



# Health and Social Care Act 2001

## 2001 CHAPTER 15

### PART 5

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Patient information*

#### **60 Control of patient information**

- (1) The Secretary of State may by regulations make such provision for and in connection with requiring or regulating the processing of prescribed patient information for medical purposes as he considers necessary or expedient—
- (a) in the interests of improving patient care, or
  - (b) in the public interest.

This subsection and subsection (2) have effect subject to subsections (3) to (6).

- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for requiring prescribed communications of any nature which contain patient information to be disclosed by health service bodies in prescribed circumstances—
    - (i) to the person to whom the information relates,
    - (ii) (where it relates to more than one person) to the person to whom it principally relates, or
    - (iii) to a prescribed person on behalf of any such person as is mentioned in sub-paragraph (i) or (ii),in such manner as may be prescribed;
  - (b) for requiring or authorising the disclosure or other processing of prescribed patient information to or by persons of any prescribed description subject to compliance with any prescribed conditions (including conditions requiring prescribed undertakings to be obtained from such persons as to the processing of such information);

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- (c) for securing that, where prescribed patient information is processed by a person in accordance with the regulations, anything done by him in so processing the information shall be taken to be lawfully done despite any obligation of confidence owed by him in respect of it;
  - (d) for creating offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale or such other level as is prescribed or for creating other procedures for enforcing any provisions of the regulations.
- (3) Regulations under subsection (1) may not make provision requiring the processing of confidential patient information for any purpose if it would be reasonably practicable to achieve that purpose otherwise than pursuant to such regulations, having regard to the cost of and the technology available for achieving that purpose.
- (4) Where regulations under subsection (1) make provision requiring the processing of prescribed confidential patient information, then the Secretary of State—
  - (a) shall, at any time within the period of one month beginning on each anniversary of the making of such regulations, consider whether any such provision could be included in regulations made at that time without contravening subsection (3), and
  - (b) if he determines that any such provision could not be so included, shall make further regulations varying or revoking the regulations made under subsection (1) to such extent as he considers necessary in order for the regulations to comply with that subsection.
- (5) Regulations under subsection (1) may not make provision for requiring the processing of confidential patient information solely or principally for the purpose of determining the care and treatment to be given to particular individuals.
- (6) Without prejudice to the operation of provisions made under subsection (2)(c), regulations under this section may not make provision for or in connection with the processing of prescribed patient information in a manner inconsistent with any provision made by or under the Data Protection Act 1998 (c. 29).
- (7) Before making any regulations under this section the Secretary of State shall, to such extent as he considers appropriate in the light of the requirements of section 61, consult such bodies appearing to him to represent the interests of those likely to be affected by the regulations as he considers appropriate.
- (8) In this section “patient information” means—
  - (a) information (however recorded) which relates to the physical or mental health or condition of an individual, to the diagnosis of his condition or to his care or treatment, and
  - (b) information (however recorded) which is to any extent derived, directly or indirectly, from such information,whether the identity of the individual in question is ascertainable from the information or not.
- (9) For the purposes of this section, patient information is “confidential patient information” where—
  - (a) the identity of the individual in question is ascertainable—
    - (i) from that information, or

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- (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person processing that information, and
  - (b) that information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.
- (10) In this section—
- “the health service” has the same meaning as in the 1977 Act;
  - “health service body” means any body (including a government department) or person engaged in the provision of the health service that is prescribed, or of a description prescribed, for the purposes of this definition;
  - “medical purposes” means the purposes of any of the following—
    - (a) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services, and
    - (b) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care or treatment;
  - “prescribed” means specified in, or determined in accordance with, regulations made by the Secretary of State under this section;
  - “processing”, in relation to information, means the use, disclosure or obtaining of the information or the doing of such other things in relation to it as may be prescribed for the purposes of this definition.

## **61 Patient Information Advisory Group**

- (1) For the purposes of subsections (2) and (3), the Secretary of State shall, as soon as reasonably practicable after the passing of this Act, by regulations establish a committee to be known as the Patient Information Advisory Group (“the Advisory Group”).
- (2) Before laying before Parliament a draft of any statutory instrument containing regulations under section 60(1), or making any regulations pursuant to section 60(4)(b), the Secretary of State shall seek and have regard to the views of the Advisory Group on the proposed regulations.
- (3) The Secretary of State may seek the views of the Advisory Group on such other matters connected with the processing of patient information or of any information (other than patient information) obtained or generated in the course of the provision of the health service as he considers appropriate.
- (4) Regulations under subsection (1) may, in particular, make provision as to—
  - (a) the persons or bodies who are to be represented by members of the Advisory Group,
  - (b) the terms of appointment of members,
  - (c) the proceedings of the Advisory Group, and
  - (d) the payment by the Secretary of State of—
    - (i) such expenses incurred by the Advisory Group, and
    - (ii) such allowances in respect of expenses incurred by members of the Advisory Group,as he may determine.

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- (5) The Secretary of State shall publish, in such manner as he considers appropriate, any views which he receives from the Advisory Group pursuant to subsection (2).
- (6) In this section “the health service”, “patient information” and “processing” have the same meaning as they have for the purposes of section 60.

*Services for disabled people*

**62 Reports to Parliament on services for disabled people**

- (1) Section 11 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33) shall be amended as follows.
- (2) Before subsection (1) there shall be inserted—
  - “(1ZA) In this section, subsection (1ZB) extends to England and Wales only and subsection (1) extends to Scotland only.
  - (1ZB) The Secretary of State shall annually lay before Parliament—
    - (a) a report containing such information as he considers appropriate with respect to the development of health and social services for persons with mental illness; and
    - (b) a report containing such information as he considers appropriate with respect to the development of health and social services for persons with learning disability;
 and each of those reports may contain such other information as the Secretary of State considers appropriate.”
- (3) For subsection (2) there shall be substituted—
  - “(2) In this section—
    - “health service hospital” has the same meaning as in the 1978 Act, except that it does not include a State hospital;
    - “learning disability” means a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.”

*Prescribing rights*

**63 Extension of prescribing rights**

- (1) The Medicines Act 1968 (c. 67) shall be amended as provided by subsections (2) to (7).
- (2) In subsection (1) of section 58 (medicinal products on prescription), after paragraph (d) there shall be inserted “, and
  - (e) other persons who are of such a description and comply with such conditions as may be specified in the order”.
- (3) After subsection (1) of that section there shall be inserted—
  - “(1A) The descriptions of persons which may be specified in an order by virtue of subsection (1)(e) are the following, or any sub-category of such a description—

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- (a) persons who are registered by any board established under the Professions Supplementary to Medicine Act 1960 (c. 66);
- (b) persons who are pharmacists;
- (c) persons whose names are entered in a roll or record established by the General Dental Council by virtue of section 45 of the Dentists Act 1984 (c. 24) (dental auxiliaries);
- (d) persons who are registered in either of the registers of ophthalmic opticians kept under section 7(a) of the Opticians Act 1989 (c. 44);
- (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);
- (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);
- (g) persons who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);
- (h) any other description of persons which appears to the appropriate Ministers to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish Parliament or Northern Ireland legislation and which the appropriate Ministers consider it appropriate to specify.

(1B) Where an order under this section includes provision by virtue of subsection (1)(e), the order shall specify such conditions as are necessary to secure that any person who is an appropriate practitioner by virtue of the provision may prescribe, give directions or administer only in respect of human use.”

(4) In subsection (4)(a) of that section, after “health visitor,” there shall be inserted “or is an appropriate practitioner by virtue of provision made under subsection (1)(e) of this section,”.

(5) After subsection (4) of that section there shall be inserted—

“(4A) An order under this section may provide, in relation to a person who is an appropriate practitioner by virtue of subsection (1)(d) or (e), that such a person may—

- (a) give a prescription for a medicinal product falling within a description or class specified in the order;
- (b) administer any such medicinal product; or
- (c) give directions for the administration of any such medicinal product, only where he complies with such conditions as may be specified in the order in respect of the cases or circumstances in which he may do so.

(4B) An order under this section may provide, in relation to a condition specified by virtue of subsection (4A), for the condition to have effect subject to such exemptions as may be specified in the order.

(4C) Where a condition is specified by virtue of subsection (4A), any prescription or direction given by a person in contravention of the condition is not (subject to such exemptions or modifications as may be specified in the order by virtue of subsection (4)(a) of this section) given by an appropriate practitioner for the purposes of subsection (2)(a) or (b) of this section.”

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- (6) In subsection (5) of that section, after “subsection (4)(a)” there shall be inserted “or (4B)”.
- (7) In section 67 (offences under Part 2 of the Act)—
- (a) after subsection (1) there shall be inserted—
- “(1A) Any person who gives a prescription or directions or administers a medicinal product in contravention of a condition imposed by an order under section 58 of this Act by virtue of subsection (4A) of that section shall be guilty of an offence.
- (1B) Any person who—
- (a) is an appropriate practitioner by virtue of provision made under section 58(1) of this Act; and
- (b) gives a prescription or directions in respect of a medicinal product of a description or class in relation to which he is not an appropriate practitioner,
- shall be guilty of an offence.”;
- (b) in subsection (4), after “under”, there shall be inserted “subsection (1A), (1B)”.
- (8) Each of the powers to establish a committee conferred by subsection (2) or (3) of section 4 of the Medicines Act 1968 (c. 67) may, before the commencement of subsections (1) to (6) of this section, be exercised in relation to section 58 of that Act as if those subsections were in force.

### *Supplementary*

#### **64 Regulations and orders**

- (1) Any power under this Act to make any order or regulations shall (except in the case of regulations under section 65(3)(c)) be exercisable by statutory instrument.
- (2) A statutory instrument containing any order or regulations made by the Secretary of State under this Act other than—
- (a) an order under section 70(2), or
- (b) any regulations to which subsection (3) applies,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) This subsection applies to any regulations under section 60 (except where they are made pursuant to section 60(4)(b)); and no such regulations shall be made (whether alone or with other provisions) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing any regulations made by the Scottish Ministers shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) Any regulations made by virtue of section 65(3)(c) shall be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

- (6) Any power under this Act to make any order or regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case;
  - (b) 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.
- (7) Where any such power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes.
- (8) Any such power includes power—
- (a) to make such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking enactments) as the authority making the order or regulations considers to be expedient; and
  - (b) to provide for a person to exercise a discretion in dealing with any matter.
- (9) Nothing in this Act shall be read as affecting the generality of subsection (8).

## **65 Supplementary and consequential provision etc**

- (1) The Secretary of State may by regulations make—
- (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
- as he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The provision which may be made under subsection (1) includes provision amending or repealing any enactment, instrument or document.
- (3) The power to make regulations under this section is also exercisable—
- (a) by the National Assembly for Wales, in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly;
  - (b) by the Scottish Ministers, in relation to provision that would be within the legislative competence of the Scottish Parliament;
  - (c) by the First Minister and deputy First Minister acting jointly, in relation to provision dealing with transferred matters (within the meaning of section 4(1) of the Northern Ireland Act 1998 (c. 47)).
- (4) Nothing in this Act shall be read as affecting the generality of subsection (1).

## **66 Interpretation**

In this Act (unless the context otherwise requires)—

“the 1977 Act” means the National Health Service Act 1977 (c. 49);

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“the 1990 Act” means the National Health Service and Community Care Act 1990 (c. 19);

“NHS trust” has the same meaning as in the 1977 Act;

“regulations” means regulations made by the relevant authority;

“the relevant authority” means—

- (a) in relation to England, the Secretary of State,
- (b) in relation to Wales, the National Assembly for Wales, and
- (c) in relation to Scotland (in connection with regulations under section 50), the Scottish Ministers.

#### **67 Minor and consequential amendments and repeals**

- (1) The minor and consequential amendments specified in Schedule 5 shall have effect.
- (2) The enactments specified in Schedule 6 are repealed to the extent specified.

#### **68 Powers of National Assembly for Wales under amended Acts**

- (1) In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), any reference to an Act which is amended by this Act shall (as from the time when the Act is so amended) be treated as referring to the Act as so amended.
- (2) But for the purpose of so construing the reference in that Schedule to the 1977 Act the amendments made by this Act do not include those made by section 27 above.
- (3) The reference in that Schedule to the 1977 Act shall also be treated as referring to that Act as amended by sections 12(1) and 13(1) of the Government Resources and Accounts Act 2000 (c. 20) (but subject to the further amendments made by section 1 above).
- (4) Neither of subsections (1) and (3) affects the power to make further Orders varying or omitting any such reference as is mentioned in that subsection.

#### **69 Financial provisions**

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State in consequence of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided by virtue of any other Act.

#### **70 Short title, commencement and extent**

- (1) This Act may be cited as the Health and Social Care Act 2001.
- (2) With the exception of—
  - (a) sections 59, 60, 61, 64 to 66, 68 and 69 and this section,
  - (b) Part 3 of Schedule 5, and
  - (c) any other provision of this Act so far as it confers any power to make an order or regulations under this Act which is exercisable by the Secretary of State,
 this Act does not come into force until such day as the relevant authority may by order appoint; and different days may be so appointed for different purposes.



- (3) In subsection (2), in its application in relation to—
- (a) sections 14 to 17 and 27,
  - (b) sections 50(1), 51 and 52,
  - (c) sections 62 (except so far as extending to Wales) and 63, and
  - (d) any repeals consequential on any provisions falling within paragraph (a) or (b),
- the reference to the relevant authority shall be read as a reference to the Secretary of State.
- (4) In subsection (2), in its application in relation to—
- (a) section 44, and
  - (b) the provisions of section 50(2) to (10) so far as relating to Scotland (and not within subsection (2)(b)),
- the reference to the relevant authority shall be read as a reference to the Scottish Ministers.
- (5) Subject to subsections (6) to (8), this Act extends to England and Wales only.
- (6) The following provisions, namely—
- (a) sections 50 to 52 and 59,
  - (b) sections 63 to 66, and
  - (c) this section,
- also extend to Scotland.
- (7) The following provisions, namely—
- (a) sections 63 to 65, and
  - (b) this section,
- also extend to Northern Ireland.
- (8) The extent of any amendment or repeal made by this Act is the same as that of the enactment amended or repealed.
- (9) Subsection (8) does not apply in relation to any amendment or repeal relating to section 115 of the Police Act 1997, and any such amendment or repeal extends to England and Wales only.
- (10) The Secretary of State may by order provide that so much of this Act as extends to England and Wales is to apply to the Isles of Scilly with such modifications (if any) as are specified in the order; but otherwise this Act does not extend there.