. 2 paras. 6, 16)
- F9** S. 3(6A) inserted (1.4.1991) by S.I. 1991/195, **art. 7** (2).
- F10** Words in s. 3(8) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 67(e)** (with Sch. 2 paras. 6, 16)

#### 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,—

- [<sup>F11</sup>(za) a Strategic Health Authority;]

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- [<sup>F12</sup>(a) a Health Authority;
  - [<sup>F12</sup>(aa) a Special Health Authority;]
  - (b) a health board;
  - [<sup>F13</sup>(bb) a Primary Care Trust]
  - [<sup>F14</sup>(bbb) a Local Health Board;]
  - (c) the Common Services Agency for the Scottish Health Service;
  - [<sup>F15</sup>(d) .....
  - (e) an NHS trust;
  - [<sup>F16</sup>(ee) the Wales Centre for Health;]
  - [<sup>F17</sup>(f) a recognised fund-holding practice;]
  - [<sup>F18</sup>(ff) the [<sup>F19</sup>Commission for Healthcare Audit and Inspection]]
  - (g) the Dental Practice Board or the Scottish Dental Practice Board;
  - (h) [<sup>F20</sup>.....
  - (i) the Secretary of State
  - [<sup>F21</sup>(ii) the Health Protection Agency;]
  - [<sup>F22</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; <sup>F23</sup> . . .

(7) a determination of a reference under subsection (3) above may contain such directions (including directions as to a 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; <sup>F23</sup> . . .

(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>F24</sup> . . .

<sup>F24</sup>(b) . . . . .

[<sup>F25</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

- F11** S. 4(2)(za) inserted (1.10.2002) by 2002 c. 17, s. 1(3), **Sch. 1 Pt. 2 para. 40**; S.I. 2002/2478, **art. 3(1)(c)** (with **art. 3(3)** and transitional provision in **art. 4**)
- F12** S. 4(2)(a) and (aa) substituted (1.4.1996 subject to s. 8 of the amending Act) for s. 4(2)(a) by 1995 c. 17, ss. 2(1)(3), **Sch. 1 para. 68(a)** (with **Sch. 2 paras. 6, 16**)
- F13** S. 4(2)(bb) inserted (4.1.2000) by 1999 c. 8, s. 65(1), **Sch. 4 paras. 74, 76(a)(ii)**; S.I. 1999/2342, **art. 2(3)(b)(i)**
- F14** S. 4(2)(bbb) inserted (10.10.2002 for W. and otherwise in force immediately before the **National Health Service Act 2006 (c. 41)** (which Act came into force on 1.3.2007 in accordance with s. 227(1) (subject to s. 277(2)-(5) of that Act))) by 2002 c. 17, ss. 6(2), 42(3), **Sch. 5 para. 31**; S.I. 2002/2532, **art. 2, Sch.**; S.I. 2006/1407, **arts. 1(1), 2, Sch. 1 Pt. 2** {para. 12(c)}
- F15** S. 4(2)(d) repealed (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), **Sch. 1 para. 68(b), Sch. 3** (with **Sch. 2 paras. 6, 16**)

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- F16** S. 4(2)(ee) inserted (1.4.2005) by Health (Wales) Act 2003 (c. 4), ss. 7(1), 10(2), **Sch. 3 para. 6**; S.I. 2003/2660, **art. 3(2)**
- F17** S. 4(2)(f) repealed (E.) (1.10.1999) by 1999 c. 8, s. 65(2), **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**
- F18** S. 4(2)(ff) inserted (1.11.1999) by 1999 c. 8, s. 65(1), Sch. 4 paras. 74, **76(a)(ii)**; S.I. 1999/2793, art. 1(2)(b), **Sch. 2**
- F19** Words in s. 4(2)(ff) substituted (11.11.2004) by The Health and Social Care (Community Health and Standards) Act 2003 (Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection) (Consequential Provisions) Order 2004 (S.I. 2004/2987), **art. 2(1)(c)**
- F20** S. 4(2)(h) repealed (1.4.2005) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 190(2), 196, 199(1), Sch. 13 para. 6(a), **Sch. 14 Pt. 7**; S.I. 2005/457, **art. 2(1)(a)(b)**
- F21** S. 4(2)(ii) inserted after s. 4(2)(i) (1.4.2005) by Health Protection Agency Act 2004 (c. 17), ss. 11(1), 12(1), **Sch. 3 para. 11(2)**; S.I. 2005/121, **art. 2(2)**
- F22** S. 4(2)(j)(k)(l)(m) added (1.4.1991) by S.I. 1991/195, **art. 7(3)**
- F23** Words in s. 4(6)(7) omitted (1.9.1999 (E.) and 1.12.1999 (W.)) by virtue of 1999 c. 8, s. 65(1), Sch. 4 paras. 74, **76(b)**; S.I. 1999/2342, art. 2(1), **Sch. 5**; S.I. 1999/3184, art. 2(2), **Sch. 2**; and those same words expressed to be repealed (1.4.2000) by 1999 c. 8, s. 65(2), **Sch. 5**; S.I. 2000/1041, art. 2(d), **Sch. 7(4)**
- F24** S. 4(9)(b) and word in s. 4(9)(a) repealed (1.4.1991) by S.I. 1991/195, **art. 7(4)**
- F25** S. 4(10) added (1.4.1991) by S.I. 1991/195, **art. 7(5)**

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

- C1** S. 4 extended (11.5.1998) by 1997 c. 46, s. 16(5); S.I. 1998/631, **art. 2(2)**
- C2** S. 4 modified (8.3.2002 for E. and 1.7.2002 for W.) by 2001 c. 15, s. 33(5), (with ss. 64(9), 65(4)); S.I. 2002/1095, **art. 2(4)**; S.I. 2002/1475, art. 2(1), **Sch. Pt. 1**
- C3** S. 4(5) modified (E.) (17.3.2004) by The General Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/433), **art. 43**
- C4** S. 4(5) modified (W.) (17.3.2004) by The General Medical Services Transitional and Consequential Provisions (Wales) Order 2004 (S.I. 2004/477), **art. 43**
- C5** S. 4(8) applied (W.) (1.3.2004) by The National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (S.I. 2004/478), **reg. 100(2)**
- C6** S. 4(8) applied (E.) (1.1.2006) by The National Health Service (Personal Dental Services Agreements) Regulations 2005 (S.I. 2005/3373), **art. 56(2)**
- C7** S. 4(8)(a)(b) applied (W.) (3.3.2006) by The General Dental Services and Personal Dental Services Transitional Provisions (Wales) Order 2006 (S.I. 2006/488), **art. 14(4)**

#### 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

#### Marginal Citations

- M2** 1978 c. 29.

#### [<sup>F26</sup>4A Provision of certain services under NHS contracts.

(1) This section applies to any arrangement under which [<sup>F27</sup>a Strategic Health Authority,]<sup>[<sup>F28</sup>a Primary Care Trust,]</sup> 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.

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(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 [F2939(1)(a)] of the principal Act;
- (b) section 26(2)(a) of the M3National Health Service (Scotland) Act 1978; or
- (c) Article 62(2)(a) of the M4Health 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

- F26** S. 4A inserted (1.9.1997) by 1997 c. 46, s. 31(1); S.I. 1997/1780,
- F27** Words in s. 4A(1) inserted (1.10.2002) by 2002 c. 17, s. 1(3), **Sch. 1 Pt. 2 para. 41**; S.I. 2002/2478, **art. 3(1)(c)** (with art. 3(3) and transitional provision in art. 4)
- F28** Words in s. 4A(1) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 54**; S.I. 2002/2478, **art. 3(1)(d)** (with art. 3(3) and transitional provision in art. 4)
- F29** Words in s. 4A(3) substituted (1.7.2002) by virtue of 2001 c. 15, s. 67, **Sch. 5 Pt. 1 para. 8** (with ss. 64(9), 65(4)); S.I. 2002/1475, art. 2, **Sch. Pt. 1**

#### Marginal Citations

- M3** 1978 c. 29.
- M4** S.I. 1972/1265 (N.I.14).

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