



Health and Medicines Act 1988

1988 CHAPTER 49

Additional powers for financing Health Service

7 Extension of powers of Secretary of State for financing the Health Service.

- (1) In order to make more income available for improving the health service (as defined in [^{F1}the National Health Service Act 2006] or the ^{M1}National Health Service (Scotland) Act 1978), the Secretary of State shall have the powers specified in subsection (2) below; but for the avoidance of doubt it is hereby declared that nothing in this section authorises him or any body to which he gives directions under subsection (3) below to disregard any enactment or rule of law or to override any person's contractual or proprietary rights.
- (2) The powers mentioned in subsection (1) above are powers [^{F2}(exercisable outside as well as within Great Britain)]—
 - (a) to acquire, produce, manufacture and supply goods;
 - (b) to acquire land by agreement and manage and deal with land;
 - (c) to supply accommodation to any person;
 - (d) to supply services to any person and to provide new services;
 - (e) to provide instruction for any person;
 - (f) to develop and exploit ideas and exploit intellectual property;
 - (g) to do anything whatsoever which appears to him to be calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred by this subsection; and
 - (h) to make such charge as he considers appropriate for anything that he does in the exercise of any such power and to calculate any such charge on any basis that he considers to be the appropriate commercial basis.
- (3) The Secretary of State may give directions (having regard to the existing work of voluntary bodies)—
 - (i) for the exercise of any of those powers by any body constituted under ^{F3}... the ^{M2}National Health Service (Scotland) Act 1978; and
 - (ii) with respect to the manner in which any such body is to exercise any such power;

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and it shall be the duty of the body in question to comply with the directions.

- (4) The directions may provide that any power to which they relate shall be exercisable subject to any limitations specified in the directions.
- (5) The directions may be varied or revoked by subsequent directions.
- (6) The Secretary of State shall exercise the powers specified in subsection (2)(c) and (d) above only if and to the extent that he is satisfied that anything which he proposes to do in the exercise of those powers does not fall within section 65 of the National Health Service Act 1977 or section 57 of the National Health Service (Scotland) Act 1978.
- (7) The Secretary of State shall exercise the powers specified in subsection (2)(f) above only after consulting (to the extent that it appears to him to be practical) any person who appears to him to have an interest through his own previous research in the ideas or intellectual property in question as to whether he should exercise them and, if so, as to any financial arrangements.

[^{F4}(7A) The power specified in paragraph (g) of subsection (2) above includes power for the Secretary of State—

- (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 [^{F5}as defined in section 1(1) of the Companies Act 2006]; 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.]

[^{F6}(7C) The power specified in paragraph (g) of subsection (2) above includes power for the Scottish Ministers—

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

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

(7D) In subsection (7C) above “companies” means companies [^{F7}as defined in section 1(1) of the Companies Act 2006]; and that subsection is without prejudice to the generality of subsection (2) above.]

- (8) The Secretary of State shall exercise the powers specified in subsection (2) above only if and to the extent that he is satisfied that anything which he proposes to do—

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- (a) will not to a significant extent interfere with the performance by him of any duty imposed on him by [^{F8}the National Health Service Act 2006] or the National Health Service (Scotland) Act 1978; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at hospitals vested in the Secretary of State for the purposes of his functions under either of those Acts (whether as resident or non-resident patients) otherwise than under section 65 of the National Health Service Act 1977 or section 57 of the National Health Service (Scotland) Act 1978.

[^{F9}(8A) The references in subsection (6) and subsection (8) to section 65 of the National Health Service Act 1977 are references to that section prior to its repeal by the National Health Service (Consequential Provisions) Act 2006.]

- (9) In section 63 of the National Health Service Act 1977 and in section 55 of the National Health Service (Scotland) Act 1978—
 - (a) in subsection (1), for the words from “to such extent” to “those charges” there shall be substituted the words “for patients to such extent as he may determine, and may recover such charges as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis”; and
 - (b) subsection (2) shall be omitted.

^{F10}(10)

- (11) The following section shall be substituted for sections 57 and 58 of the ^{M3}National Health Service (Scotland) Act 1978—

“57 Accommodation and services for private patients.

- (1) If the Secretary of State is satisfied, in the case of a health service hospital, that it is reasonable to do so, he may authorise accommodation and services at the hospital in question to be made available, to such extent as he may determine, for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Secretary of State may determine and may make and recover such charges as he may determine in respect of such accommodation and services and calculate them on any basis that he considers to be the appropriate commercial basis; but he shall do so only if and to the extent that he is satisfied that to do so—
 - (a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and
 - (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.
- (2) The Secretary of State may allow accommodation and services to which an authorisation under subsection (1) above relates to be made available in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid

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capacity) on the staff of a health service hospital for the treatment of private patients of that practitioner.

- (3) The Secretary of State shall revoke an authorisation under this section only if and to the extent that he is satisfied that sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at health service hospitals) to meet the reasonable demand for them in the area served by the hospital in question.”

^{F10}(12)

- (13) In section 98 of the ^{M4}National Health Service (Scotland) Act 1978 (which makes corresponding provision for Scotland) for the words “may be prescribed”, in the second place where they occur, there shall be substituted the words “the Secretary of State may determine”.

- (14) The following paragraph shall be added at the end of the sections mentioned in [^{F11}subsection (13)] above—

“The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.”

Textual Amendments

- F1** Words in s. 7(1) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 1 para. 116\(a\)](#) (with Sch. 3 Pt. 1)
- F2** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 34](#)
- F3** Words in s. 7(3)(i) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 45; S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F4** S. 7(7A)(7B) inserted (1.7.2002 (W.), 12.9.2002 (E.), otherwise prosp.) by [2001 c. 15, ss. 5, 70\(2\)](#) (with ss. 64(9), 65(4)); [S.I. 2002/1475, art. 2\(1\), Sch. Pt. 1; S.I. 2002/2363, art. 3](#)
- F5** Words in s. 7(7B) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 1\(2\), Sch. 1 para. 99](#) (with art. 10)
- F6** S. 7(7C)(7D) inserted (17.10.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\), ss. 37\(2\), 43\(3\); S.S.I. 2005/492, art. 3\(a\), Sch. 1](#)
- F7** Words in s. 7(7D) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 1\(2\), Sch. 1 para. 99](#) (with art. 10)
- F8** Words in s. 7(8)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 1 para. 116\(c\)](#) (with Sch. 3 Pt. 1)
- F9** S. 7(8A) inserted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 1 para. 116\(d\)](#) (with Sch. 3 Pt. 1)
- F10** S. 7(10)(12) repealed (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 4](#) (with Sch. 2 Pt. 1 Sch. 3 Pt. 1)
- F11** Words in s. 7(14) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), s. 8\(2\), Sch. 1 para. 116\(e\)](#) (with Sch. 3 Pt. 1)

Modifications etc. (not altering text)

- C1** S. 7: transfer of functions (1.7.1999) by [S.I. 1999/672, arts. 1\(2\), 2, Sch. 1](#)
- C2** S. 7(1)-(8) applied (S.) (1.4.1999) by [S.I. 1999/686, art. 5\(1\), Sch. Pt. II; s. 7\(1\)-\(8\) applied \(S.\) \(1.4.1999\) by S.I. 1999/726, art. 5, Sch. Pt. II; s. 7\(1\)-\(8\) applied \(S.\) \(1.4.2000\) by S.S.I. 2000/47, art. 5, Sch. Pt. II; s. 7\(1\)-\(8\) applied \(S.\) \(6.4.2001\) by S.S.I. 2001/137, art. 5, Sch. Pt. II; s. 7\(1\)-\(8\)](#)

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- applied (S.) (31.3.2002) by The NHS Education for Scotland Order 2002 (S.S.I. 2002/103), art. 6, **Sch. Pt. II** (with art. 4(4))
- C3** S. 7(1)-(7) and (8) applied (S.) (27.6.2002) by The National Waiting Times Centre Board (Scotland) Order 2002 (S.S.I. 2002/305), art. 5, **Sch. Pt. II** (with art. 4(4))
- C4** S. 7(2) applied (E.W.) (5.7.1990) by National Health Service and Community Care Act 1990 (c. 19), s. 5(8)(9), **Sch. 2 para. 15**; S.I. 1990/1329, art. 2(1), **Sch. 1**; s. 7(2) applied (S.) (24.7.1990) by National Health Service (Scotland) Act 1978 (c. 29), s. 32, **Sch. 7A para. 15** (as inserted (24.7.1990) by National Health Service and Community Care Act 1990 (c. 19), s. 32, **Sch. 6**); S.I. 1990/1520, art. 2(b), **Sch.** (with art. 3); s. 7(2) applied (with modifications) (E.W.) (4.1.2000 for E. for specified purposes, otherwise prosp.) by National Health Service Act 1977 (c. 49), **s. 18A(5)** (as inserted (E.W.) (4.1.2000 for E. for specified purposes, otherwise prosp.) by Health Act 1999 (c. 8), **ss. 5, 67(1)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**)
- C5** S. 7(2) applied (1.3.2007) by National Health Service Act 2006 (c. 41), s. 277(1), **Sch. 4 para. 20**
- C6** S. 7(2) applied (with modifications) (1.3.2007) by National Health Service Act 2006 (c. 41), **ss. 21(5), 277(1)**
- C7** S. 7(2) applied in part by 2006 c. 41, s. 14Z47(1) (as inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 25(2), 186(6)**; S.I. 2022/734, reg. 2(a), **Sch.** (with regs. 13, 29, 30, 33))

Marginal Citations

- M1** 1978 c. 29.
M2 1978 c. 29.
M3 1978 c. 29.
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Changes and effects yet to be applied to :

- s. 7(2) applied (with modifications) by 1977 c. 49, s. 18A(5) (as inserted) by 1999 c. 8 s. 5
- s. 7(3)(i) words omitted by 2012 c. 7 Sch. 14 para. 53

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 11 words repealed by 2005 asp 13 sch. 3