

## SCHEDULES

### SCHEDULE 4

#### AMENDMENTS OF ENACTMENTS

##### *The 1978 Act*

- 42 The 1978 Act is amended as follows.
- 43 In section 9 (local consultative committees)—
- (a) in subsection (5), for “on the provision of services under this Act” there is substituted “and, where the Secretary of State so directs, an NHS trust on the provision of services under this Act or under a pilot scheme under section 1 of the National Health Service (Primary Care) Act 1997”,
  - (b) in subsection (7), after “Health Boards” there is inserted “or, where the Secretary of State so directs, NHS trusts” and for “may be prescribed” there is substituted “the Secretary of State may direct”.
- 44 In section 10(4) (Common Services Agency)—
- (a) after “Health Boards” in the first place where it appears there is inserted “the NHS trusts”,
  - (b) after “Health Boards” in the second place where it appears there is inserted “or of the NHS trusts”,
  - (c) after “Health Boards” in the third place where it appears there is inserted “or NHS trusts”.
- 45 In section 12A(5) (NHS trusts)—
- (a) in paragraph (a), for “and directors” there is substituted “, directors and trustees”,
  - (b) in paragraph (b), after “directors” there is inserted “, trustees”,
  - (c) in paragraph (c), after “directors” there is inserted “and trustees”,
  - (d) in paragraph (d), for the words from “director” where it first appears to the end of the paragraph there is substituted “trustee, to be regarded as an executive director rather than as a trustee”.
- 46 In section 17A (NHS contracts)—
- (a) in subsection (2)—
    - (i) after paragraph (a) there is inserted—

“(aa) Special Health Boards”,
    - (ii) after paragraph (k) there is inserted—

“(ka) Primary Care Trusts established under section 16A of the National Health Service Act 1977”,
    - (iii) paragraphs (d) and (j) are omitted,
  - (b) in subsection (3), paragraph (a) and the word “and” following it are omitted.

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*Status: This is the original version (as it was originally enacted).*

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- 47 In section 17E (personal medical and dental services: regulations), subsection (4)  
 is omitted.
- 48 In section 19A(3)(b) (medical lists), for the words from first “disqualified” to  
 “29” there is substituted “disqualified for inclusion in the list by, or by virtue of a  
 direction of, the NHS Tribunal”.
- 49 Section 31 (disqualification provisions in England and Wales or Northern Ireland)  
 is renumbered as subsection (1) of that section and—
- (a) in paragraph (a), for the words from “services” to “29(1)” there is  
 substituted “any of the services mentioned in one of the paragraphs of  
 section 29(8)”;
  - (b) in paragraph (b), at the beginning, there is inserted “in relation to the  
 services in question” and for the words from “a list” to the end there is  
 substituted “any list and (if also the subject of such a declaration under  
 those provisions corresponding to a declaration of unfitness) be treated as  
 if a declaration of unfitness had been made in respect of him”;
  - (c) after that subsection there is inserted—
    - “(2) Where under the conditional disqualification provisions in  
 England and Wales or Northern Ireland—
    - (a) any conditions are imposed in relation to the provision  
 by any person of any of the services mentioned in  
 section 29(8); or
    - (b) any conditions so imposed are varied,

the Secretary of State may, by a notice in writing given to  
 each Health Board and to the person in question, impose those  
 conditions in relation to the provision by that person of those  
 services under this Part.
- (3) A notice under subsection (2) may make such modifications of  
 the conditions as the Secretary of State considers necessary for  
 them to have the like effect in relation to Scotland as they have in  
 relation to England and Wales or (as the case may be) Northern  
 Ireland, but only if the Secretary of State has previously given the  
 person concerned written notice of the proposed modifications and  
 an opportunity (in accordance with such requirements, if any, as  
 may be prescribed) to make representations about them.
- (4) Conditions imposed by a notice under subsection (2) shall cease to  
 have effect if the Secretary of State withdraws the notice by giving  
 written notice to the person concerned.
- (5) In this section, “the conditional disqualification provisions in  
 England and Wales or Northern Ireland” means any provisions in  
 force in England and Wales or Northern Ireland corresponding to  
 sections 29C and (so far as relating to conditional disqualifications)  
 30.”
- 50 Section 32 (regulations as to sections 29 to 31) is renumbered as subsection (1) of  
 that section and—
- (a) in paragraph (c) after “disqualification” in both places where it occurs there  
 is inserted “or condition”;
  - (b) after that subsection there is inserted—

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“(2) Regulations under subsection (1)(a) may in particular provide that, where (apart from the regulations) it would be the duty of the Tribunal to inquire into both an efficiency case and a fraud case in respect of the same person, they may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of, may if they think it appropriate adjourn the other case indefinitely.”

51 In section 32A (applications for interim suspension)—

(a) after subsection (1) there is inserted—

“(1A) A Health Board may, if they have requested a review of a conditional disqualification on the ground mentioned in section 30(3)(b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the review relates.”,

(b) in subsection (2), for the words from “it” to “patients” there is substituted “either of the conditions for doing so is satisfied” and after “in question” there is inserted “or the case to which the review in question”,

(c) after that subsection there is inserted—

“(2A) The conditions for giving such a direction are—

(a) that it is necessary to do so in order to protect persons who are, or may be, provided with services under this Part to which the case in question, or the case to which the review in question, relates;

(b) in, or in the case of a review relating to, a fraud case, that unless they do so there is a significant risk that—

(i) an act or omission within section 29(7)(a) will occur; or

(ii) the investigation of the case or the review will be prejudiced.”,

(d) in subsection (3)(c), for the words from “under” to “engaged in” there is substituted “of unfitness in relation to”,

(e) in subsection (4), after “case” there is inserted “or review”,

(f) subsection (5) is omitted

(g) in subsection (6)(a), “prepared under this Part of this Act” is omitted.

52 In section 32B (continuation of suspension pending appeal)—

(a) for subsection (1) and the preceding sidenote there is substituted—

**“32B Suspension pending appeal**

(1) Where, on disposing of a case under section 29B, the Tribunal make a national disqualification, they may, if they consider that either of the conditions mentioned in section 32A(2A) is satisfied, direct that section 32A(3) shall apply or, if a direction has been given under section 32A(2), shall continue to apply to him as respects services of the kind to which the disqualification relates.”,

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*Status: This is the original version (as it was originally enacted).*

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- (b) in subsection (2), in paragraph (a), for “direction under section 29(2)(b)” there is substituted “national disqualification” and, in paragraph (b), for “that direction” there is substituted “the disqualification”,
  - (c) in subsection (3), for the words from “direction” to “section 29(3)(c)” there is substituted “disqualification which is not coupled with a declaration of unfitness”,
  - (d) subsection (4) is omitted.
- 53 In section 32D (suspension provisions in England and Wales or Northern Ireland), for “29(1)” there is substituted “29(8)”.
- 54 After section 35 there is inserted—

**“35A Interpretation of Part II**

Where, under a direction by the Secretary of State, a Health Board has delegated any of its functions to an NHS trust, any reference in this Part to a Health Board in relation to such a delegated function shall, unless the context otherwise requires, include a reference to an NHS trust.”

- 55 In section 85A (financial duties of certain bodies)—
- (a) in subsection (1), before “85(1)” in both places where it occurs there is inserted “85AA(1) or” and for “85(2)(a)” there is substituted “85AA(3)”,
  - (b) in subsection (2), for “Subsection (3) of section 85” there is substituted “Subsection (9) of section 85AA”,
  - (c) in subsection (3), before “85(1)” there is inserted “85AA(1) or”,
  - (d) in subsection (6), in paragraph (c) before “85(1)” there is inserted “85AA(1)” and for “85(2)(a)” there is substituted “85AA(3)”.
- 56 In section 85B(2) (bodies in respect of which schemes for meeting losses and liabilities may be made)—
- (a) the “and” after paragraph (c) is omitted,
  - (b) after paragraph (d) there is inserted “and
  - (e) Special Health Boards”.
- 57 In section 86 (accounts of Health Boards and the Agency), subsections (1A), (1C) and (5) are omitted.
- 58 Section 87D (indicative amounts for doctors' practices) is omitted.
- 59 In section 102 (state hospitals), for paragraph (b) of subsection (4) there is substituted—
- “(b) A Health Board, a Special Health Board, the Agency or an NHS trust to the extent that power to do so is delegated to the Board, Agency or trust by the Secretary of State.”
- 60 In section 105(7) (orders, regulations and directions), for “incidental or supplemental” there is substituted “supplementary, incidental, consequential, transitory, transitional or saving”.
- 61 In section 108(1) (interpretation)—
- (a) in the appropriate place there is inserted—
    - ““goods” includes accommodation”,
  - (b) for the definition of “state hospital” there is substituted—

““state hospital” has the meaning indicated in section 102(2)”.

- 62 In Schedule 7A (NHS trusts)—
- (a) for any reference to a non-executive director or to non-executive directors there is substituted a reference to a trustee or, as the case may be, to trustees,
  - (b) in paragraph 16(c), the words from “which purposes shall include” to the end are omitted,
  - (c) in paragraph 22, in sub-paragraph (1), in paragraph (c) the words from “or is within” to the end of the paragraph, and “or Health Authority” are omitted,
  - (d) paragraph 23 is omitted.
- 63 (1) Schedule 7B (financial provisions relating to NHS trusts) is amended as follows.
- (2) In paragraph 6 (surplus funds)—
- (a) for “amount standing in the reserves of an NHS trust” there is substituted “sum held by an NHS trust other than a sum held on trust under section 12G”,
  - (b) for “that amount” there is substituted “that sum”.
- (3) For paragraph 7 of that Schedule (investment) there is substituted—
- “7 An NHS trust shall have power to invest money held by it in any investments, including investments which do not produce income, specified in directions made by the Secretary of State with the consent of the Treasury; but nothing in this paragraph applies in relation to money held on trust under section 12G.”
- (4) After that paragraph there is inserted—
- “8 Any direction with respect to—
- (a) the power conferred on an NHS trust by paragraph 1; or
  - (b) the maximum amount which an NHS trust may invest in any investment or class of investment,
- may be given only with the consent of the Treasury.”
- 64 In Schedule 8 (the Tribunal), in paragraph 8—
- (a) in sub-paragraph (2)(a), for “section 29” there is substituted “sections 29 to 29C”,
  - (b) in sub-paragraph (2)(b), after “disqualification” there is inserted “conditional disqualification or declaration of unfitness”,
  - (c) in sub-paragraph (2)(d), for the words from “the application” to the end there is substituted “section 32A(3) may be made to apply or continue to apply”.