

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Miscellaneous

Welfare Food Scheme

Section 185: Replacement of the Welfare Food Schemes

428. The Welfare Food Scheme was established in 1940 to protect the health of mothers and children at a time of food shortages and price rises. The scheme currently provides tokens for milk (in both liquid and dried form) and vitamins to expectant mothers and children up to the age of 5. It also provides non means-tested milk to children up to age 5 in nurseries and day care and to a very few disabled children.
429. The consultation document, *'Healthy Start: proposals for reform of the Welfare Food Scheme'*¹, outlined the government's intention to set up a new scheme or schemes in 2004 with the aims of ensuring that children in low income families have access to a healthy diet and giving increased support for breastfeeding. *'Healthy Start, The Results of the Consultation Exercise'*¹ summarised responses to that consultation.
430. *Section 185* replaces section 13 of the Social Security Act 1988 ("the 1988 Act"), which provided powers for a scheme or a number of schemes to be set up to distribute welfare food. The new *section 13* provides powers for regulations to establish a new scheme or schemes, to help certain pregnant women, mothers and children to have access to and incorporate in their diets, food of a prescribed description.
431. It is intended that the nutritional basis of the existing scheme will be extended under the first new scheme to include a broader range of foods in addition to milk and infant formula. It is likely that the only additional foods in the first instance will be fruit and vegetables, and that their role in the scheme will be evaluated before the range of foods is modified further. The aim is to use a voucher bearing a fixed value to enable beneficiaries to access these foods. It is also intended that the new scheme should be integrated with, and consistent with, the NHS and health policies so that beneficiaries can receive appropriate advice on nutrition to complement the prescribed food benefit.
432. *Subsection (1)* supplies powers for regulations to establish one or more schemes to provide benefits for specified categories of pregnant women, mothers and children to have access to food of a prescribed description. The first set of regulations will be subject to the affirmative resolution procedure. Thereafter, regulations will be subject to negative procedure. It is intended that the new scheme, like the existing scheme, will continue to be targeted primarily at low income families in receipt of specified benefits

¹ For copies of these documents contact postal address: PO Box 777, London SE1 6XH. Website address: www.doh.gov.uk/healthystart

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such as Income Support, Income Based Jobseekers Allowance and Tax Credits, and that the nursery element of the scheme will remain non means-tested.

433. *Subsection (2)* obliges the Secretary of State to consult the Assembly and Scottish Ministers on the establishment or variation of a scheme. The scheme in Northern Ireland will be governed by separate legislation (See *section 186*).
434. *Subsection (3)* makes it clear that a scheme may impose requirements that must be met before pregnant women, mothers and children can become entitled to benefits under the scheme or remain entitled to continuing benefits.
435. The current section 13 of the 1988 Act enables regulations to provide for the distribution or disposal of welfare food. *Subsection (4)(a)* of the new *section 13* specifies on the face of the Act the categories of providers who may supply food under the scheme. This could include food suppliers, providers of day care, and health service bodies. It is intended that retailers will supply the majority of foods in exchange for a voucher as they do presently with the current milk token and that nursery or day care institutions will provide the non-means-tested element of the scheme. Other suppliers, such as food co-operatives or voluntary and community organisations will also be encouraged to participate. As set out in the consultation document, 'Healthy Start', the government intends to shift the supply of dried milk (infant formula) to retail outlets and to end distribution via NHS clinics in order to remove a potential barrier to the promotion of breastfeeding. It is not intended that a provider be required to provide the full range of foods available under the scheme in order to participate. This means, for example, that milk deliverers could participate and provide only milk, greengrocers or farmers' markets could participate and provide only fruit and vegetables, and pharmacies could participate and provide only infant formula.
436. *Subsection (4)(b)* makes it clear that a scheme may provide for beneficiaries to gain access to the prescribed food benefit by means of a voucher or other arrangement. The existing scheme is based primarily upon the use of tokens that are exchangeable for specified quantities of liquid or formula milk. As it is the intention to provide a wider range of foods under a new scheme or schemes, different mechanisms for enabling access to the foods may be required. These may include, for example, a system based on vouchers of a fixed value which will enable parents or beneficiaries to obtain food of a prescribed description from a wide variety of retailers.
437. *Paragraphs (d) and (e) of subsection (4)* provide powers for the recompense of registered providers and the payment of beneficiaries, for example, those who fail to receive the benefit for whatever reason. These provisions, amongst other things, replace respectively subsections (4)(c) and (3)(b) of the current section 13.
438. *Paragraphs (f) and (g) of subsection (4)* make it clear that a scheme may provide for the Secretary of State to arrange for the operation of all or part of a scheme, to be delegated to health service or other bodies described in the scheme. The Department of Health, for example, may wish to contract-out elements of the scheme which relate to the distribution of vouchers to beneficiaries and reimbursement of suppliers.
439. *Subsections (4)(h) and (5)* largely replace and update subsections (4)(d) and (5) of the current section 13 and make it clear that a scheme may provide for prescribed persons to be required to supply information to assist in the administration of the scheme. For instance, suppliers may be required to provide information to verify that vouchers have been properly exchanged in accordance with the provisions of the scheme. *Subsection (5)(a)* provides for a requirement that information be provided in legible form. Such a provision could, for example, ensure that computerised records are made available in printed form.
440. *Subsection (6)* provides a new power for the Assembly to prescribe the range of foods to be available under a scheme in relation to the operation of the scheme in Wales. Although the existing scheme is primarily based upon social security benefits, and is

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therefore reserved, it is recognised that the potential range of foods links closely to the devolved health policies of the Assembly. This power has therefore been transferred to the Assembly, with agreement that the scheme will be uniform across Great Britain at the outset.

441. Powers to prescribe the range of foods will be transferred to Scottish Ministers by means of an order under section 63 of the Scotland Act 1998.
442. *Subsection (7)* provides power for the Secretary of State to give directions to bodies, such as a health body or contracted service provider, in relation to the operation of the scheme. *Subsection (8)* provides a power for the Assembly to direct bodies administering the scheme in relation to matters relating to the operation of the scheme (or that part of the scheme) in Wales. The subsection also requires the Assembly to gain the prior agreement of the Secretary of State to ensure that any proposed changes will not adversely affect the operation of the scheme throughout Great Britain, beyond the boundaries of devolved responsibilities. This qualified power will also be transferred to Scottish Ministers by section 63 Order. Section 63 of the [Scotland Act 1998 \(c.46\)](#) enables Her Majesty, by Order in Council, to provide for the transfer to the Scottish Ministers of functions of a Minister of the Crown which are exercisable in or as regards Scotland. The Order will be subject to the affirmative procedure in both the Westminster Parliament and the Scottish Parliament.
443. *Subsection (9)* replaces and updates the current power in section 13(4)(e) of the 1988 Act relating to the prosecution of some offences.
444. *Subsection (11)* contains, among other definitions, a definition of “enactment” which takes account of changes made by the Scotland Act 1988 to the Interpretation Act 1978. It also contains a definition of “women” that includes persons under the age of 18.
445. The amendment in *subsection (2)* of the Section to section 15A of the 1988 Act ensures that the Assembly’s procedures regarding subordinate legislation are reflected in the primary legislation.

Section 186: Replacement of the Welfare Food Schemes: Northern Ireland

446. [Section 186](#) will enable Northern Ireland to replicate the provisions in [Section 185](#) of the Act by way of Order in Council subject to negative resolution procedure. This will ensure that women and children in Northern Ireland have the same access to the reformed welfare food scheme as women and children in England, Scotland and Wales. Currently women and children in Northern Ireland, under the separate Northern Ireland Welfare Food Scheme, have access to the same benefits as those in the rest of the UK. This has been the position since the Scheme’s inception in 1940 and we would wish to maintain this position.
447. During suspension of the Northern Ireland Assembly, Northern Ireland legislation may be made by Order in Council under the Northern Ireland Act 2000. Such Orders are normally subject to the affirmative resolution procedure. However, if there is a requirement for immediate parity in legislative provisions between Northern Ireland and Great Britain, the Northern Ireland Act 2000 provides for Orders to be made subject to the negative resolution procedure. This is permitted only if the provisions of the Order will correspond in their purpose to the relevant provisions of the GB Act.

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

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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 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.

Section 188: Appointments to certain health and social care bodies: joint functions

456. Where there is a requirement for a Minister of the Crown to make appointments to certain health and social care bodies jointly or concurrently with another person, for example with the Northern Ireland Ministers or the Assembly, *subsections (1) and (2)* together provide that the Secretary of State may in these circumstances direct a Special

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Health Authority to undertake the appointments function, but only if he first consults the other person. *Subsection (3)* provides that if a direction is given in respect of an appointments function that has to be exercised jointly or concurrently, that function is exercisable by the Special Health Authority acting alone.

457. *Subsection (4)* provides that *subsections (2) and (3)* do not apply to any appointments to be made jointly or concurrently with the Scottish Ministers: the Secretary of State may, in these circumstances, only give a direction to the Special Health Authority in relation to any function he has. *Subsection (5)* provides that “appointments function” has the same meaning as in *section 187*.

Section 189: Validity of clearance for employment in certain NHS posts

458. Section 7 of the Protection of Children Act 1999 requires that before a person can be appointed to a child-care position, a check must be made against the Protection of Children Act List. The list is maintained by the Secretary of State and checks against it are made through the Criminal Records Bureau, which will make a charge for such a check. These checks will include a check against the POCA list wherever appropriate.
459. The Act provides for an easement to this rule in cases where the person was supplied by an employment agency or business. In such cases, it is sufficient for the employer to satisfy himself that the List has been checked within the last 12 months by the employment agency or business. This provision was included to avoid the need for checks against the List for the same person to be repeated at very frequent intervals. Normally, once a check has been made on appointment to a child-care position, there is no requirement for it to be repeated while the person remains in that child-care position.
460. The majority of persons supplied for temporary work by agencies supplying staff in the health care sector are also employed permanently in the NHS - often in the same Trust where they do the agency work. Increasingly, temporary workers will be supplied by NHS Professionals, the NHS's own "in-house" agency, which is set to become the main provider of temporary staff of all kinds in the NHS. In circumstances where a person is supplied by an agency (which may include NHS Professionals) and has substantive employment with the NHS and has previously been checked against the List, it is felt that an annual check, while being a costly overhead on the operations of NHS Professionals and other agencies, will add nothing to the safety of children.
461. Thus *subsection (1)* of *section 189* inserts new *subsections (3A), (3B) and (3C)* into section 7 of the Protection of Children Act 1999 which have the effect of disapplying the requirement to check against the Protection of Children Act List where a person is offered employment in a child care position and certain conditions are met. These conditions are that at the time the offer of employment is made, the person concerned is already employed by an NHS body (as defined) and that NHS body (or another NHS body or an employment agency or business) has ascertained that he is not on the List. In addition, he must not have been placed on the list subsequently and, if he accepts the offer of employment, he must not be placed on the List for the duration of the employment to which the offer relates.
462. Part VII of the CSA 2000 provides for the Secretary of State to maintain a List of persons who are considered unsuitable to work with vulnerable adults (the POVA List). Once the POVA List is introduced, before a person can be appointed to a position caring for vulnerable adults, a check will need to be made against the POVA List. Checks against this POVA List will again be carried out through the mechanism of the CRB. The POVA List will (when it is introduced) work in a very similar way to the Protection of Children Act List referred to above. For this reason, the amendments made by *subsection (2)* to section 89 of the CSA 2000 mirror those made to the Protection of Children Act 1999.
463. *Subsection (3)* is a transitory provision and is needed because the amendments made to the Protection of Children Act 1999 by paragraph 121 of schedule 21 to the Education Act 2002 are not yet in force.

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464. *Subsection (4)* is intended to put beyond doubt the ability to use the provisions of the Regulatory Reform Act 2001 in order to make an Order under section 1 of that Act which would further amend the provisions relating to checks against the POCA and POVA Lists in both the Protection of Children Act 1999 and the Care Standards Act 2000. Without such an amendment it might be argued that it is not possible to make such an Order until a period of 2 years had elapsed from the passing of this Act.

Public Health Laboratory Service

Section 190: Abolition of the Public Health Laboratory Service Board

465. This section abolishes the Public Health Laboratory Service Board ('PHLS'). The intention to do so was announced in Health Protection Agency ('HPA') Newsletter Number 10 on 15 November 2002².
466. The PHLS was established in 1946 and its statutory powers are broadly defined by the 1977 Act (as amended by the Public Health Laboratory Service Act 1979). Section 5(2) (c) of that Act, as amended, provides for "a microbiological service... for the control of the spread of infectious diseases and carry[ing] on such other activities as in his [the Secretary of State's] opinion can conveniently be carried on in conjunction with that service".
467. The PHLS's corporate purpose, as described in its Business Plan for 2001-2, was to protect the population from infection by maintaining a national capability of the highest quality for the detection, diagnosis, surveillance, prevention and control of infectious and communicable diseases in England and Wales. From 1 April 2003, all but one of the functions of the PHLS transferred to the Health Protection Agency ("HPA") - a new Special Health Authority - or to other parts of the National Health Service. The only function remaining with the PHLS is provision of microbiological culture media for use in microbiology laboratories. It is not intended that this function should remain with the PHLS in the longer term. An independent appraisal of the options for the future of this service is being carried out, after which appropriate recommendations will be made to the Secretary of State. It is intended that the repeal of the PHLS provisions will be brought into force after the Secretary of State has transferred the remaining function.

2 A copy of the HPA letter is available in the Library.