



# Health and Social Care Act 2008

## 2008 CHAPTER 14

### PART 6

#### GENERAL

#### **161 Orders, regulations and directions: general provisions**

- (1) Orders and regulations made under this Act by the Secretary of State, the Treasury, the Privy Council or the Welsh Ministers are to be made by statutory instrument.
- (2) Regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 120 and orders made by that Department under section 170(3) are to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) Any power to make orders or regulations mentioned in subsection (1) or (2) and any power of the Secretary of State to give directions under this Act—
  - (a) may be exercised either in relation to all cases to which the power extends, or in relation to all cases subject to specified exceptions, or in relation to any specified cases or classes of case,
  - (b) may be exercised so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act,
    - (iii) any such provision either unconditionally or subject to any specified condition, and
  - (c) may, in particular, be exercised so as to make different provision for different areas.
- (4) Any such power includes power—

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- (a) to make such supplementary, incidental, consequential or transitional provision or savings as the person exercising the power considers to be appropriate, and
- (b) to provide for a person to exercise a discretion in dealing with any matter.

## **162 Orders and regulations: Parliamentary control**

- (1) Subject to subsection (2), a statutory instrument containing—
- (a) an order or regulations made by the Secretary of State under this Act,
  - (b) an order made by the Privy Council under section 109 (rules of Office of the Health Professions Adjudicator), or
  - (c) regulations made by the Privy Council under Schedule 6 (Office of the Health Professions Adjudicator),
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) does not apply to—
- (a) a statutory instrument to which subsection (3) or (4) applies, or
  - (b) a statutory instrument containing an order made only under section 170(3) (commencement).
- (3) The Secretary of State may not make a statutory instrument containing (whether alone or with other provision)—
- (a) regulations under section 8(1) (regulated activities),
  - (b) regulations under section 20 (regulation of regulated activities) which provide that a contravention of or failure to comply with a specified provision of the regulations is an offence punishable with a maximum fine exceeding level 4 on the standard scale,
  - (c) regulations under section 43 (power to modify Chapter 2 of Part 1 in relation to newly regulated activities),
  - (d) regulations under section 87(1)(b) (penalty notices: monetary amount of the penalty) which make provision for a penalty payable under a penalty notice to be of an amount which exceeds that equal to level 4 on the standard scale,
  - (e) the first regulations made by the Secretary of State under section 120 (additional responsibilities of responsible officers),
  - (f) regulations under section 124 (regulation of social care workers) or section 126 (education and training of approved mental health professionals), or
  - (g) an order under section 167 which amends or repeals any provision of an Act of Parliament,
- unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) The Privy Council may not, under section 109 (rules of Office of the Health Professions Adjudicator), make a statutory instrument approving rules of the Office of the Health Professions Adjudicator that contain (whether alone or with other provision) provision for pilot schemes made by virtue of section 100(4) (legally qualified chairs) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

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### **163 Orders and regulations: control by National Assembly for Wales**

- (1) Subject to subsection (2), a statutory instrument containing—
  - (a) regulations made under this Act by the Welsh Ministers, or
  - (b) an order under section 167(2) (transitional provision etc.) made by the Welsh Ministers,is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (2) Subsection (1) does not apply to a statutory instrument to which subsection (3) applies.
- (3) The Welsh Ministers may not make a statutory instrument containing (whether alone or with other provision)—
  - (a) the first regulations made by the Welsh Ministers under section 120 (additional responsibilities of responsible officers), or
  - (b) regulations under section 124 (regulation of social care workers) or section 126 (education and training of approved mental health professionals),unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

### **164 Regulations: control by Northern Ireland Assembly**

- (1) A statutory rule containing regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 120 (additional responsibilities of responsible officers), other than a statutory rule to which subsection (2) applies, is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (2) The Department of Health, Social Services and Public Safety in Northern Ireland may not make a statutory rule containing (whether alone or with other provision) the first regulations made by the Department under section 120 unless a draft of the statutory rule has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

### **165 Directions**

- (1) Any power of the Secretary of State or the Privy Council to give directions under this Act includes power to vary or revoke the directions by subsequent directions.
- (2) A direction under this Act by the Secretary of State or the Privy Council must be given by an instrument in writing.

### **166 Repeals**

The enactments mentioned in Schedule 15 are repealed to the extent specified.

#### **Commencement Information**

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| <b>I1</b> | S. 166 in force at 1.1.2009 for specified purposes by <a href="#">S.I. 2008/2497</a> , <a href="#">art. 7(2)(d)</a>                               |
| <b>I2</b> | S. 166 in force at 1.1.2009 for specified purposes by <a href="#">S.I. 2008/3244</a> , <a href="#">art. 2(h)</a>                                  |
| <b>I3</b> | S. 166 in force at 1.4.2009 for specified purposes by <a href="#">S.I. 2009/270</a> , <a href="#">art. 2(2)(b)</a>                                |
| <b>I4</b> | S. 166 in force at 1.4.2009 for specified purposes by <a href="#">S.I. 2009/462</a> , <a href="#">art. 2(1)</a> , <a href="#">Sch. 1 para. 32</a> |

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## **167 Power to make transitional and consequential provision etc.**

- (1) The Secretary of State may by order make—
  - (a) such transitional or transitory provisions or savings as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act in relation to which the Secretary of State is the appropriate authority for the purposes of section 170(3), and
  - (b) such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) The Welsh Ministers may by order make such transitional or transitory provisions or savings as the Welsh Ministers consider appropriate in connection with the coming into force of any provision of this Act in relation to which the Welsh Ministers are the appropriate authority for the purposes of section 170(3).
- (3) An order under this section may amend, repeal, revoke or otherwise modify any enactment.
- (4) An order under this section may, in particular, provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order.
- (5) Before making an order under this section containing provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament, the Secretary of State must consult the Scottish Ministers.
- (6) The power under this section is not restricted by any other provision of this Act.
- (7) In this section “enactment” means an enactment contained in, or in an instrument made under—
  - (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, or
  - (d) Northern Ireland legislation.

## **168 Financial provisions**

- (1) There is to be paid out of money provided by Parliament—
  - (a) any expenditure incurred by virtue of this Act by a Minister of the Crown or government department, and
  - (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.
- (2) There are to be paid into the Consolidated Fund sums received by a Minister of the Crown or government department by virtue of this Act.

## **169 Extent**

- (1) Subject to the following provisions of this section, this Act extends to England and Wales only.

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- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland—
- (a) section 73 (arrangements between Care Quality Commission and Ministers),
  - (b) section 97 (general interpretation of Part 1),
  - (c) sections 98 to 119, 123, 127 and 128 and Schedules 6, 7, 8 and 10 (regulation of the health professions),
  - (d) sections 137 and 138 (health in pregnancy grant),
  - (e) section 145 (Human Rights Act 1998: provision of certain social care to be public function),
  - (f) section 159 (functions of Health Protection Agency in relation to biological substances), and
  - (g) sections 161, 162, 165, 167, 168, this section and sections 170 to 173 (general provisions).
- (3) The following provisions extend to England and Wales and Scotland only—
- (a) sections 131 to 133 (health in pregnancy grant: Great Britain),
  - (b) the repeal effected by this Act in section 16(2)(a)(v) of the Maintenance Orders Act 1950 (c. 37), and
  - (c) section 147(6), and Schedule 13, so far as relating to that repeal.
- (4) The following provisions extend to England and Wales and Northern Ireland only—
- (a) section 74 (arrangements between Care Quality Commission and Northern Ireland Ministers), and
  - (b) section 120 (additional responsibilities of responsible officers: England and Wales and Northern Ireland) and section 122 (Crown application) so far as relating to that section.
- (5) The following provisions extend to Northern Ireland only—
- (a) sections 134 to 136 (health in pregnancy grant: Northern Ireland), and
  - (b) section 164 (regulations: control by Northern Ireland Assembly).
- (6) The amendment, repeal or revocation by this Act of any enactment has the same extent as the enactment amended, revoked or repealed, but subject to subsection (7).
- (7) Subsection (6) does not apply to the repeals in Part 5 of Schedule 15; and accordingly those repeals, apart from the repeal mentioned in subsection (3)(b), extend to England and Wales only.

## **170 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) the provisions of this Part, except section 166 and Schedule 15 (repeals), and
  - (b) any other provision of this Act—
    - (i) so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power to make orders or regulations that is conferred by the provision or by any amendment made by the provision, or
    - (ii) so far as the provision, or any amendment made by the provision, defines any expression relevant to the exercise of any such power.

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- (2) Subsection (1)(b) does not apply to section 111 or Schedule 8 (extension of powers under s. 60 of Health Act 1999).
- (3) Except as provided by subsection (1), the provisions of this Act come into force on such day as the appropriate authority (as determined by section 171) may by order appoint.
- (4) Different days may be appointed under subsection (3) for different purposes.

## **171 The appropriate authority by whom commencement order is made**

- (1) This section has effect to determine who is the appropriate authority for the purposes of section 170(3).
- (2) Except as provided by subsections (3) to (5), the appropriate authority is the Secretary of State.
- (3) In relation to sections 119, 120 and 122 (responsible officers), so far as they relate to Northern Ireland, the appropriate authority is the Department of Health, Social Services and Public Safety in Northern Ireland.
- (4) In relation to the following provisions—
  - (a) Part 3 (public health protection), including Schedule 11, and Part 3 of Schedule 15 so far as they relate to Wales (and section 166 so far as it relates to that Part of Schedule 15 in its application to Wales),
  - (b) section 140 (pharmaceutical services), so far as relating to Part 2 of Schedule 12, together with that Part of that Schedule,
  - (c) section 141(2) (remuneration for persons providing pharmaceutical services: appointment of determining authorities in relation to Wales),
  - (d) section 144 (weighing and measuring of children: Wales),
  - (e) subsections (1) to (7) of section 146 (direct payments in lieu of provision of care services), so far as they relate to Wales,
  - (f) subsection (8) of that section,
  - (g) section 147 (abolition of maintenance liability of relatives), Schedule 13 and Part 5 of Schedule 15, so far as they relate to local authorities in Wales (and section 166 so far as relating to Part 5 of Schedule 15 in its application to local authorities in Wales),
  - (h) section 148 (ordinary residence for certain purposes of National Assistance Act 1948 (c. 29) etc.), so far as relating to Wales, and
  - (i) the repeals in the National Health Service (Wales) Act 2006 (c. 42) in Part 4 of Schedule 15 (and section 166 so far as relating to those repeals),
 the appropriate authority is the Welsh Ministers.
- (5) In relation to Part 4 (health in pregnancy grant), the appropriate authority is the Treasury.

## **172 Consultation in relation to commencement**

- (1) Before making a commencement order relating to—
  - (a) section 111 and Schedule 8 (extension of powers under section 60 of the Health Act 1999 (c. 8)) so far as relating to—
    - (i) subsection (2A) of section 60 of the Health Act 1999,

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- (ii) the repeal of paragraph 7(3) of Schedule 3 to that Act,
  - (iii) the amendments of paragraphs 8 and 9 of Schedule 3 to that Act, so far as relating to a profession that is not a reserved profession for Scotland, or
  - (iv) the meaning of “enactment” for the purposes of Schedule 3 to that Act,
- (b) section 112 (standard of proof in fitness to practise proceedings) so far as relating to a profession that is not a reserved profession for Scotland, or
- (c) section 116 (powers of Secretary of State and devolved administrations), so far as relating to the functions of the Scottish Ministers,
- the Secretary of State must consult the Scottish Ministers.
- (2) For the purposes of subsection (1)(a)(iii) and (b), a profession is a reserved profession for Scotland if it falls within Section G2 (health professions) of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46).
- (3) Before making a commencement order relating to—
- (a) paragraph 13, 14(a), (b)(i) or (c), 16, 17, 18, 19, 20, 22, 23, 24(b) or (c), 25, 26, 32 or 33 of Schedule 5,
  - (b) section 95 so far as relating to those paragraphs, or
  - (c) Part 1 of Schedule 15 so far as relating to those paragraphs (or section 166 so far as relating to that Part of that Schedule),
- the Secretary of State must consult the Welsh Ministers.
- (4) Before making a commencement order relating to section 148 (ordinary residence for certain purposes of National Assistance Act 1948 etc.) in relation to England, the Secretary of State must consult the Welsh Ministers; and, before making a commencement order relating to that section in relation to Wales, the Welsh Ministers must consult the Secretary of State.
- (5) Before making a commencement order relating to—
- (a) section 159 (functions of Health Protection Agency in relation to biological substances), or
  - (b) Part 7 of Schedule 15 (or section 166 so far as relating to that Part of that Schedule),
- the Secretary of State must consult the Department of Health, Social Services and Public Safety in Northern Ireland.
- (6) In this section “commencement order” means an order under section 170(3).

## **173 Short title**

This Act may be cited as the Health and Social Care Act 2008.

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