



Health and Care Act 2022

2022 CHAPTER 31

PART 3

SECRETARY OF STATE'S POWERS TO TRANSFER OR DELEGATE FUNCTIONS

102 Relevant bodies and Special Health Authorities

In this Part—

“relevant body” means—

- (a) Health Education England,
- (b) the Health and Social Care Information Centre,
- (c) the Health Research Authority,
- (d) the Human Fertilisation and Embryology Authority,
- (e) the Human Tissue Authority, or
- (f) NHS England;

“Special Health Authority” means a Special Health Authority established under section 28 of the National Health Service Act 2006.

103 Power to transfer functions between bodies

- (1) The Secretary of State may by regulations transfer a function of a relevant body to another relevant body.
- (2) Regulations under this section may be made only if the Secretary of State considers that they serve the purpose of improving the exercise of public functions, having regard to—
 - (a) efficiency,
 - (b) effectiveness,
 - (c) economy, and
 - (d) securing appropriate accountability to Ministers.
- (3) Regulations under this section may not transfer a function of NHS England if the Secretary of State considers that to do so would make NHS England redundant.

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- (4) The provision which may be made by regulations under this section by virtue of section 183(1)(a) includes provision—
- (a) modifying functions of either relevant body (see further section 105(1));
 - (b) modifying the constitutional or funding arrangements of either relevant body (see further section 105(2) and (3));
 - (c) abolishing the relevant body from which functions are transferred, where the Secretary of State considers that it is redundant as a result of the transfer of functions.
- (5) Where—
- (a) regulations under this section contain provision for a body to exercise a function that is exercisable in relation to Scotland, Wales or Northern Ireland,
 - (b) immediately before that provision takes effect, the function is exercisable by another body whose constitutional arrangements contain provision (however expressed) for the body to include a member whose experience, functions or appointment are connected with that part of the United Kingdom, and
 - (c) the Secretary of State considers that the constitutional arrangements of the body referred to in paragraph (a) do not contain corresponding provision as to membership,
- the Secretary of State must make provision by virtue of section 183(1)(a) modifying the constitutional arrangements of the body referred to in paragraph (a) so that they contain corresponding provision as to membership.
- (6) In this section, “Minister” means a Minister of the Crown (as defined by section 8 of the Ministers of the Crown Act 1975).

104 Power to provide for exercise of functions of Secretary of State

- (1) The Secretary of State may by regulations provide for a relevant body to exercise specified functions of the Secretary of State on behalf of the Secretary of State.
- (2) The functions that may be specified are —
- (a) any functions of the Secretary of State which relate to the health service in England;
 - (b) any other functions that the Secretary of State may provide for a Special Health Authority to exercise.
- (3) The provision which may be made by regulations under this section by virtue of section 183(1)(a) includes provision—
- (a) modifying functions of the relevant body (see further section 105(1));
 - (b) modifying the constitutional or funding arrangements of the relevant body (see further section 105(2) and (3)).
- (4) Where—
- (a) regulations under this section contain provision for a relevant body to exercise a function of the Secretary of State that is exercisable in relation to Scotland, Wales or Northern Ireland,
 - (b) immediately before that provision takes effect, the Secretary of State’s function is exercisable by a body whose constitutional arrangements contain provision (however expressed) for the body to include a member whose

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experience, functions or appointment are connected with that part of the United Kingdom, and

- (c) the Secretary of State considers that the relevant body's constitutional arrangements do not contain corresponding provision as to membership, the Secretary of State must make provision by virtue of section 183(1)(a) modifying the relevant body's constitutional arrangements so that they contain corresponding provision as to membership.
- (5) Regulations under this section may make provision for determining whether and in what circumstances the Secretary of State or a relevant body is liable for the exercise of the specified functions by the relevant body.
 - (6) The specification of a function in regulations under this section does not preclude the Secretary of State from exercising the function.
 - (7) In this section "the health service" has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act).

105 Scope of powers

- (1) In sections 103 and 104, references to modifying the functions of a body include—
 - (a) conferring a function on the body;
 - (b) abolishing a function of the body;
 - (c) changing the purpose or objective for which the body exercises a function;
 - (d) changing the conditions under which the body exercises a function.
- (2) In sections 103 and 104, references to the constitutional arrangements of a body include matters relating to—
 - (a) the name of the body;
 - (b) the chair of the body (including qualifications and procedures for appointment and functions);
 - (c) members of the body (including the number of members, qualifications and procedures for appointment and functions);
 - (d) staff of the body exercising functions on its behalf (including qualifications and procedures for appointment and functions);
 - (e) the body's powers to employ staff;
 - (f) governing procedures and arrangements (including the role and membership of committees and sub-committees);
 - (g) reports and accounts.
- (3) In sections 103 and 104, references to modifying the funding arrangements of a body include—
 - (a) modifying the extent to which it is funded by a Minister;
 - (b) conferring power on the body to charge fees for the exercise of a function (and to determine their amount).
- (4) Regulations under section 103 or 104 may repeal and re-enact (but may not create)—
 - (a) a power to make subordinate legislation,
 - (b) a power of forcible entry, search or seizure,
 - (c) a power to compel the giving of evidence, or
 - (d) a criminal offence.

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- (5) The provision which may be made by regulations under section 103 or 104 may be made by repealing, revoking or amending provision made by or under an Act, whenever passed or made.
- (6) The provision which may be made by regulations under section 103 or 104 by virtue of section 183(1)(a) includes provision repealing, revoking or amending provision made by or under any of the following, whenever passed or made—
 - (a) an Act;
 - (b) an Act of the Scottish Parliament;
 - (c) a Measure or Act of Senedd Cymru;
 - (d) Northern Ireland legislation.
- (7) In this section, “Minister” means a Minister of the Crown (as defined by section 8 of the Ministers of the Crown Act 1975).

106 Transfer schemes in connection with regulations

- (1) The Secretary of State may, in connection with regulations under section 103 or 104, make one or more schemes for the transfer of property, rights and liabilities (“transfer schemes”).
- (2) A transfer scheme in connection with regulations under section 103 may provide for the transfer of property, rights or liabilities to any appropriate person from the relevant body from which functions are transferred by the regulations.
- (3) A transfer scheme in connection with regulations under section 104 may provide for the transfer of property, rights or liabilities to any appropriate person from—
 - (a) the Secretary of State,
 - (b) a Special Health Authority, or
 - (c) any relevant body ceasing to exercise functions of the Secretary of State as a result of the regulations.
- (4) The things that may be transferred under a transfer scheme include—
 - (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (c) criminal liabilities.
- (5) A transfer scheme may—
 - (a) create rights, or impose liabilities, in relation to property or rights transferred;
 - (b) make provision about the continuing effect of things done by, on behalf of or in relation to the transferor in respect of anything transferred;
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
 - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
 - (e) make provision for the shared ownership or use of property;
 - (f) make provision which is the same as or similar to the TUPE regulations;
 - (g) make other consequential, supplementary, incidental or transitional provision.

- (6) A transfer scheme may provide—
- (a) for modifications by agreement;
 - (b) for modifications to have effect from the date when the original scheme came into effect.
- (7) In subsection (5)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (8) For the purposes of this section—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
 - (b) references to the transfer of property include the grant of a lease.
- (9) For the purposes of subsection (8)(a)—
- (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms of the individual’s employment in the civil service of the State are to be treated as constituting the terms of the contract of employment.
- (10) In this section “appropriate person” means—
- (a) any relevant body,
 - (b) the Secretary of State,
 - (c) an integrated care board,
 - (d) a Special Health Authority, or
 - (e) an NHS trust established under section 25 of the National Health Service Act 2006.

107 Transfer schemes: taxation

- (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
- (a) anything transferred under a scheme under section 106, or
 - (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision which may be made under subsection (1)(a) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
 - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
 - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
 - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;

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- (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this section references to the transfer of property include the grant of a lease.
- (6) In this section—
 - “relevant tax” means income tax, corporation tax, capital gains tax, value added tax, stamp duty or stamp duty reserve tax;
 - “tax provision” means a provision of an enactment about a relevant tax.

108 Consent and consultation

- (1) Before making regulations under section 103 or 104, the Secretary of State must—
 - (a) obtain the consent of the Scottish Ministers in relation to any provision—
 - (i) which would be within the legislative competence of the Scottish Parliament, if contained in an Act of that Parliament, and is not merely incidental to, or consequential on, provision which would be outside that legislative competence, or
 - (ii) which modifies the functions of the Scottish Ministers;
 - (b) obtain the consent of the Welsh Ministers in relation to any provision—
 - (i) which would be within the legislative competence of Senedd Cymru, if contained in an Act of the Senedd, and is not merely incidental to, or consequential on, provision which would be outside that legislative competence, or
 - (ii) which modifies the functions of the Welsh Ministers;
 - (c) obtain the consent of a Northern Ireland department in relation to any provision—
 - (i) which would be within the legislative competence of the Northern Ireland Assembly, if contained in an Act of that Assembly, and is not merely incidental to, or consequential on, provision which would be outside that legislative competence, or
 - (ii) which modifies the functions of a Northern Ireland department.
- (2) Consent is not required under subsection (1)(c)(i) in relation to any provision if—
 - (a) a Bill for an Act of the Northern Ireland Assembly containing the provision would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998, and
 - (b) the provision does not affect, other than incidentally, a transferred matter (within the meaning of that Act).
- (3) Before making regulations under section 103 or 104, the Secretary of State must consult the following about a draft of the regulations—
 - (a) any body to which the regulations relate, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (4) If, as a result of consultation under this section, it appears to the Secretary of State appropriate to change the draft regulations, the Secretary of State must carry out such

further consultation with respect to the changes as the Secretary of State considers appropriate.

- (5) It is immaterial for the purposes of this section whether consent is obtained or consultation is carried out before or after the commencement of this section.