



# Health Act 1999

## 1999 CHAPTER 8

### PART I

#### THE NATIONAL HEALTH SERVICE

##### *Fund-holding practices*

#### **1 Repeal of law about fund-holding practices**

In the National Health Service and Community Care Act 1990, sections 14 to 17 (which make provision in relation to fund-holding practices) are to cease to have effect.

##### *Local administration*

#### **2 Primary Care Trusts**

(1) After section 16 of the National Health Service Act 1977 there is inserted—

##### **“16A Primary Care Trusts**

(1) The Secretary of State may establish bodies to be known as Primary Care Trusts with a view, in particular, to their—

- (a) providing or arranging for the provision of services under this Part of this Act,
- (b) exercising functions in relation to the provision of general medical services under Part II of this Act, and
- (c) providing services in accordance with section 28C arrangements.

(2) Each Primary Care Trust shall be established by an order made by him (referred to in this Act as a PCT order).

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- (3) A Primary Care Trust shall be established for the area specified in its PCT order and shall exercise its functions in accordance with any prohibitions or restrictions in the order.
- (4) If any consultation requirements apply, they must be complied with before a PCT order is made.
- (5) In this section, “consultation requirements” means requirements about consultation contained in regulations (and the regulations must impose requirements where a PCT order establishes a Primary Care Trust).
- (6) Schedule 5A to this Act (which makes further provision about Primary Care Trusts) shall have effect.

### **16B Exercise of functions by Primary Care Trusts**

- (1) This section applies to functions which are exercisable by a Primary Care Trust under or by virtue of this Act (including this section), the National Health Service and Community Care Act 1990 or any prescribed provision of any other Act.
- (2) Regulations may provide for any functions to which this section applies to be exercised—
  - (a) by another Primary Care Trust,
  - (b) by a Special Health Authority, or
  - (c) jointly with any one or more of the following: Health Authorities, NHS trusts and other Primary Care Trusts.
- (3) Regulations may provide—
  - (a) for any functions to which this section applies to be exercised, on behalf of the Primary Care Trust by whom they are exercisable, by a committee, sub-committee or officer of the trust,
  - (b) for any functions which, under this section, are exercisable by a Special Health Authority to be exercised, on behalf of that authority, by a committee, sub-committee or officer of the authority,
  - (c) for any functions which, under this section, are exercisable by a Primary Care Trust jointly with one or more Health Authorities or other Primary Care Trusts (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.”
- (2) Schedule 1 (which inserts the new Schedule 5A in the 1977 Act) is to have effect.

## **3 Primary Care Trusts: finance**

Before section 98 of the 1977 Act there is inserted—

### **“97C Public funding of Primary Care Trusts**

- (1) It is the duty of every Health Authority, in respect of each financial year, to pay to each Primary Care Trust whose area falls within their area—
  - (a) sums equal to the trust’s general Part II expenditure, and

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- (b) sums not exceeding the amount allotted by the authority to the trust for that year towards meeting the trust's main expenditure in that year.
- (2) Any payment under subsection (1)(a) above shall be made out of money paid to the Health Authority under subsection (1) of section 97 above and any payment under subsection (1)(b) above shall be made out of money paid to the authority under subsection (3) of that section.
- (3) An amount is allotted to a Primary Care Trust for a year under this section when the trust is notified by the Health Authority that the amount is allotted to it for that year; and the Health Authority may make an allotment under this section increasing or reducing an allotment previously so made.
- (4) The Secretary of State may give directions to a Primary Care Trust about the payment of sums by the trust to the Health Authority in whose area the area of the trust falls in respect of charges or other sums referable to the valuation or disposal of assets.
- (5) Where any part of a sum paid to a Primary Care Trust by a Health Authority under subsection (1) above derives from a sum which was paid to the authority under subsection (1) or (3) of section 97 above subject to a direction (under subsection (6)(a) of that section) that it be applied for a particular purpose, the authority shall direct the trust that the sum paid to the trust shall be applied for the same purpose.
- (6) Sums falling to be paid to Primary Care Trusts under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.

#### **97D Financial duties of Primary Care Trusts**

- (1) It is the duty of every Primary Care Trust, in respect of each financial year, to perform its functions so as to secure that the expenditure of the trust which is attributable to the performance by the trust of its functions in that year (not including expenditure within subsection (1)(a) of section 97C above) does not exceed the aggregate of—
  - (a) the amount allotted to it for that year under subsection (1)(b) of that section,
  - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section), and
  - (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.
- (2) The Secretary of State may give such directions to a Primary Care Trust as appear to be requisite to secure that the trust complies with the duty imposed on it by subsection (1) above.
- (3) Directions under subsection (2) above may be specific in character.
- (4) To the extent to which—
  - (a) any expenditure is defrayed by a Primary Care Trust as trustee or on behalf of a Primary Care Trust by special trustees, or
  - (b) any sums are received by a Primary Care Trust as trustee or under section 96A above,

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

- (5) For the purposes of this section sums which, in the hands of a Primary Care Trust, cease to be trust funds and become applicable by the Primary Care Trust otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Primary Care Trust otherwise than as trustee.
- (6) Of the sums received by a Primary Care Trust under section 96A above so much only as accrues to the Primary Care Trust after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.
- (7) Subject to subsection (4) above, the Secretary of State may by directions determine—
  - (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Primary Care Trust,
  - (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Primary Care Trust, or
  - (c) the extent to which, and the circumstances in which, sums received by a Primary Care Trust under section 97C above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Primary Care Trust and to which financial year's expenditure they are to be attributed.
- (8) In subsection (7) above, "specified" means of a description specified in the directions."

#### **4 Expenditure of Health Authorities and Primary Care Trusts**

- (1) After Schedule 12 to the 1977 Act there is inserted—

"SCHEDULE  
12A

EXPENDITURE OF HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS

*Health Authorities: general Part II expenditure*

- 1 (1) In section 97 above and this Schedule, general Part II expenditure, in relation to a Health Authority, means expenditure of the authority which—
  - (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II of this Act, and
  - (b) is not excluded by sub-paragraph (2) below.
- (2) Expenditure is excluded if it is attributable to—
  - (a) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration referable to the cost of drugs,

- (c) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
- (d) remuneration of a designated description which is determined by the Health Authority and paid to persons providing general medical services in pursuance of Part II.

*Health Authorities: main expenditure*

- 2 (1) In section 97 above, main expenditure, in relation to a Health Authority and the year in question, means—
  - (a) expenditure of the authority mentioned in sub-paragraph (2) below,
  - (b) any other expenditure of the authority attributable to the performance of their functions in that year (other than general Part II expenditure and remuneration referable to the cost of drugs), and
  - (c) expenditure attributable to remuneration referable to the cost of drugs for which the authority are accountable in that year (whether paid by them or another authority).
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
  - (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
  - (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
  - (c) remuneration of a designated description which is determined by the Health Authority and paid in that year to persons providing general medical services in pursuance of Part II.
- 3 (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Health Authorities the total of the remuneration referable to the cost of drugs which is paid by each Health Authority in that year.
- (2) A Health Authority are accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to them under sub-paragraph (1) above.
- (3) Where in any financial year any remuneration referable to the cost of drugs for which a Health Authority are accountable is paid by another Health Authority, the remuneration is to be treated (for the purposes of sections 97 and 97A above) as having been paid by the first authority in the performance of their functions.
- (4) The Secretary of State may, in particular, exercise his discretion under sub-paragraph (1) above—

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- (a) so that any apportionment reflects, in the case of each Health Authority, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the authority in question,
  - (b) by reference to averaged or estimated amounts.
- (5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Health Authority other than the Health Authority which are accountable for the payment to be reimbursed in such manner as he may determine.

*PCTs: general Part II expenditure*

- 4 (1) In section 97C above and this Schedule, general Part II expenditure, in relation to a Primary Care Trust, means expenditure of the trust which—
- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II of this Act, and
  - (b) is not excluded by sub-paragraph (2) below.
- (2) Expenditure is excluded if it is attributable to—
- (a) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services), or
  - (b) remuneration of a designated description which is determined by the Health Authority within whose area the area of the trust falls and paid to persons providing general medical services in pursuance of Part II.

*PCTs: main expenditure*

- 5 (1) In section 97C above, main expenditure, in relation to a Primary Care Trust and the year in question, means—
- (a) expenditure of the trust mentioned in sub-paragraph (2) below, and
  - (b) any other expenditure of the trust attributable to the performance of its functions in that year (other than general Part II expenditure),
- and is to be treated as including any expenditure apportioned to the trust for that year under paragraph 6 below.
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
- (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services), or
  - (b) remuneration of a designated description which is determined by the Health Authority within whose area the area of the trust falls and paid in that year to persons providing general medical services in pursuance of Part II.

- 6 (1) For each financial year, a Health Authority may apportion, to such extent and in such manner as they think appropriate, among the Primary Care Trusts whose areas fall within their area, the remuneration referable to the cost of drugs for which the authority are accountable in that year.
- (2) Where in any financial year—
- (a) any remuneration referable to the cost of drugs for which the Health Authority are accountable is paid (whether by them or another Health Authority), and
  - (b) that remuneration is apportioned to a Primary Care Trust under sub-paragraph (1) above,
- that remuneration is to be treated for the purposes of sections 97C and 97D above as having been paid by the trust in the performance of its functions.

#### *Interpretation*

- 7 (1) In this Schedule—
- “designated” means designated in writing by the Secretary of State (and different designations may be made for different purposes),
  - “drugs” includes medicines and listed appliances (within the meaning of section 41 above),
  - “pharmaceutical services” does not include additional pharmaceutical services.
- (2) The Secretary of State shall determine what remuneration paid by Health Authorities to persons providing pharmaceutical services is to be treated for the purposes of this Schedule as remuneration referable to the cost of drugs.
- (3) The Secretary of State may treat all remuneration paid by Health Authorities to such persons, so far as it is met by an NHS trust or Primary Care Trust under section 103(3) below, as remuneration referable to the cost of drugs for those purposes.”
- (2) Section 97 of the 1977 Act (means of meeting expenditure of Health Authorities etc. out of public funds) is amended as follows—
- (a) subsection (2) is omitted,
  - (b) in subsection (3), at the end there is inserted “in that year”,
  - (c) for subsections (3A) and (3B) there is substituted—
- “(3BB) Schedule 12A to this Act (which defines “general Part II expenditure” and “main expenditure” for the purposes of, and supplements, this section and section 97C below) shall have effect”.
- (3) Section 103(3) of the 1977 Act (special arrangements as to payment of remuneration) is amended as follows—
- (a) in paragraph (a), for the words from “the Health Authority” to the end of that paragraph there is substituted “a Health Authority so determined in respect of the whole or any part of that remuneration”,
  - (b) in paragraph (b), for “that” there is substituted “the whole or (as the case may be) that part of the”.

(4) This section has effect for the financial year 1999-2000 and subsequent financial years.

## 5 Primary Care Trusts: provision of services etc

After section 18 of the 1977 Act there is inserted—

### *“Primary Care Trusts: further functions*

#### **18A Provision of services etc**

- (1) A Primary Care Trust may provide services under an agreement made under section 28C below, and may do so as a member of a qualifying body (within the meaning of section 28D).
- (2) A Primary Care Trust may arrange for the provision by the trust to another health service body of goods or services (including accommodation) which are of the same description as those which, at the time of making the arrangement, the trust has power to provide in carrying out its other functions.
- (3) A Primary Care Trust may provide premises for the use of persons—
  - (a) providing general medical, general dental, general ophthalmic or pharmaceutical services, or
  - (b) performing personal medical or personal dental services under an agreement made under section 28C below,
 on any terms it thinks fit.
- (4) A Primary Care Trust which manages any hospital may make accommodation or services available there for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the trust in respect of the accommodation or services.
- (5) A Primary Care Trust has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services etc.), other than make accommodation or services available for patients at any hospital it manages, for the purpose of making additional income available for improving the health service.
- (6) A Primary Care Trust may only exercise a power conferred by subsection (4) or (5) above—
  - (a) to the extent that its exercise does not to any significant extent interfere with the performance by the trust of its functions or of its obligations under NHS contracts, and
  - (b) in circumstances specified in directions under section 17 above, with the Secretary of State’s consent.
- (7) In this section “hospital” means a health service hospital and includes any establishment or facility managed for the purposes of the health service.”



## **6 Delegation of Health Authority functions relating to pilot schemes and section 28C arrangements**

- (1) After section 8 of the National Health Service (Primary Care) Act 1997, there is inserted—

### **“8A Delegation of Health Authority functions relating to pilot schemes**

- (1) The following functions of a Health Authority are excepted functions for the purpose of section 17A of the 1977 Act—
- (a) their function of entering into pilot schemes under which personal dental services are provided, and, where they have entered into such a scheme, any functions arising under the scheme which relate to those or any other services provided under the scheme,
  - (b) where a Primary Care Trust is providing any services under a pilot scheme, any functions of the Health Authority arising under that scheme (but the functions are only excepted in relation to that trust),
  - (c) their functions under section 4 (preparation of pilot scheme proposals),
  - (d) any function conferred under section 18 (funding work preparatory to pilot schemes).
- (2) The Secretary of State may by order make provision for any rights and liabilities arising under pilot schemes under which personal medical services are provided to be transferred from Health Authorities to Primary Care Trusts and from Primary Care Trusts to Health Authorities.
- (3) Subsection (2) is without prejudice to any other power of the Secretary of State to transfer rights and liabilities under the 1977 Act.”
- (2) After section 28E of the 1977 Act there is inserted—

### **“28EE Delegation of Health Authority functions relating to section 28C arrangements**

- (1) The following functions of a Health Authority are excepted functions for the purpose of section 17A above—
- (a) their function of entering into agreements under section 28C above under which personal dental services are provided, and, where they have entered into such an agreement, any functions arising under the agreement which relate to those or any other services provided under the agreement,
  - (b) where a Primary Care Trust is providing any services in accordance with section 28C arrangements, any functions of the Health Authority arising under those arrangements (but the functions are only excepted in relation to that trust),
  - (c) any function conferred under section 28E above of considering or approving proposals to provide services in accordance with section 28C arrangements,
  - (d) any function conferred under section 28E(3)(k) above of making payments of financial assistance to fund work relating to section 28C arrangements.

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- (2) The Secretary of State may by order make provision for any rights and liabilities arising under an agreement to provide personal medical services under section 28C above to be transferred from Health Authorities to Primary Care Trusts and from Primary Care Trusts to Health Authorities.
- (3) Subsection (2) above is without prejudice to any other power of the Secretary of State to transfer rights and liabilities under this Act.”

## **7 Primary Care Trusts: trust-funds and trustees**

After section 96A of the 1977 Act there is inserted—

### **“96B Trust-funds and trustees for Primary Care Trusts**

- (1) The Secretary of State may by order provide for the appointment of trustees for any Primary Care Trust.
- (2) Trustees for a Primary Care Trust may accept, hold and administer any property on trust—
  - (a) for the general or any specific purposes of the Primary Care Trust (including the purposes of any specific hospital or other establishment or facility which is managed by the trust), or
  - (b) for all or any purposes relating to the health service.
- (3) 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) provide for any appointment to be subject to any conditions specified in the order (including conditions requiring the consent of the Secretary of State),
  - (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 any persons he considers appropriate, and
  - (d) make provision about the term of office of any trustee and his removal from office.
- (4) Where trustees have been appointed for a Primary Care Trust under subsection (1) above, the Secretary of State may by order provide for the transfer of any trust property from the Primary Care Trust to the trustees so appointed.”

## **8 Payments relating to past performance**

- (1) Section 97 of the 1977 Act (public funding of Health Authorities and Special Health Authorities) is amended as follows.
- (2) After subsection (3BB) there is inserted—
  - “(3C) Where the Secretary of State has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Health Authority under subsection (3) above, he may, if it appears to him that the authority satisfied in any preceding year any objectives notified as objectives to be met by Health

Authorities for the purposes of this subsection in performing their functions, increase the initial amount by a further sum.

(3D) In subsection (3C) above, “notified” means specified or referred to in a notice given to Health Authorities by the Secretary of State.

(3E) In making any increase under subsection (3C) above, the Secretary of State may (whether by directions under subsection (6) below or otherwise) impose any conditions he thinks fit on the application or retention by the authority of the sum in question.

(3F) Where the Secretary of State has, under subsection (3C) above, increased by any sum the amount to be allotted for any year to a Health Authority and notified the authority of the allotment and it subsequently appears to him that the authority have failed (wholly or in part) to satisfy any conditions imposed in making that increase, he may—

- (a) reduce the allotment made to that authority for that year, or
- (b) when he has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the authority under subsection (3) above, reduce the initial amount,

by an amount not exceeding that sum.”

(3) In subsection (5)—

- (a) after “reducing” there is inserted “(subject to subsection (3F) above)”,
- (b) at the end there is inserted “and the reference to a determination in subsection (3C) above includes a determination made with a view to increasing or reducing an allotment previously so made”.

## **9 Indemnity cover for Part II services**

(1) Before section 44 of the 1977 Act there is inserted—

### *“Indemnity cover*

#### **43C Indemnity cover**

(1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.

(2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

- (a) for securing that a person is not to be added to any list unless he holds approved indemnity cover;
- (b) for the removal from a list prepared by a Health Authority of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Authority in the prescribed manner satisfy the Health Authority that he holds approved indemnity cover.

(3) For the purposes of this section—

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may

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be prescribed, by the Secretary of State or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

- (a) on prescribed terms; and
- (b) with an approved body;

“indemnity cover”, in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—

- (a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Authority under this Part of this Act; and
- (b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in section 46 below;

“Part II practitioner” means a person whose name is on a list;

“Part II services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

- (4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

- (a) in a form identified in accordance with the regulations in relation to persons of that description; and
- (b) made with a person or persons so identified,

is to be treated as holding approved indemnity cover for the purposes of the regulations.”

- (2) In section 29A of the 1977 Act (medical lists), at the beginning of subsection (3) there is inserted “Subject to any provision made under section 43C below,”.

- (3) In section 36 of that Act (regulations as to arrangements for general dental services), in subsection (1)(b), after “below” there is inserted “to any provision made under section 43C below”.

- (4) In section 39 of that Act (regulations as to arrangements for general ophthalmic services), in paragraph (b), after “subject” there is inserted “to any provision made under section 43C below and”.

## 10 Remuneration for Part II services

- (1) For sections 43A and 43B of the 1977 Act (regulations as to Part II remuneration) there is substituted—

### **“43A Remuneration for Part II services**

- (1) The remuneration to be paid to persons who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).
- (2) For the purposes of this section and section 43B below determining authorities are—
  - (a) the Secretary of State, and
  - (b) so far as authorised by him to exercise the functions of determining authorities, any Health Authority or other person appointed by him in an instrument (referred to in this section and section 43B below as an instrument of appointment).
- (3) An instrument of appointment—
  - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations, and
  - (b) may be contained in regulations.
- (4) Subject to this section and section 43B below, regulations may make provision about determining remuneration under subsection (1) above and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (5) Regulations may provide—
  - (a) that determinations may be made by reference to any of the following—
    - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1) above,
    - (ii) scales, indices or other data of any description specified in the regulations,
  - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) above falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
  - (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier

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date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates,

- (b) provide that any determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
  - (i) if it is required to be published, on the date of publication,
  - (ii) if it is not so required, on the date on which it is made.

- (7) A reference in this section or section 43B below to a determination is to a determination of remuneration under subsection (1) of this section.

### **43B Part II remuneration: supplementary**

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 43A(1) above, he—
  - (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.
- (3) Determinations may—
  - (a) be made in more than one stage,
  - (b) be made by more than one determining authority,
  - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—
  - (a) to correct an error, or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
  - (a) is payable only if the determining authority is satisfied as to certain conditions, or
  - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Subject to sections 29(4) and 35(2) above, remuneration under section 43A above may consist of payments by way of—
  - (a) salary,
  - (b) fees,
  - (c) allowances,
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,

and may be determined from time to time.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time.

- (8) The matters which may be reserved include in particular—
- (a) the amount of remuneration to be paid in particular cases,
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
- (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 43A(1) above to which the determination will relate or of any category falling within that description,
  - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services,
  - (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons,
  - (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate,
  - (e) the desirability of promoting services which are—
    - (i) economic and efficient, and
    - (ii) of an appropriate standard.
- (10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 43A(1) above, the reference in subsection (9)(a) above to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”
- (2) Sections 43A and 43B of the 1977 Act, as substituted by this section, have effect in relation to—
- (a) the making of determinations on or after the commencement of this section, and
  - (b) the variation or revocation on or after the commencement of this section of determinations whenever made,
- and in this subsection “determinations” means determinations under Part II of the 1977 Act of the remuneration to be paid to persons who provide services mentioned in section 43A(1).
- (3) Section 7(4) of the Health and Social Security Act 1984 and section 15(3) of the Health and Medicines Act 1988 (determinations of remuneration for services under Part II of 1977 Act deemed to be valid) have effect in relation to England and Wales as if—
- (a) after “inserted by this section” in section 7(4)(b) of the 1984 Act, and
  - (b) after “section 7 of the Health and Social Security Act 1984” in section 15(3) of the 1988 Act,
- there were inserted “and before the coming into force of section 10 of the Health Act 1999”.

**11 Local representative committees**

(1) Section 44 of the 1977 Act (recognition of local representative committees) is amended as provided in subsections (2) to (4).

(2) Before subsection (1) there is inserted—

“(A1) A Health Authority may recognise a committee formed for their area which they are satisfied is representative of—

- (a) the medical practitioners providing general medical services or general ophthalmic services in that area;
- (b) those medical practitioners and the deputy medical practitioners for that area; or
- (c) the medical practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,
 and the section 28C medical practitioners for that area,

and any committee so recognised shall be called the Local Medical Committee for the area.

(B1) A Health Authority may recognise a committee formed for their area which they are satisfied is representative of—

- (a) the dental practitioners providing general dental services in that area;
- (b) those dental practitioners and the deputy dental practitioners for that area; or
- (c) the dental practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,
 and the section 28C dental practitioners for that area,

and any committee so recognised shall be called the Local Dental Committee for the area.”

(3) In subsection (1), paragraphs (a) and (b) and “the Local Medical Committee, the Local Dental Committee,” are omitted.

(4) After subsection (2) there is inserted—

“(3) For the purposes of this section and section 45 below, a person who meets the condition in subsection (4) below—

- (a) is a deputy medical practitioner for the area of a Health Authority if he is a medical practitioner who assists a medical practitioner providing general medical services in that area in the provision of those services but is not himself on a list;
- (b) is a section 28C medical practitioner for the area of a Health Authority if he is a medical practitioner who provides or performs personal medical services in accordance with arrangements made under section 28C above by the Health Authority (whether with himself or another);
- (c) is a deputy dental practitioner for the area of a Health Authority if he is a dental practitioner who assists a dental practitioner providing general dental services in that area in the provision of those services but is not himself on a list;



- (d) is a section 28C dental practitioner for the area of a Health Authority if he is a dental practitioner who provides or performs personal dental services in accordance with arrangements made under section 28C above by the Health Authority (whether with himself or another).
- (4) The condition referred to in subsection (3) above is that the person concerned has notified the Health Authority that he wishes to be represented under this section by the appropriate committee for their area (and has not notified them that he wishes to cease to be so represented).
- (5) For the purposes of subsection (3) above—
  - (a) a person is to be treated as assisting a medical practitioner or dental practitioner in the provision of services if he is employed by that practitioner for that purpose or if he acts as his deputy in providing those services; and
  - (b) “list” has the same meaning as in section 46 below.”
- (5) Section 45 of that Act (functions of local representative committees) is amended as provided in subsections (6) to (8).
- (6) For subsection (1) there is substituted—
  - “(1) Regulations may require Health Authorities—
    - (a) in the exercise of their functions under this Part of this Act to consult committees recognised by them under section 44 above,
    - (b) in the exercise of any of their functions which relate to arrangements under section 28C above to consult committees recognised by them under section 44(A1)(c) or (B1)(c) above,on such occasions and to such extent as may be prescribed.
  - (1A) The power conferred by subsection (1) above is without prejudice to any other power to require a Health Authority to consult any committee recognised under section 44 above.
  - (1B) Committees recognised under section 44 above shall exercise such other functions as may be prescribed.
  - (1C) A committee recognised for an area under subsection (A1)(b) or (c) or (B1)(b) or (c) of section 44 above shall, in respect of each year, determine the amount of its administrative expenses for that year attributable —
    - (a) in the case of a committee recognised under subsection (A1)(b) or (c) (ii) of that section, to the deputy medical practitioners for the area;
    - (b) in the case of a committee recognised under subsection (A1)(c) of that section, to the section 28C medical practitioners for the area;
    - (c) in the case of a committee recognised under subsection (B1)(b) or (c) (ii) of that section, to the deputy dental practitioners for the area;
    - (d) in the case of a committee recognised under subsection (B1)(c) of that section, to the section 28C dental practitioners for the area.”
- (7) In subsection (2), “(including travelling and subsistence allowances payable to its members)” is omitted.
- (8) After subsection (3) there is inserted—

- “(4) Where a committee has made a determination under subsection (1C) above, it shall apportion the amount so determined among the deputy medical practitioners, section 28C medical practitioners, deputy dental practitioners or section 28C dental practitioners, as the case may be, for the area and each such practitioner shall pay in accordance with the committee’s directions the amount so apportioned to him.
- (5) References in this section to administrative expenses of a committee include references to travelling and subsistence allowances payable to its members; but the reference in subsection (2) above to a committee’s administrative expenses does not include so much of the committee’s administrative expenses as are determined under subsection (1C) above to be attributable to any practitioners mentioned in that subsection.”

## 12 Directions

- (1) For section 17 of the 1977 Act (Secretary of State’s directions) there is substituted—

*“Directions as to distribution and exercise of functions*

### **16D Secretary of State’s directions: distribution of functions**

- (1) The Secretary of State may direct a Health Authority or Special Health Authority to exercise any of his functions relating to the health service which are specified in the directions.
- (2) The Secretary of State may direct a Special Health Authority to exercise any functions of a Health Authority or a Primary Care Trust which are specified in the directions.
- (3) The functions which may be specified in directions under this section include functions under enactments relating to mental health and nursing homes.

### **17 Secretary of State’s directions: exercise of functions**

- (1) The Secretary of State may give directions to any of the bodies mentioned in subsection (2) below about their exercise of any functions.
- (2) The bodies are—
- (a) Health Authorities;
  - (b) Special Health Authorities;
  - (c) Primary Care Trusts;
  - (d) NHS trusts.
- (3) The power conferred by subsection (1) above shall not be exercised so as to give any directions which may be given under—
- (a) section 27, 28A, 41A, 97, 97A or 99 of, or paragraph 10 of Schedule 5 or paragraph 9 of Schedule 5A to, this Act;
  - (b) section 7(3)(ii) of the Health and Medicines Act 1988 (directions about the exercise of powers for financing the health service); or
  - (c) section 28 of the Health Act 1999 (plans for improving health etc.).

### **17A Health Authority's directions: distribution of functions**

- (1) A Health Authority may direct a Primary Care Trust whose area falls within their area to exercise any specified delegable functions.
- (2) A function is a delegable function for the purposes of this section if it is a function exercisable by the Health Authority which is not an excepted function.
- (3) In subsection (2) above “excepted function” means a function under—
  - (a) section 4 above;
  - (b) section 15 above (except in so far as it relates to general medical services);
  - (c) section 44 or 45(1C) to (4) below; or
  - (d) any of the other provisions of Part II of this Act—
    - (i) unless it is a function under section 51, 52 or 53; or
    - (ii) in relation to the remaining provisions of Part II, except in so far as the function relates to general medical services,or a function referred to in section 28EE(1)(a) to (d) below.
- (4) The Secretary of State may direct Health Authorities that specified delegable functions—
  - (a) are to be exercisable, or exercisable to (or only to) any specified extent, by Primary Care Trusts; or
  - (b) are not to be exercisable by Primary Care Trusts,and that the power under subsection (1) above is to be exercised accordingly.
- (5) In this section “specified” means specified in directions.

### **17B Health Authority's directions: exercise of functions**

- (1) A Health Authority may give directions to a Primary Care Trust about its exercise of any functions which the authority have directed the trust to exercise under section 17A above.
- (2) Directions under this section have effect subject to any directions given under section 17 above.”
- (2) Subsection (3) of section 17 of the 1977 Act applies in relation to the powers to give directions conferred by sections 4, 6 and 8 of the National Health Service (Primary Care) Act 1997 (proposals for, and making, variation and termination of, pilot schemes) as it applies in relation to the powers conferred by any of the provisions mentioned in paragraphs (a) to (c) of that subsection.
- (3) For section 18 of the 1977 Act (directions and regulations under sections 11 to 17) down to the end of subsection (1) there is substituted—

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*Status: This is the original version (as it was originally enacted).*

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*“Directions and regulations: general*

**18 Directions and regulations under preceding provisions**

- (1) Any directions given by the Secretary of State under section 16D, 17 or 17A above shall be given by regulations or by an instrument in writing.
- (1A) But any directions given by him—
- (a) under section 16D above about functions under section 4 above;
  - (b) under section 17A(4) above about functions relating to general medical services; or
  - (c) under section 16D, 17 or 17A above about functions conferred on the Secretary of State by section 20(1) or (2) below,
- shall be given by regulations.
- (1B) Directions given by a Health Authority under section 17A or 17B above shall be given by an instrument in writing.”
- (4) In subsection (3) of that section, for “11 to 17” there is substituted “16 to 17B above”.
- (5) Section 13 of the 1977 Act (Secretary of State’s directions) is to cease to have effect.

*NHS trusts*

**13 Establishment orders**

- (1) In section 5 of the 1990 Act (NHS trusts)—
- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “to provide goods and services for the purposes of the health service”, and
  - (b) for subsection (6) there is substituted—
- “(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.”
- (2) In section 26(3) of that Act (interpretation of Part I), after the definition of “health board” there is inserted—
- ““provide” includes manage”.
- (3) Any order under section 5(1) of that Act—
- (a) is to be treated as always having had effect with the omission of any obligation for the NHS trust to which the order relates to own land specified in the order, and
  - (b) so far as any functions specified in it could have been specified under that provision as amended by this Act, is to be treated as having been made under that provision as so amended.
- (4) Any restriction preventing the acquisition of any land by any NHS trust (including an NHS trust dissolved before the commencement of this section) merely because the land did not comprise a hospital or other establishment or facility previously managed

or provided by a Health Authority, a Special Health Authority, a Regional Health Authority or a District Health Authority is to be treated as never having had effect.

- (5) An order under section 63 may—
- (a) provide for any provision made by it for the purposes of, in consequence of or for giving full effect to this section to be treated as having had effect from a time before the commencement of this section,
  - (b) make such provision about an NHS trust dissolved before that commencement.
- (6) In section 11(1) of the 1990 Act (trust funds and trustees for NHS trusts), for “which is owned and managed” there is substituted “at or from which services are provided”.
- (7) In paragraph 3(2) of Schedule 2 to that Act (establishment orders), for “assume responsibility for the ownership and management of” there is substituted “provide services at”.
- (8) In paragraph 16(2) of that Schedule (general powers of NHS trusts), for “which is owned and managed” there is substituted “at or from which services are provided”.
- (9) In paragraph 3 of Schedule 3 to that Act (borrowing limits), in sub-paragraphs (1) and (2), for the words from “established” to “manage” there is substituted “which are required to provide services at or from”.
- (10) The 1990 Act is to be treated as always having had effect subject to the amendments made by this section.
- (11) Paragraphs (aa) and (ab) of section 91(3) of the 1977 Act (private trusts for hospitals) are to be treated as always having had effect (until their replacement by paragraph 27(a) of Schedule 4 to this Act) with the omission of “owned and”.

## **14 Exercise of powers**

For section 5(9) of the 1990 Act (restrictions on exercise of certain powers) there is substituted—

- “(9) A power conferred by paragraph 14 or 15 of Part II of Schedule 2 to this Act may only be exercised—
- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
  - (b) in circumstances specified in directions under section 17 of the principal Act, with the consent of the Secretary of State.”

## **15 Public dividend capital**

- (1) Section 9 of the 1990 Act (originating capital debt of, and other financial provisions relating to, NHS trusts) is amended as provided in subsections (2) to (5).
- (2) In subsections (1), (2) and (3), for “originating capital debt” there is substituted “originating capital”.
- (3) For subsection (4) there is substituted—
- “(4) An NHS trust’s originating capital shall be public dividend capital.”

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- (4) Subsections (5) and (6) are omitted.
- (5) In subsection (7), for the words from “the terms” to the end there is substituted—
  - “(a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Act,
  - (b) the amount of any such public dividend capital which is to be repaid at any time,
  - (c) any other terms on which any public dividend capital is so issued, or treated as issued”.
- (6) In Schedule 3 to that Act—
  - (a) in paragraph 3 (limits on indebtedness), sub-paragraph (3) is omitted, and
  - (b) in paragraph 5 (additional public dividend capital), sub-paragraph (2) is omitted.

## **16 Existing NHS trusts: conversion of initial loan**

- (1) This section applies to any NHS trust in existence immediately before commencement.
- (2) On commencement so much of the originating capital debt of the NHS trust as remains outstanding immediately before commencement is to be treated as the originating capital of the NHS trust and accordingly is public dividend capital.
- (3) Any reference in any enactment, instrument or other document to the originating capital debt of the NHS trust is to be construed (except where the context otherwise requires) as a reference to its originating capital.
- (4) The Secretary of State may with the consent of the Treasury determine the amount and time for payment of interest on the NHS trust’s initial loan in respect of the period ending with commencement.
- (5) In this section—
  - “commencement” means the coming into force of this section,
  - “initial loan” has the meaning given by section 9(5) of the 1990 Act.

## **17 Borrowing**

- (1) Schedule 3 to the 1990 Act is amended as follows.
- (2) In paragraph 1 (borrowing powers of NHS trusts), in sub-paragraph (1), after “Subject to” there is inserted “any direction given by the Secretary of State under section 17 of the principal Act, to”.
- (3) Sub-paragraphs (3) to (5) of that paragraph are omitted.
- (4) For sub-paragraph (6) of that paragraph there is substituted—
  - “(6) It shall be for the Secretary of State, with the consent of the Treasury, to determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).”

### *Quality etc*

## **18 Duty of quality**

- (1) It is the duty of each Health Authority, Primary Care Trust and NHS trust to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care which it provides to individuals.
- (2) The reference in subsection (1) to health care which a body there mentioned provides to individuals includes health care which the body provides jointly with another person to individuals.
- (3) The Secretary of State may by regulations extend the duty in this section to Special Health Authorities of any particular description.
- (4) In this section—
  - “health care” means services for or in connection with the prevention, diagnosis or treatment of illness,
  - “illness” has the meaning given by section 128(1) of the 1977 Act.

## **19 The Commission for Health Improvement**

- (1) There is to be a body corporate known as the Commission for Health Improvement.
- (2) The Commission is to have the functions conferred on it by or under sections 20 to 22.
- (3) Schedule 2 makes further provision in relation to the Commission.

## **20 Functions of the Commission**

- (1) The Commission has the following functions—
  - (a) the function of providing advice or information with respect to arrangements by Primary Care Trusts or NHS trusts for the purpose of monitoring and improving the quality of health care for which they have responsibility,
  - (b) the function of conducting reviews of, and making reports on, arrangements by Primary Care Trusts or NHS trusts for the purpose of monitoring and improving the quality of health care for which they have responsibility,
  - (c) the function of carrying out investigations into, and making reports on, the management, provision or quality of health care for which Health Authorities, Primary Care Trusts or NHS trusts have responsibility,
  - (d) the function of conducting reviews of, and making reports on, the management, provision or quality of, or access to or availability of, particular types of health care for which NHS bodies or service providers have responsibility, and
  - (e) such functions as may be prescribed relating to the management, provision or quality of, or access to or availability of, health care for which prescribed NHS bodies or prescribed service providers have responsibility.
- (2) The Secretary of State may by regulations make provision—
  - (a) as to the times at which, the cases in which, the manner in which, the persons in relation to which or the matters with respect to which any functions of the Commission are to be exercised,

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- (b) as to the matters to be considered or taken into account in connection with the exercise of any functions of the Commission,
  - (c) as to the persons to whom any advice, information or reports are to be given or made,
  - (d) as to the publication of reports and summaries of reports,
  - (e) as to the recovery from prescribed persons of amounts in respect of the expenditure incurred by the Commission in the exercise of any of its functions, and
  - (f) for or in connection with the exercise of functions of the Commission in conjunction with the exercise of statutory functions of other persons.
- (3) The Secretary of State may give directions with respect to the exercise of any functions of the Commission.
- (4) The Commission must comply with any directions under this section.
- (5) For the purposes of this section a person has responsibility for health care—
- (a) if he provides or is to provide that care to individuals, or
  - (b) if another person provides or is to provide that care to individuals—
    - (i) at his direction,
    - (ii) on his behalf, or
    - (iii) in accordance with an agreement or arrangements made by him with that other person.
- (6) References in subsection (5) to the provision of care include references to the provision of care jointly with another person.
- (7) In this section—
- “health care” has the meaning given by section 18(4),
  - “NHS body” means a Health Authority, Special Health Authority, Primary Care Trust or NHS trust,
  - “prescribed” means prescribed by regulations made by the Secretary of State,
  - “service provider” means a person who provides services—
    - (a) in accordance with arrangements under section 28C of the 1977 Act, or
    - (b) under Part II of that Act,
  - “statutory function” means a function conferred by or under any enactment.

## **21 Arrangements with the Audit Commission.**

- (1) If requested to do so by the Commission in any particular case, the Audit Commission may join with the Commission in exercising—
- (a) the Commission’s functions under section 20(1)(b) or (d), or
  - (b) any functions of the Commission—
    - (i) which are conferred under section 20(1)(e),
    - (ii) which correspond to its functions under section 20(1)(b), and
    - (iii) which relate to Health Authorities or Special Health Authorities.
- (2) If requested to do so by the Audit Commission in any particular case, the Commission may assist the Audit Commission in the exercise of its functions under section 33(1)



of the Audit Commission Act 1998 so far as they relate to any body specified in section 98(1) of the 1977 Act.

- (3) For the purposes of subsection (1), the Commission's functions under paragraph (b) or (d) of section 20(1) are to be treated as including the function of conducting and making reports on studies designed to improve—
  - (a) economy, efficiency and effectiveness in the performance of any functions of the persons mentioned in that paragraph, and
  - (b) the management of those persons.
- (4) For the purposes of subsection (1), the Commission's functions mentioned in subsection (1)(b) are to be treated as including the function of conducting and making reports on studies designed to improve—
  - (a) economy, efficiency and effectiveness in the performance of any functions of the bodies mentioned in subsection (1)(b)(iii) to which those functions of the Commission relate, and
  - (b) the management of those bodies.
- (5) Any report prepared by virtue of subsection (1) is to be prepared by the Commission acting in conjunction with the Audit Commission.
- (6) The Audit Commission may not act as mentioned in subsection (1) unless, before it does so, the Commission has agreed to pay the Audit Commission an amount equal to the full costs incurred by the Audit Commission in so acting.
- (7) The Commission may not act as mentioned in subsection (2) unless, before it does so, the Audit Commission has agreed to pay the Commission an amount equal to the full costs incurred by the Commission in so acting.
- (8) Any reference in subsection (5) or (6) to subsection (1) is a reference to that subsection as read with subsections (3) and (4).
- (9) In this section “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales.

## **22 Arrangements with Ministers**

- (1) Arrangements may be made between the Commission and a Minister of the Crown—
  - (a) for the Commission to perform any of its functions in relation to any prescribed health scheme for which the Minister has responsibility, or
  - (b) for the Commission to provide services or facilities in so far as they are required by the Minister in connection with any such health scheme.
- (2) Arrangements may be made between the Commission and a Northern Ireland Minister—
  - (a) for the Commission to perform on behalf of the Minister any functions of the Minister which—
    - (i) correspond to any functions of the Commission, and
    - (ii) relate to the Northern Irish health service, or
  - (b) for the Commission to provide services or facilities in so far as they are required by the Minister in connection with the exercise by him of any such functions.

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- (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.
- (4) Those terms and conditions may include provision with respect to the making of payments to the Commission in respect of the cost to the Commission of performing or providing any functions, services or facilities under the arrangements.
- (5) Any arrangements under subsection (2)(a) are not to affect the responsibility of the Northern Ireland Minister on whose behalf any functions are exercised.
- (6) In this section—
  - “health scheme” means any scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds,
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,
  - “Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department,
  - “Northern Irish health service” means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the 1977 Act,
  - “prescribed” means prescribed by regulations made by the Secretary of State.

## 23 Obtaining information etc

- (1) The Secretary of State may by regulations make provision—
  - (a) conferring a right on persons authorised by the Commission to enter NHS premises at such times, in such cases, for such purposes and on such conditions as may be prescribed in order—
    - (i) to inspect those premises, or
    - (ii) to inspect and take copies of prescribed documents held by prescribed persons on those premises,
  - (b) requiring prescribed persons at such times, at such places, in such cases and for such purposes as may be prescribed to produce prescribed documents or information, or make reports, to the Commission or to persons authorised by the Commission,
  - (c) requiring prescribed persons at such times, at such places, in such cases and for such purposes as may be prescribed to provide to the Commission, or to persons authorised by the Commission, an explanation of—
    - (i) any matters which are the subject of the exercise of any functions of the Commission, or
    - (ii) any documents or information inspected, copied or produced as mentioned in paragraph (a) or (b).
- (2) Regulations under this section may not make provision with respect to the disclosure of confidential information which relates to and identifies a living individual unless one or more of the following conditions is satisfied—
  - (a) the information is disclosed in a form in which the identity of the individual cannot be ascertained,
  - (b) the individual consents to the information being disclosed,
  - (c) the individual cannot be traced despite the taking of all reasonable steps,

- (d) in a case where the Commission is exercising its functions under section 20(1)(c)—
  - (i) it is not practicable to disclose the information in a form in which the identity of the individual cannot be ascertained,
  - (ii) the Commission considers that there is a serious risk to the health or safety of patients arising out of the matters which are the subject of the exercise of those functions, and
  - (iii) having regard to that risk and the urgency of the exercise of those functions, the Commission considers that the information should be disclosed without the consent of the individual.
- (3) Regulations under this section may not make provision with respect to the disclosure of information if that disclosure would be prohibited by or under any other enactment; but where information is held in a form in which the prohibition operates by reason of the fact that the information is capable of identifying an individual, regulations under this section may make provision with respect to the disclosure of the information in a form in which the identity of the individual cannot be ascertained.
- (4) Any person who without reasonable excuse—
  - (a) obstructs a person authorised by the Commission in the exercise of any right conferred by virtue of subsection (1)(a), or
  - (b) fails to comply with any requirement imposed by virtue of subsection (1)(b) or (c),is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In this section any reference to documents includes a reference to information held by means of a computer or in any other electronic form; and in the case of information so held, regulations under this section may make provision for it to be made available or produced in a visible and legible form.
- (6) In this section—
  - “confidential information” means information which is held subject to a duty of confidence, and includes information contained in a health record,
  - “health record” has the meaning given by section 68(2) of the Data Protection Act 1998,
  - “NHS premises” means premises owned or controlled by a Health Authority, Special Health Authority, Primary Care Trust or NHS trust,
  - “prescribed” means prescribed by regulations made by the Secretary of State.

## **24 Restrictions on disclosure of information**

- (1) A person who, without lawful authority, knowingly or recklessly discloses information which—
  - (a) falls within section 23(2), and
  - (b) has been obtained by the Commission in accordance with any condition mentioned in section 23(2),is guilty of an offence if the disclosure is made during the lifetime of the individual to whom the information relates.

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*Status: This is the original version (as it was originally enacted).*

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- (2) A person who, without lawful authority, knowingly or recklessly discloses information which—
- (a) relates to and identifies an individual,
  - (b) has been obtained by the Commission on terms or in circumstances requiring it to be held in confidence, and
  - (c) does not fall within subsection (1),
- is guilty of an offence if the disclosure is made during the lifetime of that individual.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) It is not an offence under this section—
- (a) to disclose information in a form in which the individual to whom the information relates is not identified, or
  - (b) to disclose information which has previously been disclosed to the public with lawful authority.
- (5) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence—
- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise, or
  - (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
- (6) For the purposes of this section a disclosure of information is to be regarded as made with lawful authority if, and only if, it is made—
- (a) with the consent of the individual to whom the information relates,
  - (b) for the purpose of facilitating the exercise of any functions of the Commission,
  - (c) for the purpose of facilitating the conduct of any investigation under the Health Service Commissioners Act 1993,
  - (d) in accordance with any enactment or order of a court,
  - (e) in connection with the investigation of a serious arrestable offence,
  - (f) for the purposes of criminal proceedings in any part of the United Kingdom,
  - (g) in a case where the information appears to the Commission to reveal—
    - (i) that the performance of a health professional in his capacity as such has or may have fallen substantially below that which is expected,
    - (ii) that a health professional has or may have been guilty of serious professional misconduct, or
    - (iii) that the fitness of a health professional to practise as such is or may be seriously impaired by reason of his physical or mental condition,and the person to whom the information is disclosed is a person to whom the Commission considers that it should be disclosed in order for appropriate action to be taken, or
  - (h) in a case where—

- (i) the information reveals that a person is likely to constitute a threat to the health or safety of individuals, and
  - (ii) the person to whom it is disclosed is a person to whom the Commission considers that the information should be disclosed in the interests of the health and safety of individuals.
- (7) For the purposes of subsection (2), information obtained by the Commission is to be regarded as identifying an individual if the individual can be identified—
  - (a) from that information, or
  - (b) from that information and from other information obtained by the Commission.
- (8) For the purposes of subsection (4)(a), information disclosed by a person is not to be regarded as being in a form in which an individual is not identified if the individual can be identified—
  - (a) from that information, or
  - (b) from that information and from other information disclosed—
    - (i) by the Commission, or
    - (ii) by any member or employee of the Commission.
- (9) Any reference in subsection (1), (2), (7) or (8)(b)(i) to the Commission includes a reference to any person authorised by the Commission under section 23.
- (10) In this section—
  - “health professional” has meaning given by section 69(1) of the Data Protection Act 1998,
  - “serious arrestable offence”—
    - (a) in relation to England and Wales, is to be construed in accordance with section 116 of the Police and Criminal Evidence Act 1984,
    - (b) in relation to Scotland, means an offence which is triable on indictment,
    - (c) in relation to Northern Ireland, is to be construed in accordance with Article 87 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

## **25 Abolition of Clinical Standards Advisory Group**

The Clinical Standards Advisory Group is to cease to exist.

### *Partnership*

## **26 Co-operation between NHS bodies**

It is the duty of Health Authorities, Special Health Authorities, Primary Care Trusts and NHS trusts to co-operate with each other in exercising their functions.

## **27 Co-operation between NHS bodies and local authorities**

- (1) Section 22 of the 1977 Act (co-operation between health authorities and local authorities) is amended as follows.

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*Status: This is the original version (as it was originally enacted).*

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(2) For subsection (1) (co-operation between Health Authorities and Special Health Authorities on the one hand and local authorities on the other) there is substituted—

“(1) In exercising their respective functions NHS bodies (on the one hand) and local authorities (on the other) shall co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

(1A) In this section “NHS body” means—

- (a) a Health Authority;
- (b) a Special Health Authority;
- (c) a Primary Care Trust; or
- (d) an NHS trust.”

## **28 Plans for improving health etc**

(1) It is the duty of each Health Authority, at such times as the Secretary of State may direct, to prepare a plan which sets out a strategy for improving—

- (a) the health of the people for whom they are responsible, and
- (b) the provision of health care to such people.

(2) It is the duty of each Health Authority to keep under review any plan prepared by them under this section.

(3) It is the duty of the bodies specified in subsection (4) to participate in the preparation or review by a Health Authority of any plan under this section.

(4) Those bodies are—

- (a) any Primary Care Trust whose area falls within the area of the Health Authority,
- (b) any NHS trust which provides services at or from a hospital or other establishment or facility which falls within the area of the Health Authority, and
- (c) any local authority whose area falls wholly or partly within the area of the Health Authority.

(5) In preparing or reviewing any plan under this section, a Health Authority—

- (a) must consult, or seek the participation of, such persons as the Secretary of State may direct, and
- (b) may consult, or seek the participation of, such other persons as they consider appropriate.

(6) The Secretary of State may give directions—

- (a) as to the periods to be covered by plans under this section,
- (b) as to the action to be taken by Health Authorities, Primary Care Trusts, NHS trusts and local authorities in connection with the preparation or review of plans under this section,
- (c) as to the matters to be taken into account in connection with the preparation or review of plans under this section,
- (d) as to the matters to be dealt with by plans under this section,
- (e) as to the form and content of plans under this section,
- (f) as to the publication of plans prepared or reviewed under this section,

- (g) as to the sharing of information between Health Authorities, Primary Care Trusts, NHS trusts and local authorities in connection with the preparation or review of plans under this section,
  - (h) as to the provision by Health Authorities of reports or other information to the Secretary of State in connection with plans under this section.
- (7) In exercising their respective functions—
- (a) Health Authorities must have regard to any plan prepared or reviewed by them under this section, and
  - (b) Primary Care Trusts, NHS trusts and local authorities must have regard to any plan under this section in relation to which they have participated.
- (8) For the purposes of this section, the persons for whom a Health Authority are responsible are—
- (a) the people in the Authority’s area, and
  - (b) such of the people outside the Authority’s area as may be specified in directions given by the Secretary of State.
- (9) It is the duty of Health Authorities, Primary Care Trusts, NHS trusts and local authorities to comply with any directions under this section which relate to them.
- (10) In this section—
- “health care” has the meaning given by section 18(4),
  - “local authority” means a county council, a county borough council, a district council, a London borough council or the Common Council of the City of London.

## **29 Payments by NHS bodies to local authorities**

- (1) Section 28A of the 1977 Act (power to make payments towards expenditure on community services) is amended as follows.
- (2) In subsection (1) (authorities to which section applies)—
- (a) for “authorities” there is substituted “bodies”,
  - (b) for paragraph (b) (which specifies a Special Health Authority established for a London Post-Graduate Teaching Hospital) there is substituted—
    - “(b) a Primary Care Trust”.
- (3) After subsection (2) there is inserted—
- “(2A) A body to which this section applies may, if they think fit, make payments to a local authority towards expenditure incurred or to be incurred by the authority in connection with the performance of any of the authority’s functions which, in the opinion of the body,—
- (a) have an effect on the health of any individuals,
  - (b) have an effect on, or are affected by, any NHS functions, or
  - (c) are connected with any NHS functions.
- (2B) In this section “NHS functions” means functions exercised by a Health Authority, Special Health Authority, Primary Care Trust or NHS trust.”

**30 Payments by local authorities to NHS bodies**

After section 28B of the 1977 Act there is inserted—

**“28BB Power of local authorities to make payments to NHS bodies**

- (1) A local authority may, if they think fit, make payments to a relevant NHS body towards expenditure incurred or to be incurred by the body in connection with the performance by the body of prescribed functions of the NHS body.
- (2) In this section—
  - “prescribed” means prescribed to any extent by regulations made by the Secretary of State;
  - “relevant NHS body” means a Health Authority or a Primary Care Trust.
- (3) A payment under this section may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure.
- (4) The Secretary of State may by directions prescribe conditions relating to payments under this section.
- (5) The power to give such directions may be exercised so as to make, as respects the cases in relation to which it is exercised, the same provision for all cases, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes.
- (6) Without prejudice to the generality of subsection (4) above, the power may be exercised—
  - (a) so as to make different provision for England and Wales and different provision for different areas in either; and
  - (b) so as to require, in such circumstances as may be specified—
    - (i) repayment of the whole or any part of a payment under this section; or
    - (ii) payment, in respect of property acquired with money paid under this section, of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition.
- (7) No payment shall be made under this section in respect of any expenditure unless the conditions relating to it conform with the conditions prescribed for payments of that description under subsection (4) above.”

**31 Arrangements between NHS bodies and local authorities**

- (1) The Secretary of State may by regulations make provision for or in connection with enabling prescribed NHS bodies (on the one hand) and prescribed local authorities (on the other) to enter into prescribed arrangements in relation to the exercise of—
  - (a) prescribed functions of the NHS bodies, and
  - (b) prescribed health-related functions of the local authorities,
 if the arrangements are likely to lead to an improvement in the way in which those functions are exercised.
- (2) The arrangements which may be prescribed include arrangements—



- (a) for or in connection with the establishment and maintenance of a fund—
    - (i) which is made up of contributions by one or more NHS bodies and one or more local authorities, and
    - (ii) out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the authority or authorities,
  - (b) for or in connection with the exercise by an NHS body on behalf of a local authority of prescribed health-related functions of the authority in conjunction with the exercise by the NHS body of prescribed functions of theirs,
  - (c) for or in connection with the exercise by a local authority on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the authority of prescribed health-related functions of theirs,
  - (d) as to the provision of staff, goods, services or accommodation in connection with any arrangements mentioned in paragraph (a), (b) or (c),
  - (e) as to the making of payments by a local authority to an NHS body in connection with any arrangements mentioned in paragraph (b),
  - (f) as to the making of payments by an NHS body to a local authority in connection with any arrangements mentioned in paragraph (c).
- (3) Regulations under this section may make provision—
- (a) as to the cases in which NHS bodies and local authorities may enter into prescribed arrangements,
  - (b) as to the conditions which must be satisfied in relation to prescribed arrangements (including conditions in relation to consultation),
  - (c) for or in connection with requiring the consent of the Secretary of State to the operation of prescribed arrangements (including provision in relation to applications for consent, the approval or refusal of such applications and the variation or withdrawal of approval),
  - (d) in relation to the duration of prescribed arrangements,
  - (e) for or in connection with the variation or termination of prescribed arrangements,
  - (f) as to the responsibility for, and the operation and management of, prescribed arrangements,
  - (g) as to the sharing of information between NHS bodies and local authorities.
- (4) The provision which may be made by virtue of subsection (3)(f) includes provision in relation to—
- (a) the formation and operation of joint committees of NHS bodies and local authorities,
  - (b) the exercise of functions which are the subject of prescribed arrangements (including provision in relation to the exercise of such functions by joint committees or employees of NHS bodies and local authorities),
  - (c) the drawing up and implementation of plans in respect of prescribed arrangements,
  - (d) the monitoring of prescribed arrangements,
  - (e) the provision of reports on, and information about, prescribed arrangements,
  - (f) complaints and disputes about prescribed arrangements,
  - (g) accounts and audit in respect of prescribed arrangements.
- (5) Any arrangements made by virtue of this section shall not affect—

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- (a) the liability of NHS bodies for the exercise of any of their functions,
  - (b) the liability of local authorities for the exercise of any of their functions, or
  - (c) any power or duty to recover charges in respect of services provided in the exercise of any local authority functions.
- (6) The Secretary of State may issue guidance to NHS bodies and local authorities in relation to consultation or applications for consent in respect of prescribed arrangements.
- (7) The reference in subsection (1) to an improvement in the way in which functions are exercised includes an improvement in the provision to any individuals of any services to which those functions relate.
- (8) In this section—
- “health-related functions”, in relation to a local authority, means functions of the authority which, in the opinion of the Secretary of State—
    - (i) have an effect on the health of any individuals,
    - (ii) have an effect on, or are affected by, any functions of NHS bodies, or
    - (iii) are connected with any functions of NHS bodies,
  - “local authority” means a district council, county council, county borough council, London borough council or the Common Council of the City of London,
  - “NHS body” means a Health Authority, Primary Care Trust or NHS trust,
  - “prescribed” means prescribed to any extent by regulations made by the Secretary of State.

## **32 Joint consultative committees**

In section 22 of the 1977 Act (co-operation between health authorities and local authorities), subsections (2) to (6) (which make provision in relation to joint consultative committees) are omitted.

### *Control of prices of medicines and profits*

## **33 Powers relating to voluntary schemes**

- (1) The powers conferred by this section may be exercised where there is in existence a scheme (referred to in this section and sections 34 and 35 as a voluntary scheme) made by the Secretary of State and the industry body for the purpose of—
- (a) limiting the prices which may be charged by any manufacturer or supplier to whom the scheme relates for the supply of any health service medicines, or
  - (b) limiting the profits which may accrue to any manufacturer or supplier to whom the scheme relates in connection with the manufacture or supply of any health service medicines.
- (2) For the purposes of this section and sections 34 and 35, a voluntary scheme is to be treated as applying to a manufacturer or supplier to whom it relates if—
- (a) he has consented to the scheme being so treated (and has not withdrawn that consent), and
  - (b) no notice is in force in his case under subsection (4).

- (3) For the purposes of this section a voluntary scheme has effect, in relation to a manufacturer or supplier to whom it applies, with any additions or modifications made by him and the Secretary of State.
- (4) If any acts or omissions of any manufacturer or supplier to whom a voluntary scheme applies (a “scheme member”) have shown that, in the scheme member’s case, the scheme is ineffective for either of the purposes mentioned in subsection (1), the Secretary of State may by a written notice given to the scheme member determine that the scheme is not to apply to him.
- (5) A notice under subsection (4) must give the Secretary of State’s reasons for giving the notice; and the Secretary of State may not give a notice under that subsection until he has given the scheme member an opportunity to make representations about the acts or omissions in question.
- (6) Consent under subsection (2)(a) must be given, or withdrawn, in the manner required by the Secretary of State.
- (7) The Secretary of State may after consultation with the industry body require any manufacturer or supplier to whom a voluntary scheme applies to—
  - (a) record and keep any information, and
  - (b) provide any information to the Secretary of State,which the Secretary of State may require for the purpose of enabling the scheme to operate or facilitating its operation or for the purpose of giving full effect to any provision made under subsection (8).
- (8) The Secretary of State may—
  - (a) prohibit any manufacturer or supplier to whom a voluntary scheme applies from increasing any price charged by him for the supply of any health service medicine covered by the scheme without the approval of the Secretary of State, and
  - (b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.

#### **34 Power to control prices**

- (1) The Secretary of State may, after consultation with the industry body—
  - (a) limit any price which may be charged by any manufacturer or supplier for the supply of any health service medicine, and
  - (b) provide for any amount representing sums charged by that person for that medicine in excess of the limit to be paid to the Secretary of State within a specified period.
- (2) The powers conferred by this section are not exercisable at any time in relation to a manufacturer or supplier to whom at that time a voluntary scheme applies.

#### **35 Statutory schemes**

- (1) The Secretary of State may, after consultation with the industry body, make a scheme (referred to in this section and section 36 as a statutory scheme) for the purpose of—

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- (a) limiting the prices which may be charged by any manufacturer or supplier for the supply of any health service medicines, or
  - (b) limiting the profits which may accrue to any manufacturer or supplier in connection with the manufacture or supply of any health service medicines.
- (2) A statutory scheme may, in particular, make any provision mentioned in subsections (3) to (6).
- (3) The scheme may require any manufacturer or supplier to whom it applies to—
- (a) record and keep information, and
  - (b) provide information to the Secretary of State.
- (4) The scheme may provide for any amount representing sums charged by any manufacturer or supplier to whom the scheme applies, in excess of the limits determined under the scheme, for health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.
- (5) The scheme may provide for any amount representing the profits, in excess of the limits determined under the scheme, accruing to any manufacturer or supplier to whom the scheme applies in connection with the manufacture or supply of health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period.
- (6) The scheme may—
- (a) prohibit any manufacturer or supplier to whom the scheme applies from increasing, without the approval of the Secretary of State, any price charged by him for the supply of any health service medicine covered by the scheme, and
  - (b) provide for any amount representing any increase in contravention of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period.
- (7) A statutory scheme may not apply to a manufacturer or supplier to whom a voluntary scheme applies.

### **36 Statutory schemes: supplementary**

- (1) The Secretary of State may, after consultation with the industry body, make any provision he considers necessary or expedient for the purpose of enabling or facilitating—
- (a) the introduction of a statutory scheme or of a limit under section 34, or
  - (b) the determination of the provision to be made in a proposed statutory scheme.
- (2) The provision may, in particular, require any person to whom such a scheme or limit may apply to—
- (a) record and keep information,
  - (b) provide information to the Secretary of State.
- (3) Where the Secretary of State is preparing to make or vary a statutory scheme, he may make any provision he considers necessary or expedient for transitional or transitory purposes which could be made by such a scheme.

### **37 Enforcement**

- (1) Regulations may provide for a person who contravenes any provision of regulations or directions under sections 33 to 36 to be liable to pay a penalty to the Secretary of State.
- (2) The penalty may be—
  - (a) a single penalty not exceeding £100,000, or
  - (b) a daily penalty not exceeding £10,000 for every day on which the contravention occurs or continues.
- (3) Regulations may provide for any amount required to be paid to the Secretary of State by virtue of section 33(8)(b), 34(1)(b) or 35(4) or (6)(b) to be increased by an amount not exceeding 50 per cent.
- (4) Regulations may provide for any amount payable to the Secretary of State by virtue of provision made under section 33(8)(b), 34(1)(b) or 35(4), (5) or (6)(b) (including such an amount as increased under subsection (3)) to carry interest at a rate specified or referred to in the regulations.
- (5) Provision may be made by regulations for conferring on manufacturers and suppliers a right of appeal against enforcement decisions taken in respect of them in pursuance of sections 33 to 36 and this section.
- (6) The provision which may be made by virtue of subsection (5) includes any provision which may be made by model provisions with respect to appeals under section 6 of the Deregulation and Contracting Out Act 1994, reading—
  - (a) the references in subsections (4) and (5) of that section to enforcement action as references to action taken to implement an enforcement decision,
  - (b) in subsection (5) of that section, the references to interested persons as references to any persons and the reference to any decision to take enforcement action as a reference to any enforcement decision.
- (7) In subsections (5) and (6), “enforcement decision” means a decision of the Secretary of State or any other person to—
  - (a) require a specific manufacturer or supplier to provide information to him,
  - (b) limit, in respect of any specific manufacturer or supplier, any price or profit,
  - (c) refuse to give his approval to a price increase made by a specific manufacturer or supplier,
  - (d) require a specific manufacturer or supplier to pay any amount (including an amount by way of penalty) to him,and in this subsection “specific” means specified in the decision.
- (8) A requirement or prohibition, or a limit, under sections 33 to 36 may only be enforced under this section and may not be relied on in any proceedings other than proceedings under this section.
- (9) In this section “regulations” means regulations made by the Secretary of State, and the Secretary of State must consult the industry body before making any regulations under this section.
- (10) The Secretary of State may by order increase (or further increase) either of the sums mentioned in subsection (2).

**38 Controls: supplementary**

- (1) Any power conferred on the Secretary of State by sections 33(6) to (8) and 34 to 36 may be exercised by—
- (a) making regulations, or
  - (b) giving directions to a specific manufacturer or supplier,
- and the regulations may themselves confer power for the Secretary of State to give directions to a specific manufacturer or supplier; and in this subsection “specific” means specified in the direction concerned.
- (2) Any power to make regulations under any of those provisions or section 37 may be exercised generally in relation to manufacturers or suppliers of health service medicines or be exercised in relation to any class of manufacturers or suppliers.
- (3) The powers to refuse approval under section 33(8)(a) or 35(6)(a) or to impose a limit under section 34(1)(a) or 35(1) are exercisable only with a view to limiting by reference to the prices or profits which would be reasonable in all the circumstances—
- (a) the prices which may be charged for, or
  - (b) the profits which may accrue to any manufacturer or supplier in connection with,
- the manufacture or supply for the purposes of the health service of health service medicines.
- (4) In so exercising those powers (in the case of sections 34(1)(a) and 35(1) and (6)(a)) the Secretary of State and any other person must bear in mind, in particular, the need for medicinal products to be available for the health service on reasonable terms and the costs of research and development.
- (5) Section 57 of, and Schedule 11 to, the 1977 Act and section 49 of, and Schedule 10 to, the 1978 Act (maximum prices of medical supplies) are to cease to have effect in relation to health service medicines; but the powers conferred by sections 33 to 36 do not affect any other powers of the Secretary of State to control prices or profits.
- (6) This subsection and subsections (7) and (8) apply for the interpretation of sections 33 to 37 and this section—
- “health service” means any of the health services within the meaning of the 1977 Act, the 1978 Act or the Health and Personal Social Services (Northern Ireland) Order 1972,
- “health service medicine” means a medicinal product used to any extent for the purposes of the health service,
- “the industry body” means any body which appears to the Secretary of State appropriate to represent manufacturers and suppliers,
- “manufacture” includes assemble and “manufacturer” means any person who manufactures health service medicines,
- “medicinal product” has the meaning given by section 130 of the Medicines Act 1968,
- “supplier” means any person who supplies health service medicines.
- (7) References to contravention of a provision include failure to comply with it.
- (8) References to supplying medicines include selling them.

*Evasion of charges, fraud etc.*

**39 Evasion of charges etc**

(1) After section 122 of the 1977 Act there is inserted—

**“122A Recovery of other charges and payments**

- (1) Where goods or services to which this section applies are provided and either—
- (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment, or
  - (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,
- the amount mentioned in subsection (2) below is recoverable summarily as a civil debt from the person in question by the responsible authority.
- (2) That amount—
- (a) in a case within subsection (1)(a) above, is the amount of the charge or (where it has been reduced) reduction,
  - (b) in a case within subsection (1)(b) above, is the amount of the payment.
- (3) Where two or more persons are liable under section 122(1) above or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.
- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description,
  - (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it,
  - (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 122B below, “responsible authority” means—
- (a) in relation to the recovery of any charge under section 122(1) above in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable,
  - (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable,
  - (c) in a case within subsection (1)(b) above, the person who made the payment.
- (6) But the Secretary of State may by directions provide for—

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- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies,
- (b) the functions of any responsible authority under this section and section 122B below,

to be exercised on behalf of the authority by another health service body.

- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act,
  - (b) drugs and medicines provided in pursuance of this Act,
  - (c) the testing of sight,
  - (d) optical appliances,
  - (e) any other appliances provided in pursuance of this Act.

### **122B Penalties**

- (1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 122(1) above in respect of the provision of goods or services to which section 122A above applies, or
  - (b) any amount recoverable from him under section 122A above,
- a notice (referred to in this section as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.
- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
- (a) £100,
  - (b) the amount referred to in subsection (1)(a) or (b) above multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) above to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b) above) may be recovered by the responsible authority summarily as a civil debt.
- (7) But a person is not liable by virtue of a penalty notice—



- (a) to pay at any time so much of any amount referred to in subsection (1) (a) or (b) above for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other, or
  - (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.
- (8) In spite of section 126(1) below, no order is to be made under subsection (3) above unless a draft has been laid before, and approved by resolution of, each House of Parliament.

### **122C Offences**

- (1) A person is guilty of an offence if he does any act mentioned in subsection (2) below with a view to securing for himself or another—
- (a) the evasion of the whole or part of any charge under this Act in respect of the provision of goods or services to which section 122A above applies,
  - (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment,
  - (c) a payment under this Act (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.
- (2) The acts referred to in subsection (1) above are—
- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation, or
  - (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this section before a magistrates' court if he is authorised to do so by the Secretary of State.
- (5) Proceedings for an offence under this section may be begun within either of the following periods—
- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Secretary of State to justify a prosecution for the offence, comes to his knowledge,
  - (b) the period of 12 months beginning with the commission of the offence.
- (6) For the purposes of subsection (5) above, a certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to his knowledge is conclusive evidence of that date.

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- (7) Where, in respect of any charge or payment under this Act—
- (a) a person is convicted of an offence under this section, or
  - (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under section 122B above,
- he shall not, in a case within paragraph (a) above, be liable to pay any such penalty charge or further sum by way of penalty or, in a case within paragraph (b) above, be convicted of such an offence.
- (8) Subsection (4) of section 122A above applies for the purposes of this section as it applies for the purposes of that.”
- (2) Any power conferred by section 37 of the 1977 Act or section 17 of the National Health Service (Primary Care) Act 1997 to confer functions on the Dental Practice Board includes, in particular, power to confer functions relating to the prosecution of offences concerning charges for the provision of dental treatment and appliances.
- (3) Sections 122A to 122C of the 1977 Act apply to charges which may be made and recovered under section 20 of the National Health Service (Primary Care) Act 1997 as they apply to charges under the 1977 Act which may be recovered under section 122(1) of that Act; and the reference in section 122A(7)(a) to the 1977 Act includes a reference to a pilot scheme (within the meaning of the 1997 Act).

#### **40 Disqualification etc. of Part II practitioners**

- (1) For section 46 of the 1977 Act (disqualification of practitioners) there is substituted—

##### **“46 The NHS tribunal**

- (1) The tribunal constituted in accordance with Schedule 9 to this Act shall continue under the name of “the NHS Tribunal”; and that Schedule shall continue to have effect in relation to the Tribunal.
- (2) If the Tribunal receive from a Health Authority representations that—
  - (a) a person who is included in any list meets either of the conditions for disqualification, or
  - (b) a person who has applied to be included in any list meets the second condition for disqualification,
 the Tribunal shall inquire into the case.
- (3) If the Tribunal receive such representations from any other person, they may inquire into the case.
- (4) Representations under this section shall be made—
  - (a) in the prescribed manner, and
  - (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.
- (5) Subsections (6) to (11) below apply for the purposes of this group of sections.
- (6) The first condition for disqualification is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.

- (7) The second condition for disqualification is that the person concerned—
- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit.
- (8) A “list” means—
- (a) a list of medical practitioners undertaking to provide general medical services,
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services,
  - (c) a list of dental practitioners undertaking to provide general dental services,
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or
  - (e) a list of persons undertaking to provide pharmaceutical services,
- prepared (in each case) under this Part of this Act.
- (9) “Health scheme” means—
- (a) any of the health services under section 1(1) above or any corresponding enactment extending to Scotland or Northern Ireland, and
  - (b) any prescribed scheme;
- and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases.
- (12) In this section and sections 46A to 49E below—
- (a) “this group of sections” means this and those sections and Schedule 9 to this Act, and
  - (b) the NHS Tribunal is referred to as the Tribunal.

#### **46A The NHS Tribunal: supplementary**

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).
- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting

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the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).

- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—
- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 46(8) above on the practitioner’s behalf, meets that condition, and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 46(7)(a) above occurring in the course of the provision of those services on his behalf.
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
- (5) In a fraud case, regulations may make provision (including provision modifying the effect of this Part of this Act) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.
- (6) For the purposes of this group of sections, in a fraud or efficiency case proceedings are finally concluded—
- (a) if the Tribunal determine not to disqualify, or conditionally disqualify, him, when they make that determination,
  - (b) if they determine to disqualify, or conditionally disqualify, him and no appeal is brought against the determination, at the end of the period for bringing an appeal,
  - (c) if they determine to disqualify, or conditionally disqualify, him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 46 above is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

#### **46B Powers of NHS Tribunal**

- (1) Subsection (2) below applies where the Tribunal are of the opinion—
- (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification,
  - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
- (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates, and
  - (b) may also make a national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 46(8) above as that list.

- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
- (5) A disqualification under this section shall have effect when proceedings in the case are finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Authority, the Authority must not enter him in the list and (if he is already included in the list) must remove him from the list.

#### **46C Conditional disqualification etc**

- (1) The functions of making disqualifications under section 46B above include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 47 below) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
  - (2) Conditions may be imposed by virtue of subsection (1) above with a view to—
    - (a) removing any prejudice to the efficiency of the services in question, or
    - (b) preventing any acts or omissions within section 46(7)(a) above,(as the case may be).
  - (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
  - (4) Section 46B(4) above applies to a conditional disqualification as it applies to a disqualification.
  - (5) The Tribunal may by directions—
    - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part),
    - (b) confer functions on any Health Authority,for the purpose of or in connection with the imposition of any conditions by virtue of this section.
  - (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.”
- (2) For section 47 of the 1977 Act (removal of disqualification) there is substituted—

#### **“47 Review etc. of disqualification**

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—
  - (a) if the disqualified or conditionally disqualified person requests a review, or
  - (b) in any other circumstances in which they consider it appropriate.

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- (2) On a review under subsection (1) above, the Tribunal may—
- (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect,
  - (b) make a disqualification conditional,
  - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,
- and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (3) If any Health Authority request a review of a conditional disqualification on the ground that—
- (a) there has been a change in the circumstances by reference to which the conditions were imposed,
  - (b) the person concerned has failed to comply with the conditions, or
  - (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,
- the Tribunal shall review the conditional disqualification.
- (4) In the case of a person who is providing services in Scotland or Northern Ireland, the reference in subsection (3) above to a Health Authority includes any corresponding authority under the provisions in force in Scotland or Northern Ireland corresponding to this Part of this Act.
- (5) On a review under subsection (3) above of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (6) If, on a review under this section of a fraud case—
- (a) there is a national disqualification which the Tribunal do not remove or make conditional,
  - (b) there is a national disqualification which is conditional and which the Tribunal make unconditional, or
  - (c) the Tribunal make a national disqualification,
- they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
- (a) in the case of a conditional disqualification, make it unconditional or vary the conditions,
  - (b) make any further disqualification or conditional disqualification, or
  - (c) make a declaration of unfitness,
- if they are of the opinion that it would be unjust to do so.
- (8) A determination of the Tribunal under this section shall have effect—
- (a) if no appeal is brought against it, at the end of the period for bringing an appeal,
  - (b) if an appeal is brought against it, when the appeal process is exhausted.

- (9) The Tribunal may hold an inquiry for the purposes of any review under this section.”

*Miscellaneous*

**41 High security psychiatric services**

- (1) For section 4 of the 1977 Act (special hospitals) there is substituted—

**“4 High security psychiatric services**

- (1) The duty imposed on the Secretary of State by section 1 above to provide services for the purposes of the health service includes a duty to provide hospital accommodation and services for persons who are liable to be detained under the Mental Health Act 1983 and in his opinion require treatment under conditions of high security on account of their dangerous, violent or criminal propensities.
- (2) The hospital accommodation and services mentioned in subsection (1) above are in this Act referred to as “high security psychiatric services”.
- (3) High security psychiatric services shall be provided only at hospital premises at which services are provided only for the persons mentioned in subsection (1) above; and for this purpose “hospital premises” means—
- (a) a hospital; or
  - (b) any part of a hospital which is treated as a separate unit.”
- (2) In section 145(1) of the Mental Health Act 1983 (interpretation), in the definition of “the managers”, paragraph (b) is omitted.
- (3) At the end of paragraph 10 of Schedule 2 to the 1990 Act (powers of NHS trusts to enter into NHS contracts) there is inserted—
- “(2) An NHS trust may not, as the provider, enter into an NHS contract for the provision of high security psychiatric services unless the NHS trust is approved for the purpose of this paragraph by the Secretary of State.
- (3) Such approval—
- (a) shall be for a period specified in the approval,
  - (b) may be given subject to conditions, and
  - (c) may be amended or revoked at any time.”

**42 Provision of information by Registrar General**

After section 124 of the 1977 Act there is inserted—

**“124A Provision of information by Registrar General**

- (1) The Registrar General may provide to the Secretary of State any information to which this section applies.

- (2) Any information provided under subsection (1) above shall be provided in such form as appears to the Registrar General appropriate for the purpose of assisting the Secretary of State in the performance of his functions in relation to the health service.
- (3) This section applies to any information—
  - (a) entered in any register kept under the Births and Deaths Registration Act 1953; or
  - (b) which is kept by the Registrar General under any other enactment and relates to any birth or death.
- (4) In subsection (3) above, “enactment” includes an enactment contained in subordinate legislation.”

### **43 Health Service Commissioners**

- (1) Section 15 of the Health Service Commissioners Act 1993 (confidentiality of information) is amended as follows.
- (2) In subsection (1), at the beginning of paragraph (e) there is inserted “where the information is to the effect that any person is likely to constitute a threat to the health or safety of patients”.
- (3) Subsection (1A) is omitted.
- (4) In subsection (1B)—
  - (a) for “such a case” there is substituted “a case within subsection (1)(e)”,
  - (b) the words following “patients” are omitted.
- (5) In subsection (1C), for paragraphs (a) and (b) there is substituted—
  - “(a) where he knows the identity of the person mentioned in subsection (1) (e), inform that person that he has disclosed the information and of the identity of any person to whom he has disclosed it, and
  - (b) inform the person from whom the information was obtained that he has disclosed it”.

#### *Rectification of transitional arrangements*

### **44 Power to rectify transitional provisions etc**

- (1) The Secretary of State may by order make such provision as he considers appropriate in consequence of the matters mentioned in subsection (2) (the “relevant defects”).
- (2) Those matters are—
  - (a) the omission from Part III of Schedule 2 to the Health Authorities Act 1995 (Transitional Provisions) Order 1996 (which determined the relevant Health Authority in relation to any Family Health Services Authority in England whose locality comprised or formed part of the area of more than one Health Authority) of an entry for Bromley Family Health Services Authority,
  - (b) the inclusion in Part III or IV of Schedule 1 to that order (which determined the relevant Health Authority in relation to any Family Health Services Authority whose locality comprised or formed part of the area of only one Health



- Authority) of an entry for any Family Health Services Authority in England or Wales whose locality comprised or formed part of the area of more than one Health Authority (and an entry for which should accordingly have been included in Part III or IV of Schedule 2 to that order),
- (c) the omission from column 2 of the entry for any Family Health Services Authority in Part III or IV of Schedule 2 to that order (which together with column 3 of that entry specified the relevant Health Authorities in relation to that Family Health Services Authority) of any Health Authority whose area or any part of whose area forms part of the locality of the Family Health Services Authority and which was not included in column 3 of that entry,
- (d) where—
- (i) the locality of a Family Health Services Authority and the area of a Health Authority overlap but do not coincide, and
  - (ii) the Family Health Services Authority had compiled a list of persons residing in its locality,
- the treatment, incorrectly, by a Health Authority of a person included in that list as residing, or as not residing, in their area.
- (3) Provision that may be made under subsection (1) includes, in particular—
- (a) provision amending the Health Authorities Act 1995 (Transitional Provisions) Order 1996,
  - (b) provision transferring, or adding, the name of any Part II practitioner to any Part II list in which he is (or, at the material time, was) not included because of any of the relevant defects,
  - (c) provision for treating anything done by or in relation to an acting authority or a person of any description identified by reference to an acting authority as having been done by or in relation to the proper authority or a person of that description identified by reference to the proper authority,
  - (d) provision for treating anything done by or in relation to an acting authority or a person of any description identified by reference to an acting authority as having been so done in the exercise by them or him of functions on behalf of the proper authority or a person of that description identified by reference to the proper authority.
- (4) Any provision made by an order under this section may be made with effect from any date after 31st March 1996 specified in the order.
- (5) Provision contained in an order under this section by virtue of section 62(4) may include provision conferring functions on the Secretary of State.
- (6) In subsection (3)(b)—
- “Part II practitioner” means a person who provides (or, at any time since 31st March 1996, has provided) general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made or treated as made (or which, but for any of the relevant defects, would have been made or treated as made) under Part II of the 1977 Act,
- “Part II list” means a list kept by a Health Authority under section 29(2)(a), 36(1)(a), 39(a) or 42(2)(a) of that Act (lists of persons providing general medical, general dental, general ophthalmic or pharmaceutical services).
- (7) In subsection (3)(c) and (d), in relation to anything done by or in relation to a Health Authority or a person identified by reference to a Health Authority—

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“acting authority” means the Health Authority by or in relation to whom the thing was done or person was identified because of any of the relevant defects,

“proper authority” means the Health Authority by or in relation to whom the thing should have been done or by reference to whom the person should have been identified.

## PART II

### THE NATIONAL HEALTH SERVICE: SCOTLAND

#### *Fund-holding practices*

#### **45 Repeal of law about fund-holding practices**

In the National Health Service (Scotland) Act 1978, sections 87A to 87C (which make provision in relation to fund-holding practices in Scotland) are to cease to have effect.

#### *NHS trusts*

#### **46 Establishment orders**

(1) In section 12A of the 1978 Act (NHS trusts)—

- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “to provide goods and services for the purposes of the health service”,
- (b) for subsection (4) there is substituted—

“(4) The functions which may be specified in an order under subsection (1) include a duty to provide goods or services so specified at, from, or through a hospital or other establishment or facility so specified.”

(2) In section 108(1) (interpretation) after the definition of “property” there is inserted—

““provide” includes manage”.

(3) Any order under section 12A(1) of that Act—

- (a) is to be treated as always having had effect with the omission of any obligation for the NHS trust to which the order relates to own land specified in the order, and
- (b) so far as any functions specified in it could have been specified under that provision as amended by this Act, is to be treated as having been made under that provision as so amended.

(4) Any restriction preventing the acquisition by any NHS trust (including any NHS trust dissolved before the commencement of this section) of land merely because the land did not comprise a hospital or other establishment or facility previously managed or provided by a Health Board or the Agency is to be treated as never having had effect.

(5) An order under section 63 of this Act may—

- (a) provide for any provision made by it for the purposes of, in consequence of, or for giving full effect to, this section to be treated as having had effect from a time before the commencement of this section,

- (b) make such provision about an NHS trust dissolved before that commencement.
- (6) In paragraph 3(2) of Schedule 7A to the 1978 Act (establishment orders), for “assume responsibility for the ownership and management of” there is substituted “provide services at”.
- (7) In paragraph 3 of Schedule 7B to that Act (borrowing limits), in sub-paragraph (1), for the words from “established” to “manage” there is substituted “which are required to provide services at or from”.
- (8) The 1978 Act is to be treated as always having had effect subject to the amendments made by this section.

#### **47 Directions as to delegation of functions**

After section 12A of the 1978 Act there is inserted—

##### **“12AA Additional functions of NHS trusts**

The Secretary of State may direct a Health Board to delegate to an NHS trust or NHS trusts some or all of their functions—

- (a) under section 2(1) of making arrangements on his behalf for the provision of services mentioned in Part II; or
- (b) relating to pilot schemes under Part I of the National Health Service (Primary Care) Act 1997; or
- (c) relating to arrangements under section 17C for the provision of personal medical services and personal dental services.”

#### **48 Constitution of NHS trust boards**

In section 12A of the 1978 Act (NHS trusts), in subsection (3), for paragraph (a) there is substituted—

- “(a) shall be a body corporate having a board of directors consisting of a chairman who is not an employee of the trust, appointed by the Secretary of State; and, subject to paragraph 5(2) of Schedule 7A, executive directors (directors who, subject to subsection (5), are employees of the trust) and non-executive directors (directors who, subject to subsection (5), are not employees of the trust and who shall be known as “trustees”).”

#### **49 Duties of NHS trusts**

(1) Paragraph 6 of Schedule 7A to the 1978 Act is amended as follows.

(2) For sub-paragraph (1) there is substituted—

- “(1) In carrying out the functions for the time being conferred on it an NHS trust shall comply with any directions given to it by the Secretary of State, whether of a general or of a particular nature.”

(3) Sub-paragraph (2) is omitted.

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### *Staff transfer*

#### **50 Transfer of staff among health service bodies**

After section 12C of the 1978 Act there is inserted—

##### **“12CA Transfer of staff among health service bodies**

- (1) This section applies to any person who is—
  - (a) employed by a health service body (the transferor authority) and is transferred to another health service body (the transferee authority) because a function of the transferor authority is transferred to the transferee authority; and
  - (b) designated for the purposes of this section by a scheme made by the transferor authority.
- (2) A scheme under this section shall not have effect unless approved by the Secretary of State.
- (3) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the transferee authority.
- (4) Without prejudice to subsection (3)—
  - (a) all the transferor 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 transferee authority on the transfer date; and
  - (b) anything done before the transfer date by or in relation to the transferor authority in respect of that contract shall be deemed from that date to have been done by or in relation to the transferee authority.
- (5) Subsections (3) and (4) 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.
- (6) A scheme under this section may designate a person either individually or as a member of a class or description of employees.
- (7) In this section—
 

a “health service body” is a body mentioned in section 17A(2); and  
 the “transfer date” is the date on which the function is transferred from the transferor authority to the transferee authority.”

### *Quality*

#### **51 Duty of quality**

After section 12G of the 1978 Act there is inserted—

*“Quality*

**12H Duty of quality**

- (1) It shall be the duty of each Health Board, Special Health Board and NHS trust and of the Agency to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care which it provides to individuals.
- (2) The reference in subsection (1) to health care which a body there mentioned provides to individuals includes health care which the body provides jointly with another person to individuals.
- (3) In this section “health care” means services for or in connection with the prevention, diagnosis or treatment of illness.”

*Finance*

**52 Expenditure of Health Boards and other bodies**

For section 85 of the 1978 Act there is substituted—

**“85AA Means of meeting expenditure of Health Boards out of public funds**

- (1) The Secretary of State shall pay to each Health Board sums equal to their general Part II expenditure.
- (2) “General Part II expenditure” is expenditure which—
  - (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II; but
  - (b) does not fall within paragraphs (b) to (e) of subsection (4).
- (3) The Secretary of State shall pay to each Health Board, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Board towards meeting their main expenditure.
- (4) In subsection (3) “main expenditure” means expenditure which is attributable to—
  - (a) the performance by the Board of their functions in that year, but—
    - (i) is not general Part II expenditure; and
    - (ii) does not fall within paragraphs (b) to (d);
  - (b) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services);
  - (c) remuneration which is paid to persons providing additional pharmaceutical services (in accordance with directions under section 27A) in respect of such of those services as are designated;
  - (d) remuneration which is—

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- (i) paid to persons providing general medical services under Part II;
  - (ii) determined by the Health Board concerned; and
  - (iii) of a designated description; or
  - (e) remuneration which is referable to the cost of drugs for which the Health Board is accountable in that year (whether paid by it or by another Health Board).
- (5) In paragraphs (b) to (e) of subsection (4), “designated” means designated in writing by the Secretary of State for the purposes of that paragraph and in relation to the allotment in question.
- (6) An amount is allotted to a Health Board for a year under this section when they are notified by the Secretary of State that it is allotted to them for that year; and the Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.
- (7) Where the Secretary of State proposes to pay any sum to a Health Board, he may, with the consent of the Treasury, instead pay that sum to an NHS trust in discharge of the whole or any part of any liability of the Health Board to the NHS trust.
- (8) The Secretary of State may give directions to a Health Board with respect to the application of sums paid to them and a Board to whom directions have been given under this subsection shall comply with the directions.
- (9) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.
- (10) Payments under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.
- (11) In this section and section 85AB, “drugs” includes medicines and listed appliances (within the meaning of section 27).

#### **85AB Further provision as to expenditure on drugs**

- (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Health Boards the total of the remuneration referable to the cost of drugs which is paid by each Health Board in that year.
- (2) A Health Board is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under subsection (1).
- (3) Where in any financial year any remuneration referable to the cost of drugs for which a Health Board is accountable is paid by another Health Board, the remuneration is to be treated (for the purposes of this section) as having been paid by the first Health Board in the performance of its functions.

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- (4) The Secretary of State may, in particular, exercise his discretion under subsection (1)—
  - (a) so that any apportionment reflects, in the case of each Health Board, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the Board in question;
  - (b) by reference to averaged or estimated amounts.
- (5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Health Board other than the Health Board which is accountable for the payment to be reimbursed in such manner as he may determine.
- (6) The Secretary of State shall determine what remuneration paid by Health Boards to persons providing pharmaceutical services is to be treated for the purposes of section 85AA and this section as remuneration referable to the cost of drugs.

### **85 Expenses of certain bodies**

- (1) There shall, in respect of each financial year, be paid by the Secretary of State sums not exceeding the amount allotted by him for that year to each of the following bodies towards meeting the expenditure attributable to the performance by that body of their functions in that year—
  - (a) the Agency;
  - (b) every Special Health Board;
  - (c) the Medical Practices Committee;
  - (d) the Dental Estimates Board;
  - (e) the tribunal;
  - (f) every local health council.
- (2) The date on which an allotment under subsection (1) (including an allotment increasing or reducing an allotment previously made) takes effect is the date on which the body receiving the allotment are notified of its amount by the Secretary of State.
- (3) The Secretary of State may give directions to a body referred to in subsection (1) with respect to the application of the sums paid to them under that subsection and it shall be the duty of any body to whom directions have been given under this subsection to comply with the directions.
- (4) Payments under subsection (1) shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.”

### **53 Public dividend capital**

- (1) Section 12E of the 1978 Act (originating capital debt of, and other financial provisions relating to, NHS trusts) is amended as provided in subsections (2) to (5).
- (2) In subsections (1), (2) and (3), for “originating capital debt” there is substituted “originating capital”.
- (3) For subsection (4) there is substituted—

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“(4) An NHS trust’s originating capital shall be public dividend capital.”

(4) Subsections (5) and (6) are omitted.

(5) In subsection (7), for the words from “the terms” to the end there is substituted—

- “(a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Act;
- (b) the amount of any such public dividend capital which is to be repaid at any time;
- (c) any other terms on which any public dividend capital is so issued, or treated as issued”.

(6) In Schedule 7B to that Act—

- (a) in paragraph 3 (limits on indebtedness), sub-paragraph (2) is omitted,
- (b) in paragraph 5 (additional public dividend capital), sub-paragraph (2) is omitted.

#### **54 Existing NHS trusts: conversion of initial loan**

(1) This section applies to any NHS trust in existence immediately before commencement.

(2) On commencement so much of the originating capital debt of the NHS trust as remains outstanding immediately before commencement is to be treated as the originating capital of the NHS trust and accordingly is public dividend capital.

(3) Any reference in any enactment, instrument or other document to the originating capital debt of the NHS trust is to be construed (except where the context otherwise requires) as a reference to its originating capital.

(4) The Secretary of State may with the consent of the Treasury determine the amount and time for payment of interest on the NHS trust’s initial loan in respect of the period ending with commencement.

(5) In this section—

- “commencement” means the coming into force of this section,
- “initial loan” has the meaning given by section 12E(5) of the 1978 Act.

#### **55 Borrowing**

(1) Schedule 7B to the 1978 Act is amended as follows.

(2) In paragraph 1 (borrowing powers of NHS trusts), in sub-paragraph (1), after “Subject to” there is inserted “any direction given by the Secretary of State, to”.

(3) Sub-paragraphs (3) to (5) of that paragraph are omitted.

(4) For sub-paragraph (6) there is substituted—

- “(6) It shall be for the Secretary of State, with the consent of the Treasury, to determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).”



### *Indemnity cover*

## **56 Indemnity cover for Part II services**

(1) After section 28B of the 1978 Act there is inserted—

### **“28C Indemnity cover**

- (1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—
  - (a) for securing that a person is not be added to any list unless he holds approved indemnity cover;
  - (b) for the removal from a list prepared by a Health Board of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Board in the prescribed manner satisfy the Health Board that he holds approved indemnity cover.

(3) For the purposes of this section—

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

- (a) on prescribed terms; and
- (b) with an approved body;

“indemnity cover”, in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—

- (a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Board under this Part of this Act; and
- (b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in section 29;

“Part II practitioner” means a person whose name is on a list;

“Part II services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

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- (a) in a form identified in accordance with the regulations in relation to persons of that description; and
  - (b) made with a person or persons so identified,
- is to be treated as holding approved indemnity cover for the purposes of the regulations.”
- (2) In section 19A of the 1978 Act (medical lists), at the beginning of subsection (3) there is inserted “Subject to any provision made under section 28C,”.
  - (3) In section 25 of that Act (arrangements for provision of general dental services), in subsection (2)(b), the word “and” before sub-paragraph (iii) is omitted and after that sub-paragraph there is inserted “; and
    - (iv) any provision made under section 28C”.
  - (4) In section 26 of that Act (arrangements for provision of general ophthalmic services), in subsection (2)(b), after “practitioners” there is inserted “and any provision made under section 28C”.

### *Remuneration*

#### **57 Remuneration for Part II services**

- (1) For sections 28A and 28B of the 1978 Act (regulations as to remuneration) there is substituted—

##### **“28A Remuneration for Part II services**

- (1) The remuneration to be paid to persons who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).
- (2) For the purposes of this section and section 28B, determining authorities are—
  - (a) the Secretary of State; and
  - (b) so far as authorised by him to exercise the functions of determining authorities, any Health Board or other person appointed by him in an instrument (referred to in this section and section 28B as an instrument of appointment).
- (3) An instrument of appointment—
  - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations; and
  - (b) may be contained in regulations.
- (4) Subject to this section and section 28B, regulations may make provision about determining remuneration under subsection (1) and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).

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- (5) Regulations may provide—
- (a) that determinations may be made by reference to any of the following—
    - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1);
    - (ii) scales, indices or other data of any description specified in the regulations;
  - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates;
  - (b) provide that any such determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
    - (i) if it is required to be published, on the date of publication;
    - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this section or section 28B to a determination is a reference to a determination of remuneration under subsection (1) of this section.

### **28B Part II remuneration: supplementary**

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 28A(1), he—
- (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.
- (3) Determinations may—
- (a) be made in more than one stage;
  - (b) be made by more than one determining authority;
  - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—

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- (a) to correct an error; or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
  - (a) is payable only if the determining authority is satisfied as to certain conditions; or
  - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Subject to sections 19(3) and 25(3), remuneration under section 28A may consist of payments by way of—
  - (a) salary;
  - (b) fees;
  - (c) allowances;
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,and may be determined from time to time.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later date.
- (8) The matters which may be reserved include in particular—
  - (a) the amount of remuneration to be paid in particular cases;
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
  - (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 28A(1) to which the determination will relate or of any category falling within that description;
  - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services;
  - (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons;
  - (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;
  - (e) the desirability of promoting services which are—
    - (i) economic and efficient; and
    - (ii) of an appropriate standard.
- (10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 28A(1), the reference in subsection (9)(a) to a category of services is a reference to the

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same category of services or to any other category of services falling within the same description.”

- (2) Sections 28A and 28B of the 1978 Act as substituted by this section have effect in relation to—
- (a) the making of determinations on or after the commencement of this section; and
  - (b) the variation or revocation on or after the commencement of this section of determinations whenever made,
- and in this subsection “determinations” means determinations under Part II of the 1978 Act of the remuneration to be paid to persons who provide services mentioned in section 28A(1).
- (3) Section 7(4) of the Health and Social Security Act 1984 and section 15(3) of the Health and Medicines Act 1988 (determinations of remuneration for services under Part II of the 1978 Act deemed to be valid) have effect in relation to Scotland as if—
- (a) after “inserted by this section” in section 7(4)(b) of the 1984 Act; and
  - (b) after “section 7 of the Health and Social Security Act 1984” in section 15(3) of the 1988 Act,
- there were inserted “and before the coming into force of section 57 of the Health Act 1999”.

### *Fraud*

## **58 Disqualification etc. of Part II practitioners**

- (1) For section 29 of the 1978 Act (disqualification of persons providing services) there is substituted—

### **“29 The NHS tribunal**

- (1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of “the NHS Tribunal” and that Schedule shall continue to have effect in relation to the Tribunal.
- (2) If the Tribunal receive from a Health Board representations that—
  - (a) a person who is included in any list meets either of the conditions for disqualification, or
  - (b) a person who has applied to be included in any list meets the second condition for disqualification,the Tribunal shall inquire into the case.
- (3) If the Tribunal receive such representations from any other person, they may inquire into the case.
- (4) Representations under this section shall be made—
  - (a) in the prescribed manner; and
  - (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.
- (5) Subsections (6) to (11) apply for the purposes of this group of sections.

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- (6) The first condition for disqualification is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.
- (7) The second condition for disqualification is that the person concerned—
- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit.
- (8) A “list” means—
- (a) a list of medical practitioners undertaking to provide general medical services;
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services;
  - (c) a list of dental practitioners undertaking to provide general dental services;
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services; or
  - (e) a list of persons undertaking to provide pharmaceutical services, prepared (in each case) under this Part.
- (9) “Health scheme” means—
- (a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales or Northern Ireland; and
  - (b) any prescribed scheme,
- and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases.
- (12) In this section and sections 29A to 29C—
- (a) “this group of sections” means this and those sections and Schedule 8; and
  - (b) the NHS Tribunal is referred to as the Tribunal.

### **29A The NHS Tribunal: supplementary**

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

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- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).
- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 29(8) on the practitioner’s behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 29(7)(a) occurring in the course of the provision of those services on his behalf.
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
- (5) In a fraud case, regulations may make provision (including provision modifying the effect of this Part) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.
- (6) For the purposes of this group of sections, in a fraud or efficiency case proceedings are finally concluded—
  - (a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;
  - (b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
  - (c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

### **29B Powers of NHS Tribunal**

- (1) Subsection (2) applies where the Tribunal are of the opinion—
  - (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
  - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
  - (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates; and

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- (b) may also make a national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 29(8) as that list.
- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
- (5) A disqualification under this section shall have effect when the case is finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.

### **29C Conditional disqualification etc**

- (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
  - (2) Conditions may be imposed by virtue of subsection (1) with a view to—
    - (a) removing any prejudice to the efficiency of the services in question; or
    - (b) preventing any acts or omissions within section 29(7)(a),
 (as the case may be).
  - (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
  - (4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.
  - (5) The Tribunal may by directions—
    - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);
    - (b) confer functions on any Health Board,
 for the purpose of or in connection with the imposition of any conditions by virtue of this section.
  - (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.”
- (2) For section 30 of the 1978 Act (removal of disqualification) there is substituted—

### **“30 Review etc. of disqualification**

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—



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- (a) if the disqualified or conditionally disqualified person requests a review; or
  - (b) in any other circumstances in which they consider it appropriate.
- (2) On a review under subsection (1), the Tribunal may—
  - (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect;
  - (b) make a disqualification conditional;
  - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (3) If any Health Board request a review of a conditional disqualification on the ground that—
  - (a) there has been a change in the circumstances by reference to which the conditions were imposed;
  - (b) the person concerned has failed to comply with the conditions; or
  - (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,the Tribunal shall review the conditional disqualification.
- (4) In the case of a person who is providing services in England and Wales or Northern Ireland, the reference in subsection (3) to a Health Board includes any corresponding authority under the provisions in force in England and Wales or Northern Ireland corresponding to this Part.
- (5) On a review under subsection (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (6) If, on a review under this section of a fraud case—
  - (a) there is a national disqualification which the Tribunal do not remove or make conditional;
  - (b) there is a national disqualification which is conditional and which the Tribunal make unconditional; or
  - (c) the Tribunal make a national disqualification,they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
  - (a) in the case of a conditional disqualification, make it unconditional or vary the conditions; or
  - (b) make any further disqualification or conditional disqualification;
  - (c) make a declaration of unfitness,if they are of the opinion that it would be unjust to do so.
- (8) A determination by the Tribunal under this section shall have effect—
  - (a) if no appeal is brought against it, at the end of the period for bringing an appeal;

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- (b) if an appeal is brought against it, when the appeal process is exhausted.
- (9) The Tribunal may hold an inquiry for the purposes of any review under this section.”

## 59 Recovery of charges and payments

- (1) After section 99 of the 1978 Act there is inserted—

### “99ZA Recovery of charges and payments

- (1) Where goods or services to which this section applies are provided and either—
  - (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or
  - (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services but that person is not entitled to, or to the benefit of, the payment,
 the amount mentioned in subsection (2) is recoverable as a debt from the person in question by the responsible authority.
- (2) That amount—
  - (a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction;
  - (b) in a case within subsection (1)(b), is the amount of the payment.
- (3) Where two or more persons are liable under section 99 or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.
- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
  - (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
  - (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
  - (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 99ZB, “responsible authority” means—
  - (a) in relation to the recovery of any charge under section 99 in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable;
  - (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;

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- (c) in a case within subsection (1)(b), the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies;
  - (b) the functions of any responsible authority under this section and section 99ZB,  
to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act;
  - (b) drugs and medicines provided in pursuance of this Act;
  - (c) the testing of sight;
  - (d) optical appliances;
  - (e) any other appliances provided in pursuance of this Act.
- (1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 99 in respect of the provision of goods or services to which section 99ZA applies; or
  - (b) any amount recoverable from him under section 99ZA,  
a notice (referred to in this section as a penalty notice) may be served on the person, by or on behalf of the responsible authority, requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.
- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
- (a) £100;
  - (b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority as a debt.
- (7) But a person is not liable by virtue of a penalty notice—
- (a) to pay at any time so much of any amount referred to in subsection (1) (a) or (b) for which he is jointly and severally liable with another as

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at that time has been paid, or ordered by a court to be paid, by that other; or

- (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

(8) Section 99ZA and this section apply to charges which may be made and recovered under section 20 of the National Health Service (Primary Care) Act 1997 as they apply to charges under this Act which may be recovered under section 99; and the reference to this Act in section 99ZA(7)(a) includes a reference to a pilot scheme (within the meaning of the 1997 Act).”

- (2) In section 105(3) of the 1978 Act (Parliamentary procedure for certain regulations) after “endowments)” there is inserted “or orders under section 99ZB(3)”.

### PART III

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous*

#### **60 Regulation of health care and associated professions**

- (1) Her Majesty may by Order in Council make provision—
  - (a) modifying the regulation of any profession to which subsection (2) applies, so far as appears to Her to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes,
  - (b) regulating any other profession which appears to Her to be concerned (wholly or partly) with the physical or mental health of individuals and to require regulation in pursuance of this section.
- (2) The professions referred to in subsection (1)(a) are—
  - (a) the professions regulated by the Pharmacy Act 1954, the Medical Act 1983, the Dentists Act 1984, the Opticians Act 1989, the Osteopaths Act 1993 and the Chiropractors Act 1994,
  - (b) the professions regulated by the Nurses, Midwives and Health Visitors Act 1997,
  - (c) the professions regulated by the Professions Supplementary to Medicine Act 1960,
  - (d) any other profession regulated by an Order in Council under this section.
- (3) The Professions Supplementary to Medicine Act 1960 and the Nurses, Midwives and Health Visitors Act 1997 are to cease to have effect.
- (4) Schedule 3 (which makes further provision about Orders under this section) is to have effect.

## **61 English and Scottish border provisions**

- (1) Her Majesty may by Order in Council provide for any functions to which subsection (2) applies which are specified in the Order, so far as exercisable in respect of the provision of services to persons in English border areas, to be exercisable (instead of any corresponding function to which subsection (4) applies) in respect of the provision of the services in question to persons in Scottish border areas who are specified in the Order.
- (2) This subsection applies to any functions under the 1977 Act, or Part I of the National Health Service (Primary Care) Act 1997, which are exercisable by the Secretary of State or any Health Authority or Primary Care Trust.
- (3) Her Majesty may by Order in Council provide for any functions to which subsection (4) applies which are specified in the Order, so far as exercisable in respect of the provision of services to persons in Scottish border areas, to be exercisable (instead of any corresponding function to which subsection (2) applies) in respect of the provision of the services in question to persons in English border areas who are specified in the Order.
- (4) This subsection applies to any functions under the 1978 Act, or Part I of the National Health Service (Primary Care) Act 1997, which are exercisable by the Scottish Ministers or any Health Board or NHS trust established under the 1978 Act.
- (5) In this section—
  - “English border area” means the area of any Health Authority adjacent to Scotland,
  - “Scottish border area” means the area of any Health Board adjacent to England.

### *Supplementary*

## **62 Regulations and orders**

- (1) Any power to make regulations or an order under this Act is exercisable by statutory instrument.
- (2) Directions under section 20 or 28 or Schedule 2, or by virtue of section 38(1)(b), are to be given by an instrument in writing.
- (3) Any such directions may be varied or revoked by subsequent directions under, or by virtue of, the same provision.
- (4) Subsections (4) and (5) of section 126 of the 1977 Act (supplementary provisions about subordinate legislation) apply in relation to any power conferred by this Act to make Orders in Council, orders or regulations, or to give directions mentioned in subsection (2), as they apply in relation to the powers which may be exercised as mentioned in subsection (4)(a) and (b) of that section.
- (5) The provision which may be made by virtue of subsection (4) of that section in regulations under section 20 or 31 or an Order in Council under section 61 includes provision amending or repealing any enactment, instrument or document.

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*Status: This is the original version (as it was originally enacted).*

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- (6) Subject to the following subsections, a statutory instrument containing subordinate legislation under this Act is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Subsection (6) does not apply to—
  - (a) an order under section 63 which contains only provision for or in connection with the transfer of any property, rights or liabilities, or
  - (b) an order under section 67.
- (8) No order is to be made under section 37(10) unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (9) No recommendation is to be made to Her Majesty to make an Order in Council under section 60 unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (10) But if any provision made by an Order in Council under that section would, if it were included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, no recommendation is to be made to Her Majesty to make the Order unless a draft—
  - (a) has been laid before, and approved by resolution of, each House of Parliament, and
  - (b) has been laid before, and approved by resolution of, the Scottish Parliament.
- (11) No recommendation is to be made to Her Majesty to make an Order in Council under section 61 unless a draft—
  - (a) has been laid before, and approved by resolution of, each House of Parliament, and
  - (b) has been laid before, and approved by resolution of, the Scottish Parliament.

### **63 Supplementary and consequential provision etc**

- (1) The Secretary of State may by order make—
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
 as he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The provision which may be made under subsection (1) includes provision amending or repealing any enactment, instrument or document.

### **64 Interpretation**

In this Act—

- “the 1977 Act” means the National Health Service Act 1977,
- “the 1978 Act” means the National Health Service (Scotland) Act 1978,
- “the 1990 Act” means the National Health Service and Community Care Act 1990,
- “the Commission” means the Commission for Health Improvement,
- “enactment” includes an enactment whenever passed or made,
- “NHS trust” has the same meaning—

- (a) in Part I of this Act as in the 1977 Act,
- (b) in Part II of this Act as in the 1978 Act.

*Final provisions*

**65 Amendments and repeals**

- (1) Schedule 4 (amendments of enactments) is to have effect.
- (2) The repeals set out in Schedule 5 (which include the repeal of an enactment which is spent) are to have effect.

**66 Devolution**

- (1) For the purposes of the Scotland Act 1998, any provision of this Act which extends to Scotland is to be taken to be a pre-commencement enactment within the meaning of that Act; but this subsection does not apply to section 22.
- (2) The power of a Minister of the Crown under section 67 to appoint a day for any of the following provisions to come into force in relation to Wales—
  - (a) sections 1 to 8 and 10 to 18 and Schedule 1,
  - (b) sections 26 to 32,
  - (c) section 65(1) and Schedule 4, so far as concerns the following provisions of that Schedule: paragraphs 1 to 16, 23 to 26, 27(a), 28 to 35, 37, 38 (except sub-paragraph (2)(b) and (d)), 39, 40, 71, 72, 74, 75, 76(b), 77 to 80, 81 (except sub-paragraph (2)(b)), 83, 84, 85 (except sub-paragraph (2)(a)) and 87 to 90, is exercisable instead by the National Assembly for Wales.
- (3) In Schedule 5 to the Government of Wales Act 1998 (bodies and offices covered by section 74), after paragraph 12 there is inserted—

“12A The Commission for Health Improvement.”
- (4) The National Assembly for Wales (Transfer of Functions) Order 1999 is amended as follows; and those amendments are to have effect as if made by an Order in Council under section 22 of the Government of Wales Act 1998 (transfer of Ministerial functions).
- (5) In Schedule 1—
  - (a) in the entry for the 1977 Act, after paragraph (c) there is inserted—
    - “(cc) section 43C;
    - (ccc) sections 46 to 49E”;
  - (b) at the end of the entry for the 1990 Act, there is inserted—

“The references above to paragraph 1 of Schedule 3 are references to that paragraph before the amendments made by section 17 of the Health Act 1999.

The Treasury consent requirement under paragraph 8 of that Schedule (inserted by Schedule 4 to the Health Act 1999), so far as relating to the matters referred to in paragraph (b) of that paragraph, shall continue in effect.”;
  - (c) after the entry for the National Minimum Wage Act 1998 there is inserted—

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*Status: This is the original version (as it was originally enacted).*

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“In the Health Act 1999—

- (a) Part I and Schedule 4, except sections 20(1), 22 and 33 to 38 and Schedule 2 (other than paragraph 2);
- (b) section 63, so far as it relates to any of the provisions which, by virtue of section 66(2), may be brought into force by the Assembly”.

(6) In Schedule 2, after the entry for the Audit Commission Act 1998, there is inserted—

“Health Act 1999 (c. 8)

The functions of the Secretary of State under section 20(1) shall be exercisable only with the agreement of the Assembly.

The functions of the Secretary of State under paragraphs 4 to 7 of Schedule 2 shall be exercisable only after consultation with the Assembly.”

## 67 Commencement

- (1) The preceding provisions of this Act (including the Schedules) are to come into force on such day as the Secretary of State may by order appoint.
- (2) Different days may be appointed under this section for different purposes.
- (3) Subsection (1) does not apply to the repeal of section 10 of the Professions Supplementary to Medicine Act 1960 (power to extend or restrict application of Act), which comes into force on 1st July 1999 or, if later, on the day on which this Act is passed.
- (4) Subsection (1) does not apply to section 66, of which—
  - (a) subsections (1) and (3) to (6) come into force on the day on which this Act is passed,
  - (b) subsection (2) comes into force on 1st July 1999 or, if later, the day on which this Act is passed.

## 68 Extent

- (1) Subject to the following provisions—
  - (a) Part I extends only to England and Wales,
  - (b) Part II extends only to Scotland, and
  - (c) this Part extends to Northern Ireland (as well as to England and Wales and Scotland).
- (2) The amendment or repeal of an enactment, or a power to amend or repeal an enactment, which extends to any part of the United Kingdom extends also to that part.
- (3) Sections 22 and 25 extend to Scotland and Northern Ireland.
- (4) Sections 33 to 38 extend to Scotland and Northern Ireland.
- (5) The Secretary of State may by order provide that so much of this Act as extends to England and Wales is to apply to the Isles of Scilly with such modifications (if any) as are specified in the order; but otherwise this Act does not extend there.



**69 Short title**

This Act may be cited as the Health Act 1999.