



# Health and Social Care Act 2001

## 2001 CHAPTER 15

### PART 1

#### NATIONAL HEALTH SERVICE

##### *Health service funding*

#### **1 Determination of allotments to and resource limits for Health Authorities and Primary Care Trusts**

- (1) Part 4 of the National Health Service Act 1977 (c. 49) (property and finance) shall be amended as follows.
- (2) In section 97 (payments to Health Authorities and Special Health Authorities), after subsection (3) there shall be inserted—

“(3AA) In determining the amount to be allotted for any year to a Health Authority under subsection (3) above (or in varying the amount under subsection (5) below), the Secretary of State may take into account (in whatever way he thinks appropriate)—

  - (a) the Authority’s general Part 2 expenditure, and
  - (b) expenditure which would have been the Authority’s general Part 2 expenditure but for an order under section 103(1) below,

during any period he thinks appropriate (or such elements of that expenditure as he thinks appropriate).”
- (3) In section 97AA (resource limits for Health Authorities and Special Health Authorities), after subsection (2) there shall be inserted—

“(2A) But in specifying an amount for a Health Authority under subsection (1) above (or in varying the amount under subsection (6) below), the Secretary of State may take into account (in whatever way he thinks appropriate)—

  - (a) any such use of resources, and

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- (b) the use of any resources which would have been for the purpose of the Authority's general Part 2 expenditure but for an order under section 103(1) below,  
during any period he thinks appropriate (or such elements of such uses of resources as he thinks appropriate)."
- (4) In section 97C (public funding of Primary Care Trusts), after subsection (1) there shall be inserted—
- “(1A) In determining the amount to be allotted for any year to a Primary Care Trust under subsection (1)(b) above (or in varying the amount under subsection (3) below), the Authority may take into account, in whatever way they think appropriate, but subject to any directions, the distribution within their area of—
- (a) their general Part 2 expenditure, and
- (b) expenditure which would have been their general Part 2 expenditure but for an order under section 103(1) below,  
during any period the Authority think appropriate (or such elements of that expenditure as they think appropriate).”
- (5) In section 97E (resource limits for Primary Care Trusts), after subsection (2) there shall be inserted—
- “(2A) But in specifying an amount for a Primary Care Trust under subsection (1) above (or in varying the amount under subsection (4) below), the Health Authority may take into account, in whatever way they think appropriate, but subject to any directions, the distribution within their area of—
- (a) their use of resources for the purpose of their general Part 2 expenditure, and
- (b) the use of any resources which would have been for the purpose of their general Part 2 expenditure but for an order under section 103(1) below,  
during any period they think appropriate (or such elements of such uses of resources as they think appropriate).”

#### **Commencement Information**

- II** S. 1 partly in force; s. 1 not in force at Royal Assent see s. 70(2); s. 1 in force for E. at 22.10.2001 by S.I. 2001/3619, arts. 1(3), 2(1) (subject to art. 2(2))

## **2 Payments relating to past performance**

- (1) Section 97 of the 1977 Act (means of meeting expenditure of Health Authorities out of public funds) shall be amended as follows.
- (2) For subsection (3C) there shall be substituted—
- “(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 increase the initial amount by a further sum if it appears to him that over a period notified to the Authority—

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- (a) they satisfied any objectives notified to them as objectives to be met in performing their functions, or
  - (b) they performed well against any criteria notified to them as criteria relevant to the satisfactory performance of their functions (whether or not the method of measuring their performance against those criteria was also notified to them).”
- (3) In subsection (3D), for “Health Authorities” there shall be substituted “ the Health Authority ”.

#### Commencement Information

**I2** S. 2 partly in force; s. 2 not in force at Royal Assent see s. 70(1); s. 2 in force for E. at 30.9.2002 by S.I. 2002/2363, art. 2(1) (subject to art. 2(2))

### 3 Supplementary payments to NHS trusts and Primary Care Trusts

- (1) After paragraph 5 of Schedule 3 to the National Health Service and Community Care Act 1990 (c. 19) (which makes financial provision about NHS trusts) there shall be inserted—

#### “Supplementary payments

- 5A (1) If the Secretary of State considers it appropriate to do so, he may make a payment to the trust.
- (2) The payment may be subject to such conditions as he thinks fit to impose, including conditions as to repayment.”
- (2) In section 9 of the 1990 Act (financial provisions relating to NHS trusts), in subsection (9), after paragraph (c) there shall be inserted—
- “(ca) the making of supplementary payments to them;”.
- (3) In section 97C of the 1977 Act (public funding of Primary Care Trusts), after subsection (5) there shall be inserted—
- “(5A) If the Secretary of State considers it appropriate to do so, he may make a supplementary payment to a Primary Care Trust, which may be subject to such conditions as he thinks fit to impose, including conditions as to repayment.”
- (4) In section 97D of the 1977 Act (financial duties of Primary Care Trusts), in subsection (1)(b), after “section” there shall be inserted “ , apart from subsection (5A) ”.

#### Commencement Information

**I3** S. 3 partly in force; s. 3 not in force at Royal Assent, see s. 70(2); s. 3 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2)); s. 3(1)(2) in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

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## 4 Public-private partnerships

After section 96B of the 1977 Act there shall be inserted—

“ *Companies*

### 96C Public-private partnerships

- (1) The Secretary of State may form, or participate in forming, companies to provide facilities or services for—
  - (a) persons or bodies exercising functions, or otherwise providing services, under this Act; or
  - (b) NHS trusts.
- (2) The Secretary of State may, with a view to securing or facilitating the provision by companies of facilities or services for persons or bodies falling within subsection (1)(a) or (b)—
  - (a) invest in the companies (whether by acquiring assets, securities or rights or otherwise), or
  - (b) provide loans and guarantees and make other kinds of financial provision to or in respect of them,
 or both.
- (3) For the purposes of subsections (1) and (2) above it is immaterial that the facilities or services provided or to be provided by the companies in question are not provided or to be provided—
  - (a) only to persons or bodies falling within subsection (1)(a) or (b); or
  - (b) to persons or bodies falling within subsection (1)(a) only in their capacities as persons or bodies such as are mentioned in that provision.
- (4) In this section—
 

“companies” means companies within the meaning of the Companies Act 1985 (c. 6);

“facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus.
- (5) This section is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of this section.”

#### Commencement Information

**I4** S. 4 partly in force; s. 4 not in force at Royal Assent see s. 70(2); s. 4 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2))

## 5 Income generation

In section 7 of the Health and Medicines Act 1988 (c. 49) (additional powers for financing Health Service), after subsection (7) there shall be inserted—

“(7A) The power specified in paragraph (g) of subsection (2) above includes power for the Secretary of State—

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- (a) to form, or participate in the forming of, companies,
- (b) to invest in companies (whether by acquiring assets, securities or rights or otherwise), and
- (c) to provide loans and guarantees and make other kinds of financial provision to or in respect of companies,

where it appears to him that to do so is calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred by that subsection.

(7B) In subsection (7A) above “companies” means companies within the meaning of the Companies Act 1985 (c. 6); and that subsection is without prejudice to—

- (a) the generality of paragraph (g) of subsection (2) above, and
- (b) any powers of the Secretary of State exercisable otherwise than by virtue of this section.”

#### Commencement Information

- I5** S. 5 wholly in force at 12.9.2002; s. 5 not in force at Royal Assent, see s. 70(2); s. 5 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#); s. 5 in force for E. at 12.9.2002 by [S.I. 2002/2363](#), [art. 3](#)

#### *Terms of employment of health service employees*

### 6 Terms and conditions of employment by health service bodies

- (1) In Schedule 5 to the 1977 Act (Health Authorities), in paragraph 10(1) (staff)—
- (a) for “at such remuneration and on such conditions of service” there shall be substituted “ and pay its officers such remuneration and allowances, and employ them on such other terms and conditions, ”; and
  - (b) for “may contain provision—” there shall be substituted “ may make provision with respect to any matter connected with the employment by an authority of its officers, including in particular provision— ”.
- (2) In Schedule 5A to the 1977 Act (Primary Care Trusts)—
- (a) for paragraph 8 there shall be substituted—

- “8
- (1) A Primary Care Trust may employ such officers as it thinks fit.
  - (2) Subject to sub-paragraph (3) below, a trust may—
    - (a) pay its officers such remuneration and allowances, and
    - (b) employ them on such other terms and conditions, as it thinks fit.
  - (3) A trust shall—
    - (a) in exercising its powers under sub-paragraph (2) above, and
    - (b) otherwise in connection with the employment of its officers, act in accordance with regulations and any directions given by the Secretary of State.

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- (4) Before making any regulations under sub-paragraph (3) above, the Secretary of State shall consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.”;
- and
- (b) in paragraph 11 (remuneration and pensions etc), sub-paragraph (2) (remuneration and allowances payable to officers of a Primary Care Trust) shall accordingly be omitted.
- (3) In paragraph 16 of Schedule 2 to the 1990 Act (general powers of National Health Service Trusts)—
- (a) sub-paragraph (1)(d) (general power to employ staff) shall be omitted; and
- (b) after sub-paragraph (2) there shall be inserted—
- “(3) An NHS trust may employ such staff as it thinks fit.
- (4) Subject to sub-paragraph (5) below, an NHS trust may—
- (a) pay its staff such remuneration and allowances, and
- (b) employ them on such other terms and conditions, as it thinks fit.
- (5) An NHS trust shall—
- (a) in exercising its powers under sub-paragraph (4) above, and
- (b) otherwise in connection with the employment of its staff, act in accordance with regulations and any directions given by the Secretary of State.
- (6) Before making any regulations under sub-paragraph (5) above, the Secretary of State shall consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations.”

#### Commencement Information

**I6** S. 6 partly in force; s. 6 not in force at Royal Assent see s. 70(2); s. 6 in force for E. at 1.10.2001 by S.I. 2001/3294, arts. 1(3), 2

#### *Local authority scrutiny of health service provision*

### 7 Functions of overview and scrutiny committees

- (1) In section 21 of the Local Government Act 2000 (c. 22) (overview and scrutiny committees), in subsection (2), after paragraph (e) there shall be inserted—
- “(f) in the case of the overview and scrutiny committee or committees of an authority to which section 7 of the Health and Social Care Act 2001 applies, to review and scrutinise, in accordance with regulations under that section, matters relating to the health service (within the meaning of that section) in the authority’s area, and to make reports and recommendations on such matters in accordance with the regulations.”

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- (2) This section applies to—
- (a) any county council,
  - (b) any county borough council,
  - (c) the council of any district comprised in an area for which there is no county council,
  - (d) any London borough council.
- (3) Regulations may, in relation to an overview and scrutiny committee of an authority to which this section applies, make provision—
- (a) as to matters relating to the health service in the authority’s area which the committee may review and scrutinise,
  - (b) as to matters relating to the health service in the authority’s area on which the committee may make reports and recommendations to local NHS bodies,
  - (c) as to matters on which local NHS bodies must consult the committee in accordance with the regulations,
  - (d) as to information which local NHS bodies must provide to the committee,
  - (e) as to information which may not be disclosed by a local NHS body to the committee,
  - (f) requiring any officer of a local NHS body to attend before the committee to answer questions.
- (4) For the purposes of any provision of subsection (3) “local NHS body”, in relation to an overview and scrutiny committee, means a Health Authority, Primary Care Trust or NHS trust specified for those purposes by regulations in relation to the committee.
- (5) In this section—
- “the health service” has the same meaning as in the 1977 Act, except that it includes services provided in pursuance of section 31 arrangements in relation to the exercise of health-related functions of a local authority;
- “section 31 arrangements” means arrangements under regulations under section 31 of the Health Act 1999 (c. 8) (arrangements between NHS bodies and local authorities).

#### **Commencement Information**

**I7** S. 7 partly in force; s. 7 in force for certain purposes at 11.5.2001, see s. 70(2)

## **8 Joint overview and scrutiny committees etc.**

- (1) In this section, “relevant functions”—
- (a) in relation to a local authority operating executive arrangements under Part 2 of the Local Government Act 2000 (c. 22) (“the 2000 Act”), are functions which are, or, but for regulations under this section, would be, exercisable under section 21(2)(f) of that Act by an overview and scrutiny committee of that authority, and
  - (b) in relation to a local authority operating alternative arrangements under that Part, are any corresponding functions which are, or, but for regulations under this section, would be, exercisable by a committee of the authority falling within paragraph (b) of section 32(1) of that Act;

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and references to an overview and scrutiny committee include references to a committee falling within that paragraph.

- (2) Regulations may make provision under which—
- (a) two or more local authorities may appoint a joint committee of those authorities (a “joint overview and scrutiny committee”) and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the committee;
  - (b) a local authority may arrange for relevant functions in relation to that authority to be exercisable by an overview and scrutiny committee of another local authority;
  - (c) a county council for any area may arrange for one or more of the members of an overview and scrutiny committee of the council for a district comprised in that area to be appointed as—
    - (i) a member of an overview and scrutiny committee of the county council or another local authority, for the purposes of relevant functions of the committee in relation to the county council, or
    - (ii) a member of an overview and scrutiny committee of the county council, for the purposes of relevant functions of the committee in relation to another local authority.
- (3) The regulations may in particular—
- (a) provide for arrangements to be made only in specified circumstances, or subject to specified conditions or limitations;
  - (b) in relation to joint overview and scrutiny committees, make provision applying, or corresponding to, any provision of section 21(4) and (6) to (15) of the 2000 Act or section 9 of, and Schedule 1 to, this Act, with or without modifications.
- (4) The regulations may require, or enable the relevant authority to direct, a local authority—
- (a) to make arrangements of any description within subsection (2), and
  - (b) to comply with such requirements in connection with the arrangements as may be specified in the regulations or as the relevant authority may direct.
- (5) In section 7(3) and (4), references to an overview and scrutiny committee include references to a joint overview and scrutiny committee.
- (6) In subsection (2)(c), references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority.
- (7) Section 21(4) of the 2000 Act does not apply to the discharge of functions by virtue of arrangements under regulations under subsection (2).
- (8) Section 21(10) of the 2000 Act does not apply to persons who are members of an overview and scrutiny committee by virtue of arrangements under regulations under subsection (2)(c).
- (9) In this section “local authority” means a county council, county borough council, district council or London borough council.



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#### Commencement Information

**I8** S. 8 partly in force; s. 8 in force for certain purposes at 11.5.2001, see s. 70(2)

### 9 Overview and scrutiny committees: exempt information

- (1) This section applies in relation to any item of business at a meeting of an overview and scrutiny committee which is an item relating to functions of the committee under section 21(2)(f) of the Local Government Act 2000 (c. 22).
- (2) In relation to any such item, information is exempt information for the purposes of section 100A(4) of the Local Government Act 1972 (c. 70) (exclusion of public from meetings to prevent disclosure of exempt information) if it falls within any of the descriptions of information which are for the time being specified in Part 1 of Schedule 1 to this Act, but subject to any qualifications contained in Part 2 of that Schedule.
- (3) Part 3 of that Schedule has effect for the interpretation of that Schedule.
- (4) The relevant authority may by order vary that Schedule—
  - (a) by adding any description or other provision in connection with a relevant body or services provided by, or under arrangements made by, a relevant body, or
  - (b) by deleting or varying any description or other provision for the time being specified or contained in that Schedule.
- (5) The relevant authority may exercise the power conferred by subsection (4) by amending any Part of Schedule 1, with or without amendment of any other Part.
- (6) In this section and Schedule 1 “relevant body” means a body in respect of which overview and scrutiny committees exercise functions under regulations under section 7.

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

**C1** S. 9 applied (E.) (1.1.2003) by [The Local Authority \(Overview and Scrutiny Committees Health Scrutiny Functions\) Regulations 2002 \(S.I. 2002/3048\)](#), [reg. 7\(4\)](#)

#### Commencement Information

**I9** S. 9 partly in force; s. 9 in force for certain purposes at 11.5.2001, see s. 70(2)

VALID FROM 01/01/2003

### 10 Application to the City of London

- (1) The Common Council may establish a committee which has, in relation to the City of London, the powers which under section 21(2)(f) of the Local Government Act 2000 a local authority’s overview and scrutiny committee has in relation to the authority’s area.

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- (2) Sections 7(3) to (5), 8 and 9 and Schedule 1 apply as if such a committee were an overview and scrutiny committee and as if the Common Council were a London borough council.
- (3) Section 21 of the Local Government Act 2000 applies as if such a committee were an overview and scrutiny committee and as if the Common Council were a local authority, but with the omission—
- (a) of subsections (1) to (3), (5) and (9),
  - (b) in subsection (8), of “Executive”,
  - (c) in subsection (11), of paragraph (b), and
  - (d) in subsection (13)(a), of the reference to members of the executive.
- (4) In the provisions applied by subsections (2) and (3), references to functions under any provision of section 21(2) of the 2000 Act are, in the case of the committee established under subsection (1), references to its functions under that subsection.
- (5) “The Common Council” means the Common Council of the City of London.

VALID FROM 01/01/2003

*Public involvement and consultation*

**11 Public involvement and consultation**

- (1) It is the duty of every body to which this section applies to make arrangements with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on—
- (a) the planning of the provision of those services,
  - (b) the development and consideration of proposals for changes in the way those services are provided, and
  - (c) decisions to be made by that body affecting the operation of those services.
- (2) This section applies to—
- (a) Health Authorities,
  - (b) Primary Care Trusts, and
  - (c) NHS trusts.
- (3) For the purposes of this section a body is responsible for health services—
- (a) if the body provides or is to provide those services to individuals, or
  - (b) if another person provides, or is to provide, those services to individuals—
    - (i) at that body’s direction,
    - (ii) on its behalf, or
    - (iii) in accordance with an agreement or arrangements made by that body with that other person;
 and references in this section to the provision of services include references to the provision of services jointly with another person.

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VALID FROM 01/09/2003

### *Independent advocacy services*

## **12 Independent advocacy services**

After section 19 of the 1977 Act there shall be inserted—

### **“19A Independent advocacy services**

- (1) It is the duty of the Secretary of State to arrange, to such extent as he considers necessary to meet all reasonable requirements, for the provision of independent advocacy services.
- (2) “Independent advocacy services” are services providing assistance (by way of representation or otherwise) to individuals making or intending to make—
  - (a) a complaint under a procedure operated by a health service body or independent provider,
  - (b) a complaint to the Health Service Commissioner for England or the Health Service Commissioner for Wales,
  - (c) a complaint of a prescribed description which relates to the provision of services as part of the health service and—
    - (i) is made under a procedure of a prescribed description, or
    - (ii) gives rise, or may give rise, to proceedings of a prescribed description.
- (3) In subsection (2)—

“health service body” means a body which, under section 2(1) or (2) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England or the Health Service Commissioner for Wales;

“independent provider” means a person who, under section 2B(1) or (2) of that Act, is subject to such investigation.
- (4) The Secretary of State may make such other arrangements as he thinks fit for the provision of assistance to individuals in connection with complaints relating to the provision of services as part of the health service.
- (5) In making arrangements under this section the Secretary of State must have regard to the principle that the provision of services under the arrangements should, so far as practicable, be independent of any person who is the subject of a relevant complaint or is involved in investigating or adjudicating on such a complaint.
- (6) The Secretary of State may make payments to any person in pursuance of arrangements under this section.”

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### *Intervention powers*

## 13 Intervention orders

(1) After section 84 of the 1977 Act there shall be inserted—

### **“84A Intervention orders**

- (1) If the Secretary of State—
- (a) is of the opinion that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and
  - (b) is satisfied that it is appropriate for him to intervene under this section, he may make an order under this section in respect of the body (an “intervention order”).
- (2) The bodies to which this section applies are—
- (a) Health Authorities,
  - (b) Special Health Authorities,
  - (c) NHS trusts,
  - (d) Primary Care Trusts.
- (3) An intervention order may make any provision authorised by section 84B below (including any combination of such provisions).

### **84B Intervention orders: effect**

- (1) In this section—
- (a) “member” means a member of a Health Authority, Special Health Authority or Primary Care Trust, or a member of the board of directors of an NHS trust,
  - (b) “employee member” means a member of a Health Authority, Special Health Authority or Primary Care Trust who is an officer of the Authority or Trust, or an executive director of an NHS trust.
- (2) An intervention order may provide for the removal from office of—
- (a) all the members, or
  - (b) those specified in the order,
- and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).
- (3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—
- (a) all the members, or
  - (b) those specified in the order,
- and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).

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- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
- (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified,
- and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.
- (6) If the person referred to in subsection (5)(a) is a body referred to in section 84A(2) above, the functions of that body include the performance of the functions specified in the directions under subsection (5); and, if that body is a Health Authority, are primary functions of the Authority.
- (7) Subsection (8) applies in relation to any provision—
- (a) in this Act, the National Health Service and Community Care Act 1990 (c. 19), or the Health and Social Care Act 2001; or
  - (b) in any order or regulations made, or directions given, under any of those Acts,
- which relates to the membership of the body to which an intervention order relates (or of its board of directors, in the case of an NHS trust), or relates to its procedure.
- (8) If the Secretary of State considers it appropriate, the intervention order may, in relation to any such provision specified in the order, provide—
- (a) that it is not to apply in relation to the body while the order remains in force; or
  - (b) that it is to apply in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.”
- (2) In section 126 of the 1977 Act (orders, regulations and directions), in subsection (1), after “section 28EE(2)” there shall be inserted “ or section 84A ”.

#### **Commencement Information**

**I10** S. 13 partly in force; s. 13 not in force at Royal Assent see s. 70(2); s. 13 in force for E. at 1.8.2001 by S.I. 2001/2804, arts. 1(3), 2(1)(a) (subject to art. 2(2))

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### *Abolition of Medical Practices Committee and National Health Service Tribunal*

#### **14 Abolition of Medical Practices Committee**

- (1) The Medical Practices Committee is abolished.
- (2) On the date this section comes into force—
  - (a) all property in the possession of the Medical Practices Committee, and
  - (b) all rights and liabilities to which the Medical Practices Committee is entitled or subject immediately before that date,
 shall be transferred to the Secretary of State.
- (3) In Schedule 10 to the 1977 Act (additional provisions as to sale of medical practices)—
  - (a) for each reference to “the Medical Practices Committee” and “the Committee”, and for “Medical Practices Committee” in the heading preceding paragraph 1, there shall be substituted “ the Secretary of State ”,
  - (b) in paragraph 1(3)—
    - (i) for “they are” there shall be substituted “ he is ”, and
    - (ii) for “they shall” there shall be substituted “ he shall ”, and
  - (c) in paragraph 1(7), for “them”—
    - (i) where it first occurs there shall be substituted “ the Secretary of State ”, and
    - (ii) where it occurs the second time there shall be substituted “ him ”.
- (4) A certificate issued by the Medical Practices Committee under paragraph 1(3) of Schedule 10 to the 1977 Act before the commencement of this section shall continue to have effect from then on as if it had been issued by the Secretary of State.

#### **15 Vacancies for medical practitioners**

- (1) Section 29B of the 1977 Act (which provides for regulations about the filling of vacancies for general practitioners) shall be amended as follows.
- (2) In subsection (2)—
  - (a) for paragraphs (a) and (b) there shall be substituted—
    - “(a) the determination by a Health Authority of whether there is, or will be, a vacancy for a medical practitioner in a locality;
    - (b) any consultation which a Health Authority must undertake before doing so;”,
  - and
  - (b) in paragraph (c), for “the Medical Practices Committee” there shall be substituted “ a Health Authority ”.
- (3) In subsection (3)(b), for “Secretary of State” there shall be substituted “ FHSAA ”.

#### **Commencement Information**

**I11** S. 15 partly in force; s. 15 not in force at Royal Assent, see s. 70(2); s. 15 (except s. 15(3) in so far as it applies to W.) in force for certain purposes at 8.3.2002 and s. 15(1)(2) wholly in force and s. 15(3)

**Status:** Point in time view as at 30/09/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Health and Social Care Act 2001, Part 1. (See end of Document for details)

in force for E. at 1.4.2002 by S.I. 2002/1095, art. 2(2) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, arts. 2, 3)

## 16 Abolition of NHS Tribunal

The National Health Service Tribunal is abolished.

### Commencement Information

**I12** S. 16 wholly in force at 26.8.2002; s. 16 not in force at Royal Assent, see s. 70(2); s. 16 in force for E. at 14.12.2001 by S.I. 2001/3738, art. 2(4), Sch. 2 (subject to art. 2(5)(6)); s. 16 in force for W. at 26.8.2002 by S.I. 2002/1919, art. 2(1), Sch. Pt. I (subject to art. 2(2)(3))

*General and personal medical services, general dental services,  
general ophthalmic services and pharmaceutical services*

## 17 Remuneration of general medical practitioners

In section 29 of the 1977 Act (which makes provision for the arrangements for general medical services), subsection (4) (which prevents general medical practitioners' remuneration from consisting wholly or mainly of a fixed salary except in special circumstances) shall cease to have effect.

### Commencement Information

**I13** S. 17 partly in force; s. 17 not in force at Royal Assent see s. 70(2); s. 17 in force for E. for certain purposes at 14.12.2001 by S.I. 2001/3738, arts. 1(3), 2(3), Sch. 1 Pt. III

## 18 Out of hours medical services

(1) This section applies to arrangements made by—

- (a) a medical practitioner, in connection with any obligation of his to provide general medical services under arrangements under section 29 of the 1977 Act, or
- (b) any person (the “participant”), in connection with any obligation of his to provide personal medical services under section 28C arrangements, under which a person undertakes, or persons undertake, to provide out of hours services.

(2) Regulations may make provision—

- (a) for such arrangements to be made, in the case of a service provider of a specified description, only if the service provider is approved in accordance with the regulations;
- (b) for approval to be given, as respects out of hours services provided for persons in the area of any Health Authority, by that Authority or by another Health Authority;
- (c) as to steps to be taken by any Health Authority for making available information about approvals which have been given;
- (d) as to the procedure for applying for approval;

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2001, Part 1. (See end of Document for details)*

- (e) as to requirements (including requirements imposed by a Health Authority) with which an approved service provider must comply;
- (f) as to the suspension or withdrawal of any approval;
- (g) as to circumstances in which, while the arrangements are in force, there may be transferred to the service provider—
  - (i) liabilities or obligations of the medical practitioner by virtue of Part 2 of the 1977 Act, or
  - (ii) (as the case may be) liabilities or obligations of the participant by virtue of the section 28C arrangements;
- (h) as to criteria to be applied in making decisions under the regulations;
- (i) as to appeals against decisions of Health Authorities under the regulations.

(3) In this section—

“medical practitioner” has the same meaning as in the 1977 Act;

“out of hours period” means any period specified by the regulations as such a period;

“out of hours services” means general medical services or personal medical services (as the case may be) provided during part or all of an out of hours period;

“section 28C arrangements” means arrangements made under section 28C of the 1977 Act;

“service provider”, in relation to arrangements to which this section applies, means the person or persons undertaking to provide out of hours services under the arrangements.

#### Commencement Information

**I14** S. 18 partly in force; s. 18 in force for certain purposes at 11.5.2001, see s. 70(2); s. 18 in force for E. at 12.9.2002 by S.I. 2002/2363, art. 3

## 19 Enhanced criminal record certificates

(1) Section 115 of the Police Act 1997 (c. 50) (enhanced criminal record certificates) shall be amended as follows.

(2) In subsection (2)—

- (a) the word “or” after paragraph (a) shall be omitted; and
- (b) at the end of paragraph (b) there shall be inserted “or
  - (c) in relation to an individual to whom subsection (6C), (6D) or (6E) applies.”

(3) After subsection (6B) there shall be inserted—

“(6C) This subsection applies to an individual included or seeking inclusion in any list prepared for the purposes of Part 2 of the National Health Service Act 1977 (c. 49) of—

- (a) medical practitioners undertaking to provide general medical services,
- (b) persons undertaking to provide general dental services,
- (c) persons undertaking to provide general ophthalmic services, or



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- (d) persons undertaking to provide pharmaceutical services.
- (6D) This subsection applies to an individual who is—
- (a) a director of a body corporate included or seeking inclusion in a list referred to in subsection (6C)(b) or (c),
  - (b) a member of a limited liability partnership included or seeking inclusion in a list referred to in subsection (6C)(c),
  - (c) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership) included or seeking inclusion in a list referred to in subsection (6C)(d).
- (6E) This subsection applies to an individual included or seeking inclusion in any list prepared by a Health Authority under—
- (a) section 28DA of the National Health Service Act 1977 or section 8ZA of the National Health Service (Primary Care) Act 1997 (lists of persons who may perform personal medical services or personal dental services), or
  - (b) section 43D of the 1977 Act (supplementary lists),
- and to an individual included or seeking inclusion in any list corresponding to a list referred to in paragraph (a) prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (which provides for the application of enactments in relation to local pharmaceutical services).”

#### Commencement Information

**I15** S. 19 wholly in force at 1.7.2002; s. 19 not in force at Royal Assent, see s. 70(2); s. 19 in force for E. at 1.4.2002 by S.I. 2002/1095, art. 2(3), Sch. (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 19 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

## 20 Medical, dental, ophthalmic and pharmaceutical etc. lists

- (1) The 1977 Act shall be amended as follows.
- (2) In section 29A (medical lists), after subsection (4) there shall be inserted—
  - “(4A) Regulations may make provision in relation to the supply to a Health Authority, by a medical practitioner who is included in their medical list (or, as respects paragraph (a), by arrangement with him), of—
    - (a) information of a prescribed description; and
    - (b) a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act.”
- (3) In section 29B (vacancies for medical practitioners)—
  - (a) after subsection (2) there shall be inserted—
    - “(2A) The regulations may also make provision in relation to—
      - (a) grounds on which a Health Authority may, or must, refuse to nominate or approve a medical practitioner for appointment

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- to fill a vacancy (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H(2) below);
- (b) information which must be supplied to a Health Authority by a medical practitioner seeking such nomination or approval (or by arrangement with him);
- (c) the supply to a Health Authority by such a medical practitioner of a certificate of a kind referred to in section 29A(4A)(b) above; and
- (d) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about such medical practitioners, and refusals by the Health Authority to nominate or approve them.”;
- (b) in subsection (3), after paragraph (a) there shall be inserted—
- “(aa) grounds on which a Health Authority may defer a decision whether or not to nominate or approve a medical practitioner for appointment to fill a vacancy;”;
- (c) after subsection (3) there shall be inserted—
- “(3A) If regulations made by virtue of subsection (2A)(a) provide that a Health Authority may refuse to nominate or approve a medical practitioner for appointment to fill a vacancy, they must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”
- (4) In section 36 (regulations about general dental services)—
- (a) in subsection (1)(b), for “(2) and (3)” there shall be substituted “ (2) to (7) ”,
- (b) after subsection (1) there shall be inserted—
- “(1A) The regulations may include provision as to—
- (a) information which must be supplied to a Health Authority by, or by arrangement with, a dental practitioner or dental corporation included or seeking inclusion in a list referred to in subsection (1)(a); and
- (b) the supply to a Health Authority—
- (i) by a dental practitioner who is included, or seeking inclusion, in such a list, or
- (ii) by a director of a dental corporation included, or seeking inclusion, in such a list,
- of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act.”;
- and
- (c) after subsection (3) there shall be inserted—
- “(4) The provision which may be made by regulations under subsection (3) includes, in particular, provision in relation to grounds on which a Health Authority may, or must, refuse to include a dental practitioner or a dental corporation in a list referred to in subsection (1)(a)

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- (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below).
- (5) Those regulations may make provision in relation to criteria to be applied in making decisions under the regulations.
- (6) If those regulations provide that a Health Authority may refuse to include a dental practitioner or dental corporation in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority's decision.
- (7) Regulations may provide for grounds on which a Health Authority may defer a decision whether or not to grant an application for inclusion in a list referred to in subsection (1)(a).
- (8) Regulations may make provision as to the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about dental practitioners and dental corporations seeking inclusion in such a list, and refusals by the Health Authority to include them.”
- (5) Section 39 (regulations about general ophthalmic services) shall be renumbered as subsection (1) of that section, and—
- (a) in that subsection as so renumbered, in paragraph (b), after “subject to” there shall be inserted “ subsections (2) and (3) below, to ”, and
- (b) after that subsection there shall be inserted—
- “(2) The regulations may, in particular, make provision in relation to—
- (a) grounds on which a Health Authority may, or must, refuse to include a medical practitioner or an ophthalmic optician in a list referred to in subsection (1)(a) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below);
- (b) information which must be supplied to a Health Authority by a person included or seeking inclusion in such a list (or by arrangement with him);
- (c) the supply to a Health Authority by an individual—
- (i) who is included, or seeking inclusion, in such a list, or
- (ii) who is a director of a body corporate or who is a member of a limited liability partnership included, or seeking inclusion, in such a list,
- of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
- (d) grounds on which a Health Authority may defer a decision whether or not to include a person in such a list;
- (e) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to include them; and

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- (f) criteria to be applied in making decisions under the regulations.
- (3) If regulations made by virtue of subsection (2)(a) provide that a Health Authority may refuse to include a person in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority's decision."
- (6) In section 42 (regulations about pharmaceutical services)—
- (a) in subsection (3), the word "and" after paragraph (d) shall be omitted,
- (b) after paragraph (e) there shall be inserted—
- “(f) as to other grounds on which a Health Authority may, or must, refuse to grant an application (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below);
- (g) as to information which must be supplied to a Health Authority by a person included, or seeking inclusion, in such a list (or by arrangement with him);
- (h) for the supply to a Health Authority by an individual—
- (i) who is included, or seeking inclusion, in such a list, or
- (ii) who is a member of the body of persons controlling a body corporate included, or seeking inclusion, in such a list,
- of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
- (i) for grounds on which a Health Authority may defer a decision whether or not to grant an application;
- (j) for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to grant such applications;
- (k) as to criteria to be applied in making decisions under the regulations (other than decisions required by virtue of paragraph (d))”,
- and
- (c) after subsection (4) there shall be inserted—
- “(4A) If regulations made by virtue of subsection (3)(f) provide that a Health Authority may refuse to grant an application, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority's decision.”
- (7) In section 43 (persons authorised to provide pharmaceutical services), after subsection (2B) there shall be inserted—
- “(2BA) The regulations may, in particular, include provision—

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2001, Part 1. (See end of Document for details)*

- (a) as to grounds on which a Health Authority may, or must, refuse to grant an application for inclusion in a list of medical practitioners referred to in subsection (2A) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H(2) below);
  - (b) as to information which must be supplied to a Health Authority by a medical practitioner included, or seeking inclusion, in such a list (or by arrangement with him);
  - (c) for the supply to a Health Authority by a medical practitioner who is included, or seeking inclusion, in such a list of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
  - (d) for grounds on which a Health Authority may defer a decision whether or not to grant an application for inclusion in such a list;
  - (e) for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to grant such applications;
  - (f) as to criteria to be applied in making decisions under the regulations
- (2BB) If regulations made by virtue of subsection (2BA)(a) provide that a Health Authority may refuse to grant an application for inclusion in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”

#### Commencement Information

**116** S. 20 partly in force; s. 20 not in force at Royal Assent see s. 70(2); s. 20(1)-(5) in force for E. for certain purposes at 22.11.2001 and 14.12.2001 by [S.I. 2001/3738](#), [arts. 1\(3\), 2\(2\)](#), [Sch. 1 Pt. II](#); s. 20 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. 1 Pt. 1](#)

## 21 Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists

After section 43 of the 1977 Act there shall be inserted—

### “43ZA Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists

- (1) The Secretary of State may by regulations provide—
  - (a) that if a person is to be included in a list referred to in subsection (3), he is to be subject, while he remains included in the list, to conditions determined by the Health Authority,
  - (b) for the Health Authority to vary that person’s terms of service for the purpose of or in connection with the imposition of any such conditions,
  - (c) for the Health Authority to vary the conditions or impose different ones,
  - (d) for the consequences of failing to comply with a condition (including removal from the list), and
  - (e) for the review by the Health Authority of any decision made by virtue of the regulations.

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*Status: Point in time view as at 30/09/2002. This version of this part contains provisions that are not valid for this point in time.*

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- (2) The imposition of conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services in question, or
  - (b) preventing any acts or omissions within section 49F(3)(a) below.
- (3) The lists in question are—
- (a) a list of persons undertaking to provide general medical services,
  - (b) a list of persons undertaking to provide general dental services,
  - (c) a list of persons undertaking to provide general ophthalmic services,
  - (d) a list of persons undertaking to provide pharmaceutical services.
- (4) If regulations provide for a practitioner’s removal from the list for breach of condition—
- (a) the regulations may provide that he may not withdraw from the list while the Health Authority are investigating whether there are grounds for exercising their power to remove him, or after the Health Authority have decided to remove him but before they have given effect to that decision; and
  - (b) the regulations must include provision—
    - (i) requiring the practitioner to be given notice of any allegation against him,
    - (ii) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his removal from the list, and
    - (iii) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of his right of appeal under subsection (5).
- (5) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the FHSAA against the Health Authority’s decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to vary his terms of service,
  - (d) on any review of an earlier such decision of theirs,
  - (e) to remove him from the list for breach of condition,
- and the appeal shall be by way of redetermination of the Health Authority’s decision.
- (6) The regulations may provide for any such decision not to have effect until the determination by the FHSAA of any appeal against it, and must so provide in relation to a decision referred to in subsection (5)(e).
- (7) Regulations under this section may provide for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about persons whose inclusion in the lists referred to in subsection (3) is subject to conditions imposed under this section, and about the removal of such persons from such lists for breach of condition.”

**Status:** Point in time view as at 30/09/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Health and Social Care Act 2001, Part 1. (See end of Document for details)

### Commencement Information

**I17** S. 21 wholly in force at 1.7.2002; s. 21 not in force at Royal Assent, see s. 70(2); s. 21 in force for E. at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 21 in force for W. at 1.7.2002, {art. 2(1)}, Sch. Pt. 1

## 22 Dental corporations

- (1) The 1977 Act shall be amended as follows.
- (2) In section 35 (arrangements for general dental services)—
  - (a) in subsection (1)—
    - (i) after “dental practitioners” there shall be inserted “ or dental corporations ”, and
    - (ii) after “dental practitioner” there shall be inserted “ or dental corporation ”,
  - (b) in subsection (2)—
    - (i) after “dental practitioner who” there shall be inserted “ , or dental corporation which, ”,
    - (ii) after “salary” there shall be inserted “ (or, in the case of a dental corporation, a fixed rate of remuneration) ”, and
    - (iii) in paragraph (b), after “practitioner” there shall be inserted “ or corporation ”, and
  - (c) after subsection (4) there shall be inserted—

“(5) In this Act, “dental corporation” means a body corporate which carries on the business of dentistry (within the meaning of section 40 of the Dentists Act 1984 (c. 24)).”
- (3) In section 36 (regulations about general dental services)—
  - (a) in subsection (1)(a), after “dental practitioners” there shall be inserted “ and dental corporations ”,
  - (b) in subsection (1)(b), after “dental practitioner” there shall be inserted “ or dental corporation ”,
  - (c) in subsection (1)(d), after “dental practitioners” there shall be inserted “ and dental corporations ”, and
  - (d) in subsection (3), after “dental practitioner” there shall be inserted “ or dental corporation ”.
- (4) In section 37 (Dental Practice Board), after subsection (1C) there shall be inserted—

“(2) In subsections (1A) and (1B), references to a dental practitioner include references to a dental corporation.”
- (5) In section 128(1) (interpretation), in the appropriate place there shall be inserted—

““dental corporation” has the meaning given by section 35(5);”.

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2001, Part 1. (See end of Document for details)*

### Commencement Information

**I18** S. 22 wholly in force at 1.7.2002; s. 22 not in force at Royal Assent see s. 70(2); s. 22 in force for E. at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 22 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

## 23 Declaration of financial interests, gifts, etc.

- (1) The 1977 Act shall be amended as follows.
- (2) In section 29 (arrangements and regulations for general medical services), after subsection (5) there shall be inserted—
  - “(5A) Regulations may include provision as to the making of declarations about—
    - (a) financial interests;
    - (b) gifts above a prescribed value; and
    - (c) other benefits received.
  - (5B) Before making regulations by virtue of subsection (5A), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent medical practitioners providing general medical services.”
- (3) In section 36 (regulations about general dental services), after the subsection (1A) inserted by section 20 of this Act there shall be inserted—
  - “(1B) The regulations may include provision as to the making of declarations about—
    - (a) financial interests;
    - (b) gifts above a prescribed value; and
    - (c) other benefits received.
  - (1C) Before making regulations by virtue of subsection (1B), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent dental practitioners and dental corporations providing general dental services.”
- (4) In section 39 (regulations about general ophthalmic services), after the subsection (3) inserted by section 20 of this Act there shall be inserted—
  - “(4) The regulations may include provision as to the making of declarations about—
    - (a) financial interests;
    - (b) gifts above a prescribed value; and
    - (c) other benefits received.
  - (5) Before making regulations by virtue of subsection (4), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent persons providing general ophthalmic services.”
- (5) In section 42 (regulations about pharmaceutical services)—
  - (a) in subsection (3), after the paragraph (k) inserted by section 20 of this Act there shall be inserted—
    - “(l) as to the making of declarations about—



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- (i) financial interests;
- (ii) gifts above a prescribed value; and
- (iii) other benefits received.”,

and

- (b) after the subsection (3B) inserted by section 43 of this Act there shall be inserted—

“(3C) Before making regulations by virtue of subsection (3)(1), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent persons providing pharmaceutical services.”

#### **Commencement Information**

**119** S. 23 partly in force; s. 23 not in force at Royal Assent see s. 70(2); s. 23 in force for W. at 1.7.2002 by S.I. 2002/1475, **art. 2(1)**, Sch. Pt. 1

## **24 Supplementary lists**

After section 43C of the 1977 Act there shall be inserted—

### **“43D Supplementary lists**

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of persons approved by the Health Authority for the purpose of assisting in the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services.
- (2) Such a list is referred to in this section as a “supplementary list”.
- (3) The regulations may, in particular, include provision as to—
  - (a) the Health Authority to which an application for inclusion in a supplementary list is to be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Health Authority may, or must, refuse a person’s application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - (d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Health Authority may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined

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*Status: Point in time view as at 30/09/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2001, Part 1. (See end of Document for details)*

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- by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
- (g) the supply to the Health Authority by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a supplementary list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person’s inclusion in a supplementary list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the supplementary list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) below.
- (6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N below.
- (7) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a supplementary list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.
- (9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—

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- (a) to impose conditions, or any particular condition,
- (b) to vary a condition,
- (c) to remove him from the supplementary list for breach of condition,
- (d) on any review of an earlier such decision of theirs.

(10) Regulations may require a person (“A”) included in—

- (a) a medical list,
- (b) a list referred to in section 36(1)(a),
- (c) a list referred to in section 39(1)(a),
- (d) a list referred to in section 42(2)(a), or
- (e) a list referred to in section 43(2A),

not to employ or engage a person (“B”) to assist him in the provision of the relevant service unless B is included in a list referred to in paragraphs (a) to (e), a supplementary list, a services list referred to in section 28DA above or section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46) or a list corresponding to a services list prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (or, in any of those cases, such a list of a prescribed description).

(11) If regulations do so require, they—

- (a) need not require both A and B to be included in lists prepared by the same Health Authority, but
- (b) may, in particular, require that both A and B be included in lists prepared by Health Authorities in England, or in lists prepared by Health Authorities in Wales.”

#### Commencement Information

**I20** S. 24 wholly in force at 1.7.2002; s. 24 not in force at Royal Assent, see s. 70(2); s. 24 in force for E. at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 24 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

## 25 Suspension and disqualification of practitioners

After section 49E of the 1977 Act (which is repealed by this Act) there shall be inserted—

### “49F Disqualification of practitioners

- (1) If it appears to a Health Authority that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in any of the following prepared by them—
- (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 and dental corporations undertaking to provide general dental services,
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or

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- (e) a list of persons undertaking to provide pharmaceutical services, (such a person being referred to in this group of sections as a “practitioner”), they may (or, in cases falling within subsection (6), must) decide to remove him from that list.
- (2) The first condition 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 (and such a case is referred to in this group of sections as an “efficiency case”).
- (3) The second condition 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,
- (and such a case is referred to in this group of sections as a “fraud case”).
- (4) The third condition is that the person concerned is unsuitable to be included in the list (and such a case is referred to in this group of sections as an “unsuitability case”).
- (5) “This group of sections” means this section and sections 49G to 49R below.
- (6) In unsuitability cases, the Health Authority must remove the practitioner from the list in prescribed circumstances.
- (7) The Health Authority must state which condition (or conditions) they are relying on when removing a practitioner from a list.
- (8) In subsection (3), “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.
- (9) 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.

#### **49G Contingent removal**

- (1) In an efficiency case or a fraud case, the Health Authority may, instead of deciding to remove a practitioner from their list, decide to remove him contingently.
- (2) If they so decide, they must impose such conditions as they may decide on his inclusion in the list with a view to—
- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or

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- (b) preventing further acts or omissions within section 49F(3)(a) above (in a fraud case).
- (3) If the Health Authority determine that the practitioner has failed to comply with a condition, they may decide to—
  - (a) vary the conditions, or impose different conditions, or
  - (b) remove him from their list.
- (4) The Health Authority may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.

#### **49H Fraud and unsuitability cases: supplementary**

- (1) Where the practitioner is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second or third condition referred to in section 49F(3) and (4) above—
  - (a) in the case of an ophthalmic optician not referred to in paragraph (b) or a dental corporation, if any director meets that condition (whether or not he first did so when he was a director), and
  - (b) in the case of a body corporate carrying on a retail pharmacy business or an ophthalmic optician which is a limited liability partnership, if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).
- (2) A practitioner is to be treated for the purposes of this group of sections as meeting the condition referred to in section 49F(3) above if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 49F(1) 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 49F(3)(a) above occurring in the course of the provision of those services on his behalf.

#### **49I Suspension**

- (1) If the Health Authority are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, they may suspend a practitioner from their list—
  - (a) while they decide whether or not to exercise their powers under section 49F or 49G (other than in circumstances falling within paragraph (b)), or
  - (b) while they wait for a decision affecting the practitioner of a court or of a body which regulates—
    - (i) the practitioner's profession,
    - (ii) the profession of a person providing any of the services mentioned in section 49F(1) on the practitioner's behalf, or
    - (iii) if the practitioner is a body corporate, the profession of one of its directors or, as the case may be, one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,

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or one of that regulatory body's committees.

- (2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.
- (3) In a case falling within subsection (1)(a), the Health Authority must specify how long the period of suspension is to be.
- (4) In a case falling within subsection (1)(b), the Health Authority may specify that the practitioner shall remain suspended after the decision referred to there for an additional period which the Health Authority must specify.
- (5) In either case—
  - (a) before that period expires they may extend, or further extend, the suspension for a further specified period, or
  - (b) if that period has expired, they may impose a further suspension, for a period which they must specify.
- (6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—
  - (a) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),
  - (b) if, on the application of the Health Authority, the FHSAA orders accordingly before the expiry of the period of suspension, or
  - (c) if the Health Authority have applied under paragraph (b) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA has made an order.
- (7) If the FHSAA does so order, it shall specify—
  - (a) the date on which the period of suspension is to end, or
  - (b) an event beyond which it is not to continue.
- (8) The FHSAA may, on the application of the Health Authority, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (9) The Secretary of State may make regulations providing for payments to practitioners who are suspended.
- (10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

#### **49J Suspension pending appeal**

- (1) This section applies if the Health Authority decide to remove a practitioner from a list under section 49F.
- (2) In such a case they may also decide to suspend the practitioner from the list pending any appeal by him, if they are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

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- (3) If they do suspend the practitioner under this section, the suspension has effect from the date when the Health Authority gave him notice of the suspension.
- (4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 49M(1) below, or, if the practitioner appeals under section 49M, until the FHSAA has disposed of the appeal.
- (5) The Health Authority may revoke a suspension imposed under this section.
- (6) If the practitioner appeals under section 49M against the Health Authority's decision to remove him from the list, the FHSAA may also revoke a suspension imposed on him under this section.
- (7) Subsections (9) and (10) of section 49I above apply for the purposes of this section as they apply for the purposes of that.

#### **49K Effect of suspension**

While a practitioner is suspended (whether under section 49I or under section 49J above) he is to be treated as not being included in the list from which he has been suspended even though his name appears in it.

#### **49L Review of decisions**

- (1) The Health Authority may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the FHSAA, or a suspension imposed under section 49J above).
- (2) The practitioner may not request a review before the expiry of the period of—
  - (a) three months beginning with the date of the Health Authority's decision to suspend or contingently remove him, or (as appropriate),
  - (b) six months beginning with the date of their decision on the previous review.
- (3) On such a review, the Health Authority may—
  - (a) confirm the contingent removal or the suspension,
  - (b) in the case of a suspension, terminate it,
  - (c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.

#### **49M Appeals**

- (1) A practitioner may appeal to the FHSAA against a decision of a Health Authority mentioned in subsection (2) by giving notice in writing to the FHSAA within the period of 28 days beginning with the date on which the Health Authority gave him notice of the decision.
- (2) The Health Authority decisions in question are—

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- (a) to remove the practitioner from a list (under section 49F or 49G(3) or under subsection (5)(b) of this section),
  - (b) to remove him contingently (under section 49G),
  - (c) to impose any particular condition under section 49G, or to vary any condition or to impose any different condition under that section,
  - (d) to vary his terms of service (under section 49G(4)),
  - (e) any decision on a review of a contingent removal under section 49L.
- (3) The appeal shall be by way of redetermination of the Health Authority's decision.
- (4) On an appeal, the FHSAA may make any decision which the Health Authority could have made.
- (5) If the FHSAA decides to remove the practitioner contingently—
- (a) the Health Authority and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked, and
  - (b) the Health Authority may remove him from their list if they determine that he has failed to comply with a condition.
- (6) The Health Authority shall not remove a person from a list, or impose a contingent removal—
- (a) until the expiry of the period of 28 days referred to in subsection (1), or
  - (b) if the practitioner appeals within that period, until the FHSAA has disposed of the appeal.
- (7) Regulations may provide for payments by Health Authorities to practitioners who are removed from lists pursuant to decisions of the FHSAA under this section, but whose appeals against those decisions are successful.

#### **49N National disqualification**

- (1) If the FHSAA removes the practitioner from a list, it may also decide to disqualify him from inclusion in—
- (a) all lists referred to in section 49F(1)(a) to (e) prepared by all Health Authorities,
  - (b) all supplementary lists prepared by all Health Authorities, and
  - (c) all services lists prepared by all Health Authorities under section 28DA above or under section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46), or any list corresponding to a services list prepared by any Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001,
- or only from inclusion in one or more descriptions of such lists prepared by all Health Authorities, the description being specified by the FHSAA in its decision.
- (2) A decision by the FHSAA to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.
- (3) The FHSAA may also impose a national disqualification on a practitioner if it dismisses an appeal by him against a Health Authority's refusal to include him



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in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).

- (4) The Health Authority may apply to the FHSAA for a national disqualification to be imposed on a person after they have—
  - (a) removed him from a list of theirs of any of the kinds referred to in subsection (1)(a) to (c), or
  - (b) refused to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of their refusal.
- (6) If the FHSAA imposes a national disqualification on a person—
  - (a) no Health Authority may include him in a list of any of the kinds from which he has been disqualified from inclusion prepared by them, and
  - (b) if he is included in such a list, each Health Authority in whose list he is included must remove him from it.
- (7) The FHSAA may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.
- (8) Subject to subsection (9), the person may not request such a review before the end of the period of—
  - (a) two years beginning with the date on which the national disqualification was imposed, or
  - (b) one year beginning with the date of the FHSAA's decision on the last such review.
- (9) The Secretary of State may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to “two years” or “one year” were a reference to a different period specified in the regulations.

#### **49O Notification of decisions**

Regulations may require a Health Authority to notify prescribed persons, or persons of prescribed descriptions, of any decision they make under this group of sections, and of any information relevant to the decision which they consider it appropriate to include in the notification.

#### **49P Withdrawal from lists**

Regulations may provide for circumstances in which a practitioner—

- (a) whom a Health Authority are investigating in order to see whether there are grounds for exercising their powers under section 49F, 49G or 49I,
  - (b) whom a Health Authority have decided to remove from a list under section 49F or 49G, or contingently remove under section 49G, but who has not yet been removed or contingently removed, or
  - (c) who has been suspended under section 49I,
- may not withdraw from a list in which he is included.

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#### **49Q Regulations**

- (1) Any decision by a Health Authority referred to in this group of sections shall be reached in accordance with regulations made by the Secretary of State about such decisions.
- (2) The regulations shall include provision—
  - (a) requiring the practitioner to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before a Health Authority make any decision affecting him under this group of sections,
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal which he may have.
- (3) The regulations may, in particular, make provision as to criteria which the Health Authority must apply when making decisions in unsuitability cases.

#### **49R Corresponding provision in Scotland and Northern Ireland**

- (1) This section applies where it appears to the Secretary of State that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this group of sections.
- (2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Secretary of State may make regulations providing for the effect to be given in England and Wales to a corresponding decision.
- (4) That effect need not be the same as the effect of the decision in the place where it was made.
- (5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England and Wales.”

#### **Commencement Information**

**I21** S. 25 partly in force; s. 25 not in force at Royal Assent see s. 70(2); s. 25 in force for E. for certain purposes at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 25 in force for E. for certain purposes at 22.11.2001 and 14.12.2001 by S.I. 2001/3738, arts. 1(3), 2(2)(3), Sch. 1 Pts. II, III; s. 25 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

#### *Personal medical services and personal dental services*

#### **26 PMS and PDS lists**

- (1) After section 28D of the 1977 Act there shall be inserted—

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### **“28DA Lists of persons who may perform personal medical services or personal dental services**

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of—
  - (a) medical practitioners who may perform personal medical services in accordance with section 28C arrangements,
  - (b) dental practitioners who may perform personal dental services in accordance with section 28C arrangements.
- (2) Such a list is referred to in this section as a “services list”.
- (3) The regulations may, in particular, include provision as to—
  - (a) the Health Authority to which an application for inclusion in a services list is to be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Health Authority may, or must, refuse a person’s application for inclusion in a services list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - (d) requirements with which a person included in a services list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Health Authority may, or must, suspend or remove a person from a services list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a services list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Health Authority by an applicant for inclusion in a services list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a services list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a services list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
  - (a) a person’s inclusion in a services list to be subject to conditions determined by the Health Authority,

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- (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the services list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) below.
- (6) Regulations may provide—
- (a) that no person may perform personal medical services in accordance with section 28C arrangements unless he is included in a medical list, a supplementary list under section 43D or a services list,
  - (b) that no person may perform personal dental services in accordance with section 28C arrangements unless he is included in a list referred to in section 36(1)(a), a supplementary list under section 43D or a services list.
- (7) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N below.
- (8) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a services list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (9) or (10).
- (9) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a services list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.
- (10) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the services list for breach of condition,
  - (d) on any review of an earlier such decision of theirs.”
- (2) After section 8 of the National Health Service (Primary Care) Act 1997 (c. 46) there shall be inserted—

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### “ Services Lists

#### **8ZA Lists of persons who may perform personal medical services or personal dental services**

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of—
  - (a) medical practitioners who may perform personal medical services in connection with the provision of such services under a pilot scheme,
  - (b) dental practitioners who may perform personal dental services in connection with the provision of such services under a pilot scheme.
- (2) Such a list is referred to in this section as a “services list”.
- (3) The regulations may, in particular, include provision as to—
  - (a) the Health Authority to which an application for inclusion in a services list is to be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Health Authority may, or must, refuse a person’s application for inclusion in a services list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - (d) requirements with which a person included in a services list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Health Authority may, or must, suspend or remove a person from a services list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a services list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Health Authority by an applicant for inclusion in a services list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a services list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a services list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—

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- (a) a person's inclusion in a services list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the services list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) of the 1977 Act.
- (6) Regulations may provide—
- (a) that no person may perform personal medical services unless he is included in a medical list, a supplementary list under section 43D of the 1977 Act or a services list,
  - (b) that no person may perform personal dental services unless he is included in a list referred to in section 36(1)(a) of the 1977 Act, a supplementary list under section 43D of that Act or a services list.
- (7) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N of the 1977 Act.
- (8) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a services list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority's decision and the reasons for it and of any right of appeal under subsection (9) or (10).
- (9) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person's application for inclusion in a services list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the Family Health Services Appeal Authority ("FHSAA") against the Health Authority's decision.
- (10) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority's decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the services list for breach of condition,
  - (d) on any review of an earlier such decision of theirs."
- (3) In section 40(3) of the National Health Service (Primary Care) Act 1997 (c. 46) (interpretation) after "sections 28C" there shall be inserted " , 28DA "

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### Commencement Information

- I22** S. 26 partly in force; s. 26 not in force at Royal Assent, see s. 70(2); s. 26(2) in force for E. at 31.5.2002 by S.I. 2002/1095, art. 2(7) (with transitional provisions in arts. 3, 4) (as amended (26.3.2002) by S.I. 2002/1170, art. 3); s. 26 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

### *The Family Health Services Appeal Authority*

## 27 The Family Health Services Appeal Authority

- (1) After section 49R of the 1977 Act (which is inserted by section 25 of this Act) there shall be inserted—

*“ The Family Health Services Appeal Authority*

### **49S The Family Health Services Appeal Authority**

- (1) There shall be a body to be known as the Family Health Services Appeal Authority (“FHSAA”).
- (2) The FHSAA shall be constituted in accordance with Schedule 9A to this Act, which also makes other provision in relation to the FHSAA.
- (3) The FHSAA shall have such functions as are conferred on it by this Act or by any other enactment.
- (4) The Secretary of State may direct the FHSAA to exercise any of his functions relating to the determination of appeals to him which are specified in the directions.
- (5) Directions under subsection (4) shall be given by regulations or by an instrument in writing.
- (6) The Secretary of State may make available to the FHSAA any facilities (including the use of any premises) provided by him or by a Special Health Authority or NHS trust for any service under this Act, and the services of persons employed by the Secretary of State or by a Special Health Authority or NHS trust.
- (7) Subsections (1) to (3) of section 27 above apply in relation to the services of persons employed by a Special Health Authority and made available under subsection (6) as they apply in relation to the services of officers of Special Health Authorities to be made available under section 26 above.
- (8) For the purposes of subsection (6)—
  - (a) the Secretary of State may give directions to an NHS trust requiring it to make facilities or the services of persons available as mentioned there; but
  - (b) subsections (1) and (2) of section 27 above apply in relation to the services of such persons as they apply in relation to the services of

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officers to be made available by virtue of section 26 above by a Health Authority, Special Health Authority or Primary Care Trust.”

(2) In section 102 of the 1977 Act (allowances and remuneration for members of certain bodies), in each of subsections (1)(a)(v) and (2)(d), for “the Tribunal constituted under section 46 above” there shall be substituted “ the FHSAA ”.

(3) In section 128(1) of the 1977 Act (interpretation), in the appropriate place there shall be inserted—

““the FHSAA” means the Family Health Services Appeal Authority;”.

(4) Before Schedule 10 to the 1977 Act there shall be inserted—

#### “SCHEDULE 9A

#### THE FAMILY HEALTH SERVICES APPEAL AUTHORITY

##### *Constitution*

1 The Family Health Services Appeal Authority (“the FHSAA”) shall consist of—

- (a) a President;
- (b) one or more Deputy Presidents; and
- (c) a number of other members,

all appointed by the Lord Chancellor on terms to be determined by him.

2 The number of the other members shall be determined by the Lord Chancellor after consulting the Secretary of State.

3 A person appointed as the President shall have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), and a person appointed as a Deputy President shall have a 7 year general qualification.

4 The qualifications which the other members must have in order to be eligible for appointment shall be determined by the Lord Chancellor.

5 Each person appointed under paragraph 1—

- (a) shall hold and vacate office in accordance with the terms of his appointment; and
- (b) may be removed from office by the Lord Chancellor on grounds of incapacity or misbehaviour.

6 The other members must include at least one—

- (a) medical practitioner providing general medical services, or performing personal medical services under section 28C arrangements;
- (b) dental practitioner providing general dental services, or performing personal dental services under section 28C arrangements;
- (c) ophthalmic optician or medical practitioner providing general ophthalmic services; and
- (d) registered pharmacist providing pharmaceutical services or local pharmaceutical services (whether under this Act or under a pilot



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scheme made under section 28 of the Health and Social Care Act 2001),

and must also include such number of persons with a 7 year general qualification (construed as in paragraph 3) as the Lord Chancellor considers appropriate bearing in mind the requirements of paragraph 9, and a number of lay persons who do not fall within paragraphs (a) to (d) and who possess such qualifications and experience as the Lord Chancellor considers appropriate.

### **Procedure**

7 The procedure of the FHSAA shall be as it determines, subject to the following.

8 The functions of the FHSAA shall be exercised by panels consisting—

- (a) in the case of functions referred to in section 49S(4) above, of such one or more members as the President may choose; and
- (b) in the case of other functions, of three members chosen by the President,

and, in either case, the President may include himself (or, in the case of a one-member panel, may constitute the panel).

9 Subject to paragraph 10, at least one member of each panel (or, in the case of a one-member panel, that member) must have a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)).

10 In the case of a panel constituted for the purposes of section 49M or 49N above, one member of the panel must have the qualification mentioned in paragraph 9, and (unless the President decides otherwise)—

- (a) if the practitioner provides general medical services, one member of the panel must fall within paragraph 6(a), and so on as respects a practitioner who provides one of the other services referred to in section 49F(1); and
- (b) the third member must neither fall within any of sub-paragraphs (a) to (d) of paragraph 6 nor have a legal qualification.

11 Where a panel has more than one member—

- (a) the President shall nominate one of the members as chairman,
- (b) decisions shall be taken by a majority of votes, and
- (c) if there is a tie the chairman shall have a second vote as a casting vote.

12 The FHSAA shall—

- (a) give notice of a panel's decision and of the reasons for it to each party to the proceedings; and
- (b) publish each decision of a panel falling within paragraph 13 in such way as the FHSAA considers appropriate;

and it may send a copy of any such decision to such prescribed persons or persons of prescribed descriptions as it considers appropriate, together with any information relevant to the decision which the FHSAA considers it appropriate to include.

13 The following decisions fall within this paragraph—

- (a) a decision on national disqualification (see section 49N above);

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- (b) a decision to allow an appeal brought by virtue of section 49M(2)(a), (b) or (c) above; and
  - (c) such other decisions as may be prescribed.
- 14 The FHSAA may publish a decision not falling within paragraph 13 if it considers it appropriate to do so.
- 15 The Lord Chancellor may make rules as to—
  - (a) the composition of panels,
  - (b) the allocation to panels of cases, or of particular proceedings in any case, and
  - (c) the procedure to be followed by a panel in considering any matter before it.
- 16 The Lord Chancellor shall make rules—
  - (a) giving each party to proceedings before a panel the opportunity of putting his case at a hearing,
  - (b) entitling each party to be legally represented at any hearing (whether it is held at the instance of the panel or of a party), and
  - (c) securing that any hearing is held in public unless the practitioner asks for it to be in private (a request which the panel must consider but need not grant).
- 17 Rules under this Schedule may, in particular, make provision—
  - (a) as to the carrying out by a Deputy President of functions of the President,
  - (b) as to how, and as to the time within which, an application to the FHSAA is to be made, or an appeal to the FHSAA is to be brought (so far as the matter is not provided for in or by virtue of this or any other Act),
  - (c) for a period which must elapse before an application, or a further application, may be made under section 49M(5)(a) above,
  - (d) as to the matters referred to in paragraph 12,
  - (e) for the giving by the panel of directions to the parties as to the conduct of the case, and for the consequences of failure to comply with such directions (which may include allowing or dismissing the appeal or application if the failure to comply was without reasonable excuse);
  - (f) empowering a panel to require persons to attend and give evidence or produce documents,
  - (g) about the admissibility of evidence, and
  - (h) enabling the panel to administer oaths.
- 18 No person shall be required by virtue of any such rules to give any evidence or produce any document or other material which he could not be compelled to give or produce in civil proceedings in a court in England and Wales.

### **Miscellaneous**

- 19 (1) The President must, in respect of each period of 12 months beginning on 1st April, prepare a written report about the FHSAA's activities during that period.
- (2) He must send a copy of the report to the Lord Chancellor, the Secretary of State and the National Assembly for Wales.

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- (3) After consulting the Lord Chancellor and the National Assembly for Wales, the Secretary of State may give directions to the President as to subjects with which the report must deal.
- 20 The President must arrange such training for himself and the other members of the FHSAA as he considers appropriate.

### **Interpretation**

- 21 In this Schedule—
- “practitioner” means the person whose case is before the FHSAA;  
“prescribed” means prescribed by the Lord Chancellor in rules.”
- (5) In the National Health Service (Primary Care) Act 1997 (c. 46)—
- (a) in section 22 (supplementary regulations about personal medical or dental services), in the section 28E to be inserted into the 1977 Act, in subsection (7) (e), for “Tribunal constituted under section 46” there shall be substituted “Family Health Services Appeal Authority constituted under section 49S”; and
- (b) in Schedule 1 (preferential treatment on transferring to medical lists), in paragraph 9(a), for “Tribunal constituted under section 46” there shall be substituted “Family Health Services Appeal Authority constituted under section 49S”.

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

- C2** S. 27(2) amended (temp. from 22.7.2002) by [The Health and Social Care Act 2001 \(Commencement No. 3\) \(Wales\) Order 2002 \(S.I. 2002/1919\)](#), art. 3(2), **Sch. Pt. III**
- C3** S. 27(5)(b) amended (temp. from 22.7.2002) by [The Health and Social Care Act 2001 \(Commencement No. 3\) \(Wales\) Order 2002 \(S.I. 2002/1919\)](#), art. 3(2), **Sch. Pt. III**

#### **Commencement Information**

- I23** S. 27 wholly in force at 26.8.2002; s. 27 not in force at Royal Assent see s. 70(2); s. 27 in force for E. for certain purposes at 1.10.2001 and otherwise for E. at 1.12.2001 by [S.I. 2001/3294](#), arts. 1(3), 4(1), **Sch.** (subject to transitional provisions in art. 4(2)); s. 27 in force for W. at 26.8.2002 by [S.I. 2002/1919](#), **art. 3(1)**, **Sch. Pt. II** (subject to art. 3(2), **Sch. Pt. III**)

**Status:**

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**Changes to legislation:**

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