

*These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003*

# HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 5 - Miscellaneous

#### Appointments and employment

#### *Section 187: Appointments to certain health and social care bodies*

448. *Section 187* makes provision in respect of appointments to certain health and social care bodies. The Secretary of State currently has the power, under section 16D of the 1977 Act, to direct a Special Health Authority to undertake any of his functions relating to the health service that he specifies in directions. Pursuant to this power, the Secretary of State currently directs the National Health Service Appointments Commission (“the NHSAC”), a Special Health Authority established under section 11 of the 1977 Act, to exercise his powers of appointment in relation to many bodies that have functions within the health service.
449. The power to direct the NHSAC to undertake a function of the Secretary of State of making appointments is currently limited to bodies whose functions fall within the meaning of the ‘health service’ in the 1977 Act. Because of this limitation, specific provision was made in the 2002 Act for the Secretary of State to direct a Special Health Authority to exercise his function of appointing members to certain bodies, including, for example, the Council for the Regulation of Health Care Professionals.
450. *Subsections (1), (2) and (3)* enable the Secretary of State to direct a Special Health Authority to exercise the function of appointing persons to any body (whether or not established in legislation) that has functions relating to health, social care, or the regulation of professions associated with health or social care. The Government’s intention is for this role to be delegated to the NHSAC.
451. *Subsections (4) and (5)* make provision for the extent of the relevant provisions of the 1977 Act where the Secretary of State delegates an appointments function to the Special Health Authority in respect of appointments to a body that has functions in the United Kingdom.
452. *Subsection (6)* provides for what is meant by ‘appointments function’, and *subsection (7)* provides that if a body has other functions falling outside those specified in *subsection (1)*, this does not prevent the Secretary of State from delegating the appointments function to the Special Health Authority.
453. *Subsection (8)* introduces *Schedule 12* which amends the Pharmacy Act 1954, the Medical Act 1983, the Dentists Act 1984, the Opticians Act 1989, the Osteopaths Act 1993, the Chiropractors Act 1994, the Nursing and Midwifery Order 2001 and the Health Professions Order 2001. The effect of these amendments is to allow the Privy Council to direct a Special Health Authority to undertake its function of appointing

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members to the regulatory bodies established by those enactments, together with any function that the Privy Council has in removing members. The Privy Council may, in particular cases, decide instead to delegate only certain parts of these functions, retaining the rest itself. The Privy Council may only so direct a Special Health Authority if the Secretary of State has exercised his power of direction under the section.

454. In respect of the Medical Act 1983 and the Dentists Act 1984, further provision is made for the appointments functions currently made by Her Majesty, on the advice of Her Privy Council, to be conferred on the Privy Council: this is consistent with provision made in the Pharmacy Act 1954, the Opticians Act 1989, the Osteopaths Act 1993, the Chiropractors Act 1994, the Nursing and Midwifery Order 2001 and the Health Professions Order 2001.
455. *Subsection (10)* provides that “nothing in this section applies in relation to CHAI or CSCI”. The reason for this is that *schedules 6 and 7* provide that chair and non-executive appointments to CHAI and CSCI should in future automatically fall to a Special Health Authority to make rather than Ministers. For all other appointments it will be a matter for Ministers to determine whether or not they should be delegated. The Government's intention is that the Special Health Authority involved will be the NHS Appointments Commission.