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# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART I

#### THE NATIONAL HEALTH SERVICE: ENGLAND AND WALES

##### *Local management*

#### **1 Regional and District Health Authorities.**

- (1) In the <sup>M1</sup>National Health Service Act 1977 (in this Part of this Act referred to as “the principal Act”), in section 8 (Regional and District Health Authorities etc.)—
  - (a) in subsection (1) for the words “Schedule 5 to this Act” there shall be substituted “Schedule 1 to the National Health Service and Community Care Act 1990”;
  - (b) any reference to an area or an Area Health Authority shall be omitted; and
  - (c) subsection (5) (consultation before making orders under subsection (2)) shall be omitted.
- (2) Part I of Schedule 1 to this Act shall have effect in place of Part I of Schedule 5 to the principal Act (membership of health authorities etc.).
- (3) Part III of Schedule 5 to the principal Act (supplementary provisions as to authorities) shall be amended in accordance with Part III of Schedule 1 to this Act.
- (4) Subject to subsection (5) below, at the end of the day appointed for the coming into force of this subsection,—
  - (a) any person who became a member of a Regional or District Health Authority under Part I of Schedule 5 to the principal Act shall cease to be such a member; and
  - (b) any person who, by virtue of an order under section 11 of the principal Act, became a member of a special health authority which is a relevant authority

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for the purposes of paragraph 9(1) of Schedule 5 to that Act (as amended by Part III of Schedule 1 to this Act) shall cease to be such a member.

- (5) Subsection (4) above does not apply to a person holding office as chairman of a Regional, District or Special Health Authority.

#### Marginal Citations

**M1** 1977 c. 49.

## 2 Family Health Services Authorities.

- (1) On and after the day appointed for the coming into force of this subsection—
- (a) each existing Family Practitioner Committee shall be known as a Family Health Services Authority; and
  - (b) any reference in any enactment to a Family Practitioner Committee shall be construed as a reference to a Family Health Services Authority;
- and the generality of this subsection is not affected by any express amendment made by this Act.
- (2) In subsection (1) above “enactment” means—
- (a) an enactment passed before the day appointed for the coming into force of subsection (1) above; and
  - (b) an enactment comprised in subordinate legislation made before that day.
- (3) In section 10 of the principal Act (Family Health Services Authorities)—
- (a) for the words “Schedule 5 to this Act” there shall be substituted “Schedule 1 to the National Health Service and Community Care Act 1990”; and
  - (b) subsection (7) (consultation before making orders under subsection (4)) shall be omitted.
- (4) Part II of Schedule 1 to this Act shall have effect in place of Part II of Schedule 5 to the principal Act (membership of Family Practitioner Committees).
- (5) At the end of the day appointed for the coming into force of this subsection, any person who became a member of a Family Practitioner Committee under Part II of Schedule 5 to the principal Act (including a person holding office as chairman of such a committee) shall cease to be a member and, accordingly, in the case of a chairman, shall also cease to be chairman.
- (6) Nothing in this section shall cause a Family Health Services Authority to be included in the expression “health authority”, as defined in the principal Act.

## 3 Primary and other functions of health authorities etc. and exercise of functions.

- (1) Any reference in this Act to the primary functions of a Regional, District or Special Health Authority is a reference to those functions for the time being exercisable by the authority by virtue of directions under section 11, section 13 or section 14 of the principal Act; and any reference in this Act to the primary functions of a Family Health Services Authority is a reference to the functions for the time being exercisable by the authority by virtue of this Act or section 15 of the principal Act.

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- (2) In addition to carrying out its primary functions, a Regional, District or Special Health Authority or a Family Health Services Authority may, as the provider, enter into an NHS contract (as defined in section 4 below) under which the goods or services to be provided are of the same description as goods or services which the authority already provides or could provide for the purposes of carrying out its primary functions.
- (3) In section 16 of the principal Act (exercise of functions), in subsection (1) for the words from “an Area”, in the first place where they occur, to “Health Authority” in the second place where those words occur, there shall be substituted “a Regional or District Health Authority, or exercisable by a Regional or District Health Authority by virtue of any prescribed provision of this or any other Act, or exercisable by a Family Health Services Authority under Part I of the National Health Service and Community Care Act 1990”.
- (4) In section 17 of the principal Act (directions as to exercise of functions), in subsection (1) after the words “sections 13 to 16 above” there shall be inserted “and may also give directions with respect to the exercise by health authorities or Family Health Services Authorities of functions under the National Health Service and Community Care Act 1990”.
- (5) Nothing in this section or in the principal Act affects the power of a Regional, District or Special Health Authority at any time to provide goods or services under the principal Act for the benefit of an individual where—
  - (a) the provision of those goods or services is neither within the primary functions of the authority nor carried out pursuant to an NHS contract; but
  - (b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an NHS contract for their provision.
- (6) In any case where—
  - (a) a Regional, District or Special Health Authority provides goods or services for the benefit of an individual as mentioned in subsection (5) above, and
  - (b) the provision of those goods or services is within the primary functions of another health authority or is a function of a health board,the authority providing the goods or services shall be remunerated in respect of that provision by that other health authority or health board.
- (7) The rate of any remuneration payable by virtue of subsection (6) above shall be calculated in such manner or on such basis as may be determined by the Secretary of State.
- (8) In any case where—
  - (a) a Regional, District or Special Health Authority provides goods or services for the benefit of an individual, and
  - (b) the provision of those goods or services is not pursuant to an NHS contract, and
  - (c) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this subsection by a direction made by the Secretary of State,the authority shall be remunerated by the Secretary of State in respect of the provision of the goods or services in question at such rate or rates as he considers appropriate.

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#### 4 NHS contracts.

- (1) In this Act the expression “NHS contract” means an arrangement under which one health service body (“the acquirer”) arranges for the provision to it by another health service body (“the provider”) of goods or services which it reasonably requires for the purposes of its functions.
- (2) In this section “health service body” means any of the following, namely,—
  - (a) a health authority;
  - (b) a health board;
  - (c) the Common Services Agency for the Scottish Health Service;
  - (d) a Family Health Services Authority;
  - (e) an NHS trust;
  - (f) a recognised fund-holding practice;
  - (g) the Dental Practice Board or the Scottish Dental Practice Board;
  - (h) the Public Health Laboratory Service Board; and
  - (i) the Secretary of State.
- (3) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.
- (4) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—
  - (a) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement, or
  - (b) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,
 that health service body may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.
- (5) Where a reference is made to the Secretary of State under subsection (3) or subsection (4) above, the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.
- (6) By his determination of a reference under subsection (4) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.
- (7) A determination of a reference under subsection (3) above may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.

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- (8) Without prejudice to the generality of his powers on a reference under subsection (3) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where an arrangement is so varied or brought to an end—
- (a) subject to paragraph (b) below, the variation or termination shall be treated as being effected by agreement between the parties; and
  - (b) the directions included in the determination by virtue of subsection (7) above may contain such provisions as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.
- (9) In subsection (2) above “NHS trust” includes—
- (a) such a trust established under the <sup>M2</sup>National Health Service (Scotland) Act 1978; and
  - (b) a body established in Northern Ireland and specified by an order made by statutory instrument by the Secretary of State as equivalent to an NHS trust established under this Part of this Act.

#### Marginal Citations

M2 1978 c. 29.

## 4 NHS contracts. **E+W**

- (1) In this Act the expression “NHS contract” means an arrangement under which one health service body (“the acquirer”) arranges for the provision to it by another health service body (“the provider”) of goods or services which it reasonably requires for the purposes of its functions.
- (2) In this section “health service body” means any of the following, namely,—
- (a) a health authority;
  - (b) a health board;
  - (c) the Common Services Agency for the Scottish Health Service;
  - (d) a Family Health Services Authority;
  - (e) an NHS trust;
  - (f) a recognised fund-holding practice;
  - (g) the Dental Practice Board or the Scottish Dental Practice Board;
  - (h) the Public Health Laboratory Service Board; <sup>F2</sup> . . .
  - (i) the Secretary of State
  - [<sup>F3</sup>(j) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland Order 1972;
  - (k) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
  - (l) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991; and
  - (m) the Department of Health and Social Services for Northern Ireland.]

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- (3) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.
- (4) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—
- (a) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement, or
  - (b) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,
- that health service body may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.
- (5) Where a reference is made to the Secretary of State under subsection (3) or subsection (4) above, the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.
- (6) By his determination of a reference under subsection (4) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.
- (7) A determination of a reference under subsection (3) above may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.
- (8) Without prejudice to the generality of his powers on a reference under subsection (3) above, the Secretary of State or, as the case may be, the person appointed under subsection (5) above may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where an arrangement is so varied or brought to an end—
- (a) subject to paragraph (b) below, the variation or termination shall be treated as being effected by agreement between the parties; and
  - (b) the directions included in the determination by virtue of subsection (7) above may contain such provisions as the Secretary of State or, as the case may be, the person appointed under subsection (5) above considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.
- (9) In subsection (2) above “NHS trust” includes—
- (a) such a trust established under the <sup>M5</sup>National Health Service (Scotland) Act 1978; <sup>F4</sup> . . .
  - <sup>F4</sup>(b) . . . . .

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- [<sup>F5</sup>(10) Where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 or a body mentioned in subsection (2) (j), (k), (1) or (m) above is a party or prospective party to an arrangement or proposed arrangement which—
- (a) falls within the definition of NHS contract in subsection (1) above; and
  - (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,
- subsections (3) to (8) above shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.]

#### Textual Amendments

- F2** Word at end of s. 4(2)(h) repealed (1.4.1991) by S.I. 1991/195, art. 7(3)  
**F3** S. 4(2)(j)(k)(l)(m) added (1.4.1991) by S.I. 1991/195, art. 7(3)  
**F4** S. 4(9)(b) and word in s. 4(9)(a) repealed (1.4.1991) by S.I. 1991/195, art. 7(4)  
**F5** S. 4(10) added (1.4.1991) by S.I. 1991/195, art. 7(5)

#### Marginal Citations

- M5** 1978 c. 29.

VALID FROM 01/09/1997

#### [<sup>F1</sup>4A Provision of certain services under NHS contracts.

- (1) This section applies to any arrangement under which a Health Authority or such other health service body as may be prescribed arrange for the provision to them—
- (a) by a person on an ophthalmic list, or
  - (b) by a person on a pharmaceutical list,
- of goods or services that they reasonably require for the purposes of functions which they are exercising under Part I of the principal Act.
- (2) Any such arrangement is to be treated as an NHS contract for the purposes of section 4 (other than subsections (4) and (6)).
- (3) In this section—
- “health service body” means a body which is a health service body for the purposes of section 4;
  - “ophthalmic list” means a list published in accordance with regulations made under—
    - (a) section 39(a) of the principal Act;
    - (b) section 26(2)(a) of the <sup>M3</sup>National Health Service (Scotland) Act 1978; or
    - (c) Article 62(2)(a) of the <sup>M4</sup>Health and Personal Social Services (Northern Ireland) Order 1972; and
  - “pharmaceutical list” means a list published in accordance with regulations made under—

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- (a) section 42(2)(a) of the principal Act;
- (b) section 27(2) of the National Health Service (Scotland) Act 1978; or
- (c) Article 63(2A)(a) of the 1972 Order.]

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#### **Textual Amendments**

**F1** S. 4A inserted (1.9.1997) by 1997 c. 46, s. 31(1); S.I. 1997/1780,

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#### **Marginal Citations**

**M3** 1978 c. 29.

**M4** S.I. 1972/1265 (N.I.14).



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