



National Health Service Reform and Health Care Professions Act 2002

2002 CHAPTER 17

PART 1

NATIONAL HEALTH SERVICE, ETC

NHS bodies and their functions: England

1 English Health Authorities: change of name

- (1) On and after the date on which this section comes into force, Health Authorities for areas in England are to be known instead as Strategic Health Authorities.
- (2) Accordingly, for section 8 of the National Health Service Act 1977 (c. 49) (in this Act referred to as “the 1977 Act”) (establishment and abolition of Health Authorities) there is substituted—

“8 Health Authorities and Strategic Health Authorities

- (1) It is the duty of the Secretary of State to establish, in accordance with Part 1 of Schedule 5 to this Act, authorities to be called—
 - (a) Strategic Health Authorities, in the case of authorities established for areas in England;
 - (b) Health Authorities, in the case of authorities established for areas in Wales.
- (2) Subject to subsection (4) below—
 - (a) a Strategic Health Authority shall be established for such area of England as is specified in the order establishing the authority; and
 - (b) a Health Authority shall be established for such area of Wales as is so specified, or, if the order so provides, for the whole of Wales.

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- (3) A Strategic Health Authority or a Health Authority shall be known by such name, in addition to the title “Strategic Health Authority” or “Health Authority”, as—
- (a) appears to the Secretary of State appropriately to signify the connection of the authority with the area for which they are established; and
 - (b) is specified in the order establishing the authority.
- (4) The Secretary of State may by order—
- (a) vary the area of a Strategic Health Authority or Health Authority;
 - (b) abolish a Strategic Health Authority or Health Authority;
 - (c) establish a new Strategic Health Authority or Health Authority;
 - (d) change the name by which a Strategic Health Authority or Health Authority are known.
- (5) No order shall be made under this section relating to a Strategic Health Authority until after the completion of such consultation as may be prescribed.
- (6) Consultation requirements contained in regulations under subsection (5) are in addition to, and not in substitution for, any other consultation requirements which may apply.
- (7) The Secretary of State shall act under this section so as to ensure—
- (a) that the areas for which Strategic Health Authorities are at any time established together comprise the whole of England;
 - (b) that the areas for which Health Authorities are at any time established together comprise the whole of Wales; and
 - (c) that no area for which a Strategic Health Authority or a Health Authority are established extends both into England and into Wales.
- (8) The power to make incidental or supplemental provision conferred by section 126(4) below includes, in particular, in its application to orders made under this section, power to make provision for the transfer of staff, property, rights and liabilities.”
- (3) Schedule 1 (which contains amendments consequential upon this section) is to have effect.

2 Primary Care Trusts

- (1) Section 16A of the 1977 Act (which provides for the establishment of Primary Care Trusts) is amended as provided in subsections (2) and (3).
- (2) For subsection (1) there is substituted—
- “(1) It is the duty of the Secretary of State to establish bodies to be known as Primary Care Trusts for areas in England with a view to their exercising functions in relation to the health service.
- (1A) The Secretary of State shall act under this section so as to ensure that the areas for which Primary Care Trusts are at any time established together comprise the whole of England.”
- (3) In subsection (3), after “the area” there is inserted “of England”.

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- (4) Schedule 5A to the 1977 Act (which makes further provision about Primary Care Trusts) is amended as follows—
- (a) in paragraph 2(3)—
 - (i) for “the Health Authority in whose area a Primary Care Trust is established to meet the costs” there is substituted “a Strategic Health Authority whose area includes any part of the area of a Primary Care Trust to meet costs”, and
 - (ii) in paragraph (b), after “meet” there is inserted “(or to contribute towards its meeting)”
 - (b) in paragraph 2(4), for “the Health Authority in whose area a Primary Care Trust is established” there is substituted “a Strategic Health Authority whose area includes any part of the area of a Primary Care Trust”,
 - (c) in paragraph 16(1), for “the Health Authority within whose area the trust’s area falls” there is substituted “each Strategic Health Authority whose area includes any part of the trust’s area”, and
 - (d) in paragraph 16(3), for “the Health Authority within whose area the trust’s area falls” there is substituted “any Strategic Health Authority whose area includes any part of the trust’s area”.
- (5) Schedule 2 (which contains amendments of the 1977 Act and of other enactments to reallocate functions of Health Authorities to Primary Care Trusts and to make certain connected amendments) is to have effect.

3 Directions: distribution of functions

- (1) The 1977 Act is amended as follows.
- (2) In section 16D (Secretary of State’s directions: distribution of functions), in subsection (1), after “Special Health Authority” there is inserted “or a Primary Care Trust”.
- (3) For section 17A (Health Authority’s directions: distribution of functions) there is substituted—

“17A Strategic Health Authority’s directions: distribution of functions

- (1) A Strategic Health Authority may, in relation to any specified functions of theirs, direct a Primary Care Trust any part of whose area falls within their area to exercise those functions.
- (2) But a Strategic Health Authority may not so direct a Primary Care Trust in relation to any functions of the Strategic Health Authority arising under section 28C arrangements if the Primary Care Trust is providing any services in accordance with those arrangements.
- (3) The Secretary of State may direct Strategic Health Authorities that specified functions of theirs—
- (a) are to be exercisable, or exercisable to (or only to) any specified extent, by Primary Care Trusts; or
 - (b) are not to be exercisable by Primary Care Trusts,
- and that the power in subsection (1) above is to be exercised accordingly.

(4) Directions under subsection (3)(a) above may include directions that any of the specified functions are to be exercised (or exercised to or only to any specified extent) jointly with the Strategic Health Authority, or jointly by one or more Primary Care Trusts; but such directions may be given only if regulations providing for the joint exercise of those functions have been made under section 16 or 16B above.

(5) In this section, “specified” means specified in the directions.”

(4) In section 17B (Health Authority’s directions: exercise of functions), in subsection (1), the words from “which” to the end are omitted.

(5) In section 18 (directions and regulations under preceding provisions), in subsection (1A)—

- (a) “or” is inserted after paragraph (a),
- (b) paragraph (b) is omitted, and
- (c) in paragraph (c), for “16D, 17 or 17A” there is substituted “16D or 17”.

4 Personal medical services, personal dental services and local pharmaceutical services

(1) In section 9 of the National Health Service (Primary Care) Act 1997 (c. 46) (relationship between Part 1 of that Act and the 1977 Act), after subsection (1) there is inserted—

“(1A) In subsection (1), the words from “, apart from” to “functions,” have effect only in relation to Wales.”

(2) In section 36 of the Health and Social Care Act 2001 (c. 15) (effect of the 1977 Act), after subsection (1) there is inserted—

“(1A) In subsection (1), the words from “, apart from” to “authority,” have effect only in relation to Wales.”

(3) Schedule 3 (which contains amendments of the National Health Service (Primary Care) Act 1997 and of other enactments related to the provisions of this section and sections 1 to 3) is to have effect.

5 Local Representative Committees

(1) Section 44 of the 1977 Act (recognition of local representative committees) is amended in accordance with subsections (2) to (7).

(2) Before subsection (A1) there is inserted—

“(ZA1) A Primary Care Trust may recognise a committee formed for its area, or for the area of that and one or more other Primary Care Trusts, which it is satisfied is representative of—

- (a) the medical practitioners providing general medical services or general ophthalmic services in the Primary Care Trust’s area;
- (b) those medical practitioners and the deputy medical practitioners for the Primary Care Trust’s area;
- (c) the medical practitioners mentioned in—
 - (i) paragraph (a) above; or

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(ii) paragraph (b) above,
and the section 28C medical practitioners for the Primary Care Trust's area,
and any committee so recognised shall be called the Local Medical Committee for the Primary Care Trust's area."

(3) After subsection (A1) there is inserted—

“(A2) A Primary Care Trust may recognise a committee formed for its area, or for the area of that and one or more other Primary Care Trusts, which it is satisfied is representative of—

- (a) the dental practitioners providing general dental services in the Primary Care Trust's area;
- (b) those dental practitioners and the deputy dental practitioners for the Primary Care Trust's area;
- (c) the dental practitioners mentioned in—
 - (i) paragraph (a) above; or
 - (ii) paragraph (b) above,

and the section 28C dental practitioners for the Primary Care Trust's area,
and any committee so recognised shall be called the Local Dental Committee for the Primary Care Trust's area.”

(4) After subsection (B1) there is inserted—

“(B2) Where a Primary Care Trust is satisfied that a committee formed for its area, or for its area together with the area of one or more other Primary Care Trusts, is representative—

- (a) of the ophthalmic opticians providing general ophthalmic services in the Primary Care Trust's area; or
- (b) of the persons providing pharmaceutical services from premises in the Primary Care Trust's area,

the Primary Care Trust may recognise that committee; and any committee so recognised shall be called the Local Optical Committee or the Local Pharmaceutical Committee, as the case may be, for the area of the Primary Care Trust.”

(5) In subsection (2), “with the approval of the Health Authority” is omitted.

(6) In subsection (3)—

- (a) in each of paragraphs (a) and (c), before “Health Authority” there is inserted “Primary Care Trust or”,
- (b) after paragraph (a) there is inserted—
 - “(aa) is a section 28C medical practitioner for the area of a Primary Care Trust if he is a medical practitioner who performs personal medical services in the area of the Primary Care Trust in accordance with arrangements made under section 28C above;”, and
- (c) after paragraph (c) there is inserted—
 - “(ca) is a section 28C dental practitioner for the area of a Primary Care Trust if he is a dental practitioner who performs

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personal dental services in the area of the Primary Care Trust in accordance with arrangements made under section 28C above;”.

- (7) In subsection (4), after “notified the” there is inserted “Primary Care Trust or”.
- (8) Section 45 of the 1977 Act (functions of local representative committees) is amended as follows.
- (9) After subsection (1) there is inserted—
- “(1ZA) Regulations may require—
- (a) Primary Care Trusts, in the exercise of their functions under this Part of this Act, to consult committees recognised by them under section 44 above,
 - (b) Strategic Health Authorities, in the exercise of any of their functions which relate to arrangements under section 28C above, to consult committees recognised under section 44(ZA1)(c) or (A2)(c) above by Primary Care Trusts for the area or areas where the personal medical or dental services are provided (or to be provided) under the arrangements,
- on such occasions and to such extent as may be prescribed.”
- (10) In subsection (1A)—
- (a) for “power conferred by subsection (1) above is” there is substituted “powers conferred by subsections (1) and (1ZA) above are”, and
 - (b) after “require a” there is inserted “Strategic Health Authority, Primary Care Trust or”.
- (11) In subsection (1C)—
- (a) for “subsection (A1)(b) or (c) or (B1)(b) or (c)” there is substituted “subsection (ZA1)(b) or (c), (A1)(b) or (c), (A2)(b) or (c) or (B1)(b) or (c)”,
 - (b) before paragraph (a) there is inserted—
 - “(za) in the case of a committee recognised under subsection (ZA1) (b) or (c)(ii) of that section, to the deputy medical practitioners for the Primary Care Trust’s area;
 - (zb) in the case of a committee recognised under subsection (ZA1) (c) of that section, to the section 28C medical practitioners for that area;”, and
 - (c) after paragraph (b) there is inserted—
 - “(ba) in the case of a committee recognised under subsection (A2) (b) or (c)(ii) of that section, to the deputy dental practitioners for the Primary Care Trust’s area;
 - (bb) in the case of a committee recognised under subsection (A2) (c) of that section, to the section 28C dental practitioners for that area;”.
- (12) In each of subsections (2) and (3), before “Health Authority”, in each place where it occurs, there is inserted “Primary Care Trust or”.

NHS bodies and their functions: Wales

6 Local Health Boards

(1) After section 16B of the 1977 Act there is inserted—

“16BA Local Health Boards

- (1) The National Assembly for Wales may establish bodies to be known as Local Health Boards with a view, in particular, to their exercising—
 - (a) functions of Health Authorities transferred or to be transferred to the Assembly by order under section 27 of the Government of Wales Act 1998 (reform of Welsh health authorities),
 - (b) other functions of the Assembly relating to the health service.
- (2) Each Local Health Board shall be established by order made by the Assembly (referred to in this Act as an LHB order), and an order may establish more than one Local Health Board.
- (3) A Local Health Board shall be established for the area of Wales specified in its LHB order.
- (4) If any consultation requirements apply, they must be complied with before an LHB order is varied or revoked.
- (5) In this section, “consultation requirements” means requirements about consultation contained in regulations made by the Assembly.
- (6) Schedule 5B to this Act (which makes further provision about Local Health Boards) shall have effect.

16BB Local Health Boards: functions

- (1) The National Assembly for Wales may direct a Local Health Board to exercise in relation to its area any functions which—
 - (a) were exercised by a Health Authority in relation to any part of the same area, and
 - (b) have been transferred to the Assembly as mentioned in section 16BA(1) above.
- (2) The Assembly may also direct a Local Health Board to exercise in relation to its area such other functions of the Assembly relating to the health service as are specified in the directions.
- (3) The functions which may be specified in directions under this section include functions under enactments relating to mental health and nursing homes.
- (4) The Assembly may give directions to a Local Health Board about its exercise of any functions.
- (5) Directions under subsection (1) above must be given in regulations made by the Assembly; but other directions under this section and directions under section 16BC below may be given in such regulations or by instrument in writing.

16BC Exercise of functions by Local Health Boards

- (1) This section applies to functions which are exercisable by a Local Health Board under or by virtue of section 16BB above or this section.
- (2) The Assembly may give directions providing for any functions to which this section applies to be exercised—
 - (a) by another Local Health Board;
 - (b) by a Special Health Authority; or
 - (c) jointly with any one or more of the following: Health Authorities, NHS trusts, Primary Care Trusts and other Local Health Boards.
- (3) Directions given by the Assembly may provide—
 - (a) for any functions to which this section applies to be exercised, on behalf of the Local Health Board by whom they are exercisable, by a committee, sub-committee or officer of the Board,
 - (b) for any functions which, under this section, are exercisable by a Special Health Authority to be exercised, on behalf of that authority, by a committee, sub-committee or officer of the authority,
 - (c) for any functions which, under this section, are exercisable by a Local Health Board jointly with one or more Health Authorities or other Local Health Boards (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee.”
- (2) Schedule 4 (which inserts the new Schedule 5B in the 1977 Act) and Schedule 5 (which makes other amendments relating to Local Health Boards) are to have effect.
- (3) In section 126 of the 1977 Act (orders, regulations and directions)—
 - (a) in subsection (1)—
 - (i) after “PCT order” there is inserted “or an instrument made by the National Assembly for Wales”, and
 - (ii) in paragraph (b), after “Schedule 5A to this Act” there is inserted “, paragraph 19, 20 or 22 of Schedule 5B to this Act”,
 - (b) in subsection (3B), after “pursuance of” there is inserted “section 16BB or”,
 - (c) in subsection (4), for “section 18” there is substituted “section 16BB, 18”, and
 - (d) in subsection (4A)—
 - (i) the word “or” at the end of paragraph (b) is omitted, and
 - (ii) after paragraph (b) there is inserted—

“(ba) paragraph 9(3) of Schedule 5B to this Act, or”.
- (4) Section 1 of the National Health Service (Private Finance) Act 1997 (c. 56) (powers to enter into externally financed development agreements) applies to Local Health Boards as it applies to NHS trusts.

Financial arrangements: England and Wales

7 Funding of Strategic Health Authorities and Health Authorities

- (1) Section 97 of the 1977 Act (means of meeting expenditure of Health Authorities etc out of public funds) is amended as follows.
- (2) Before subsection (1) there is inserted—

“(A1) It is the duty of the Secretary of State to pay in respect of each financial year to each Strategic Health Authority sums not exceeding the amount allotted for that year by the Secretary of State to the Authority towards meeting the expenditure of the Authority which is attributable to the performance by the Authority of their functions in that year.”
- (3) In subsection (3C), after “any year” there is inserted “to a Strategic Health Authority under subsection (A1) above or”.
- (4) In subsection (3D), after “given to” there is inserted “the Strategic Health Authority or”.
- (5) In subsection (3F), after “any year to” there is inserted “a Strategic Health Authority or”.
- (6) In subsection (5), after “allotted to a” there is inserted “Strategic Health Authority,”.
- (7) In subsection (6)—
 - (a) after “directions to a” there is inserted “Strategic Health Authority,”,
 - (b) at the end of paragraph (a) there is inserted “or”, and
 - (c) paragraphs (bb) and (c) are omitted.
- (8) Subsection (8) is omitted.
- (9) In subsection (9), after “paid to” there is inserted “Strategic Health Authorities,”.

8 Funding of Primary Care Trusts

For section 97C of the 1977 Act (public funding of Primary Care Trusts) there is substituted—

“97C Public funding of Primary Care Trusts

- (1) It is the duty of the Secretary of State, in respect of each financial year, to pay to each Primary Care Trust—
 - (a) sums equal to their general Part 2 expenditure; and
 - (b) sums not exceeding the amount allotted by the Secretary of State to the Primary Care Trust for that year towards meeting the Trust’s main expenditure in that year.
- (2) In determining the amount to be allotted for any year to a Primary Care Trust under subsection (1)(b) above (or in varying the amount under subsection (7) below), the Secretary of State may take into account, in whatever way he thinks appropriate—
 - (a) the Trust’s general Part 2 expenditure; and

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- (b) expenditure which would have been the Trust's general Part 2 expenditure but for an order under section 103(1) below, during any period he thinks appropriate (or such elements of that expenditure as he thinks appropriate).
- (3) Where the Secretary of State has made an initial determination of the amount ("the initial amount") to be allotted for any year to a Primary Care Trust under subsection (1)(b) above, he may increase the initial amount by a further sum if it appears to him that over a period notified to the Trust—
- (a) it satisfied any objectives notified to it as objectives to be met in performing its functions; or
- (b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).
- (4) In subsection (3) above, "notified" means specified or referred to in a notice given to the Primary Care Trust by the Secretary of State.
- (5) In making any increase under subsection (3) above, the Secretary of State may (whether by directions under subsection (8) below or otherwise) impose any conditions he thinks fit on the application or retention by the Primary Care Trust of the sum in question.
- (6) Where the Secretary of State has, under subsection (3) above, increased by any sum the amount to be allotted for any year to a Primary Care Trust and notified the Trust of the allotment and it subsequently appears to him that the Trust has failed (wholly or in part) to satisfy any conditions imposed in making that increase, he may—
- (a) reduce the allotment made to the Trust for that year; or
- (b) when he has made an initial determination of the amount ("the initial amount") to be allotted for any subsequent year to the Trust under subsection (1)(b) above, reduce the initial amount,
- by any amount not exceeding that sum.
- (7) An amount is allotted to a Primary Care Trust for a year under this section when the Trust is notified by the Secretary of State that the amount is allotted to the Trust for that year; and the Secretary of State may make an allotment under this section increasing or reducing (subject to subsection (6) above) an allotment previously so made, and the reference to a determination in subsection (3) above includes a determination made with a view to increasing or reducing an allotment previously so made.
- (8) The Secretary of State may give directions to a Primary Care Trust with respect to—
- (a) the application of sums paid to it under this section, or
- (b) the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.
- (9) Sums falling to be paid to Primary Care Trusts under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine."

9 Funding of Local Health Boards

(1) After section 97E of the 1977 Act there is inserted—

“97F Public funding of Local Health Boards

- (1) It is the duty of the National Assembly for Wales, in respect of each financial year, to pay to each Local Health Board—
 - (a) sums equal to their general Part 2 expenditure; and
 - (b) sums not exceeding the amount allotted by the National Assembly for Wales to the Local Health Board for that year towards meeting the Board’s main expenditure in that year.
- (2) In determining the amount to be allotted for any year to a Local Health Board under subsection (1)(b) above (or in varying the amount under subsection (7) below), the National Assembly for Wales may take into account, in whatever way the Assembly thinks appropriate—
 - (a) the Board’s general Part 2 expenditure; and
 - (b) expenditure which would have been the Board’s general Part 2 expenditure but for an order under section 103(1) below,during any period the Assembly thinks appropriate (or such elements of that expenditure as it thinks appropriate).
- (3) Where the National Assembly for Wales has made an initial determination of the amount (“the initial amount”) to be allotted for any year to a Local Health Board under subsection (1)(b) above, the Assembly may increase the initial amount by a further sum if it appears to it that over a period notified to the Board—
 - (a) the Board satisfied any objectives notified to it as objectives to be met in performing its functions; or
 - (b) it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it).
- (4) In subsection (3) above, “notified” means specified or referred to in a notice given to the Local Health Board by the National Assembly for Wales.
- (5) In making any increase under subsection (3) above, the National Assembly for Wales may (whether by directions under subsection (8) below or otherwise) impose any conditions it thinks fit on the application or retention by the Local Health Board of the sum in question.
- (6) Where the National Assembly for Wales has, under subsection (3) above, increased by any sum the amount to be allotted for any year to a Local Health Board and notified the Board of the allotment and it subsequently appears to the Assembly that the Board has failed (wholly or in part) to satisfy any conditions imposed in making that increase, the Assembly may—
 - (a) reduce the allotment made to the Board for that year; or
 - (b) when the Assembly has made an initial determination of the amount (“the initial amount”) to be allotted for any subsequent year to the Board under subsection (1)(b) above, reduce the initial amount,by any amount not exceeding that sum.

- (7) An amount is allotted to a Local Health Board for a year under this section when the Board is notified by the National Assembly for Wales that the amount is allotted to the Board for that year; and the National Assembly for Wales may make an allotment under this section increasing or reducing (subject to subsection (6) above) an allotment previously so made, and the reference to a determination in subsection (3) above includes a determination made with a view to increasing or reducing an allotment previously so made.
- (8) The National Assembly for Wales may give directions to a Local Health Board with respect to—
- (a) the application of sums paid to the Board under this section, or
 - (b) the payment of sums by the Board to the National Assembly for Wales in respect of charges or other sums referable to the valuation or disposal of assets.
- (9) Sums falling to be paid to Local Health Boards under this section shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the National Assembly for Wales may determine.

97G Financial duties of Local Health Boards

- (1) It is the duty of every Local Health Board, in respect of each financial year, to perform its functions so as to secure that the expenditure of the Board which is attributable to the performance by the Board of its functions in that year (not including expenditure within subsection (1)(a) of section 97F above) does not exceed the aggregate of—
- (a) the amount allotted to it for that year under subsection (1)(b) of that section;
 - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under that section); and
 - (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray any such expenditure.
- (2) The National Assembly for Wales may give such directions to a Local Health Board as appear to be requisite to secure that the Board complies with the duty imposed on it by subsection (1) above.
- (3) Directions under subsection (2) may be specific in character.
- (4) To the extent to which—
- (a) any expenditure is defrayed by a Local Health Board as trustee or on behalf of a Local Health Board by special trustees; or
 - (b) any sums are received by a Local Health Board as trustee or under section 96A above,
- that expenditure and, subject to subsection (6) below, those sums shall be disregarded for the purposes of this section.
- (5) For the purposes of this section sums which, in the hands of a Local Health Board, cease to be trust funds and become applicable by the Local Health Board otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the Local Health Board otherwise than as trustee.

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- (6) Of the sums received by a Local Health Board under section 96A above so much only as accrues to the Local Health Board after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4) above.
- (7) Subject to subsection (4) above, the National Assembly for Wales may by directions determine—
- (a) whether specified sums are, or are not, to be treated for the purposes of this section as received under this Act by a specified Local Health Board;
 - (b) whether specified expenditure is, or is not, to be treated for those purposes as expenditure within subsection (1) above of a specified Local Health Board; or
 - (c) the extent to which, and the circumstances in which, sums received by a Local Health Board under section 97F above but not yet spent are to be treated for the purposes of this section as part of the expenditure of the Local Health Board and to which financial year's expenditure they are to be attributed.
- (8) In subsection (7) above, “specified” means of a description specified in the directions.

97H Resource limits for Local Health Boards

- (1) It is the duty of every Local Health Board to ensure that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the National Assembly for Wales.
- (2) For the purpose of subsection (1) above no account shall be taken of any use of resources for the purposes of a Board's general Part 2 expenditure (within the meaning of paragraph 6A of Schedule 12A).
- (3) But in specifying an amount for a Local Health Board under subsection (1) above (or in varying the amount under subsection (5) below), the National Assembly for Wales may take into account (in whatever way it thinks appropriate)—
- (a) any such use of resources; and
 - (b) the use of any resources which would have been for the purpose of the Board's general Part 2 expenditure but for an order under section 103(1) below,
- during any period the Assembly thinks appropriate (or such elements of such uses of resources as it thinks appropriate).
- (4) For the purpose of subsection (1) above the National Assembly for Wales may give directions—
- (a) specifying uses of resources which are to be, or not to be, taken into account;
 - (b) making provision for determining to which Local Health Board certain uses of resources are to be attributed;
 - (c) specifying descriptions of resources which are to be, or not to be, taken into account.

- (5) Where an amount has been specified under this section in respect of a financial year, it may be varied by a later specification.
- (6) Subsections (4) to (6) of section 97G above shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1); and for that purpose references to the defraying of expenditure and the receipt of sums shall be construed as references to the incurring of liabilities and the acquisition of assets.
- (7) The provisions in section 97G(2) and (3) above about the giving of directions by the National Assembly for Wales shall apply in relation to the duty under subsection (1) above as they apply in relation to the duty under section 97G(1).
- (8) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.”

10 Expenditure of NHS bodies

- (1) The 1977 Act is amended as follows.
- (2) In section 97 (means of meeting expenditure of Health Authorities etc out of public funds), in subsection (3BB), for “section 97C” there is substituted “sections 97C and 97F”.
- (3) Schedule 12A to the 1977 Act (expenditure of Health Authorities and Primary Care Trusts) is amended as follows.
- (4) In paragraph 3—
 - (a) in each of sub-paragraphs (1), (4) and (5), for “Secretary of State” there is substituted “National Assembly for Wales”,
 - (b) in sub-paragraph (1), for “he” there is substituted “it”,
 - (c) in sub-paragraph (4)—
 - (i) for “his discretion” there is substituted “its discretion”, and
 - (ii) for “his opinion” there is substituted “the Assembly’s opinion”, and
 - (d) in sub-paragraph (5), for “he” there is substituted “the Assembly”.
- (5) In paragraph 4(2), the word “or” at the end of paragraph (a) is omitted, and after paragraph (a) there is inserted—
 - “(aa) remuneration referable to the cost of drugs,
 - (ab) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or”.
- (6) In paragraph 5(1)—
 - (a) the “and” at the end of paragraph (a) is omitted,
 - (b) in paragraph (b), for “(other than general Part II expenditure),” there is substituted “(other than general Part 2 expenditure and remuneration referable to the cost of drugs), and”, and
 - (c) for the words following paragraph (b) there is substituted—
 - “(c) expenditure attributable to remuneration referable to the cost of drugs for which the trust is accountable in that year (whether paid by it or by another trust).”

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(7) In paragraph 5(2), the “or” at the end of paragraph (a) is omitted, and after paragraph (a) there is inserted—

“(aa) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or”.

(8) For paragraph 6 there is substituted—

“6 (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Primary Care Trusts the total of the remuneration referable to the cost of drugs which is paid by each Primary Care Trust in that year.

(2) A Primary Care Trust is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (1) above.

(3) Where in any financial year any remuneration referable to the cost of drugs for which a Primary Care Trust is accountable is paid by another Primary Care Trust, the remuneration is to be treated (for the purposes of sections 97C and 97D above) as having been paid by the first trust in the performance of its functions.

(4) The Secretary of State may, in particular, exercise his discretion under sub-paragraph (1) above—

- (a) so that any apportionment reflects, in the case of each Primary Care Trust, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the trust in question,
- (b) by reference to averaged or estimated amounts.

(5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Primary Care Trust other than the trust which is accountable for the payment to be reimbursed in such manner as he may determine.”

(9) After paragraph 6 there is inserted—

“Local Health Boards: general Part 2 expenditure

6A (1) In section 97F above and this Schedule, general Part 2 expenditure, in relation to a Local Health Board, means expenditure of the Board which—

- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part 2 of this Act, and
- (b) is not excluded by sub-paragraph (2) below.

(2) Expenditure is excluded if it is attributable to—

- (a) the reimbursement of expenses of persons providing services in pursuance of Part 2 which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
- (b) remuneration referable to the cost of drugs,

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- (c) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
- (d) remuneration of a designated description which is determined by the Board and paid to persons providing general medical services in pursuance of Part 2.

Local Health Boards: main expenditure

- 6B (1) In section 97F above, main expenditure, in relation to a Local Health Board and the year in question, means—
- (a) expenditure of the Board mentioned in sub-paragraph (2) below,
 - (b) any other expenditure of the Board attributable to the performance of its functions in that year (other than general Part 2 expenditure and remuneration referable to the cost of drugs), and
 - (c) expenditure attributable to remuneration referable to the cost of drugs for which the Board is accountable in that year (whether paid by it or by another Board).
- (2) The expenditure referred to in sub-paragraph (1)(a) above is expenditure attributable to—
- (a) the reimbursement in that year of expenses of persons providing services in pursuance of Part 2 which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services),
 - (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under section 41A above), in respect of such of those services as are designated, or
 - (c) remuneration of a designated description which is determined by the Board and paid in that year to persons providing general medical services in pursuance of Part 2.
- 6C (1) For each financial year, the National Assembly for Wales shall apportion, in such manner as it thinks appropriate, among all Local Health Boards the total of the remuneration referable to the cost of drugs which is paid by each Local Health Board in that year.
- (2) A Local Health Board is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under sub-paragraph (1) above.
- (3) Where in any financial year any remuneration referable to the cost of drugs for which a Local Health Board is accountable is paid by another Local Health Board, the remuneration is to be treated (for the purposes of sections 97F and 97G above) as having been paid by the first Board in the performance of its functions.
- (4) The National Assembly for Wales may, in particular, exercise its discretion under sub-paragraph (1) above—
- (a) so that any apportionment reflects, in the case of each Local Health Board, the financial consequences of orders for the

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provision of drugs, being orders which in the Assembly’s opinion are attributable to the Board in question,

(b) by reference to averaged or estimated amounts.

(5) The National Assembly for Wales may make provision for any remuneration referable to the cost of drugs which is paid by a Local Health Board other than the Board which is accountable for the payment to be reimbursed in such manner as the Assembly may determine.”

(10) In paragraph 7—

(a) in sub-paragraph (1)—

(i) in the definition of “designated”, after “Secretary of State” there is inserted “or, as the case may be, the National Assembly for Wales”, and

(ii) in the definition of “remuneration referable to the cost of drugs”, for “paragraph 1(2)(b)” there is substituted “paragraphs 1(2)(b), 4(2)(aa) and 6A(2)(b)”,

(b) in sub-paragraph (2), for “Health Authorities” there is substituted “Primary Care Trusts”, and at the end there is inserted “and the National Assembly for Wales shall make the corresponding determination in relation to Health Authorities and Local Health Boards.”, and

(c) in sub-paragraph (3)—

(i) for “Health Authorities” there is substituted “Primary Care Trusts”,

(ii) “or Primary Care Trust” is omitted, and

(iii) at the end there is inserted “, and the National Assembly for Wales may so treat all remuneration paid by Health Authorities to such persons, so far as it is so met.”

Quality

11 Duty of quality

In section 18 of the 1999 Act (duty of quality), in subsection (4), at the end of the definition of “health care” there is inserted “, and the environment in which such services are provided”.

12 Further functions of the Commission for Health Improvement

(1) Section 20 of the 1999 Act (functions of the Commission for Health Improvement) is amended as provided in subsections (2) to (4).

(2) In subsection (1)—

(a) in paragraph (d), for “particular types of health care” there is substituted “health care”,

(b) the “and” at the end of paragraph (d) is omitted, and

(c) after paragraph (d) there is inserted—

“(da) the function of conducting reviews of, and making reports on, the quality of data obtained by others relating to the management, provision or quality of, or access to or availability of, health care for which NHS bodies or service providers have responsibility, the validity of conclusions

drawn from such data, and the methods used in their collection and analysis,”.

(3) After subsection (1) there is inserted—

“(1A) The functions of conducting reviews and of carrying out investigations include—

- (a) the collection and analysis of data, and
- (b) the assessment of performance against criteria.

(1B) Subject to any regulations under paragraph (d) of subsection (2), the Commission must publish at least a summary of each report it makes in the exercise of the functions conferred on it by or under this section and sections 21 and 22.”

(4) In subsection (2), for paragraph (d) there is substituted—

“(d) as to cases or classes of case in which the Commission must publish reports (and not just summaries),”.

(5) In section 33 of the Audit Commission Act 1998 (c. 18) (studies for improving economy etc in services), in subsection (6)(c), after “Secretary of State” there is inserted “, the Commission for Health Improvement”.

13 Commission for Health Improvement: inspections and investigations

(1) In section 20 of the 1999 Act (functions of the Commission for Health Improvement)

—

(a) in subsection (1), after the paragraph (da) inserted by section 12 there is inserted—

“(db) the function of carrying out inspections of NHS bodies and service providers, and persons who provide or are to provide health care for which NHS bodies or service providers have responsibility, and making reports on the inspections, and”,
and

(b) after the subsections (1A) and (1B) inserted by section 12 there is inserted—

“(1C) The inspections referred to in paragraph (db) of subsection (1) are to be carried out only in connection with the function referred to in paragraph (d) of that subsection.

(1D) If after carrying out—

- (a) a review under subsection (1)(b),
- (b) an investigation under subsection (1)(c),
- (c) any function equivalent to one referred to in paragraph (a) or (b) prescribed under subsection (1)(e), or
- (d) an inspection under subsection (1)(db),

the Commission is of the view referred to in subsection (1E) as to a body, service provider or other person reviewed, investigated or inspected (taking account, if appropriate, of any other relevant information the Commission may have), the Commission must make a report of its view to the Secretary of State.

(1E) The view referred to is that—

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- (a) the health care for which the body or service provider in question has responsibility is of unacceptably poor quality (whether generally or in particular areas), or
 - (b) there are significant failings in the way the body, service provider or other person is being run (including, where the service provider or other person is an individual, the way his practice is being run).
- (1F) In its report, the Commission may recommend to the Secretary of State that he take special measures in relation to the body or service provider in question with a view to improving the health care for which it is responsible or the way the body, service provider or other person (or, as mentioned in subsection (1E)(b), his practice) is being run.
- (1G) The report must give the Commission’s reasons for its view, and for any recommendation under subsection (1F).”
- (2) In section 23 of that Act (powers of the Commission to obtain information)—
 - (a) in subsection (1)(a), for “NHS premises” there is substituted “relevant premises”,
 - (b) in subsection (2)(d), after “section 20(1)(c)” there is inserted “, (d) or (db), or any functions equivalent to those under section 20(1)(c) prescribed under section 20(1)(e)”, and
 - (c) in subsection (6)—
 - (i) the definition of “NHS premises” is omitted, and
 - (ii) after the definition of “prescribed” there is inserted—

““relevant premises” means—

 - (a) premises owned or controlled by an NHS body,
 - (b) premises owned or controlled by a Local Health Board,
 - (c) premises owned or controlled by a service provider and used for purposes connected with the services provided,
 - (d) any other premises used for any purpose connected with the provision of health care for which an NHS body, a service provider or a Local Health Board has responsibility,

(and terms used in this definition have the meaning given by section 20(7) (disregarding section 20(8)(b))).”

14 Commission for Health Improvement: constitution

- (1) Schedule 2 to the 1999 Act (the Commission for Health Improvement) is amended as follows.
- (2) After paragraph 5 there is inserted—

“5A (1) The Secretary of State may direct a Special Health Authority to exercise—

 - (a) his function of appointing the chairman and the other members referred to in paragraph 4(c), and
 - (b) any functions conferred on him by regulations under paragraph 5 in relation to the appointment or tenure of office of the chairman and those other members.

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- (2) The National Assembly for Wales may direct a Special Health Authority to exercise—
- (a) its function of appointing the member referred to in paragraph 4(b), and
 - (b) any functions conferred on it by regulations under paragraph 5 in relation to the appointment or tenure of office of that member.
- (3) If the Secretary of State or the Assembly gives such directions, the 1977 Act has effect as if—
- (a) the directions were directions under section 16D of that Act, and, accordingly,
 - (b) the functions were exercisable by the Special Health Authority under section 16D.”
- (3) In paragraph 7 (employees)—
- (a) in sub-paragraph (2), the words after “Commission” are omitted, and
 - (b) sub-paragraphs (6) and (7) are omitted.
- (4) In paragraph 8 (delegation of functions)—
- (a) the existing text is renumbered as sub-paragraph (1) of that paragraph,
 - (b) in that sub-paragraph (1) (as so renumbered), for “a committee” to the end there is substituted—
 - “(a) a committee, sub-committee, member or employee of the Commission, or
 - (b) any other person.”, and
 - (c) after sub-paragraph (1) there is inserted—
 - “(2) If the Commission arranges for the discharge of any function falling within section 20(1A) of this Act by one or more committees or sub-committees of the Commission, the persons by whom those functions are to be discharged are to be known collectively as “the Office for Information on Health Care Performance”.
 - (3) If the Commission arranges for the discharge of any function as mentioned in sub-paragraph (1)(b), the arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.”
- (5) In paragraph 12—
- (a) in sub-paragraph (1), for “the exercise of its functions” there is substituted “the way in which the Commission has exercised its functions”, and
 - (b) after sub-paragraph (1) there is inserted—
 - “(1A) As soon as possible after the end of each financial year, the Commission must also make a report to the Secretary of State and the National Assembly for Wales on what it has found in relation to NHS bodies and service providers in the course of exercising its functions during the year.
 - (1B) The Secretary of State must lay before Parliament any reports he receives under sub-paragraphs (1) and (1A).

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(1C) The National Assembly for Wales must publish any report it receives under sub-paragraph (1A).”

Patient and public involvement

15 Establishment of Patients' Forums

- (1) The Secretary of State shall establish a body to be known as a Patients' Forum—
 - (a) for each NHS trust all or most of whose hospitals, establishments and facilities are situated in England, and
 - (b) for each Primary Care Trust.
- (2) The members of each Patients' Forum are to be appointed by the Commission for Patient and Public Involvement in Health.
- (3) A Patients' Forum must—
 - (a) monitor and review the range and operation of services provided by, or under arrangements made by, the trust for which it is established,
 - (b) obtain the views of patients and their carers about those matters and report on those views to the trust,
 - (c) provide advice, and make reports and recommendations, about matters relating to the range and operation of those services to the trust,
 - (d) make available to patients and their carers advice and information about those services,
 - (e) in prescribed circumstances, perform any prescribed function of the trust with respect to the provision of a service affording assistance to patients and their families and carers,
 - (f) carry out such other functions as may be prescribed.
- (4) In providing advice or making recommendations under subsection (3)(c), a Patients' Forum must have regard to the views of patients and their carers.
- (5) If, in the course of exercising its functions, a Patients' Forum becomes aware of any matter which in its view—
 - (a) should be considered by a relevant overview and scrutiny committee, the Forum may refer that matter to the committee,
 - (b) should be brought to the attention of the Commission for Patient and Public Involvement in Health, it may refer that matter to the Commission.
- (6) Subsection (5) does not prejudice the power of a Patients' Forum to make such other representations or referrals as it thinks fit, to such persons or bodies as it thinks fit, about matters arising in the course of its exercising its functions.
- (7) Patients' Forums must in prescribed circumstances—
 - (a) co-operate with each other in the exercise of their functions,
 - (b) exercise functions jointly with one or more other Forums.
- (8) References in subsection (3) to services are references to—
 - (a) services provided as part of the health service in England,
 - (b) services provided in England in pursuance of section 31 arrangements in relation to the exercise of health-related functions of a local authority, and

- (c) services provided elsewhere (and not as part of the health service in England) in pursuance of section 31 arrangements with a local authority in England.

(9) In this section—

“carer”, in relation to a patient, means a person who provides care for the patient, but who is not employed to do so by any body in the exercise of its functions under any enactment,

“the health service” has the same meaning as in the 1977 Act,

“patient” includes (as well as a patient within the meaning of that Act) a person who receives services provided in pursuance of section 31 arrangements in relation to the exercise of health-related functions of a local authority,

“prescribed” means prescribed by regulations made by the Secretary of State,

“relevant overview and scrutiny committee”, in relation to a Patients' Forum, means any overview and scrutiny committee in relation to which the Primary Care Trust or NHS trust for which the Forum is established is a local NHS body by virtue of regulations made under section 7(4) of the Health and Social Care Act 2001 (c. 15) (including that provision as read with section 8(5) and as applied by section 10(2) of that Act),

“section 31 arrangements” means arrangements under regulations under section 31 of the 1999 Act (arrangements between NHS bodies and local authorities).

16 Additional functions of PCT Patients' Forums

(1) A Patients' Forum established for a Primary Care Trust (a “PCT Patients' Forum”) has the following additional functions—

- (a) providing independent advocacy services to persons in the Trust’s area or persons to whom services have been provided by, or under arrangements with, the Trust,
- (b) making available to patients and their carers advice and information about the making of complaints in relation to services provided by or under arrangements with the Trust, and
- (c) representing to persons and bodies which exercise functions in relation to the area of the Trust (including, in particular, any relevant overview and scrutiny committee) the views of members of the public in the Trust’s area about matters affecting their health.

(2) In subsection (1), references to services have the meaning given by section 15(8).

(3) It is also the function of a PCT Patients' Forum—

- (a) to promote the involvement of members of the public in the area of the Trust in consultations or processes leading (or potentially leading) to decisions by those mentioned in subsection (4), or the formulation of policies by them, which would or might affect (whether directly or not) the health of those members of the public,
- (b) to make available advice and information to such members of the public about such involvement,
- (c) to advise those mentioned in subsection (4) about how to encourage such involvement (including, in the case of bodies mentioned in subsection (4)

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to which section 11 of the Health and Social Care Act 2001 (c. 15) applies, advising them how to comply with the requirements of that section in relation to the area of the Primary Care Trust), and

- (d) to monitor how successful those mentioned in subsection (4) are at achieving such involvement.
- (4) Those referred to in subsection (3) are—
- (a) Strategic Health Authorities whose areas include any part of the area of the Primary Care Trust,
 - (b) the Primary Care Trust itself,
 - (c) NHS trusts which provide services to patients in the area of the Primary Care Trust,
 - (d) other public bodies, and
 - (e) others providing services to the public or a section of the public.
- (5) In section 12 of the Health and Social Care Act 2001 (which inserts a new section 19A concerning independent advocacy services into the 1977 Act), in that new section 19A, after subsection (6) there is inserted—
- “(7) The Secretary of State may direct a Patients' Forum established for a Primary Care Trust to exercise any of his functions under this section so far as they relate to independent advocacy services provided to persons in the area of the Primary Care Trust or persons to whom services have been provided by, or under arrangements with, the Trust; and if he does so—
- (a) the functions of that Patients' Forum are to be taken to include those functions, but
 - (b) the Patients' Forum may not make any arrangements with itself under this section.”
- (6) In this section—
- “carer” and “patient” have the same meaning as in section 15,
 - “independent advocacy services” means services provided under section 19A of the 1977 Act (independent advocacy services),
 - “relevant overview and scrutiny committee” has the same meaning as in section 15.

17 Entry and inspection of premises

- (1) The Secretary of State may make regulations requiring—
- (a) Strategic Health Authorities,
 - (b) Primary Care Trusts,
 - (c) Health Authorities,
 - (d) Local Health Boards,
 - (e) local authorities,
 - (f) NHS trusts,
 - (g) persons providing services under Part 2 of the 1977 Act or under arrangements under section 28C of that Act, or
 - (h) persons providing piloted services under pilot schemes established under section 28 of the Health and Social Care Act 2001 (c. 15), or providing LP Services under an LPS scheme established under Schedule 8A to the 1977 Act,

to allow members of a Patients' Forum authorised by or under the regulations to enter and inspect, for the purposes of any of the Forum's functions, premises owned or controlled by those referred to in paragraphs (a) to (h).

- (2) The Secretary of State may also make regulations requiring any other person who owns or controls premises where services are provided as mentioned in subsection (1) (g) or (h) to allow members of a Patients' Forum authorised by or under the regulations to enter and inspect the premises for the purposes of any of the Forum's functions.
- (3) The regulations may in particular make provision as to—
 - (a) cases and circumstances in which access is to be permitted,
 - (b) limitations or conditions to which access is to be subject.
- (4) In subsection (1), “local authorities” has the same meaning as in section 31 of the 1999 Act (arrangements between NHS bodies and local authorities).

18 Annual reports

- (1) Every Patients' Forum must—
 - (a) prepare a report in relation to its activities in each financial year, and
 - (b) as soon as possible after the end of each financial year, send a copy of its report for that year to the trust for which it is established, and to the persons mentioned in subsection (2).
- (2) Those persons are—
 - (a) the Secretary of State,
 - (b) the Commission for Patient and Public Involvement in Health,
 - (c) each Strategic Health Authority whose area includes—
 - (i) any part of the area of the Primary Care Trust for which the Forum is established, or
 - (ii) all or most of the hospitals, establishments and facilities of the NHS trust for which the Forum is established,
 - (d) any relevant overview and scrutiny committee within the meaning given by section 15.
- (3) A report under this section relating to any year must include details of the arrangements maintained by the Forum in that year for obtaining the views of patients.
- (4) In this section, “financial year”, in relation to a Patients' Forum, means—
 - (a) the period beginning with the date on which the Forum is established and ending with the next 31st March, and
 - (b) each successive period of 12 months ending with 31st March.

19 Supplementary

- (1) The Secretary of State may by regulations make further provision in relation to Patients' Forums.
- (2) The regulations may in particular make provision as to—
 - (a) the appointment of members,
 - (b) any qualification or disqualification for membership,
 - (c) terms of appointment,

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- (d) circumstances in which a person is to cease to be a member or may be suspended,
 - (e) the proceedings of Patients' Forums,
 - (f) the discharge of any function of a Patients' Forum by a committee of the Forum or by a joint committee appointed with another Forum,
 - (g) the appointment, as members of a committee or joint committee, of persons who are not members of the Forum or Forums concerned,
 - (h) the funding of Patients' Forums and the provision of premises, other facilities and staff,
 - (i) the payment of travelling and other allowances to members of a Patients' Forum or of a committee of a Forum or a joint committee of two or more Forums (including attendance allowances or compensation for loss of remunerative time),
 - (j) the preparation by a Patients' Forum of annual accounts, and their inclusion in accounts of the Commission for Patient and Public Involvement in Health,
 - (k) the provision of information (including descriptions of information which are or are not to be provided) to a Patients' Forum by an NHS trust, a Primary Care Trust, a Strategic Health Authority, the Commission for Patient and Public Involvement in Health or a person providing independent advocacy services (within the meaning given by section 19A of the 1977 Act),
 - (l) the provision of information by a Patients' Forum to another person (including another Forum),
 - (m) the referral of matters by a Patients' Forum to a relevant overview and scrutiny committee (within the meaning given by section 15),
 - (n) the preparation and publication of reports by Patients' Forums (including the publication of reports under section 18),
 - (o) matters to be included in any such report,
 - (p) the furnishing and publication by NHS trusts, Primary Care Trusts and Strategic Health Authorities of comments on reports or recommendations of Patients' Forums.
- (3) The regulations must secure that the members of a Patients' Forum include—
- (a) at least one person who is a member or representative of a voluntary organisation whose purpose, or one of whose purposes, is to represent the interests of—
 - (i) persons for whom services are being provided under the 1977 Act, or
 - (ii) persons who provide care for such persons, but who are not employed to do so by any body in the exercise of its functions under any enactment, and
 - (b) at least one person for whom services are being or have been provided by the trust for which the Patients' Forum is established.
- (4) The regulations must also secure that the members of a Patients' Forum established for a Primary Care Trust also include—
- (a) at least one member of the Patients' Forum established for each NHS trust all or most of whose hospitals, establishments and facilities are situated in the area of the Primary Care Trust, and
 - (b) if it appears to the Commission for Patient and Public Involvement in Health that there is a body which represents members of the public in the Primary Care Trust's area in matters relating to their health, at least one person who

is a member or representative of that body (or, if there is more than one such body, of any of those bodies).

- (5) The regulations may include provision applying, or corresponding to, any provision of Part 5A of the Local Government Act 1972 (c. 70) (access to meetings and documents), with or without modifications.
- (6) In section 134 of the Mental Health Act 1983 (c. 20) (correspondence of patients), in subsection (3)(e), after “Community Health Council” there is inserted “, a Patients' Forum”.
- (7) In Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities for the purposes of the Act), in Part 3 (National Health Service), after paragraph 41 there is inserted—

“41A A Patients' Forum established under section 15 of the National Health Service Reform and Health Care Professions Act 2002.”

20 The Commission for Patient and Public Involvement in Health

- (1) There shall be a body corporate to be known as the Commission for Patient and Public Involvement in Health (“the Commission”) to exercise the functions set out in subsections (2) to (5) (in addition to its function of appointing members of Patients' Forums).
- (2) The Commission has the following functions—
 - (a) advising the Secretary of State, and such bodies as may be prescribed, about arrangements for public involvement in, and consultation on, matters relating to the health service in England,
 - (b) advising the Secretary of State, and such bodies as may be prescribed, about arrangements for the provision in England of independent advocacy services,
 - (c) representing to the Secretary of State and such bodies as may be prescribed, and advising him and them on, the views, as respects the arrangements referred to in paragraphs (a) and (b), of Patients' Forums and those voluntary organisations and other bodies appearing to the Commission to represent the interests of patients of the health service in England and their carers,
 - (d) providing staff to Patients' Forums established for Primary Care Trusts, and advice and assistance to Patients' Forums and facilitating the co-ordination of their activities,
 - (e) advising and assisting providers of independent advocacy services in England,
 - (f) setting quality standards relating to any aspect of —
 - (i) the way Patients' Forums exercise their functions, and
 - (ii) the services provided by independent advocacy services in England, monitoring how successfully they meet those standards, and making recommendations to them about how to improve their performance against those standards,
 - (g) such other functions in relation to England as may be prescribed.
- (3) It is also the function of the Commission to promote the involvement of members of the public in England in consultations or processes leading (or potentially leading) to decisions by those mentioned in subsection (4), or the formulation of policies by them, which would or might affect (whether directly or not) the health of those members of the public.

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- (4) The decisions in question are those made by—
- (a) health service bodies,
 - (b) other public bodies, and
 - (c) others providing services to the public or a section of the public.
- (5) It is also the function of the Commission—
- (a) to review the annual reports of Patients' Forums made under section 18, and
 - (b) to make, to the Secretary of State or to such other persons or bodies as the Commission thinks fit, such reports or recommendations as the Commission thinks fit concerning any matters arising from those annual reports.
- (6) If the Commission—
- (a) becomes aware in the course of exercising its functions of any matter connected with the health service in England which in its opinion gives rise to concerns about the safety or welfare of patients, and
 - (b) is not satisfied that the matter is being dealt with, or about the way it is being dealt with,
- the Commission must report the matter to whichever person or body it considers most appropriate (or, if it considers it appropriate to do so, to more than one person or body).
- (7) Bodies to whom the Commission might report a matter include—
- (a) the regulatory body for the profession of a person working in the health service,
 - (b) the Commission for Health Improvement.
- (8) The Commission may make such charges as it thinks fit for the provision of advice and other services (but this is subject to any prescribed limitation).
- (9) The Secretary of State may by regulations make further provision in relation to the Commission.
- (10) The regulations may, in particular, make provision as to the provision of information (including descriptions of information which are or are not to be provided) to the Commission by a Strategic Health Authority, a Special Health Authority, an NHS trust, a Primary Care Trust, a Patients' Forum or a provider of independent advocacy services.
- (11) Schedule 6 (which makes further provision about the Commission) is to have effect.
- (12) In this section—
- “carer” and “patient” have the same meaning as in section 15,
 - “the health service” has the same meaning as in the 1977 Act, except that it includes services provided in pursuance of section 31 arrangements in relation to the exercise of health-related functions of a local authority,
 - “health service bodies” means Strategic Health Authorities, Primary Care Trusts and NHS trusts,
 - “independent advocacy services” means services provided under section 19A of the 1977 Act (independent advocacy services),
 - “prescribed” means prescribed by regulations made by the Secretary of State,

“section 31 arrangements” means arrangements under regulations under section 31 of the 1999 Act (arrangements between NHS bodies and local authorities).

21 Overview and scrutiny committees

In section 7 of the Health and Social Care Act 2001 (c. 15) (health-related functions of overview and scrutiny committees), in subsection (3)(b), at the end there is inserted “or to the relevant authority”.

22 Abolition of Community Health Councils in England

- (1) The Community Health Councils established for districts in England under section 20 of the 1977 Act are abolished.
- (2) That section shall cease to have effect in its application to the area of any Health Authority established for an area in England and to any Community Health Council established for a district in England.
- (3) The Association of Community Health Councils for England and Wales (“ACHCEW”) established under paragraph 5 of Schedule 7 to the 1977 Act is also abolished.
- (4) The National Assembly for Wales has as respects Wales the same power under that paragraph as it would have if no such body had been established.
- (5) The Secretary of State may by order make provision—
 - (a) as to the transfer to a person falling within subsection (6), on or after the abolition of a Community Health Council by subsection (1), of any of the rights or liabilities of a person as a member or former member of the Council,
 - (b) as to the transfer to a person falling within subsection (6) or to the National Assembly for Wales, on or after the abolition of ACHCEW, of any of the property held, rights enjoyed or liabilities incurred in respect of the functions of ACHCEW by a person as a member or former member of a Community Health Council which was a member of ACHCEW.
- (6) The following fall within this subsection—
 - (a) the Secretary of State,
 - (b) a Health Authority established for an area in England,
 - (c) a Special Health Authority,
 - (d) an NHS trust,
 - (e) a Primary Care Trust.
- (7) Before exercising the power conferred by subsection (5)(b) the Secretary of State must consult the National Assembly for Wales.
- (8) If section 1 comes into force before this section—
 - (a) the references to Health Authorities in section 20 of and Schedule 7 to the 1977 Act are to be construed (until this section comes into force) as including references to Strategic Health Authorities, and
 - (b) the references in this section to Health Authorities established for areas in England are to have effect as references to Strategic Health Authorities.

- (9) If this section comes into force before section 1, the reference in subsection (6)(b) to a Health Authority established for an area in England is to be construed, after section 1 comes into force, as a reference to a Strategic Health Authority.

Joint working

23 Joint working with the prison service

- (1) In exercising their respective functions, NHS bodies (on the one hand) and the prison service (on the other) shall co-operate with one another with a view to improving the way in which those functions are exercised in relation to securing and maintaining the health of prisoners.
- (2) The appropriate authority may by regulations make provision for or in connection with enabling prescribed NHS bodies (on the one hand) and the prison service (on the other) to enter into prescribed arrangements in relation to the exercise of—
- (a) prescribed functions of the NHS bodies, and
 - (b) prescribed health-related functions of the prison service,
- if the arrangements are likely to lead to an improvement in the way in which those functions are exercised in relation to securing and maintaining the health of prisoners.
- (3) The arrangements which may be prescribed include arrangements—
- (a) for or in connection with the establishment and maintenance of a fund—
 - (i) which is made up of contributions by one or more NHS bodies and by the prison service, and
 - (ii) out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the prison service,
 - (b) for or in connection with the exercise by an NHS body on behalf of the prison service of prescribed health-related functions of the prison service in conjunction with the exercise by the NHS body of prescribed functions of theirs,
 - (c) for or in connection with the exercise by the prison service on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the prison service of prescribed health-related functions of the prison service,
 - (d) as to the provision of staff, goods, services or accommodation in connection with any arrangements mentioned in paragraph (a), (b) or (c),
 - (e) as to the making of payments by the prison service to an NHS body in connection with any arrangements mentioned in paragraph (b),
 - (f) as to the making of payments by an NHS body to the prison service in connection with any arrangements mentioned in paragraph (c).
- (4) Any arrangements made by virtue of this section do not affect the liability of NHS bodies, or of the prison service, for the exercise of any of their functions.
- (5) In this section—
- “appropriate authority” means—
 - (a) the Secretary of State, in relation to England, and
 - (b) the National Assembly for Wales, in relation to Wales,

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

“NHS bodies” means Strategic Health Authorities, Primary Care Trusts, NHS trusts, Special Health Authorities, Health Authorities and Local Health Boards,

“prison service” means the Minister of the Crown exercising functions in relation to prisons (within the meaning of the Prison Act 1952 (c. 52)),

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).

24 Health and well-being strategies in Wales

- (1) It is the duty of —
 - (a) each local authority in Wales, and
 - (b) each Local Health Board any part of whose area lies within the area of the local authority,
 jointly to formulate and implement a strategy for the health and well-being of members of the public in the local authority’s area (a “health and well-being strategy”).
- (2) The local authority and the Local Health Board (or Boards) responsible for a health and well-being strategy are referred to below as the “responsible bodies”.
- (3) The responsible bodies are to have regard to their strategy in the exercise of their functions.
- (4) Each strategy is to be formulated in relation to a period of time to be specified in regulations to be made by the National Assembly for Wales.
- (5) The National Assembly for Wales may by regulations make further provision about health and well-being strategies.
- (6) The regulations may, in particular, make provision as to—
 - (a) the imposition of a duty on the responsible bodies to co-operate in formulating their strategy with prescribed persons or descriptions of person (including, for example, NHS trusts, Community Health Councils, voluntary bodies, and local businesses),
 - (b) steps which the responsible bodies must take before formulating the strategy,
 - (c) matters which the strategy must address,
 - (d) publication of the strategy,
 - (e) monitoring and review by the responsible bodies of the strategy and its implementation,
 - (f) the production of information and reports by the responsible bodies in relation to the strategy,
 - (g) the avoidance of duplication in the preparation of health and well-being strategies and other prescribed strategies or plans provided for under any other enactment.
- (7) The National Assembly for Wales may—
 - (a) give directions to local authorities in Wales, Local Health Boards and NHS trusts in connection with health and well-being strategies,
 - (b) issue guidance to responsible bodies in connection with them.
- (8) The power to give directions in subsection (7)(a) is without prejudice to any other power to give directions to the bodies mentioned there.

(9) In this section—

- (a) “local authority” means county council or county borough council,
- (b) “prescribed” means prescribed in regulations made by the National Assembly for Wales,

and references to NHS trusts are to be construed as references to NHS trusts all or most of whose hospitals, establishments and facilities are situated in Wales.

PART 2

HEALTH CARE PROFESSIONS

The Council for the Regulation of Health Care Professionals

25 The Council for the Regulation of Health Care Professionals

(1) There shall be a body corporate known as the Council for the Regulation of Health Care Professionals (in this group of sections referred to as “the Council”).

(2) The general functions of the Council are—

- (a) to promote the interests of patients and other members of the public in relation to the performance of their functions by the bodies mentioned in subsection (3) (in this group of sections referred to as “regulatory bodies”), and by their committees and officers,
- (b) to promote best practice in the performance of those functions,
- (c) to formulate principles relating to good professional self-regulation, and to encourage regulatory bodies to conform to them, and
- (d) to promote co-operation between regulatory bodies; and between them, or any of them, and other bodies performing corresponding functions.

(3) The bodies referred to in subsection (2)(a) are—

- (a) the General Medical Council,
- (b) the General Dental Council,
- (c) the General Optical Council,
- (d) the General Osteopathic Council,
- (e) the General Chiropractic Council,
- (f) subject to section 26(5), the Royal Pharmaceutical Society of Great Britain,
- (g) subject to section 26(6), the Pharmaceutical Society of Northern Ireland,
- (h) until their abolition by virtue of section 60(3) of the 1999 Act—
 - (i) the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, and each of the National Boards for Nursing, Midwifery and Health Visiting, and
 - (ii) the Council for Professions Supplementary to Medicine and each Board established by or by virtue of the Professions Supplementary to Medicine Act 1960 (c. 66),
- (i) any regulatory body (within the meaning of Schedule 3 to the 1999 Act) established by an Order in Council under section 60 of that Act as the successor to a body mentioned in paragraph (h), and

- (j) any other regulatory body (within that meaning) established by an Order in Council under that section.
- (4) Schedule 7 (which makes further provision about the Council) is to have effect.
- (5) “This group of sections” means this section and sections 26 to 29, and includes Schedule 7.
- (6) In this group of sections, references to regulation, in relation to a profession, are to be construed in accordance with paragraph 11(2) and (3) of Schedule 3 to the 1999 Act.

26 Powers and duties of the Council: general

- (1) Except as mentioned in subsections (3) to (6), the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions.
- (2) The Council may, for example, do any of the following—
 - (a) investigate, and report on, the performance by each regulatory body of its functions,
 - (b) where a regulatory body performs functions corresponding to those of another body (including another regulatory body), investigate and report on how the performance of such functions by the bodies in question compares,
 - (c) recommend to a regulatory body changes to the way in which it performs any of its functions.
- (3) The Council may not do anything in relation to the case of any individual in relation to whom—
 - (a) there are, are to be, or have been proceedings before a committee of a regulatory body, or the regulatory body itself or any officer of the body, or
 - (b) an allegation has been made to the regulatory body, or one of its committees or officers, which could result in such proceedings.
- (4) Subsection (3) does not prevent the Council from taking action under section 28 or 29, but action under section 29 may be taken only after the regulatory body’s proceedings have ended.
- (5) The Council may not do anything in relation to the functions of the Royal Pharmaceutical Society of Great Britain (or its Council, or an officer or committee of the Society) unless those functions are—
 - (a) conferred on the Society (or its Council, or an officer or committee of the Society) by or by virtue of any provision of the Pharmacy Act 1954 (c. 61), other than section 17 (the benevolent fund),
 - (b) conferred as mentioned in paragraph (a) by, or by virtue of, an Order in Council under section 60 of the 1999 Act, or
 - (c) otherwise conferred as mentioned in paragraph (a) and relate to the regulation of the profession regulated by the Pharmacy Act 1954.
- (6) The Council may not do anything in relation to the functions of the Pharmaceutical Society of Northern Ireland (or its Council, or an officer or committee of the Society) unless those functions are—
 - (a) conferred on the Society (or its Council, or an officer or committee of the Society) by or by virtue of any provision of the Pharmacy (Northern

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- Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22)), other than Article 3(3)(e) (the benevolent functions),
- (b) conferred as mentioned in paragraph (a) by, or by virtue of, an Order in Council under section 60 of the 1999 Act or an order under section 56 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) (which makes provision corresponding to section 60 of the 1999 Act), or
 - (c) otherwise conferred as mentioned in paragraph (a) and relate to the regulation of the profession regulated by the Pharmacy (Northern Ireland) Order 1976.
- (7) The Secretary of State, the National Assembly for Wales, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland may ask the Council for advice on any matter connected with a profession appearing to him or them to be a health care profession.
- (8) The Council must comply with such a request.
- (9) In section 60(1) of the 1999 Act (regulation of health care and associated professions), after paragraph (b) there is inserted—
- “(c) modifying the functions, powers or duties of the Council for the Regulation of Health Care Professionals,
 - (d) modifying the list of regulatory bodies (in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002) in relation to which that Council performs its functions,
 - (e) modifying, as respects any such regulatory body, the range of functions of that body in relation to which the Council performs its functions.”
- (10) In Schedule 3 to the 1999 Act (which makes further provision about orders under section 60 of that Act), in paragraph 7, after sub-paragraph (3) there is inserted—
- “(4) An Order may not confer any additional powers of direction over the Council for the Regulation of Health Care Professionals.”
- (11) In subsections (3) and (4), “proceedings”, in relation to a regulatory body, or one of its committees or officers, includes a process of decision-making by which a decision could be made affecting the registration of the individual in question.
- (12) In this section, “health care profession” means a profession (whether or not regulated by or by virtue of any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals.

27 Regulatory bodies and the Council

- (1) Each regulatory body must in the exercise of its functions co-operate with the Council.
- (2) If the Council considers that it would be desirable to do so for the protection of members of the public, it may give directions requiring a regulatory body to make rules (under any power the body has to do so) to achieve an effect which must be specified in the directions.
- (3) The Council may give such directions only in relation to rules which must be approved by the Privy Council (whether by order or not) or by the Department of Health, Social Services and Public Safety in Northern Ireland before coming into force.
- (4) The Council must send a copy of any such directions to the relevant authority.

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- (5) The relevant authority is the Secretary of State or, if the regulatory body in question is the Pharmaceutical Society of Northern Ireland, the Department of Health, Social Services and Public Safety there.
- (6) The directions do not come into force until the date specified in an order made by the relevant authority.
- (7) The Secretary of State must lay before both Houses of Parliament, or (as the case may be) the Department of Health, Social Services and Public Safety must lay before the Northern Ireland Assembly, a draft of an order—
 - (a) setting out any directions he or it receives pursuant to subsection (4), and
 - (b) specifying the date on which the directions are to come into force.
- (8) Subsections (4) to (7) apply also to—
 - (a) directions varying earlier directions, and
 - (b) directions revoking earlier directions, and given after—
 - (i) both Houses of Parliament have resolved to approve the draft order specifying the date on which the earlier directions are to come into force, or (as the case may be)
 - (ii) the Northern Ireland Assembly has done so.
- (9) Subsections (4) and (5) apply also to directions—
 - (a) revoking earlier directions, but
 - (b) which do not fall within subsection (8)(b),but subsections (6) and (7) do not apply to such directions.
- (10) If the Council gives directions which fall within subsection (9), the earlier directions which those directions revoke shall be treated as if subsections (6) and (7) had never applied to them, and as never in force.
- (11) A regulatory body must comply with directions given under subsection (2) which have come into force and have not been revoked.
- (12) A regulatory body is not to be taken to have failed to comply with such directions merely because a court determines that the rules made pursuant to the directions are to be construed in such a way that the effect referred to in subsection (2) is not achieved.
- (13) The Secretary of State shall make provision in regulations as to the procedure to be followed in relation to the giving of directions under subsection (2).
- (14) The regulations must, in particular, make provision requiring the Council to consult a regulatory body before giving directions relating to it under subsection (2).
- (15) In this section—
 - (a) “making” rules includes amending or revoking rules, and
 - (b) “rules” includes regulations, byelaws and schemes.

28 Complaints about regulatory bodies

- (1) The Secretary of State may make provision in regulations about the investigation by the Council of complaints made to it about the way in which a regulatory body has exercised any of its functions.
- (2) The regulations may, in particular, make provision as to—

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- (a) who (or what description of person) is entitled to complain,
 - (b) the nature of complaints which the Council must (or need not) investigate,
 - (c) matters which are excluded from investigation,
 - (d) requirements to be complied with by a person who makes a complaint,
 - (e) the procedure to be followed by the Council in investigating complaints,
 - (f) the making of recommendations or reports by the Council following investigations,
 - (g) the confidentiality, or disclosure, of any information supplied to the Council or acquired by it in connection with an investigation,
 - (h) the use which the Council may make of any such information,
 - (i) the making of payments to any persons in connection with investigations,
 - (j) privilege in relation to any matter published by the Council in the exercise of its functions under the regulations.
- (3) The regulations may also make provision—
- (a) empowering the Council to require persons to attend before it,
 - (b) empowering the Council to require persons to give evidence or produce documents to it,
 - (c) about the admissibility of evidence,
 - (d) enabling the Council to administer oaths.
- (4) No person shall be required by or by virtue of regulations under this section to give any evidence or produce any document or other material to the Council which he could not be compelled to give or produce in civil proceedings before the High Court or, in Scotland, the Court of Session.

29 Reference of disciplinary cases by Council to court

- (1) This section applies to—
- (a) a direction of the Statutory Committee of the Royal Pharmaceutical Society of Great Britain under section 8 of the Pharmacy Act 1954 (c. 61) (control of registrations by Statutory Committee) or section 80 of the Medicines Act 1968 (c. 67) (power to disqualify and direct removal from register),
 - (b) a direction of the Statutory Committee of the Pharmaceutical Society of Northern Ireland under Article 20 of the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22)) (control of registrations by Statutory Committee) or section 80 of the Medicines Act 1968,
 - (c) a direction by the Professional Conduct Committee of the General Medical Council under section 36 of the Medical Act 1983 (c. 54) (professional misconduct and related offences),
 - (d) a direction by the Committee on Professional Performance of the General Medical Council under section 36A of that Act (professional performance),
 - (e) a determination by the Professional Conduct Committee of the General Dental Council under section 27 of the Dentists Act 1984 (c. 24) (erasure or suspension of registration for crime or misconduct),
 - (f) a disciplinary order made by the Disciplinary Committee of the General Optical Council under section 17 of the Opticians Act 1989 (c. 44) (powers of Disciplinary Committee),
 - (g) any step taken by the Professional Conduct Committee of the General Osteopathic Council under section 22 of the Osteopaths Act 1993 (c. 21)

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- (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee),
- (h) any step taken by the Professional Conduct Committee of the General Chiropractic Council under section 22 of the Chiropractors Act 1994 (c. 17) (which relates to corresponding matters),
 - (i) any corresponding measure taken in relation to a nurse, midwife or health visitor,
 - (j) any corresponding measure taken in relation to a member of a profession regulated by the Professions Supplementary to Medicine Act 1960 (c. 66) or, after the repeal of that Act by virtue of section 60(3) of the 1999 Act, by any such Order in Council under section 60 of the 1999 Act as is mentioned in section 25(3)(i).
- (2) This section also applies to—
- (a) a final decision of the relevant committee not to take any disciplinary measure under the provision referred to in whichever of paragraphs (a) to (h) of subsection (1) applies,
 - (b) any corresponding decision taken in relation to a nurse, midwife or health visitor, or to any such person as is mentioned in subsection (1)(j) and
 - (c) a decision of the relevant regulatory body, or one of its committees or officers, to restore a person to the register following his removal from it in accordance with any of the measures referred to in paragraphs (a) to (j) of subsection (1).
- (3) The things to which this section applies are referred to below as “relevant decisions”.
- (4) If the Council considers that—
- (a) a relevant decision falling within subsection (1) has been unduly lenient, whether as to any finding of professional misconduct or fitness to practise on the part of the practitioner concerned (or lack of such a finding), or as to any penalty imposed, or both, or
 - (b) a relevant decision falling within subsection (2) should not have been made, and that it would be desirable for the protection of members of the public for the Council to take action under this section, the Council may refer the case to the relevant court.
- (5) In subsection (4), the “relevant court”—
- (a) in the case of a person whose address in the register of practitioners in question is (or if he were registered would be) in Scotland, means the Court of Session,
 - (b) in the case of a person whose address in the register of practitioners in question is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland, and
 - (c) in the case of any other person (including one who is not registered and is not seeking registration or restoration to the register), means the High Court of Justice in England and Wales.
- (6) The Council may not so refer a case after the end of the period of four weeks beginning with the last date on which the practitioner concerned has the right to appeal against the relevant decision.
- (7) If the Council does so refer a case—
- (a) the case is to be treated by the court to which it has been referred as an appeal by the Council against the relevant decision (even though the Council was not a party to the proceedings resulting in the relevant decision), and

- (b) the body which made the relevant decision is to be a respondent.
- (8) The court may—
- (a) dismiss the appeal,
 - (b) allow the appeal and quash the relevant decision,
 - (c) substitute for the relevant decision any other decision which could have been made by the committee or other person concerned, or
 - (d) remit the case to the committee or other person concerned to dispose of the case in accordance with the directions of the court,
- and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

Appeals

30 Medical practitioners

- (1) The Medical Act 1983 (c. 54) is amended as follows.
- (2) In section 40 (appeals)—
- (a) in subsection (1), paragraph (c) is omitted,
 - (b) after subsection (1), there is inserted—
 - “(1A) A decision of the General Council under section 39 above giving a direction for erasure is also an appealable decision for the purposes of this section.”,
 - (c) for subsection (3) there is substituted—
 - “(3) A person in respect of whom an appealable decision falling within subsection (1) has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 36(6), 36A(7), or 37(6) above, or section 41(7) or 45(7) below, appeal against the decision to the relevant court.
- (3A) In subsection (3), “the relevant court”—
- (a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session,
 - (b) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland, and
 - (c) in the case of any other person (including one appealing against a decision falling within subsection (1)(e)), means the High Court of Justice in England and Wales.
- (3B) A person in respect of whom an appealable decision falling within subsection (1A) above has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 39(2), appeal against the decision to a county court or, in Scotland, the sheriff in whose sheriffdom the address in the register is situated.”,
- (d) subsections (4) to (6), (9) and (10) are omitted, and
 - (e) for subsections (7) and (8) there is substituted—

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- “(7) On an appeal under this section from the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee, the court may—
- (a) dismiss the appeal,
 - (b) allow the appeal and quash the direction or variation appealed against,
 - (c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by the committee concerned, or
 - (d) remit the case to the committee concerned to dispose of the case in accordance with the directions of the court,
- and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.
- (8) On an appeal under this section from the General Council, the court (or the sheriff) may—
- (a) dismiss the appeal,
 - (b) allow the appeal and quash the direction appealed against, or
 - (c) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),
- and may make such order as to costs (or in Scotland, expenses) as it (or he) thinks fit.”
- (3) In Schedule 4 (proceedings before Professional Conduct, Health and Preliminary Proceedings Committees)—
- (a) in paragraph 3(b), the words “to Her Majesty in Council” are omitted and for “the Judicial Committee” there is substituted “the court (or the sheriff)”,
 - (b) in paragraph 10(1)—
 - (i) for “section 37 of this Act and” there is substituted “section 37 of this Act”,
 - (ii) after “or 37 of this Act”, there is inserted “and a direction for erasure given by the General Council under section 39 of this Act”, and
 - (iii) in paragraph (a), for the words “mentioned in subsection (3) of that section” there is substituted “specified in that section”,
 - (c) paragraph 10(2) is omitted, and
 - (d) in paragraph 10(3)—
 - (i) “or (2)” is omitted,
 - (ii) “or that sub-paragraph as applied by sub-paragraph (2) above” is omitted,
 - (iii) for “mentioned in section 40(3)” there is substituted “specified in section 40”, and
 - (iv) for “mentioned in the said section 40(3)” there is substituted “specified in section 40 of this Act”.

31 Dentists

- (1) The Dentists Act 1984 (c. 24) is amended as follows.
- (2) In section 29 (appeals)—

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

- (a) in subsection (1), for the words from “to Her” to the end there is substituted “against that determination or direction to the relevant court.”,
- (b) after subsection (1) there is inserted—

“(1A) In subsection (1), “the relevant court”—

- (a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session,
 - (b) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland, and
 - (c) in the case of any other person, means the High Court of Justice in England and Wales.”,
- (c) subsection (2) is omitted, and
 - (d) for subsection (3) there is substituted—

“(3) On an appeal under this section, the court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the determination or direction appealed against,
- (c) (in the case of an appeal against a determination under section 27 above or a direction under section 28 above) substitute for the determination or direction appealed against any other determination or direction which could have been made or given by the Professional Conduct Committee or (as the case may be) the Health Committee, or
- (d) remit the case to the Professional Conduct Committee, the Health Committee or the Continuing Professional Development Committee to dispose of the case under section 27 or 28 above or Schedule 3A to this Act in accordance with the directions of the court,

and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.”

- (3) In section 44 (withdrawal of privilege from body corporate)—

- (a) in subsection (4)—
 - (i) after “days” there is inserted “from service”, and
 - (ii) for the words from “in accordance” to “Majesty in Council” there is substituted “appeal to the relevant court”, and
- (b) after subsection (4) there is inserted—

“(4A) In subsection (4), “the relevant court”—

- (a) where the registered office of the body corporate is in Northern Ireland, means the High Court of Justice in Northern Ireland,
- (b) where the registered office of the body corporate is in Scotland, means the Court of Session,
- (c) where the registered office of the body corporate is in any other place, means the High Court of Justice in England and Wales.”

- (4) In section 51, the words from “(other” to “appeals)” are omitted.
- (5) In section 34A (professional training and development requirements), in subsection (7)(b), for “to Her Majesty in Council” there is substituted “under section 29 above to the relevant court”.
- (6) Subsection (5) has effect—
- (a) upon the coming into force of this section, if that happens after the coming into force of article 8 of the Dentists Act 1984 (Amendment) Order 2001 ([S.I. 2001/3926](#)) (“the Dentists Order”) so far as that article effects the insertion into the Dentists Act 1984 (c. 24) of the new section 34A(7)(b),
 - (b) otherwise, immediately after the coming into force to that extent of that article.
- (7) If this section comes into force before article 10(3) of the Dentists Order—
- (a) paragraphs (b), (c) and (d) of article 10(3) of that Order are revoked upon the coming into force of this section, and
 - (b) until the coming into force of the remainder of article 10(3) of that Order, section 29 of the Dentists Act 1984 (c. 24) (as amended by this section) is to be read with the modifications set out in subsection (8).
- (8) The modifications are that section 29 is to be read as if—
- (a) in each of paragraphs (a) and (b) of subsection (1A), the words “(or if he were registered would be)” were omitted,
 - (b) in paragraph (c) of subsection (3), the words “(in the case of an appeal against a determination under section 27 above or a direction under section 28 above)” were omitted, and
 - (c) in paragraph (d) of subsection (3)—
 - (i) for the words “, the Health Committee or the Continuing Professional Development Committee” there were substituted “or the Health Committee”, and
 - (ii) the words “or Schedule 3A to this Act” were omitted.

32 Opticians

- (1) Section 23 of the Opticians Act 1989 (c. 44) (appeals in disciplinary and other cases) is amended as follows.
- (2) For subsection (1) there is substituted—
- “(1) An individual or body corporate who is notified under subsection (11) of section 17—
- (a) that a disciplinary order has been made against him under that section; or
 - (b) that a direction has been given in respect of him under subsection (9) of that section,
- may, before the end of the period of 28 days beginning with the date on which notification was served, appeal against that order or direction to the relevant court.
- (1A) In subsection (1), “the relevant court”—

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- (a) in the case of an individual whose address in the register is in Scotland, or a body corporate whose registered office is in Scotland, means the Court of Session,
 - (b) in the case of an individual whose address in the register is in Northern Ireland, or a body corporate whose registered office is in Northern Ireland, means the High Court of Justice in Northern Ireland, and
 - (c) in the case of any other individual or body corporate, means the High Court of Justice in England and Wales.
- (1B) An individual or body corporate who is notified under subsection (3) of section 19 above that a direction has been given in respect of him under that section may, before the end of the period of 28 days beginning with the date on which notification was served, appeal against that direction to a county court or, in Scotland, the sheriff in whose sheriffdom the address in the register or (as the case may be) the registered office is situated.
- (1C) On an appeal under this section, the court (or the sheriff) may—
- (a) dismiss the appeal,
 - (b) allow the appeal and quash the order or direction appealed against,
 - (c) substitute for the order or direction appealed against any other order or direction which could have been made by the Disciplinary Committee, or
 - (d) remit the case to the Disciplinary Committee to dispose of the case in accordance with the directions of the court (or the sheriff),
- and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”
- (3) In subsection (2), for “any such appeal”, where it first appears, there is substituted “any appeal under this section”.

33 Osteopaths

- (1) The Osteopaths Act 1993 (c. 21) is amended as follows.
- (2) In section 10 (fraud or error in relation to registration)—
- (a) in subsection (7), for “Her Majesty in Council” there is substituted “a county court or, in the case of a person whose address in the register is in Scotland, the sheriff in whose sheriffdom the address is situated”,
 - (b) for subsection (8) there is substituted—
 - “(8) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notification of the order was served under subsection (6).”
 - (c) subsection (10) is omitted, and
 - (d) for subsection (11) there is substituted—
 - “(11) On an appeal under this section, the court (or the sheriff) may—
 - (a) dismiss the appeal,
 - (b) allow the appeal and quash the order appealed against, or
 - (c) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),

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

and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”

(3) In section 22 (consideration of allegations by the Professional Conduct Committee), in each of subsections (6) and (8), for “recommendation under section 31(8)(c)” there is substituted “decision of a court on an appeal under section 31”.

(4) In section 23 (consideration of allegations by the Health Committee), in each of subsections (4), (5) and (6), for “recommendation under section 31(8)(c)” there is substituted “decision of a court on an appeal under section 31”.

(5) In section 29 (appeals against decisions of the Registrar), for subsections (4) to (6) there is substituted—

“(4) A person aggrieved by the decision of the General Council on an appeal under this section may appeal to a county court or, in the case of a person whose address in the register is (or if he were registered would be) in Scotland, the sheriff in whose sheriffdom the address is situated.

(4A) On an appeal under subsection (4) above, the court (or the sheriff) may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Registrar, or
- (d) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),

and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”

(6) In section 31 (appeals against decisions of the Professional Conduct Committee and appeal tribunals)—

- (a) in subsection (1), for the words from “sent to him” to the end there is substituted “served on him, appeal against it to the relevant court.”,
- (b) after subsection (1) there is inserted—

“(1A) In subsection (1), “the relevant court”—

- (a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session,
- (b) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland, and
- (c) in the case of any other person, means the High Court of Justice in England and Wales.”,

- (c) subsections (3) to (5) and (7) are omitted, and
- (d) for subsection (8) there is substituted—

“(8) On an appeal under this section, the court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Professional Conduct Committee or (as the case may be) Health Committee, or

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- (d) remit the case to the Committee or appeal tribunal concerned to dispose of the case in accordance with the directions of the court,

and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.”

- (7) In section 35 (rules), subsection (3) is omitted.

34 Chiropractors

- (1) The Chiropractors Act 1994 (c. 17) is amended as follows.

- (2) In section 10 (fraud or error in relation to registration)—

- (a) in subsection (7), for “Her Majesty in Council” there is substituted “a county court or, in the case of a person whose address in the register is in Scotland, the sheriff in whose sheriffdom the address is situated”,

- (b) for subsection (8) there is substituted—

“(8) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notification of the order was served under subsection (6).”

- (c) subsection (10) is omitted, and

- (d) for subsection (11) there is substituted—

“(11) On an appeal under this section, the court (or the sheriff) may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the order appealed against, or
- (c) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff), and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”

- (3) In section 22 (consideration of allegations by the Professional Conduct Committee), in each of subsections (7) and (9), for “recommendation under section 31(8)(c)” there is substituted “decision of a court on an appeal under section 31”.

- (4) In section 23 (consideration of allegations by the Health Committee), in each of subsections (4), (5) and (6), for “recommendation under section 31(8)(c)” there is substituted “decision of a court on an appeal under section 31”.

- (5) In section 29 (appeals against decisions of the Registrar), for subsections (4) to (6) there is substituted—

“(4) A person aggrieved by the decision of the General Council on an appeal under this section may appeal to a county court or, in the case of a person whose address in the register is (or if he were registered would be) in Scotland, the sheriff in whose sheriffdom the address is situated.

- (4A) On an appeal under subsection (4) above, the court (or the sheriff) may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Registrar, or

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(d) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff), and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”

(6) In section 31 (appeals against decisions of the Professional Conduct Committee and appeal tribunals)—

(a) in subsection (1), for the words from “sent to him” to the end there is substituted “served on him, appeal against it to the relevant court.”,

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

“(1A) In subsection (1), “the relevant court”—

(a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session,

(b) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland, and

(c) in the case of any other person, means the High Court of Justice in England and Wales.”,

(c) subsections (3) to (5) and (7) are omitted, and

(d) for subsection (8) there is substituted—

“(8) On an appeal under this section, the court may—

(a) dismiss the appeal,

(b) allow the appeal and quash the decision appealed against,

(c) substitute for the decision appealed against any other decision which could have been made by the Professional Conduct Committee or (as the case may be) Health Committee, or

(d) remit the case to the Committee or appeal tribunal concerned to dispose of the case in accordance with the directions of the court,

and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.”

(7) In section 35 (rules), subsection (3) is omitted.

The pharmacy profession

35 Regulation of the profession of pharmacy

In Schedule 3 to the 1999 Act (which makes provision in relation to orders under section 60 of that Act regulating health care and associated professions), in paragraph 2, for sub-paragraphs (2) and (3) there is substituted—

“(2) But (subject to paragraph 12) an order may not amend the Medicines Act 1968 except in connection with the regulation of the profession regulated by the Pharmacy Act 1954.”

PART 3

MISCELLANEOUS

36 Amendments of health service legislation in connection with consolidation

- (1) The Secretary of State may by order make such amendments of the legislation relating to the health service in England and Wales as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or greater part of that legislation.
- (2) An order under this section shall not come into force unless—
 - (a) a single Act, or
 - (b) a group of two or more Acts,is passed consolidating the whole or greater part of the legislation relating to the health service in England and Wales (with or without other legislation relating to any of the health services).
- (3) If such an Act or group of Acts is passed, the order shall (by virtue of this subsection) come into force immediately before the Act or group of Acts comes into force.
- (4) Once an order under this section has come into force, no further order may be made under this section.
- (5) In this section—

“the health services” means any of the health services within the meaning of the 1977 Act, the National Health Service (Scotland) Act 1978 (c. 29) or the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)),

“the legislation relating to the health service in England and Wales” means the 1977 Act and any other Act relating to the health service (within the meaning of that Act), whenever passed.

37 Minor and consequential amendments and repeals

- (1) The minor and consequential amendments specified in Schedule 8 are to have effect.
- (2) The enactments specified in Schedule 9 are repealed to the extent specified.

38 Regulations and orders

- (1) Any power under this Act to make any order or regulations is (except in the case of orders under section 22(5)) exercisable by statutory instrument or, in the case of an order made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 27, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) A statutory instrument containing any order or regulations made by the Secretary of State under this Act, other than regulations under section 28 or an order under section 27, 36 or 42(3), shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing regulations under section 28 or an order under section 36, or an order of the Secretary of State under section 27, shall not be made

unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

- (4) No order shall be made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 27 unless a draft of the order has been laid before, and approved by resolution of, the Northern Ireland Assembly.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Subsections (5) to (7) do not apply to orders under section 27.
- (9) Subject to subsection (8), nothing in this Act shall be read as affecting the generality of subsection (7).
- (10) Directions given in pursuance of any provision of this Act are, except where otherwise stated, to be given by instrument in writing.
- (11) Any power conferred by this Act to give directions by instrument in writing includes power to vary or revoke them by subsequent directions.

39 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, or 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, including an enactment contained in an Act passed in the same session as this Act.

(3) The power to make regulations under this section is also exercisable by the National Assembly for Wales, in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly.

(4) Nothing in this Act shall be read as affecting the generality of subsection (1).

40 Wales

(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 is (as from the time when the Act is so amended) to be treated as referring to the Act as so amended.

(2) Subsection (1) does not affect the power to make further Orders varying or omitting any such reference.

41 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.

42 Short title, interpretation, commencement and extent

(1) This Act may be cited as the National Health Service Reform and Health Care Professions Act 2002.

(2) In this Act—

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

“the 1999 Act” means the Health Act 1999 (c. 8),

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

(3) This Act, apart from—

- (a) this section and sections 38 to 41, and
- (b) any other provision of this Act so far as it confers any power to make an order or regulations under this Act,

shall come into force on such day as the appropriate authority may by order appoint, and different days may be appointed for different provisions and for different purposes.

(4) In subsection (3), the “appropriate authority” is—

- (a) in relation to sections 1 to 5, 7, 8, 15 to 22, Part 2, and section 36, the Secretary of State,
- (b) in relation to sections 11 to 14, the Secretary of State after consulting the National Assembly for Wales,
- (c) in relation to sections 6, 9 and 24, the National Assembly for Wales,
- (d) in relation to sections 10 and 23—
 - (i) the Secretary of State, in relation to England, and
 - (ii) the National Assembly for Wales, in relation to Wales,
- (e) in relation to section 37—

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- (i) the Secretary of State, as respects any amendment or repeal consequential on provisions falling within paragraph (a),
 - (ii) the Secretary of State, after consulting the National Assembly for Wales, as respects any amendment or repeal consequential on provisions falling within paragraph (b),
 - (iii) the National Assembly for Wales, as respects any amendment or repeal consequential on provisions falling within paragraph (c),
 - (iv) otherwise, the Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales.
- (5) Subject to subsection (6), this Act extends to the whole of the United Kingdom, except for Part 1, which extends to England and Wales only.
- (6) The extent of any amendment or repeal made by this Act is the same as that of the enactment amended or repealed.
- (7) Subsection (6) does not apply to the amendment of the Police Act 1997 (c. 50) made by paragraph 64 of Schedule 2, which extends to England and Wales only.
- (8) 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.