



# Health and Social Care (Community Health and Standards) Act 2003

## 2003 CHAPTER 43

### PART 1

#### NHS FOUNDATION TRUSTS

##### *Introductory*

#### **1 NHS foundation trusts**

- (1) An NHS foundation trust is a public benefit corporation which is authorised under this Part to provide goods and services for the purposes of the health service in England.
- (2) A public benefit corporation is a body corporate which, in pursuance of an application under this Part, is constituted in accordance with Schedule 1.

#### **2 Independent Regulator of NHS Foundation Trusts**

- (1) There is to be a body corporate known as the Independent Regulator of NHS Foundation Trusts (referred to in this Part as “the regulator”).
- (2) Schedule 2 (which makes further provision about the regulator) has effect.

#### **3 General duty of regulator**

The regulator must exercise its functions in a manner that is consistent with the performance by the Secretary of State of the duties under sections 1, 3 and 51 of the National Health Service Act 1977 (c. 49) (duty as to health service and services generally and as to university clinical teaching and research).

### *Authorisation*

#### **4 Applications by NHS trusts**

- (1) An NHS trust may make an application to the regulator for authorisation to become an NHS foundation trust, if the application is supported by the Secretary of State.
- (2) The application must—
  - (a) describe the goods and services which the NHS trust proposes should be provided by the NHS foundation trust, and
  - (b) be accompanied by a copy of the proposed constitution of the trust;and must give any further information which the regulator requires the NHS trust to give.
- (3) The applicant may modify the application with the agreement of the regulator at any time before authorisation is given under section 6.
- (4) Once an NHS trust has made the application—
  - (a) the provisions of the proposed constitution which give effect to paragraphs 3 to 19 of Schedule 1 have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust and of the board of governors, and the initial directors, and enabling the board of governors and board of directors to make preparations for the performance of their functions,
  - (b) the NHS trust may do anything (including the things mentioned in paragraph 16 of Schedule 2 to the National Health Service and Community Care Act 1990 (c. 19) (general powers)) which appears to it to be necessary or desirable for the purpose of preparing it for NHS foundation trust status.

#### **5 Other applications**

- (1) An application may be made to the regulator by persons (other than an NHS trust) to be incorporated as a public benefit corporation and authorised to become an NHS foundation trust, if the application is supported by the Secretary of State.
- (2) The application must—
  - (a) describe the goods and services which the applicants propose should be provided by the trust, and
  - (b) be accompanied by a copy of the proposed constitution of the trust;and must give any further information which the regulator requires the applicants to give.
- (3) If it appears to the regulator that—
  - (a) provision of the goods and services described in the application is likely to assist in the performance of the duties mentioned in section 3,
  - (b) the trust as proposed to be constituted will be able to provide those goods and services, and
  - (c) the proposed constitution accords with Schedule 1 and is otherwise appropriate,the regulator may issue a certificate of incorporation.
- (4) The applicants may modify the application with the agreement of the regulator at any time before the certificate is issued.

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- (5) On the issue of the certificate, the applicants are incorporated as a public benefit corporation.
- (6) The certificate is conclusive evidence of incorporation.
- (7) Once the certificate has been issued—
  - (a) the proposed constitution has effect, but the applicants may exercise the functions of the corporation on its behalf until a board of directors is appointed in accordance with the constitution,
  - (b) the corporation may do anything (including the things mentioned in section 18) which appears to it to be necessary or desirable for the purpose of preparing it for NHS foundation trust status.

## **6 Authorisation of NHS foundation trusts**

- (1) The regulator may give an authorisation under this section—
  - (a) to an NHS trust which has applied under section 4, or
  - (b) to a public benefit corporation,if the regulator is satisfied as to the following matters.
- (2) The matters are that—
  - (a) the applicant's constitution will be in accordance with Schedule 1 and will otherwise be appropriate,
  - (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
  - (c) there will be a board of governors, and a board of directors, constituted in accordance with the constitution,
  - (d) the steps necessary to prepare for NHS foundation trust status have been taken,
  - (e) the applicant will be able to provide the goods and services which the authorisation is to require it to provide, and
  - (f) any other requirements which the regulator considers appropriate are met.
- (3) In deciding whether it is satisfied as to the matters referred to in subsection (2)(e), the regulator is to consider (among other things)—
  - (a) any report or recommendation in respect of the applicant made by the Commission for Healthcare Audit and Inspection,
  - (b) the financial position of the applicant.
- (4) The authorisation may be given on any terms the regulator considers appropriate.
- (5) The regulator must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following—
  - (a) if the applicant is an NHS trust, the Patients' Forum for the trust and the staff employed by the trust,
  - (b) individuals who live in any area specified in the proposed constitution as the area for a public constituency,
  - (c) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors,
  - (d) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,

(e) any persons prescribed by regulations.

(6) If regulations make provision about consultation, the regulator may not give an authorisation unless it is satisfied that the applicant has complied with the regulations.

(7) The generality of the power in subsection (4) is not affected by the following provisions of this Part.

## **7 Effect of authorisation**

(1) On an authorisation being given to a body corporate which is an NHS trust—

- (a) it ceases to be an NHS trust and becomes an NHS foundation trust,
- (b) the proposed constitution has effect.

(2) In consequence of subsection (1)(a), any order made under section 5(1) of the 1990 Act (establishment of the NHS trust) is revoked.

(3) On an authorisation being given to a body corporate which is a public benefit corporation, it becomes an NHS foundation trust.

(4) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.

(5) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities.

(6) The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

(7) An NHS foundation trust is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the trust's property is not to be regarded as property of, or property held on behalf of, the Crown.

## **8 Amendments of constitution**

An NHS foundation trust may make amendments of its constitution with the approval of the regulator.

## **9 Variation of authorisation**

(1) The regulator may vary an authorisation.

(2) In deciding whether or not to vary an authorisation the regulator is to have regard (among other things) to—

- (a) any report or recommendation made to it by virtue of section 21(2)(f) of the Local Government Act 2000 (c. 22) (overview and scrutiny committees),
- (b) any report or recommendation made to it by the Commission for Patient and Public Involvement in Health under section 20(5)(b) or (6) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

## **10 Register of NHS foundation trusts**

(1) The regulator must establish and maintain a register of NHS foundation trusts.

(2) The register must contain in relation to each NHS foundation trust—

- (a) a copy of the current constitution,
  - (b) a copy of the current authorisation,
  - (c) a copy of the latest annual accounts and of any report of the auditor on them,
  - (d) a copy of the latest annual report,
  - (e) a copy of the latest document sent to the regulator under paragraph 27 of Schedule 1 (forward planning),
  - (f) a copy of any notice given under section 23 (failing NHS foundation trusts).
- (3) In relation to any time before an NHS foundation trust is first required to send an annual report to the regulator, the register must contain a list of the persons who were first elected or appointed as—
- (a) the members of the board of governors,
  - (b) the directors.
- (4) Members of the public may inspect the register at any reasonable time.
- (5) Any person who requests it is to be provided with a copy of or extract from any document contained in the register on payment of a reasonable charge.

#### *Financial matters*

### **11 Power of Secretary of State to give financial assistance**

- (1) The Secretary of State may give financial assistance to any NHS foundation trust.
- (2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.
- (3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.

“Externally financed development agreement” has the same meaning as in section 1 of the National Health Service (Private Finance) Act 1997 (c. 56), reading references in subsections (3) and (5) of that section to the trust as references to the NHS foundation trust.

### **12 Prudential borrowing code**

- (1) The regulator must make a code for determining the limit on the total amount of the borrowing of any NHS foundation trust.
- (2) In making the code the regulator is to have regard (among other things) to any generally accepted principles used by financial institutions to determine the amounts of loans to non-profit making bodies.

A body is non-profit making if it does not carry on activities for the purpose of making profits for distribution to its members or others.
- (3) Before making the code, the regulator must consult—
  - (a) the Secretary of State,
  - (b) every NHS trust intending to make an application to become an NHS foundation trust,
  - (c) such other persons as the regulator considers appropriate.

- (4) The regulator must lay a copy of the code before Parliament.
- (5) The regulator may revise the code; and subsections (2) to (4) apply in relation to revising the code, but the regulator must also consult every NHS foundation trust.

### **13 Public dividend capital**

- (1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions (“initial public dividend capital”), but subject to this section.
- (2) Any amount issued to an NHS foundation trust as public dividend capital under section 11 is (like initial public dividend capital) an asset of the Consolidated Fund.
- (3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust is to be treated as having been issued.
- (4) But the dividend to be paid by the trust is to be the same as that payable by NHS trusts in England in pursuance of section 9(7) of the 1990 Act (dividend on public dividend capital).
- (5) Before exercising the power in subsection (3), the Secretary of State must consult the regulator.
- (6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital is to be paid into the Consolidated Fund.

### *Functions*

### **14 Authorised services**

- (1) An authorisation must authorise the NHS foundation trust to provide goods and services for purposes related to the provision of health care.
- (2) But the authorisation must secure that the principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- (3) The trust may also carry on activities other than those mentioned in subsection (1), subject to any restrictions in the authorisation, for the purpose of making additional income available in order to carry on its principal purpose better.
- (4) The authorisation may require the provision, wholly or partly for the purposes of the health service in England, of goods and services by the trust.
- (5) References in this Part to goods and services include, in particular—
  - (a) education and training,
  - (b) accommodation and other facilities.
- (6) The authorisation must authorise and may require the trust—
  - (a) to carry out research in connection with the provision of health care,
  - (b) to make facilities and staff available for the purposes of education, training or research carried on by others;

and, in deciding how to exercise its functions under this subsection in a case where any of the corporation's hospitals includes a medical or dental school provided by a university, the regulator is to have regard to the need to establish and maintain appropriate arrangements with the university.

- (7) In deciding whether or not to require the trust to provide, wholly or partly for the purposes of the health service in England, any goods or services the regulator is to have regard (among other things) to—
- (a) the need for the provision of goods or services in the area in question,
  - (b) any provision of goods or services by other health service bodies in the area in question,
  - (c) any other provision by the trust with which the provision of the goods or services is connected,
  - (d) any agreement or arrangement to which the body corporate which is the trust is or was a party.
- (8) Such a requirement as is mentioned in subsection (4) may be framed by reference (among other things) to—
- (a) goods or services in general or of a particular description,
  - (b) goods or services required to meet the needs of health service bodies in general or those of a particular description,
  - (c) goods or services required to meet the needs of other persons of a particular description,
  - (d) the volume of goods or services provided,
  - (e) the place where goods or services are provided,
  - (f) the period within which goods or services are provided.

## **15 Private health care**

- (1) An authorisation may restrict the provision, for purposes other than those of the health service in England, of goods and services by an NHS foundation trust.
- (2) The power is to be exercised, in particular, with a view to securing that the proportion of the total income of an NHS foundation trust which was an NHS trust in any financial year derived from private charges is not greater than the proportion of the total income of the NHS trust derived from such charges in the base financial year.
- (3) The base financial year means the first financial year throughout which the body corporate was an NHS trust or, if it was an NHS trust throughout the financial year ending with 31st March 2003, that year.
- (4) Private charges means charges imposed in respect of goods and services provided to patients other than patients being provided with goods and services for the purposes of the health service.
- (5) Section 14(8) applies for the purposes of this section.

## **16 Protection of property**

- (1) An NHS foundation trust may not dispose of any protected property without the approval of the regulator.

Disposing of property includes disposing of part of it or granting an interest in it.

- (2) Protected property is property of the trust designated as protected in its authorisation.
- (3) The regulator may designate property as protected if it considers it is needed—
  - (a) for the purposes of any goods or services which the authorisation requires the trust to provide wholly or partly for the purposes of the health service in England, or
  - (b) for the purpose of doing anything which the trust is required to do under section 14(6).
- (4) The regulator may give approval under subsection (1) on any terms it considers appropriate.
- (5) An NHS foundation trust may not create a floating charge on its property.

## **17 Financial powers**

- (1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.
- (2) But the total amount of the trust's borrowing is subject to the limit imposed by its authorisation.
- (3) The limit must be reviewed annually by the regulator.
- (4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.
- (5) The investment may include investment by—
  - (a) forming, or participating in forming, bodies corporate,
  - (b) otherwise acquiring membership of bodies corporate.
- (6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

## **18 General powers**

- (1) An NHS foundation trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- (2) In particular it may—
  - (a) acquire and dispose of property,
  - (b) enter into contracts,
  - (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),
  - (d) employ staff.
- (3) Any power of the trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).



## **19 Information**

- (1) An authorisation—
  - (a) must require an NHS foundation trust to disclose such information as the Secretary of State specifies to the regulator,
  - (b) may require an NHS foundation trust to disclose other information to the regulator.
- (2) The regulator may require any other health service body to disclose any information which the regulator requires for the purposes of its functions.

## **20 Entry and inspection of premises**

An authorisation may require an NHS foundation trust to allow the regulator to enter and inspect premises owned or controlled by the trust.

## **21 Fees**

An authorisation may require an NHS foundation trust to pay a reasonable annual fee to the regulator.

## **22 Trust funds and trustees**

- (1) The Secretary of State may by order provide for the appointment of trustees for an NHS foundation trust to hold property on trust—
  - (a) for the purposes of the NHS foundation trust, or
  - (b) for any purposes relating to the health service.
- (2) The order may—
  - (a) make provision as to the persons by whom trustees are to be appointed and generally as to the method of their appointment,
  - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
  - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate,
  - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where trustees have been appointed for an NHS foundation trust under this section, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees.
- (4) Where an NHS trust for which trustees have been appointed under section 11 of the 1990 Act is given an authorisation, the order appointing the trustees is to have effect as an order under this section.

## *Failure*

### **23 Failing NHS foundation trusts**

- (1) If the regulator is satisfied—
  - (a) that an NHS foundation trust is contravening, or failing to comply with, any term of its authorisation or any requirement imposed on it under any enactment and that the contravention or failure is significant, or
  - (b) that an NHS foundation trust has contravened, or failed to comply with, any such term or requirement and is likely to do so again and that the contravention or failure was significant,the regulator may by a notice to the trust exercise any one or more of the powers in subsections (3) and (4).
- (2) The regulator may also by a notice to the trust exercise any one or more of those powers if the regulator is satisfied that the trust has contravened or failed to comply with a previous notice.
- (3) The regulator may require the trust, the directors or the board of governors to do, or not to do, specified things or things of a specified description within a specified period.
- (4) The regulator may remove any or all of the directors or members of the board of governors and appoint interim directors or members of the board.
- (5) The regulator’s power to remove a director, or member of the board of governors, of the trust includes power to suspend him from office, or to disqualify him from holding office, as a director or member of the board of governors of the trust for a specified period.

### **24 Voluntary arrangements**

- (1) If the regulator is satisfied that it is necessary or desirable to do so, it may by a notice to an NHS foundation trust require the directors—
  - (a) to take steps to obtain a moratorium, or
  - (b) to make a proposal for a voluntary arrangement.
- (2) An order may provide for Part 1 of the Insolvency Act 1986 (c. 45) (company voluntary arrangements), including any related provision of that Act, to apply with modifications in relation to NHS foundation trusts; and the references in this Part to a moratorium or voluntary arrangement are to a moratorium under section 1A, or a voluntary arrangement under Part 1, of that Act as modified by the order.

### **25 Dissolution etc.**

- (1) The powers conferred by this section are exercisable where—
  - (a) an NHS foundation trust contravenes or fails to comply with a notice under section 23 or 24 or the trust’s compliance with a notice under section 24 does not result in the implementation of a voluntary arrangement, and
  - (b) the regulator considers that further exercise of any of the powers conferred by those sections would not be likely to secure the provision of the goods and services which the authorisation requires the trust to provide.

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- (2) Before the powers conferred by this section are exercised, the regulator must consult prescribed persons about prescribed matters.  
“Prescribed” means prescribed by an order.
- (3) An order may transfer, or provide for the transfer of, any property or liabilities of the trust to—
  - (a) another NHS foundation trust,
  - (b) a Primary Care Trust,
  - (c) an NHS trust,
  - (d) the Secretary of State.
- (4) Schedule 3 (which provides for the transfer of employees) has effect.
- (5) An order may provide for the dissolution of the trust.
- (6) An order may apply any provision of Part 4 of the Insolvency Act 1986 (winding up of companies), including any related provision of that Act, with modifications.
- (7) Where the regulator refuses to give an authorisation to a public benefit corporation—
  - (a) the powers conferred by this section are also exercisable,
  - (b) references in this section and Schedule 3 to an NHS foundation trust are to be read as references to the corporation.

## **26 Sections 24 and 25: supplementary**

- (1) In sections 24 and 25, an order means an order made by the Secretary of State.
- (2) The modifications of the Insolvency Act 1986 that may be made by an order under section 24(2) include (for example)—
  - (a) provision for securing that the goods and services which the trust is required by the authorisation to provide continue to be provided (whether by the trust or another),
  - (b) provision for securing the protection of property needed for the purposes of those goods and services.
- (3) The power conferred by section 25(3) is to be exercised with a view to securing the provision of the goods and services which the authorisation requires the trust to provide.
- (4) That power is also to be exercised (together, if required, with the power conferred by section 11(2)) with a view to securing that any transfer of property in pursuance of the power does not result in a net loss of value to the trust; and the question whether a transfer would result in a net loss of value is to be determined in accordance with regulations.
- (5) The Insolvency Act 1986 (c. 45) may not be modified under section 25(6) so as to alter the priority of debts or the ranking of debts between themselves.

### *Mergers*

## **27 Mergers**

- (1) An application may be made jointly by—

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- (a) an NHS foundation trust, and
  - (b) another NHS foundation trust or an NHS trust,
- to the regulator for authorisation of the dissolution of the trusts and the transfer of some or all of their property and liabilities to a new NHS foundation trust established under this section.
- (2) The application must—
- (a) be supported by the Secretary of State if one of the parties to it is an NHS trust,
  - (b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,
  - (c) describe the goods and services which it is proposed should be provided by the new trust, and
  - (d) be accompanied by a copy of the proposed constitution of the new trust;
- and must give any further information which the regulator requires the applicants to give.
- (3) The applicants may modify the application with the agreement of the regulator at any time before authorisation is given under this section.
- (4) The regulator may—
- (a) issue a certificate incorporating the directors of the applicants as a public benefit corporation, and
  - (b) give an authorisation under this section to the corporation to become an NHS foundation trust,
- if the regulator is satisfied as to the following matters.
- (5) The matters are that—
- (a) the constitution of the new trust will be in accordance with Schedule 1 and will otherwise be appropriate,
  - (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
  - (c) the new trust will be able to provide the goods and services which the authorisation is to require it to provide, and
  - (d) any other requirements which the regulator considers appropriate are met.
- (6) In deciding whether it is satisfied as to the matters referred to in subsection (5)(c), the regulator is to consider (among other things)—
- (a) any report or recommendation in respect of either of the applicants made by the Commission for Healthcare Audit and Inspection,
  - (b) the financial position of the applicants.
- (7) The applicants must consult about the application in accordance with regulations.
- (8) In the course of the consultation the applicants must seek the views of—
- (a) any Patients' Forum for an applicant,
  - (b) the staff employed by the applicants,
  - (c) individuals who live in any area specified in the proposed constitution as the area for a public constituency,
  - (d) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors,

- (e) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,
  - (f) any persons prescribed by regulations.
- (9) The regulator may not give an authorisation under this section unless it is satisfied that the applicants have complied with the regulations.
- (10) The certificate is conclusive evidence of incorporation; and the authorisation is conclusive evidence that the corporation is an NHS foundation trust.
- (11) On an authorisation being given under this section, the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

## **28 Section 27: supplementary**

- (1) Where an authorisation is given under section 27, the regulator is to specify the property and liabilities to be transferred to the new NHS foundation trust.
- (2) Where such an authorisation is given, the Secretary of State is to make an order—
- (a) dissolving the trusts in question, and
  - (b) transferring, or providing for the transfer of, the property and liabilities specified by the regulator to the new NHS foundation trust.
- (3) The order may—
- (a) transfer, or provide for the transfer of, any of the remaining property or liabilities to the persons mentioned in section 25(3),
  - (b) include provisions corresponding to those of Schedule 3.
- (4) Where one of the parties to an application under section 27 is an NHS trust, the powers conferred on the Secretary of State by Part 4 of Schedule 2 to the 1990 Act are not exercisable in relation to the trust.
- (5) Section 6(4) applies to an authorisation under section 27 as it does in relation to an authorisation under that section.

### *Co-operation*

## **29 Co-operation between NHS bodies**

In section 26 of the Health Act 1999 (c. 8) (co-operation between NHS bodies), for “and NHS trusts” there is substituted “, NHS trusts and NHS foundation trusts”.

### *Patient and public involvement*

## **30 Public involvement and consultation**

In section 11(2) of the Health and Social Care Act 2001 (c. 15) (public involvement and consultation), at the end there is inserted—

“(d) NHS foundation trusts”.

**31 Patients' Forums**

- (1) The National Health Service Reform and Health Care Professions Act 2002 (c. 17) is amended as follows.
- (2) In section 15 (establishment of patients' forums)—
  - (a) in subsection (1), after paragraph (b) there is inserted “and
    - (c) for each NHS foundation trust.”, and
  - (b) in subsection (9), in the definition of “relevant overview and scrutiny committee”, for “or NHS trust” there is substituted “, NHS trust or NHS foundation trust”.
- (3) In section 17 (entry and inspection of premises), in subsection (1), after paragraph (f) there is inserted—
  - “(fa) NHS foundation trusts.”.
- (4) In section 18 (annual reports) in subsection (2)—
  - (a) in paragraph (c)(ii), after “NHS trust” there is inserted “or NHS foundation trust”,
  - (b) after paragraph (d) there is inserted—
    - “(e) where the report includes provision which relates to any NHS foundation trust, the Independent Regulator of NHS Foundation Trusts”.
- (5) In section 19 (supplementary) in subsection (2)—
  - (a) in paragraph (k), after “an NHS trust,” there is inserted “an NHS foundation trust,”,
  - (b) in paragraph (p), after “NHS trusts,” there is inserted “NHS foundation trusts,”;
 and in subsection (4)(a), after “NHS trust” there is inserted “or NHS foundation trust”.

**32 Commission for Patient and Public Involvement in Health**

- (1) Section 20 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (Commission for Patient and Public Involvement in Health) is amended as follows.
- (2) In subsection (10), after “an NHS trust,” there is inserted “an NHS foundation trust,”.
- (3) In subsection (12), in the definition of “health service bodies”, for “and NHS trusts” there is substituted “, NHS trusts and NHS foundation trusts”.

*Miscellaneous***33 Taxation**

- (1) In section 519A of the Income and Corporation Taxes Act 1988 (c. 1) (taxation of health service bodies), in subsection (2), after paragraph (b) there is inserted—
  - “(bb) an NHS foundation trust”.
- (2) Section 61(3) of the 1990 Act (health service bodies: stamp duty) applies to an NHS foundation trust as it applies to an NHS trust.

- (3) In section 41 of the Value Added Tax Act 1994 (c. 23) (application to the Crown), in subsection (7), after “1978” there is inserted “an NHS foundation trust”.

### **34 Other amendments relating to NHS foundation trusts**

Schedule 4 (which makes amendments relating to NHS foundation trusts) has effect.

### **35 Conduct of elections**

- (1) Regulations may make provision as to the conduct of elections for membership of the board of governors of an NHS foundation trust.
- (2) The regulations may in particular provide for—
- (a) nomination of candidates and obligations to declare their interests,
  - (b) systems and methods of voting, and the allocation of places on the board of governors, at contested elections,
  - (c) filling of vacancies,
  - (d) supervision of elections,
  - (e) election expenses and publicity,
  - (f) questioning of elections and the consequences of irregularities.
- (3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.
- (4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.
- (5) Pending the coming into force of regulations under this section, elections for membership of the board of governors of an NHS foundation trust, if contested, must be by secret ballot.

### **36 Offence**

- (1) A person may not vote at an election for the board of governors of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.
- (2) A person may not stand for election to the board unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held and is not prevented from being a member of the board by paragraph 8 of Schedule 1.
- (3) A person elected to the board may not vote at a meeting of the board unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust and is not prevented from being a member of the board by paragraph 8 of Schedule 1.
- (4) This section does not apply to an election held for the staff constituency.
- (5) Specified means specified for the purpose in the trust’s constitution.
- (6) A person is guilty of an offence if he—

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- (a) makes a declaration under this section which he knows to be false in a material particular, or
  - (b) recklessly makes such a declaration which is false in a material particular.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **37 Representative membership**

An authorisation may require an NHS foundation trust to take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.

### **38 Audit**

Schedule 5 (which makes provision in relation to the audit of the accounts of NHS foundation trusts) has effect.

### **39 General duty of NHS foundation trusts**

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

## *Supplementary*

### **40 Interpretation of Part 1**

- (1) In this Part—
- “the 1990 Act” means the National Health Service and Community Care Act 1990 (c. 19),
  - “authorisation” means an authorisation under section 6 or 27,
  - “health service body” means a Strategic Health Authority, a Special Health Authority, an NHS trust, an NHS foundation trust or a Primary Care Trust,
  - “regulations” means regulations made by the Secretary of State.
- (2) Other expressions used in this Part and in the 1977 Act have the same meaning in this Part as in that Act.
- (3) Any references in this Part, in relation to property held on trust, to the purposes of an NHS foundation trust are to the general or any specific purposes of the NHS foundation trust (including the purposes of any specific hospital at or from which services are provided by the trust).
- (4) Any references in this Part to goods and services are to be interpreted in accordance with section 14(5).



## PART 2

### STANDARDS

#### CHAPTER 1

##### REGULATORY BODIES

#### **41 The Commission for Healthcare Audit and Inspection**

- (1) There is to be a body corporate known as the Commission for Healthcare Audit and Inspection (in this Part referred to as the CHAI).
- (2) Schedule 6 (which makes further provision about the CHAI) has effect.

#### **42 The Commission for Social Care Inspection**

- (1) There is to be a body corporate known as the Commission for Social Care Inspection (in this Part referred to as the CSCI).
- (2) Schedule 7 (which makes further provision about the CSCI) has effect.

#### **43 Transfer of property etc to CHAI and CSCI**

Schedule 8 (which makes provision for the transfer of property, rights and liabilities to the CHAI and the CSCI) has effect.

#### **44 Abolition of former regulatory bodies**

- (1) The Commission for Health Improvement is abolished.
- (2) The National Care Standards Commission is abolished.

#### CHAPTER 2

##### NHS HEALTH CARE: INTRODUCTORY

#### **45 Quality in health care**

- (1) It is the duty of each NHS body to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care provided by and for that body.
- (2) In this Part “health care” means—
  - (a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
  - (b) the promotion and protection of public health.
- (3) In subsection (2)(a), “illness” has the meaning given by section 128(1) of the 1977 Act.

**46 Standards set by Secretary of State**

- (1) The Secretary of State may prepare and publish statements of standards in relation to the provision of health care by and for English NHS bodies and cross-border SHAs.
- (2) The Secretary of State must keep the standards under review and may publish amended statements whenever he considers it appropriate.
- (3) The Secretary of State must consult such persons as he considers appropriate—
  - (a) before publishing a statement under this section;
  - (b) before publishing an amended statement under this section which in the opinion of the Secretary of State effects a substantial change in the standards.
- (4) The standards set out in statements under this section are to be taken into account by every English NHS body and cross-border SHA in discharging its duty under section 45.

**47 Standards set by Assembly**

- (1) The Assembly may prepare and publish statements of standards in relation to the provision of health care by and for Welsh NHS bodies.
- (2) The Assembly must keep the standards under review and may publish amended statements whenever it considers it appropriate.
- (3) The Assembly must consult such persons as it considers appropriate—
  - (a) before publishing a statement under this section;
  - (b) before publishing an amended statement under this section which in the opinion of the Assembly effects a substantial change in the standards.
- (4) The standards set out in statements under this section are to be taken into account by every Welsh NHS body in discharging its duty under section 45.

**CHAPTER 3**

## NHS HEALTH CARE: FUNCTIONS OF CHAI

*Healthcare provided by and for NHS bodies***48 Introductory**

- (1) The CHAI has the general function of encouraging improvement in the provision of health care by and for NHS bodies.
- (2) In exercising its functions under subsection (1) and sections 49 to 56 in relation to such provision, the CHAI shall be concerned in particular with—
  - (a) the availability of, and access to, the health care;
  - (b) the quality and effectiveness of the health care;
  - (c) the economy and efficiency of the provision of the health care;
  - (d) the availability and quality of information provided to the public about the health care;
  - (e) the need to safeguard and promote the rights and welfare of children; and

- (f) the effectiveness of measures taken for the purpose of paragraph (e) by the body in question and any person who provides, or is to provide, health care for that body.

#### **49 National performance data**

The CHAI has the function of publishing data relating to the provision of health care by and for NHS bodies.

#### **50 Annual reviews**

- (1) In each financial year the CHAI must conduct a review of the provision of health care by and for—
  - (a) each English NHS body, and
  - (b) each cross-border SHA,and must award a performance rating to each such body.
- (2) The CHAI is to exercise its function under subsection (1) by reference to criteria from time to time devised by it and approved by the Secretary of State.
- (3) The CHAI must publish the criteria devised and approved from time to time under subsection (2).
- (4) In exercising its functions under this section in relation to any health care the CHAI must take into account the standards set out in statements published under section 46.
- (5) For the purposes of this section the CHAI may, subject to this Part, conduct an inspection of—
  - (a) the body being reviewed; and
  - (b) any person who provides, or is to provide, health care for that body (wherever the health care is or is to be provided).
- (6) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the award of a performance rating under this section.

#### **51 Reviews: England and Wales**

- (1) The CHAI has the function of conducting reviews of—
  - (a) the overall provision of health care by and for NHS bodies;
  - (b) the overall provision of particular kinds of health care by and for NHS bodies;
  - (c) the provision of health care, or a particular kind of health care, by and for NHS bodies of a particular description.
- (2) If the Secretary of State so requests, the CHAI must conduct—
  - (a) a review under subsection (1)(a);
  - (b) a review under subsection (1)(b) of the overall provision of a kind of health care specified in the request; or
  - (c) a review under subsection (1)(c) of the provision of health care, or health care of a kind specified in the request, by or for NHS bodies of a description so specified.

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- (3) The Secretary of State must consult the Assembly before making a request under subsection (2).
- (4) In conducting a review under this section in relation to any health care the CHAI must take into account—
  - (a) the standards set out in statements published under section 46, where the health care is provided by or for an English NHS body or cross-border SHA;
  - (b) the standards set out in statements published under section 47, where the health care is provided by or for a Welsh NHS body.
- (5) For the purposes of this section the CHAI may carry out an inspection of—
  - (a) any NHS body; and
  - (b) any person who provides, or is to provide, health care for an NHS body (wherever the health care is or is to be provided).
- (6) Where the CHAI conducts a review under this section it must publish a report.
- (7) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of a report under this section.

## **52      Reviews and investigations: England**

- (1) The CHAI has the function of conducting other reviews of, and investigations into, the provision of health care by and for English NHS bodies and cross-border SHAs.
- (2) The CHAI may in particular under this section conduct—
  - (a) a review of the overall provision of health care by and for English NHS bodies and cross-border SHAs;
  - (b) a review of the overall provision of a particular kind of health care by and for English NHS bodies and cross-border SHAs;
  - (c) a review of, or investigation into, the provision of any health care by or for a particular English NHS body or cross-border SHA.
- (3) The CHAI has the function of conducting reviews of the arrangements made by English NHS bodies and cross-border SHAs for the purpose of discharging their duty under section 45.
- (4) If the Secretary of State so requests, the CHAI must conduct—
  - (a) a review under subsection (2)(a);
  - (b) a review under subsection (2)(b) of the overall provision of a kind of health care specified in the request;
  - (c) a review or investigation under subsection (2)(c), or a review under subsection (3), in relation to the provision of such health care by or for such body as may be specified in the request.
- (5) In exercising its functions under this section in relation to any health care the CHAI must take into account the standards set out in statements published under section 46.
- (6) For the purposes of this section the CHAI may carry out an inspection of—
  - (a) any English NHS body or cross-border SHA; and
  - (b) any person who provides, or is to provide, health care for such a body (wherever the health care is or is to be provided).

- (7) Where the CHAI conducts a review or investigation under this section it must publish a report.
- (8) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of a report under this section.
- (9) The Secretary of State may by regulations require an NHS body to publish a statement as to the action it proposes to take as a result of any review or investigation conducted under this section in relation to it.
- (10) Regulations under subsection (9) may make provision—
  - (a) as to the matters with which a statement under the regulations must deal;
  - (b) as to the time by which any such statement must be published;
  - (c) requiring an NHS body, before publishing any such statement, to obtain the consent of any person specified in the regulations;
  - (d) requiring the NHS body publishing any such statement to send a copy of it to any person so specified.

### **53 Failings**

- (1) This section applies where the CHAI conducts—
  - (a) a review under section 50 or 51; or
  - (b) a review or investigation under section 52.
- (2) The CHAI must make a report to the Secretary of State if it is of the view that—
  - (a) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA;
  - (b) there are significant failings in the running of an English NHS body or cross-border SHA; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an English NHS body or cross-border SHA.
- (3) A report made to the Secretary of State under subsection (2) may include a recommendation that, with a view to remedying the failings in question, the Secretary of State take special measures in relation to—
  - (a) in a case falling within paragraph (a) or (b) of subsection (2), the English NHS body or cross-border SHA in question;
  - (b) in a case falling within paragraph (c) of that subsection, any person, other than a Welsh NHS body, referred to in that paragraph.
- (4) The CHAI must also report to the Assembly where it is of the view that—
  - (a) there are significant failings in relation to the provision of health care by or for a Welsh NHS body;
  - (b) there are significant failings in the running of a Welsh NHS body; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for a Welsh NHS body.
- (5) A report made to the Assembly under subsection (4) may include a recommendation that, with a view to remedying the failings in question, the Assembly take special measures in relation to—

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- (a) in a case falling within paragraph (a) or (b) of subsection (4), the Welsh NHS body in question; and
  - (b) in a case falling within paragraph (c) of that subsection, any person, other than an English NHS body or cross-border SHA, referred to in that paragraph.
- (6) The CHAI must also make a report to the regulator where it is of the view that—
- (a) there are significant failings in relation to the provision of health care by or for an NHS foundation trust;
  - (b) there are significant failings in the running of an NHS foundation trust; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an NHS foundation trust.
- (7) A report made to the regulator under subsection (6) may include a recommendation that, with a view to remedying the failings in question, the regulator take special measures in relation to the NHS foundation trust in question.
- (8) A report under this section must give the CHAI’s reasons for its view and for any recommendation made.
- (9) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of a report under this section.

#### **54 Functions relating to Secretary of State and Assembly**

- (1) The CHAI is to keep the appropriate authority informed about the provision of health care by and for any NHS body.
- (2) The CHAI may at any time give advice to the appropriate authority on any matter connected with the provision of such health care (including, in particular, advice on any changes which it thinks should be made to the standards under section 46 or 47 for the purpose of securing improvement in the quality of the health care).
- (3) When requested to do so by the appropriate authority, the CHAI must give the authority advice or information on such matters connected with the provision of health care by or for any NHS body as may be specified in the request.
- (4) The CHAI may give advice to the appropriate authority or any NHS body about the establishment or conduct of any inquiry held, or to be held, by the authority or the body in relation to the provision of health care by or for that body.
- (5) In this section, the “appropriate authority” means—
  - (a) the Secretary of State, in relation to the provision of health care by or for an English NHS body or cross-border SHA; or
  - (b) the Assembly, in relation to the provision of health care by or for a Welsh NHS body.

#### **55 Reviews of data**

- (1) The CHAI may review—
  - (a) the quality of data obtained by others in relation to the provision of health care by and for NHS bodies;
  - (b) the methods used in the collection and analysis of such data; and

(c) the validity of conclusions drawn from such data.

(2) Where the CHAI conducts a review under this section it must publish a report.

## **56 Co-ordination of reviews**

The CHAI has the function of promoting the effective co-ordination of reviews or assessments carried out by public bodies or other persons in relation to the provision of health care by or for English NHS bodies and cross-border SHAs.

### *Other functions*

## **57 Studies as to economy, efficiency etc**

(1) The CHAI has the function of promoting or undertaking comparative or other studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the exercise of any of the functions of an English NHS body, other than a Special Health Authority (whether the functions are exercised by the English NHS body or by another person).

(2) The CHAI may exercise its function under subsection (1) in relation to a body on the CHAI's own initiative or at the request of the body concerned.

(3) For the purposes of this section the CHAI may carry out an inspection of—

- (a) any English NHS body other than a Special Health Authority;
- (b) any person exercising the functions of such a body.

(4) The CHAI must publish its recommendations and the result of any studies under this section.

(5) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of any recommendations or the result of any studies under this section.

(6) The CHAI's functions under this section may be exercised on its behalf by the Audit Commission, if the Audit Commission and the CHAI so agree.

(7) Where the Audit Commission exercises functions under subsection (6), it shall do so on such terms, including terms as to payment, as the CHAI and the Audit Commission may agree.

## **58 Additional functions**

(1) The Secretary of State may by regulations provide that the CHAI is to have such additional functions as may be prescribed in relation to—

- (a) the provision of health care by or for NHS bodies;
- (b) the improvement of—
  - (i) economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies; and
  - (ii) the financial or other management, or operations, of English NHS bodies.

- (2) The Secretary of State must consult the regulator before making provision under subsection (1) in relation to NHS foundation trusts.
- (3) The Secretary of State must obtain the consent of the Assembly before making provision under subsection (1)(a) in relation to health care provided by or for a Welsh NHS body other than health care provided by or for an English NHS body or cross-border SHA.

### *Supplementary*

## **59 Criteria**

- (1) The Secretary of State may, after consulting the CHAI, make regulations requiring the CHAI to devise and publish statements of criteria to be used in—
  - (a) the exercise of any of its functions under section 48(1), 49, 51 or 53 in relation to the provision of health care by or for an English NHS body or cross-border SHA;
  - (b) the exercise of any of its functions under section 52, 56, 57 or 58(1)(b).
- (2) The Assembly may, after consulting the CHAI, make regulations requiring the CHAI to devise and publish statements of criteria to be used in the exercise of its functions under section 48(1), 49, 51 or 53 in relation to the provision of health care by or for a Welsh NHS body.
- (3) In relation to any function conferred on the CHAI under subsection (1)(a) of section 58, regulations under that section may provide that any one or more of the following provisions of this section shall have effect as if it included a reference to the exercise of that function—
  - (a) subsection (1)(a);
  - (b) subsection (1)(b);
  - (c) subsection (2).
- (4) Regulations under this section may require the CHAI—
  - (a) to consult any person specified in the regulations before publishing a statement under subsection (1) or (2);
  - (b) to obtain the consent of the Secretary of State before publishing a statement under subsection (1);
  - (c) to obtain the consent of the Assembly before publishing a statement under subsection (2).

## **60 Provision of material**

- (1) The CHAI must, on request, provide the Comptroller and Auditor General with any material relevant to a review or investigation under sections 50 to 52 or a study under section 57.
- (2) The CHAI must, on request, provide the regulator with—
  - (a) any material which is relevant to a review or investigation under sections 50 to 52 and relates to the provision of health care by or for an NHS foundation trust;



- (b) any material which is relevant to a study under section 57 and relates to an NHS foundation trust.

## **61 Co-operation between CHAI and the regulator**

- (1) The CHAI and the regulator must co-operate with each other in the exercise of their respective functions under Part 1 and this Chapter.
- (2) In particular, for the purposes of subsection (1)—
  - (a) the CHAI must keep the regulator informed about the provision of health care by and for NHS foundation trusts;
  - (b) the regulator must give to the CHAI any information it has about the provision of health care by or for an NHS foundation trust which it considers would assist the CHAI in the discharge of its functions.

## **62 Fees**

- (1) The CHAI may from time to time make and publish provision—
  - (a) requiring an English NHS body or cross-border SHA to pay a fee in respect of the exercise by the CHAI, in relation to that body or to health care provided by or for that body, of such of its functions under this Chapter as may be prescribed;
  - (b) requiring a person of a prescribed description who provides health care for an English NHS body or cross-border SHA to pay a fee in respect of the exercise by the CHAI, in relation to the health care so provided by that person, of such of its functions under this Chapter as may be prescribed.
- (2) The CHAI may not under subsection (1)(b) require a Welsh NHS body to pay a fee.
- (3) The amount of a fee payable under provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision.
- (4) Provision under subsection (1) may include provision—
  - (a) for different fees to be paid in different cases, or classes of case;
  - (b) for different fees to be paid by persons of different descriptions;
  - (c) for the amount of a fee to be determined by the CHAI in accordance with specified factors;
  - (d) for the time by which a fee must be paid.
- (5) Before making any provision under subsection (1) the CHAI must consult such persons as appear to it appropriate.
- (6) The Secretary of State may by regulations make provision as to—
  - (a) the manner in which provision under subsection (1) is to be made and published;
  - (b) the matters to be taken into account by the CHAI before making the provision.
- (7) The Secretary of State may by regulations make provision for an independent person or panel to review the amount charged under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount.

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- (8) For the purpose of determining the fee payable by a person or body under subsection (1), the person or body must provide the CHAI with such information, in such form, as the CHAI may require.
- (9) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

### **63 Fees: Wales**

- (1) The CHAI may from time to time make and publish provision—
  - (a) requiring a Welsh NHS body to pay a fee in respect of the exercise by the CHAI, in relation to that body or to health care provided by or for that body, of such of its functions under this Chapter as may be prescribed;
  - (b) requiring a person of a prescribed description who provides health care for a Welsh NHS body to pay a fee in respect of the exercise by the CHAI, in relation to the health care so provided by that person, of such of its functions under this Chapter as may be prescribed.
- (2) The CHAI may not under subsection (1)(b) require an English NHS body or cross-border SHA to pay a fee.
- (3) The amount of a fee payable under provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision.
- (4) Provision under subsection (1) may include provision—
  - (a) for different fees to be paid in different cases, or classes of case;
  - (b) for different fees to be paid by persons of different descriptions;
  - (c) for the amount of a fee to be determined by the CHAI in accordance with specified factors;
  - (d) for the time by which a fee must be paid.
- (5) Before making any provision under subsection (1) the CHAI must consult such persons as appear to it appropriate.
- (6) The Assembly may by regulations make provision as to—
  - (a) the manner in which provision under subsection (1) is to be made and published;
  - (b) the matters to be taken into account by the CHAI before making the provision.
- (7) The Assembly may by regulations make provision for an independent person or panel to review the amount charged under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount.
- (8) For the purpose of determining the fee payable by a person or body under subsection (1), the person or body must provide the CHAI with such information, in such form, as the CHAI may require.
- (9) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

**64 Reports and information**

- (1) The CHAI must make copies of any report published by it under this Chapter available for inspection at its offices by any person at any reasonable time.
- (2) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the CHAI considers appropriate.
- (3) The CHAI may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of the CHAI's functions under this Chapter.

**65 Co-operation between CHAI and the Audit Commission**

The CHAI and the Audit Commission must co-operate with each other in relation to matters in respect of which both have functions.

**66 Right of entry**

- (1) A person authorised to do so by the CHAI may, if the CHAI considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
  - (a) any premises owned or controlled by an NHS body;
  - (b) any other premises used, or proposed to be used, for any purpose connected with—
    - (i) the provision of health care by or for an NHS body, or
    - (ii) the discharge of any of the functions of an NHS body.
- (2) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

**67 Right of entry: supplementary**

- (1) A person authorised by virtue of section 66 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—
  - (a) inspect, take copies of and remove from the premises any documents or records (including personal records);
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises;
    - (ii) any person receiving health care there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons receiving health care there.
- (2) The power in subsection (1)(a) includes—
  - (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.

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- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 66 to enter and inspect any premises may—
  - (a) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under section 66 or this section; and
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
  - (a) obstructs the exercise of any power conferred by section 66 or this section, or
  - (b) fails to comply with any requirement of section 66 or this section,
 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **68 Power to require documents and information etc**

- (1) The CHAI may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
  - (a) which relates or relate to—
    - (i) the provision of health care by or for an NHS body, or
    - (ii) the discharge of any of the functions of an NHS body; and
  - (b) which the CHAI considers it necessary or expedient to have for the purposes of this Chapter.
- (2) The persons referred to in subsection (1) are—
  - (a) the NHS body;
  - (b) any person providing health care for, or exercising functions of, the NHS body;
  - (c) a local authority.
- (3) The power in subsection (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **69 Power to require explanation**

- (1) The Secretary of State may by regulations make provision requiring prescribed persons to provide to the CHAI, or to persons authorised by it, an explanation of—
  - (a) any documents, records or items inspected, copied or provided under sections 66 to 68,
  - (b) any information provided under those sections, or

- (c) any matters which are the subject of the exercise of any functions of the CHAI under this Chapter,  
in circumstances where the CHAI considers the explanation necessary or expedient for the purposes of this Chapter.
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the CHAI.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## CHAPTER 4

### NHS HEALTH CARE: FUNCTIONS OF NATIONAL ASSEMBLY FOR WALES

#### *Reviews and investigations*

#### **70 Reviews and investigations relating to Wales**

- (1) The Assembly has the function of conducting reviews of, and investigations into, the provision of health care by and for Welsh NHS bodies.
- (2) The Assembly may in particular under this section conduct—
- (a) a review of the overall provision of health care by and for Welsh NHS bodies;
  - (b) a review of the overall provision of a particular kind of health care by and for Welsh NHS bodies;
  - (c) a review of, or investigation into, the provision of any health care by or for a particular Welsh NHS body.
- (3) The Assembly has the function of conducting reviews of the arrangements made by Welsh NHS bodies for the purpose of discharging their duty under section 45.
- (4) In exercising its functions under this section in relation to any health care the Assembly shall be concerned in particular with—
- (a) the availability of, and access to, the health care;
  - (b) the quality and effectiveness of the health care;
  - (c) the financial or other management of the health care and the economy and efficiency of its provision;
  - (d) the availability and quality of information provided to the public about the health care;
  - (e) the need to safeguard and promote the rights and welfare of children; and
  - (f) the effectiveness of measures taken for the purpose specified in paragraph (e) by the body in question and any person who provides, or is to provide, health care for that body,
- and must take into account the standards set out in statements published under section 47.
- (5) For the purposes of this section the Assembly may carry out an inspection of—
- (a) any Welsh NHS body;

- (b) any other person who provides, or is to provide, health care for a Welsh NHS body (in Wales or elsewhere).
- (6) Where the Assembly conducts a review under this section it must publish a report.

## 71 Reporting to Secretary of State and regulator

- (1) The Assembly must report to the Secretary of State where, after conducting a review or investigation under section 70, it is of the view that—
- (a) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA;
  - (b) there are significant failings in the running of an English NHS body or cross-border SHA; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an English NHS body or cross-border SHA.
- (2) A report under subsection (1) may include a recommendation that, with a view to remedying the failings, the Secretary of State take special measures in relation to—
- (a) the English NHS body or cross-border SHA; and
  - (b) in a case falling within paragraph (c) of subsection (1), any person, other than a Welsh NHS body, referred to in that paragraph.
- (3) The Assembly must report to the regulator where, after conducting a review or investigation under section 70, it is of the view that—
- (a) there are significant failings in relation to the provision of health care by or for an NHS foundation trust;
  - (b) there are significant failings in the running of an NHS foundation trust; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an NHS foundation trust.
- (4) A report under subsection (3) may include a recommendation that, with a view to remedying the failings, the regulator take special measures in relation to the NHS foundation trust.
- (5) A report under this section must give the Assembly’s reasons for its view and for any recommendation made.

### *Ancillary powers*

## 72 Right of entry

- (1) A person authorised to do so by the Assembly may, if the Assembly considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
- (a) any premises owned or controlled by a Welsh NHS body;
  - (b) any other premises used, or proposed to be used, for any purpose connected with—
    - (i) the provision of health care by or for a Welsh NHS body; or
    - (ii) the discharge of any of the functions of a Welsh NHS body.

- (2) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

### **73 Right of entry: supplementary**

- (1) A person authorised by virtue of section 72 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—
- (a) inspect, take copies of and remove from the premises any documents or records (including personal records);
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises;
    - (ii) any person receiving health care there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons receiving health care there.
- (2) The power in subsection (1)(a) includes—
- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 72 to enter and inspect any premises may—
- (a) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under section 72 or this section; and
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
- (a) obstructs the exercise of any power conferred by section 72 or this section, or
  - (b) fails to comply with any requirement of section 72 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **74 Power to require documents and information**

- (1) The Assembly may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
- (a) which relates or relate to—
    - (i) the provision of health care by or for a Welsh NHS body; or

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- (ii) the discharge of any of the functions of a Welsh NHS body; and
  - (b) which the Assembly considers it necessary or expedient to have for the purposes of this Chapter.
- (2) The persons referred to in subsection (1) are—
- (a) the Welsh NHS body;
  - (b) any person providing health care for, or exercising functions of, the Welsh NHS body;
  - (c) a local authority in Wales.
- (3) The power in subsection (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **75 Power to require explanation**

- (1) The Assembly may by regulations make provision requiring prescribed persons to provide to the Assembly, or to persons authorised by it, an explanation of—
- (a) any documents, records or items inspected, copied or provided under sections 72 to 74,
  - (b) any information provided under those sections, or
  - (c) any matters which are the subject of the exercise of any function of the Assembly under section 70, and
- in circumstances where the Assembly considers the explanation necessary or expedient for the purposes of this Chapter.
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the Assembly.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **CHAPTER 5**

### SOCIAL SERVICES: FUNCTIONS OF CSCI

#### *Provision of social services*

## **76 Introductory**

- (1) The CSCI has the general function of encouraging improvement in the provision of English local authority social services.
- (2) In exercising its functions under subsection (1) and sections 77 to 81 in relation to the provision of such services the CSCI shall be concerned in particular with—
- (a) the availability of, and access to, the services;



- (b) the quality and effectiveness of the services;
- (c) the management of the services;
- (d) the economy and efficiency of their provision and their value for money;
- (e) the availability and quality of information provided to the public about the services;
- (f) the need to safeguard and promote the rights and welfare of children; and
- (g) the effectiveness of measures taken by local authorities for the purpose specified in paragraph (f).

## **77 Information and advice**

- (1) The CSCI is to keep the Secretary of State informed about the provision of English local authority social services.
- (2) The CSCI may at any time give advice to the Secretary of State on any matter connected with the provision of English local authority social services.
- (3) The CSCI may in particular under subsection (2) give advice to the Secretary of State on any changes which it thinks should be made, for the purpose of securing improvement in the quality of services provided by local authorities in England in the exercise of the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions), in the standards prepared and published from time to time under section 23 of that Act.
- (4) When requested to do so by the Secretary of State, the CSCI must give him advice or information on such matters connected with the provision of English local authority social services as may be specified in the request.
- (5) The CSCI may give advice to the Secretary of State or any local authority in England about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or the authority in relation to the provision of English local authority social services.

## **78 Review of studies and research**

- (1) The CSCI may review—
  - (a) studies and research undertaken by others in relation to the provision of English local authority social services;
  - (b) the methods used in such studies and research; and
  - (c) the validity of the conclusions drawn from such studies and research.
- (2) Where the CSCI conducts a review under this section it must publish a report.

## **79 Annual reviews**

- (1) In each financial year the CSCI must conduct a review of the English local authority social services which are provided by, or pursuant to arrangements made by, each local authority in England.
- (2) After conducting a review under subsection (1) in respect of a local authority the CSCI must award a performance rating to that authority.

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- (3) The CSCI is to exercise its functions under this section by reference to criteria from time to time devised by it and approved by the Secretary of State.
- (4) The CSCI must publish the criteria devised and approved from time to time under subsection (3).
- (5) The CSCI is to exercise its functions under this section in any financial year in accordance with any timetable specified in relation to that year by the Secretary of State.
- (6) In exercising its functions under this section the CSCI must take into account guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970 (c. 42).
- (7) In exercising its functions under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions), the CSCI must take into account the standards prepared and published from time to time under section 23 of that Act.
- (8) For the purposes of this section, the CSCI may carry out an inspection of—
  - (a) the local authority being reviewed;
  - (b) any person providing an English local authority social service pursuant to arrangements made by the authority.
- (9) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the award of a performance rating under this section.

## **80 Other reviews and investigations**

- (1) The CSCI has the function of conducting other reviews of, and investigations into, the provision of English local authority social services.
- (2) The CSCI may in particular under this section conduct—
  - (a) a review of the overall provision of English local authority social services;
  - (b) a review of the provision of any English local authority social service of a particular description; or
  - (c) a review of, or investigation into, the provision of any English local authority social service by a particular person or persons.
- (3) If the Secretary of State so requests, the CSCI must conduct—
  - (a) a review under subsection (2)(a);
  - (b) a review under subsection (2)(b) of an English local authority social service of such description as may be specified in the request; or
  - (c) a review or investigation under subsection (2)(c) in relation to the provision of such services as may be specified in the request by such person, or persons of such description, as may be so specified.
- (4) In exercising its function under this section the CSCI must take into account guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970 (c. 42).
- (5) In exercising its function under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering

functions), the CSCI must take into account the standards prepared and published from time to time under section 23 of that Act.

- (6) For the purposes of this section, the CSCI may carry out an inspection of—
  - (a) any local authority in England;
  - (b) any other person providing an English local authority social service.
- (7) Where the CSCI conducts a review or investigation under this section, it must publish a report.
- (8) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the publication of a report under this section.

## **81 Failings**

- (1) This section applies where the CSCI conducts—
  - (a) a review under section 79; or
  - (b) a review or investigation under section 80.
- (2) If under section 79 the CSCI awards the lowest performance rating to a local authority, the CSCI must—
  - (a) inform the Secretary of State of that fact; and
  - (b) recommend any special measures which it considers the Secretary of State should take.
- (3) If (in a case where subsection (2) does not apply) the CSCI considers that a local authority in England is failing to discharge any of its social services functions to an acceptable standard, it must—
  - (a) inform the Secretary of State of that fact; and
  - (b) recommend any special measures which it considers the Secretary of State should take.
- (4) However, in a case falling within subsection (3), if the CSCI considers that the failure is not substantial, it may instead—
  - (a) give the local authority a notice under subsection (5); and
  - (b) inform the Secretary of State that it has done so.
- (5) A notice under this subsection is a notice which specifies—
  - (a) the respects in which the CSCI considers that the local authority is failing;
  - (b) the action which the CSCI considers the authority should take to remedy the failure; and
  - (c) the time by which the CSCI considers the action should be taken.
- (6) Where under subsection (2)(b) or (3)(b) the CSCI has recommended that the Secretary of State take special measures in relation to a local authority, the CSCI must, if the Secretary of State so requests—
  - (a) undertake a further review under section 80 in relation to the authority; and
  - (b) include in its report under subsection (7) of that section a report on such matters as the Secretary of State may specify.

- (7) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the publication of a report under this section.

*Other functions*

**82 Studies as to economy, efficiency etc**

- (1) The CSCI has the function of promoting or undertaking comparative or other studies designed to enable it to make recommendations—
- (a) for improving economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions;
  - (b) for improving the management of such local authorities in their discharge of those functions.
- (2) The CSCI may also promote or undertake studies designed to enable it to prepare reports as to the impact of—
- (a) the operation of any particular statutory provisions, or
  - (b) any directions or guidance given by a Minister of the Crown (whether pursuant to any such provision or otherwise),
- on economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions.
- (3) For the purposes of this section the CSCI may carry out an inspection of any local authority in England.
- (4) The CSCI must publish—
- (a) any recommendations made by it under subsection (1);
  - (b) the result of any studies under this section.
- (5) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the publication of any recommendations or the result of any studies under this section.
- (6) The CSCI must, on request, provide the Comptroller and Auditor General with any material relevant to a study under this section.

**83 Joint working with Audit Commission**

- (1) The CSCI and the Audit Commission may (without prejudice to any other power they may have to do so) exercise jointly their respective functions under section 82 above and sections 33 and 34 of the Audit Commission Act 1998 (c. 18).
- (2) The CSCI and the Audit Commission must co-operate with each other with respect to the exercise of their respective functions under section 82 above and sections 33 and 34 of the Audit Commission Act 1998.
- (3) The Secretary of State may give guidance to the CSCI and the Audit Commission as to which of them should promote or undertake studies which could be promoted or undertaken by either of them.

- (4) The CSCI and the Audit Commission must take any such guidance into account in the exercise of their functions.

#### **84 Additional functions**

The CSCI is to have such additional functions as may be prescribed in relation to the provision of English local authority social services.

#### *Supplementary*

#### **85 Criteria**

The Secretary of State may, after consulting the CSCI, make regulations requiring the CSCI—

- (a) to devise and publish statements of the criteria to be used in the exercise of any of its functions under this Chapter (other than section 79);
- (b) to consult any person specified in the regulations before publishing any such statement; and
- (c) to obtain the consent of the Secretary of State before publishing any such statement.

#### **86 Fees**

- (1) The CSCI may from time to time make and publish provision requiring a local authority in England to pay a fee in respect of the exercise by the CSCI, in relation to that authority or to an English local authority social service provided by, or pursuant to arrangements made by, that authority, of such of its functions under section 79, 80 or 82 as may be prescribed.
- (2) The amount of a fee payable by virtue of provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision.
- (3) Provision under subsection (1) may include provision—
  - (a) for different fees to be paid in different cases, or classes of case;
  - (b) for different fees to be paid by persons of different descriptions;
  - (c) for the amount of a fee to be determined by the CSCI in accordance with specified factors;
  - (d) for the time by which a fee must be paid.
- (4) The Secretary of State may by regulations make provision as to—
  - (a) the manner in which provision under subsection (1) is to be made and published;
  - (b) the matters to be taken into account by the CSCI before making the provision.
- (5) Before making any provision under subsection (1) the CSCI must consult such persons as appear to it appropriate.
- (6) The Secretary of State may by regulations make provision for an independent person or panel to review the amount chargeable under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount.

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- (7) For the purpose of determining the fee payable by a local authority under subsection (1) it must provide the CSCI with such information, in such form, as the CSCI may require.
- (8) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

## **87 Reports and information**

- (1) The CSCI must make copies of any report published by it under this Chapter available for inspection at its offices by any person at any reasonable time.
- (2) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the CSCI considers appropriate.
- (3) The CSCI may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of the CSCI's functions under this Chapter.

## **88 Right of entry**

- (1) A person authorised to do so by the CSCI may, if the CSCI considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
  - (a) any premises owned or controlled by a local authority in England; or
  - (b) any premises falling within subsection (2), other than premises used wholly or mainly as a private dwelling.
- (2) The premises referred to in subsection (1)(b) are premises—
  - (a) which are used, or proposed to be used, by any person in connection with the provision of an English local authority social service; or
  - (b) which the CSCI reasonably believes to be so used, or proposed to be so used.
- (3) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

## **89 Right of entry: supplementary**

- (1) A person authorised by virtue of section 88 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—
  - (a) inspect, take copies of and remove from the premises any documents or records (including personal records) relating to the discharge by the local authority of its social services functions;
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises; or
    - (ii) any person accommodated or cared for there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons accommodated or cared for there.
- (2) The power in subsection (1)(a) includes—

- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 88 to enter and inspect premises may—
- (a) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under section 88 or this section; and
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
- (a) obstructs the exercise of any power conferred by section 88 or this section, or
  - (b) fails to comply with any requirement of section 88 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **90 Power to require information etc**

- (1) The CSCI may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
- (a) which relates or relate to the discharge by a local authority in England of its social services functions; and
  - (b) which the CSCI considers it necessary or expedient to have for the purposes of this Chapter.
- (2) The persons referred to in subsection (1) are—
- (a) the local authority;
  - (b) a person providing an English local authority social service for the authority; or
  - (c) any NHS body.
- (3) The power in subsection (1) to require the provision of information includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **91 Power to require explanation**

- (1) The Secretary of State may by regulations make provision requiring prescribed persons to provide to the CSCI, or to persons authorised by it, an explanation of—

- (a) any documents, records or items inspected, copied or provided under sections 88 to 90,
- (b) any information provided under those sections, or
- (c) any matters which are the subject of the exercise of any functions of the CSCI under this Chapter,

in cases where the CSCI considers the explanation necessary or expedient for the purposes of this Chapter.

- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the CSCI.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## CHAPTER 6

### SOCIAL SERVICES: FUNCTIONS OF NATIONAL ASSEMBLY FOR WALES

#### *Provision of social services*

#### **92 General function**

The Assembly has the general function of encouraging improvement in the provision of Welsh local authority social services.

#### **93 Reviews of studies and research**

- (1) The Assembly may review—
  - (a) studies and research undertaken by others in relation to the provision of Welsh local authority social services;
  - (b) the methods used in such studies and research; and
  - (c) the validity of conclusions drawn from such studies and research.
- (2) Where the Assembly conducts a review under this section it must publish such report as it considers appropriate.

#### **94 Reviews and investigations**

- (1) The Assembly has the function of conducting reviews of, and investigations into, the way in which local authorities in Wales discharge their social services functions.
- (2) The Assembly may in particular under this section conduct—
  - (a) a review of the overall provision of Welsh local authority social services;
  - (b) a review of the provision of any Welsh local authority social service of a particular description; or
  - (c) a review of, or investigation into, the provision of any Welsh local authority social service by a particular person or persons.
- (3) The Assembly may in a review under subsection (2)—
  - (a) assess performance against criteria;



- (b) award performance ratings.
- (4) For the purposes of this section the Assembly may carry out an inspection of—
  - (a) any local authority in Wales;
  - (b) any other person providing a Welsh local authority social service.
- (5) Where the Assembly conducts a review or investigation under this section, it must publish a report.
- (6) The Assembly may by regulations require a local authority in Wales to pay a fee to the Assembly in respect of the exercise of the Assembly’s function under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions).
- (7) A fee under this section shall be of such amount, and shall be payable at such a time, as may be specified in the regulations.
- (8) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

## **95 Studies as to economy, efficiency etc**

- (1) The Assembly has the function of promoting or undertaking comparative or other studies designed to enable it to make recommendations—
  - (a) for improving economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions;
  - (b) for improving the management of such local authorities in the discharge of those functions.
- (2) The Assembly may also promote or undertake studies designed to enable it to prepare reports as to the impact of the operation of any particular statutory provisions on economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions.
- (3) The Assembly must publish or otherwise make available—
  - (a) any recommendations made by it under subsection (1); and
  - (b) a report on the result of any studies under this section.
- (4) The Assembly and the Audit Commission must co-operate with each other with respect to the exercise of their respective functions under this section and sections 33 and 34 of the Audit Commission Act 1998 (c. 18).

## **96 Additional functions**

The Assembly shall have such additional functions in relation to the provision of Welsh local authority social services as—

- (a) correspond to functions conferred on the CSCI by or under this Act; and
- (b) are specified by the Assembly in regulations.

## **97 General considerations**

- (1) This section applies for the purpose of the exercise by the Assembly of its functions—
  - (a) under sections 92 to 95; and

- (b) under regulations under section 96.
- (2) The Assembly shall be concerned in particular with—
- (a) the availability of, and access to, the services;
  - (b) the quality and effectiveness of the services;
  - (c) the management of the services;
  - (d) the economy and efficiency of their provision and their value for money;
  - (e) the availability and quality of information provided to the public about the services;
  - (f) the need to safeguard and promote the rights and welfare of children; and
  - (g) the effectiveness of measures taken by local authorities for the purpose specified in paragraph (f).

*Ancillary powers***98 Right of entry**

- (1) A person authorised to do so by the Assembly may, if the Assembly considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
- (a) any premises owned or controlled by a local authority in Wales;
  - (b) any premises falling within subsection (2), other than premises used wholly or mainly as a private dwelling.
- (2) The premises referred to in subsection (1)(b) are premises—
- (a) which are used, or proposed to be used, by any person in connection with the provision of a Welsh local authority social service; or
  - (b) which the Assembly reasonably believes to be so used, or proposed to be so used.
- (3) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

**99 Right of entry: supplementary**

- (1) A person authorised by virtue of section 98 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—
- (a) inspect, take copies of and remove from the premises any documents or records (including personal records) relating to the discharge by the local authority of its social services functions;
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises; or
    - (ii) any person accommodated or cared for there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons accommodated or cared for there.
- (2) The power in subsection (1)(a) includes—

- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 98 to enter and inspect premises may—
- (a) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under section 98 or this section;
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
- (a) obstructs the exercise of any power conferred by section 98 or this section, or
  - (b) fails to comply with any requirement of section 98 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **100 Power to require information**

- (1) The Assembly may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
- (a) which relates or relate to the discharge by a local authority in Wales of its social services functions; and
  - (b) which the Assembly considers it necessary or expedient to have for the purpose of any of its functions under this Chapter.
- (2) The persons referred to in subsection (1) are—
- (a) the local authority;
  - (b) a person providing a Welsh local authority social service for the authority; or
  - (c) any NHS body.
- (3) The power in subsection (1) to require the provision of information includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **101 Power to require explanation**

- (1) The Assembly may by regulations make provision requiring prescribed persons to provide to the Assembly, or to persons authorised by it, an explanation of—

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- (a) any documents, records or items inspected, copied or produced under sections 98 to 100,
- (b) any information provided under those sections, or
- (c) any matters which are the subject of the exercise of any functions of the Assembly under this Chapter,

in cases where the Assembly considers the explanation necessary or expedient for the purposes of this Chapter.

- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the Assembly.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## CHAPTER 7

### FUNCTIONS UNDER THE CARE STANDARDS ACT 2000

#### *Functions of CHAI and CSCI*

#### **102 Transfer of functions to CHAI and CSCI**

- (1) The functions of the National Care Standards Commission under Part 2 of the Care Standards Act 2000 (c. 14) (registration and standards) are transferred in accordance with subsections (2) and (3).
- (2) Its functions under that Part are transferred to the CHAI insofar as they relate to—
  - (a) independent hospitals;
  - (b) independent clinics; and
  - (c) independent medical agencies.
- (3) Its functions under that Part are transferred to the CSCI insofar as they relate to—
  - (a) children’s homes;
  - (b) care homes;
  - (c) residential family centres;
  - (d) domiciliary care agencies;
  - (e) nurses agencies;
  - (f) fostering agencies;
  - (g) voluntary adoption agencies; and
  - (h) adoption support agencies.
- (4) In relation to any period after the coming into force of this subsection but before the coming into force of sections 80 and 81, the functions of the National Care Standards Commission under Part 3 of that Act are transferred to the CSCI.

#### **103 General functions of CHAI**

In the Care Standards Act 2000 (c. 14), after section 5 insert—

**“5A General duties of Commission for Healthcare Audit and Inspection**

- (1) The Commission for Healthcare Audit and Inspection (referred to in this Act as “the CHAI”) shall have the general duty of keeping the Secretary of State informed about—
  - (a) the provision in England of independent health services; and
  - (b) in particular, the availability and quality of the services.
- (2) The CHAI shall have the general duty of encouraging improvement in the quality of independent health services provided in England.
- (3) The CHAI shall make information about independent health services provided in England available to the public.
- (4) When asked to do so by the Secretary of State, the CHAI shall give him advice or information on such matters relating to the provision in England of independent health services as may be specified in his request.
- (5) The CHAI may at any time give advice to the Secretary of State on—
  - (a) any changes which the CHAI thinks should be made, for the purpose of securing improvement in the quality of independent health services provided in England, in the standards set out in statements under section 23;
  - (b) any other matter connected with the provision in England of such services.
- (6) In the exercise of its functions under this Act the CHAI must have particular regard to the need to safeguard and promote the rights and welfare of children.
- (7) The Secretary of State may by regulations confer additional functions on the CHAI in relation to the provision in England of independent health services.
- (8) In this section “independent health services” means services of the kind provided by persons for whom the CHAI is the registration authority.”

**104 General functions of CSCI**

In the Care Standards Act 2000, after section 5A (inserted by section 103 above) insert—

**“5B General duties of Commission for Social Care Inspection**

- (1) The Commission for Social Care Inspection (referred to in this Act as “the CSCI”) shall have the general duty of keeping the Secretary of State informed about—
  - (a) the provision in England of registered social care services; and
  - (b) in particular, the availability and quality of the services.
- (2) The CSCI shall have the general duty of encouraging improvement in the quality of registered social care services provided in England.
- (3) The CSCI shall make information about registered social care services provided in England available to the public.

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- (4) When asked to do so by the Secretary of State, the CSCI shall give him advice or information on such matters relating to the provision in England of registered social care services as may be specified in his request.
- (5) The CSCI may at any time give advice to the Secretary of State on—
  - (a) any changes which the CSCI thinks should be made, for the purpose of securing improvement in the quality of registered social care services provided in England, in the standards set out in statements under section 23;
  - (b) any other matter connected with the provision in England of registered social care services.
- (6) In the exercise of its functions under this Act the CSCI must have particular regard to the need to safeguard and promote the rights and welfare of children.
- (7) The Secretary of State may by regulations confer additional functions on the CSCI in relation to the provision in England of registered social care services.
- (8) In this section, “registered social care services” means services of the kind provided by persons for whom the CSCI is the registration authority.”

## 105 Fees

- (1) The Care Standards Act 2000 (c. 14) is amended as follows.
- (2) After section 113 insert—

### “113A Fees payable under Part 2

- (1) The CHAI and the CSCI may each from time to time make and publish provision determining the amount of any fee payable to it under Part 2.
- (2) Provision under subsection (1) may include provision—
  - (a) for different amounts to be payable in different cases, or classes of case;
  - (b) for different amounts to be payable by persons of different descriptions.
- (3) Before the CHAI or the CSCI makes any provision under subsection (1) it must consult such bodies as appear to it to be representative of the persons liable to pay the fee.
- (4) No provision may be made under subsection (1) without the consent of the Secretary of State.
- (5) If the Secretary of State considers it necessary or desirable to do so, he may by regulations make provision determining the amount of a fee payable to the CHAI or the CSCI under Part 2 instead of the amount for which provision is made under subsection (1).
- (6) Before making any regulations under subsection (5) in respect of fees payable to the CHAI or the CSCI, the Secretary of State shall consult that body and such other persons as appear to him to be appropriate.”

- (3) In section 12 (applications for registration), in subsection (2), for “a fee of the prescribed amount” substitute “a fee of the amount determined under section 113A, where the registration authority is the CHAI or the CSCI, or of the prescribed amount, where the registration authority is the Assembly.”
- (4) In section 15 (other applications), in subsection (3) for “a fee of such amount as may be prescribed” substitute “a fee of—
- (a) the amount determined under section 113A, where the registration authority is the CHAI or the CSCI; or
  - (b) the prescribed amount, where the registration authority is the Assembly.”
- (5) In that section, in subsection (5)—
- (a) for “subsection (3)” substitute “subsection (3)(b)”; and
  - (b) for “the registration authority” substitute “the Assembly”.
- (6) In section 16 (regulations about registration), for subsection (3) substitute—
- “(3) Persons registered under this Part must also pay to the registration authority, at such time as may be prescribed, an annual fee—
- (a) of such amount as may be determined under section 113A, where the registration authority is the CHAI or the CSCI; and
  - (b) of such amount as may be prescribed, where the registration authority is the Assembly.”
- (7) In section 22(7)(i) (fees in respect of notification of variation of corporate ownership etc), for the words from “of a fee” to the end substitute “, in respect of any notification required to be made by virtue of paragraph (h), of a fee of—
- (i) such amount as may be determined under section 113A, where notification is made to the CHAI or the CSCI; or
  - (ii) the prescribed amount, where notification is made to the Assembly”.

### *Miscellaneous*

#### **106 Meaning of “independent medical agency”**

In section 2(5) of the Care Standards Act 2000 (c. 14) (an “independent medical agency” does not include an independent clinic), after “clinic” insert “or an independent hospital”.

#### **107 Children’s homes providing secure accommodation**

- (1) In section 4 of the Care Standards Act 2000 (c. 14) (basic definitions), in subsection (8)
- (a) (references to a description of establishment), after “children’s home” insert “, a children’s home providing accommodation for the purpose of restricting liberty,”.
- (2) In section 22 of that Act (regulations), in subsection (8) (regulations relating to children’s homes)—
- (a) omit paragraph (a), and
  - (b) in paragraph (b), for “mentioned in paragraph (a)” substitute “of restricting liberty”.

**108 Information and inspection**

- (1) Section 31 of the Care Standards Act 2000 (inspections by persons authorised by registration authority) is amended as follows.
- (2) After subsection (1), insert—
- “(1A) The power under subsection (1) to require the provision of information includes—
- (a) power to require the provision of copies of any documents or records (including medical and other personal records); and
- (b) in relation to records kept by means of a computer, power to require the provision of the records in legible form.”
- (3) In subsection (3)—
- (a) in paragraph (b), for “(other than medical records)” substitute “(including medical and other personal records)”; and
- (b) in paragraph (d), for “employed” substitute “working”.
- (4) In subsection (6), omit “and inspect any medical records relating to his treatment in the establishment”.

**109 Assembly: duties relating to children**

In section 8 of the Care Standards Act 2000 (general functions of the Assembly), at the end insert—

- “(6) The Assembly must have particular regard to the need to safeguard and promote the rights and welfare of children in the exercise of—
- (a) its functions exercisable by virtue of section 5(b) and subsections (1) to (3) of this section; and
- (b) any other functions exercisable by the Assembly corresponding to functions exercisable by the CSCI in relation to England.”

**CHAPTER 8**

## OTHER FUNCTIONS OF CSCI

**110 Boarding schools and colleges**

The functions of the National Care Standards Commission under section 87 of the Children Act 1989 (c. 41) (welfare of children accommodated in boarding schools and colleges) are transferred to the CSCI.

**111 Boarding schools and colleges: reports**

In section 87 of the Children Act 1989, after subsection (9) insert—

- “(9A) Where the Commission or the National Assembly for Wales exercises the power conferred by subsection (5) in relation to a child, it must publish a report on whether the child’s welfare is adequately safeguarded and promoted while he is accommodated by the school or college.



(9B) Where the Commission or the National Assembly for Wales publishes a report under this section, it must—

- (a) send a copy of the report to the school or college concerned; and
- (b) make copies of the report available for inspection at its offices by any person at any reasonable time.

(9C) Any person who requests a copy of a report published under this section is entitled to have one on payment of such reasonable fee (if any) as the Commission or the National Assembly for Wales (as the case may be) considers appropriate.”

## 112 Secure training centres

- (1) The CSCI and the Secretary of State may make arrangements for the CSCI to conduct inspections of secure training centres in England.
- (2) Inspections under this section shall be on such terms, including terms as to payment of the CSCI, as the CSCI and Secretary of State may agree in the arrangements.
- (3) In this section, “secure training centre” has the same meaning as in section 43(1)(d) of the Prison Act 1952 (c. 52).

## CHAPTER 9

### COMPLAINTS

## 113 Complaints about health care

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
  - (a) the exercise of any of the functions of an English NHS body or a cross-border SHA;
  - (b) the provision of health care by or for such a body;
  - (c) the provision of services by such a body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 (c. 8) in relation to the exercise of the health-related functions of a local authority.
- (2) The Assembly may by regulations make provision about the handling and consideration of complaints made under the regulations about—
  - (a) the exercise of any of the functions of a Welsh NHS body;
  - (b) the provision of health care by or for a Welsh NHS body;
  - (c) the provision of services by a Welsh NHS body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 in relation to the exercise of the health-related functions of a local authority.
- (3) Regulations under this section may provide for a complaint to be considered by one or more of the following—
  - (a) an NHS body;
  - (b) the CHAI;
  - (c) an independent lay person;

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- (d) an independent panel established under the regulations;
  - (e) any other person or body.
- (4) Regulations under this section may make provision for a complaint or any matter raised by a complaint—
- (a) to be referred to a Health Service Commissioner for him to consider whether to investigate the complaint or matter under the Health Service Commissioners Act 1993 (c. 46) (and to be treated by him as a complaint duly referred to him under section 10 of that Act);
  - (b) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.

#### **114 Complaints about social services**

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
- (a) the discharge by a local authority in England of any of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
  - (c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 in relation to the functions of an NHS body (within the meaning of that section).
- (2) Regulations under subsection (1) may provide for a complaint to be considered by one or more of the following—
- (a) the local authority in respect of whose functions the complaint is made;
  - (b) the CSCI;
  - (c) an independent panel established under the regulations;
  - (d) any other person or body.
- (3) The Assembly may by regulations make provision about the handling and consideration of complaints made under the regulations about—
- (a) the discharge by a local authority in Wales of any of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
  - (c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 (c. 8) in relation to the functions of an NHS body (within the meaning of that section).
- (4) Regulations under subsection (3) may provide for a complaint to be considered by one or more of the following—
- (a) the local authority in respect of whose functions the complaint is made;
  - (b) an independent panel established under the regulations;
  - (c) any other person or body.
- (5) Regulations under this section may provide for a complaint or any matter raised by a complaint—

- (a) in the case of regulations under subsection (1), to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7) who is a member of the Commission for Local Administration in England for him to consider whether to investigate the complaint or matter under that Part (and to be treated as if it had been duly made under section 26 of that Act);
  - (b) in the case of regulations under subsection (3), to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 who is a member of the Commission for Local Administration in Wales for him to consider whether to investigate the complaint or matter under that Part (and to be treated as if it had been duly made under section 26 of that Act);
  - (c) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.
- (6) Regulations under this section may not make provision about complaints capable of being considered as representations under section 24D or section 26 of the Children Act 1989 (c. 41).

### **115 Complaints regulations: supplementary**

- (1) Regulations under subsection (1) or (2) of section 113 or under subsection (1) or (3) of section 114 (“the regulations”) may, without prejudice to the generality of the subsection under which they are made, make the following provision.
- (2) The regulations may make provision about—
- (a) the persons who may make a complaint;
  - (b) the complaints which may, or may not, be made under the regulations;
  - (c) the persons to whom complaints may be made;
  - (d) complaints which need not be considered;
  - (e) the period within which complaints must be made;
  - (f) the procedure to be followed in making, handling and considering a complaint;
  - (g) matters which are excluded from consideration;
  - (h) the making of a report or recommendations about a complaint;
  - (i) the action to be taken as a result of the complaint.
- (3) The regulations may require—
- (a) the making of a payment, in relation to the consideration of a complaint under the regulations, by any person or body in respect of whom the complaint is made;
  - (b) any such payment to be—
    - (i) made to such person or body as may be specified in the regulations; and
    - (ii) of such amount as may be specified in, or calculated or determined under, the regulations;
  - (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may require any person or body who handles or considers complaints under the regulations to make information available to the public about the procedures to be followed under the regulations.
- (5) The regulations may also—

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- (a) provide for different parts or aspects of a complaint to be treated differently;
  - (b) require the production of information or documents in order to enable a complaint to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a complaint to a person or body—
    - (i) who is considering a complaint under the regulations; or
    - (ii) to whom a complaint has been referred;
 and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures, including in particular provision for—
- (a) enabling such a complaint to be made under the regulations; and
  - (b) securing that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures;
- and in this subsection “statutory complaints procedures” means procedures established by or under any enactment.

## 116 Further consideration of representations under the Children Act 1989

- (1) In the Children Act 1989 (c. 41), after section 26 (representations) insert—

### “26ZA Representations: further consideration

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in England under section 24D or section 26.
- (2) The regulations may in particular make provision—
  - (a) for the further consideration of a representation by the Commission for Social Care Inspection (“the CSCI”);
  - (b) for a representation to be referred by the CSCI for further consideration by an independent panel established under the regulations;
  - (c) about the procedure to be followed on the further consideration of a representation;
  - (d) for the making of recommendations about the action to be taken as the result of a representation;
  - (e) about the making of reports about a representation;
  - (f) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
  - (g) for a representation to be referred by the CSCI back to the local authority concerned for reconsideration by the authority;
  - (h) for a representation or any matter raised by the representation to be referred by the CSCI—
    - (i) to a Local Commissioner in England for him to consider whether to investigate the representation or matter under Part

3 of the Local Government Act 1974 as if it were a complaint duly made under section 26 of that Act; or

(ii) to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.

(3) The regulations may require—

- (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
- (b) any such payment to be—
  - (i) made to such person or body as may be specified in the regulations;
  - (ii) of such amount as may be specified in, or calculated or determined under, the regulations;
- (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.

(4) The regulations may also—

- (a) provide for different parts or aspects of a representation to be treated differently;
- (b) require the production of information or documents in order to enable a representation to be properly considered;
- (c) authorise the disclosure of information or documents relevant to a representation—
  - (i) to a person or body who is further considering a representation under the regulations; or
  - (ii) to a Local Commissioner in England (when a representation is referred to him under the regulations);

and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.

(5) In this section, “Local Commissioner in England” means a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7), who is a member of the Commission for Local Administration in England.”

(2) After section 26ZA of that Act (as inserted by subsection (1)) insert—

**“26ZB Representations: further consideration (Wales)**

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in Wales under section 24D or section 26.
- (2) The regulations may in particular make provision—
  - (a) for the further consideration of a representation by an independent panel established under the regulations;
  - (b) about the procedure to be followed on the further consideration of a representation;
  - (c) for the making of recommendations about the action to be taken as the result of a representation;

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- (d) about the making of reports about a representation;
- (e) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
- (f) for a representation to be referred back to the local authority concerned for reconsideration by the authority.

(3) The regulations may require—

- (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
- (b) any such payment to be—
  - (i) made to such person or body as may be specified in the regulations;
  - (ii) of such amount as may be specified in, or calculated or determined under, the regulations; and
- (c) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.

(4) The regulations may also—

- (a) provide for different parts or aspects of a representation to be treated differently;
- (b) require the production of information or documents in order to enable a representation to be properly considered;
- (c) authorise the disclosure of information or documents relevant to a representation to a person or body who is further considering a representation under the regulations;

and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.”

(3) In section 26A of that Act (requirement on local authorities to provide assistance for persons making representations under section 24D and section 26), after subsection (2) insert—

“(2A) The duty under subsection (1) includes a duty to make arrangements for the provision of assistance where representations under section 24D or 26 are further considered under section 26ZA or 26ZB.”

## **117 Representations relating to special guardianship support services**

(1) In section 26 of the Children Act 1989 (c. 41) (representations), after subsection (3B) insert—

“(3C) The duty under subsection (3) extends to any representations (including complaints) which are made to the authority by—

- (a) a child with respect to whom a special guardianship order is in force,
- (b) a special guardian or a parent of such a child,
- (c) any other person the authority consider has a sufficient interest in the welfare of such a child to warrant his representations being considered by them, or
- (d) any person who has applied for an assessment under section 14F(3) or (4),

about the discharge by the authority of such functions under section 14F as may be specified by the Secretary of State in regulations.”

- (2) Section 14G of that Act (special guardianship support services: representations) shall cease to have effect.

### **118 Complaints about handling of complaints**

In section 3 of the Health Service Commissioners Act 1993 (c. 46) (remit of Commissioners), after subsection (1D) insert—

“(1E) Where a complaint is duly made to a Commissioner by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any function under section 113 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care), the Commissioner may, subject to the provisions of this Act, investigate the alleged maladministration.”

### **119 Complaints: data protection**

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity) at the end insert—

“(6) Personal data processed for the purpose of the function of considering a complaint under section 113(1) or (2) or 114(1) or (3) of the Health and Social Care (Community Health and Standards) Act 2003, or section 24D, 26, 26ZA or 26ZB of the Children Act 1989, are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.”

## **CHAPTER 10**

### **SUPPLEMENTARY AND GENERAL**

#### *Joint working*

### **120 Co-operation etc**

- (1) The CHAI and the CSCI must co-operate with each other where it seems to them appropriate to do so for the efficient and effective discharge of their respective functions.
- (2) The CHAI and the CSCI must, in prescribed circumstances, consult each other in relation to the proposed exercise of their functions.
- (3) The CHAI and the CSCI may each delegate to the other any of its functions to be exercised by the other on its behalf.
- (4) The CHAI and the CSCI may, subject to such conditions as may be prescribed, enter into arrangements for the pooling of financial resources whenever they consider it appropriate to do so.

## **121 Reviews and investigations**

- (1) The CHAI and the CSCI may exercise any of their powers to conduct reviews and investigations under this Part in conjunction with each other.
- (2) The CHAI may conduct a review or investigation under this Part, or undertake a study under section 57, in conjunction with a review, investigation or study relating to any functions of an NHS body, or to any health care provided by or for an NHS body, which is being conducted by any other public authority.
- (3) The CSCI may conduct a review or investigation under this Part, or a study under section 82 in conjunction with a review, investigation or study relating to any other functions of a local authority which is being conducted by any other public authority.
- (4) Where a review, investigation or study is being conducted by the CHAI in conjunction with any other authority pursuant to this section, any report which under this Part the CHAI is required to publish in relation to the review, investigation or study may consist of a joint report by the CHAI and the other authority as to all the matters being investigated by both of them.
- (5) Where a review, investigation or study is being conducted by the CSCI in conjunction with any other authority pursuant to this section, any report which under this Part the CSCI is required to publish in relation to the review, investigation or study may consist of a joint report by the CSCI and the other authority as to all the matters being investigated by both of them.
- (6) This section is without prejudice to any other powers of the CHAI or the CSCI.

## **122 Joint annual reviews**

- (1) Regulations made by the Secretary of State may provide that, where services of a description specified in the regulations are provided under arrangements under section 31 of the Health Act 1999 (c. 8), the CHAI and the CSCI shall jointly—
  - (a) review the provision by the parties to the arrangements of such services as may be specified in the regulations;
  - (b) award a performance rating in respect of those services.
- (2) The regulations may provide that the CHAI and the CSCI are to exercise their functions under this section—
  - (a) at such times as may be specified in the regulations;
  - (b) by reference to criteria determined by the CHAI and the CSCI and approved by the Secretary of State.
- (3) The regulations may require the CHAI and the CSCI to publish a report after conducting a review under this section.

## **123 Power to assist**

- (1) The CHAI or the CSCI may if it thinks it appropriate to do so provide assistance to any other public authority in the United Kingdom for the purpose of the exercise by that authority of its functions.
- (2) Assistance provided by the CHAI or the CSCI under this section may be provided on such terms, including terms as to payment, as it thinks fit.



*Arrangements with public authorities***124 Arrangements with Ministers etc: CHAI**

- (1) Arrangements may be made between the CHAI and a Minister of the Crown —
  - (a) for the CHAI to perform any of its functions in relation to any prescribed health scheme for which the Minister has responsibility; or
  - (b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with any such health scheme.
- (2) Arrangements may be made between the CHAI and a Northern Ireland Minister—
  - (a) for the CHAI to perform on behalf of the Minister any functions of the Minister which—
    - (i) correspond to any functions of the CHAI; and
    - (ii) relate to the Northern Irish health service;
  - (b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with the exercise by him of any such functions.
- (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.
- (4) Those terms and conditions may include provision with respect to the making of payments to the CHAI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.
- (5) Any arrangements under subsection (2)(a) are not to affect the responsibility of the Northern Ireland Minister on whose behalf any functions are exercised.
- (6) In this section—

“health scheme” means any scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds;

“Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department;

“Northern Irish health service” means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the 1977 Act.

**125 Arrangements with Ministers etc: CSCI**

- (1) Arrangements may be made between the CSCI and a Minister of the Crown—
  - (a) for the CSCI to advise the Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services; or
  - (b) for the CSCI to review, and conduct inspections in relation to, the provision of any such services.
- (2) Arrangements may be made between the CSCI and a Northern Ireland Minister for the CSCI to advise and assist the Northern Ireland Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services.
- (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.

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

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- (4) Those terms and conditions may include provision with respect to the making of payments to the CSCI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.
- (5) In this section “Northern Ireland Minister” has the same meaning as in section 124.

## **126 Arrangements with the Isle of Man and Channel Islands: CHAI**

- (1) The CHAI may make arrangements with—
  - (a) the Government of the Isle of Man,
  - (b) the States of Jersey, or
  - (c) the States of Guernsey,for the CHAI to advise and assist that authority with respect to the provision of health care by them or on their behalf.
- (2) The terms and conditions of arrangements under this section may include provision with respect to the making of payments to the CHAI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

## **127 Arrangements with the Isle of Man and Channel Islands: CSCI**

- (1) The CSCI may make arrangements with—
  - (a) the Government of the Isle of Man,
  - (b) the States of Jersey, or
  - (c) the States of Guernsey,for the CSCI to advise and assist that authority with respect to the provision of any services which are similar to English local authority social services.
- (2) The terms and conditions of arrangements under this section may include provision with respect to the making of payments to the CSCI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

### *Reports*

## **128 Reports: CHAI**

- (1) As soon as possible after the end of each financial year the CHAI must make a report on each of the following—
  - (a) the way in which it has exercised its functions during the year;
  - (b) the provision of health care by or for NHS bodies;
  - (c) what it has found in the course of exercising its functions during the year in relation to the persons for whom it is the registration authority under the Care Standards Act 2000 (c. 14).
- (2) The CHAI must lay before Parliament a copy of each report made under this section.
- (3) The CHAI must send a copy of each report made under this section to the Secretary of State and the Assembly.
- (4) The CHAI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time request.

**129 Reports: CSCI**

- (1) As soon as possible after the end of each financial year the CSCI must make a report on each of the following—
  - (a) the way in which it has exercised its functions during the year;
  - (b) what it has found in the course of exercising its functions during the year.
- (2) The CSCI must lay before Parliament a copy of each report made under this section.
- (3) The CSCI must send a copy of each such report to the Secretary of State.
- (4) The CSCI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time require.

*Relationship with government***130 Duty to have regard to government policy: CHAI**

- (1) In exercising any of its functions the CHAI must have regard to such aspects of government policy as the Secretary of State may direct.
- (2) Subsection (1) does not apply in relation to any of the CHAI's functions under section 48(1), 49, 51 or 53.
- (3) In exercising any of its functions under any of the sections referred to in subsection (2) —
  - (a) where the exercise relates to the provision of health care by or for an English NHS body or cross-border SHA, the CHAI must have regard to such aspects of government policy as the Secretary of State may direct; and
  - (b) where the exercise relates to the provision of health care by or for a Welsh NHS body, the CHAI must have regard to such aspects of the Assembly's policy as the Assembly may direct.
- (4) In relation to any function conferred on the CHAI under subsection (1)(a) of section 58, regulations under that section may do either or both of the following—
  - (a) they may disapply subsection (1) of this section in relation to that function;
  - (b) they may require the CHAI, in exercising the function in relation to the provision of health care by or for a Welsh NHS body, to have regard to such aspects of the Assembly's policy as the Assembly may direct.
- (5) A direction under this section—
  - (a) must be given in writing;
  - (b) may be varied or revoked by a further direction under this section.

**131 Duty to have regard to government policy: CSCI**

- (1) In exercising any of its functions the CSCI must have regard to such aspects of government policy as the Secretary of State may direct in writing.
- (2) A direction given under this section may be varied or revoked by a further such direction.

**132 Failure in discharge of functions: CHAI**

- (1) Where the Secretary of State considers that the CHAI is to a significant extent—
  - (a) failing to discharge any of its functions under this Act; or
  - (b) failing properly to discharge any of those functions;
 he may give a direction to the CHAI.
- (2) The Secretary of State must consult the Assembly before giving a direction under this section in respect of a failure which—
  - (a) relates to any function of the CHAI under section 48(1), 49, 51 or 53; and
  - (b) relates to the provision of health care by or for a Welsh NHS body.
- (3) Regulations under section 58 may, in relation to any function conferred on the CHAI under subsection (1)(a) of that section, provide that—
  - (a) the Assembly, and not the Secretary of State, may give directions to the CHAI under subsection (1);
  - (b) the Assembly, as well as the Secretary of State, may give directions to the CHAI under subsection (1).
- (4) The CHAI must comply with any direction given to it under this section.
- (5) A direction given under this section—
  - (a) must be given in writing;
  - (b) may be varied or revoked by a further direction under this section.

**133 Failure in discharge of functions: CSCI**

- (1) Where the Secretary of State considers that the CSCI is to a significant extent—
  - (a) failing to discharge any of its functions under this Act or the Children Act 1989 (c. 41), or
  - (b) failing properly to discharge any of those functions,
 he may give it a direction in writing.
- (2) The CSCI must comply with any such direction.
- (3) A direction given under this section may be varied or revoked by a further such direction.

*Inquiries***134 Inquiries: CHAI**

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the CHAI of any of its functions.
- (2) The Assembly may cause an inquiry to be held into any matter connected with the exercise by the CHAI of any of its functions in relation to any health care provided by or for a Welsh NHS body.
- (3) Before an inquiry is begun, the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly may give a direction that it be held in private.

- (4) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (5) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (6) The report of the person holding the inquiry is to be published, unless the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly considers that there are exceptional circumstances which make publication inappropriate.
- (7) Publication under subsection (6) is to be in such manner as the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly considers appropriate.

### **135 Inquiries: CSCI**

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the CSCI of any of its functions (under any enactment).
- (2) Before an inquiry is begun, the Secretary of State may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (5) The report of the person holding the inquiry is to be published, unless the Secretary of State considers that there are exceptional circumstances which make publication inappropriate.
- (6) Publication under subsection (5) is to be in such manner as the Secretary of State considers appropriate.

### *Information*

### **136 Disclosure of information obtained by CHAI**

- (1) This section applies to information which—
  - (a) has been obtained by the CHAI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.
- (2) Subject to section 137, a person is guilty of an offence if he knowingly or recklessly discloses information to which this section applies during the lifetime of the individual to which it relates.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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

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- (4) For the purposes of subsection (1)(b), information obtained by the CHAI, or any person authorised by it, is to be regarded as identifying an individual if that individual can be identified—
- (a) from that information, or
  - (b) from that information and from other information obtained by the CHAI or any person authorised by it.

### 137 Section 136: defence

- (1) It is a defence for a person charged with an offence under section 136 to prove that at the time of the alleged offence—
- (a) any of the circumstances in subsection (2) applied in relation to the disclosure in question; or
  - (b) he reasonably believed that they applied.
- (2) The circumstances referred to in subsection (1)(a) are that—
- (a) the disclosure was made in a form in which the individual to whom it relates is not identified;
  - (b) the disclosure was made with the consent of the individual to whom the information relates;
  - (c) the information disclosed had previously been lawfully disclosed to the public;
  - (d) the disclosure was made under or pursuant to regulations under section 113 (complaints about health care);
  - (e) the disclosure was made in accordance with any enactment or court order;
  - (f) the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;
  - (g) the disclosure was made to any body or person in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising his or its functions under any enactment.
- (3) It is also a defence for a person charged with an offence under section 136 to prove that the disclosure was made—
- (a) for the purposes of facilitating the exercise of any functions of the CHAI (under any enactment);
  - (b) in connection with the investigation of a criminal offence (whether or not in the United Kingdom);
  - (c) for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (4) For the purposes of subsection (2)(a), information disclosed by a person is not to be regarded as being in a form in which an individual is not identified if the individual can be identified—
- (a) from that information, or
  - (b) from that information and from other information disclosed by the CHAI, by any person authorised by it or by any of its members or employees.

**138 Information obtained by CHAI: supplementary**

- (1) The CHAI may, subject to section 136, use any information it obtains, or documents or records produced to it, in the course of exercising any of its functions for the purposes of any of its other functions.
- (2) Where subsection (3) applies, the CHAI may disclose any information obtained by it notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.
- (3) This subsection applies where—
  - (a) in the case of information relating to an individual, the circumstances in paragraph (a) or (b) of subsection (2) of section 137 apply in relation to the disclosure;
  - (b) in any case, the circumstances in any of paragraphs (c) to (g) of that subsection apply in relation to the disclosure; or
  - (c) in any case, the disclosure is made as specified in paragraph (a), (b) or (c) of subsection (3) of that section.
- (4) Subsection (4) of section 137 applies for the purposes of subsection (3)(a) above.

**139 Information obtained by CSCI: supplementary**

The CSCI may use any information it obtains, or documents or records produced to it, in the course of exercising any of its functions for the purposes of any of its other functions.

**140 Code of practice: CHAI**

- (1) The CHAI must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.
- (2) The code must in particular make provision about the CHAI's obtaining, handling, use and disclosure of confidential personal information.
- (3) Before publishing the code, the CHAI must consult such persons as it considers appropriate.
- (4) The CHAI must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) For the purposes of this section “confidential personal information” means information which—
  - (a) is obtained by the CHAI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.

**141 Code of practice: CSCI**

- (1) The CSCI must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.

- (2) The code must in particular make provision about the CSCI's obtaining, handling, use and disclosure of confidential personal information.
- (3) Before publishing the code, the CSCI must consult such persons as it considers appropriate.
- (4) The CSCI must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) For the purposes of this section “confidential personal information” means information which—
  - (a) is obtained by the CSCI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.

*Wales: supplementary***142 Annual reports of Assembly**

As soon as possible after the end of each financial year of the Assembly, the Assembly must make and publish a report or reports on—

- (a) what it has found during the year in the course of exercising—
  - (i) its functions under Chapter 4 and 6 of this Part (other than any function of making regulations);
  - (ii) its functions exercisable by virtue of section 5(b) and 8(1) to (3) of the Care Standards Act 2000 (c. 14);
- (b) the way in which the Assembly has during the year exercised those functions.

**143 Use by Assembly of information**

- (1) The Assembly may use any information it obtains, or documents produced to it, in the course of exercising any function of the Assembly referred to in any paragraph of subsection (2) for the purposes of any function of the Assembly referred to in any other paragraph of that subsection.
- (2) The functions of the Assembly referred to in subsection (1) are—
  - (a) its functions under Chapter 4 of this Part;
  - (b) its functions under Chapter 6 of this Part;
  - (c) its functions exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000 (c. 14);
  - (d) its functions under section 80 of the Children Act 1989 (c. 41).
- (3) References to functions in subsection (2) do not include functions of making regulations.

**144 Inquiries: Wales**

- (1) This section applies where, under section 35 of the Government of Wales Act 1998 (c. 38), the Assembly causes an inquiry to be held into any matter relevant to the exercise of—



- (a) its functions under Chapter 4 or 6 of this Part (other than any function of making regulations);
  - (b) its functions under section 87 of the Children Act 1989.
- (2) Before an inquiry is begun, the Assembly may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) The report of the person holding the inquiry is to be published, unless the Assembly considers that there are exceptional circumstances which make publication inappropriate.
- (5) Publication under subsection (4) is to be in such manner as the Assembly considers appropriate.

#### **145 Co-operation between Assembly and CHAI**

- (1) The Assembly and the CHAI must co-operate with each other for the efficient and effective discharge of any relevant function.
- (2) For the purposes of subsection (1), a relevant function is—
- (a) any function of the CHAI under Chapter 3 of this Part;
  - (b) any function of the Assembly under Chapter 4 or 6 of this Part (other than any function of making regulations);
  - (c) any function of the CHAI under the Care Standards Act 2000;
  - (d) any function of the Assembly exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000.

#### *General*

#### **146 Offences by bodies corporate**

- (1) This section applies where any offence under this Part is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager, or secretary of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
- (a) to any other similar officer of the body; and
  - (b) where the body is a local authority or NHS body, to any officer or member of the authority or NHS body.

**147 Minor and consequential amendments**

Schedule 9 (which makes minor and consequential amendments relating to this Part) has effect.

**148 Interpretation of Part 2**

In this Part—

“Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;

“the CHAI” means the Commission for Healthcare Audit and Inspection;

“cross-border SHA” means a Special Health Authority not performing functions only or mainly in respect of England or only or mainly in respect of Wales;

“the CSCI” means the Commission for Social Care Inspection;

“English local authority social service” means—

- (a) a service which is provided, in any place, by a local authority in England in the exercise of any of its social services functions;
- (b) a service which is provided, in any place, by another person pursuant to arrangements made by a local authority in England in the exercise of its social services functions;
- (c) a service which—
  - (i) is provided, in any place, by a local authority in England, or by another person pursuant to arrangements made by a local authority in England, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and
  - (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions.

“English NHS body” means—

- (a) a Primary Care Trust;
- (b) a Strategic Health Authority;
- (c) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England;
- (d) an NHS foundation trust;
- (e) a Special Health Authority performing functions only or mainly in respect of England;

“financial year”, in relation to the CHAI or the CSCI, means—

- (a) the period beginning with the date on which that body is established and ending with the next 31st March following that date; and
- (b) each successive period of twelve months ending with 31st March;

“health care” has the meaning given by section 45(2);

“local authority” has the same meaning as in the Local Authority Social Services Act 1970 (c. 42) (see section 1 of that Act);

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

“NHS body” means—

- (a) an English NHS body;
- (b) a Welsh NHS body;
- (c) a cross-border SHA;

- “NHS trust” has the same meaning as in Part 1 of the 1977 Act;
- “personal records” includes medical records;
- “prescribed” means prescribed by regulations made by—
- (a) the Secretary of State;
  - (b) in the case of sections 63, 75 and 101, the Assembly;
- “regulator” means the Independent Regulator of NHS Foundation Trusts;
- “social services functions” has the same meaning as in the Local Authority Social Services Act 1970;
- “Welsh local authority social service” means—
- (a) a service provided, in any place, by a local authority in Wales in the exercise of any of its social services functions;
  - (b) a service provided, in any place, by another person pursuant to arrangements made by a local authority in Wales in the exercise of its social services functions;
  - (c) a service which—
    - (i) is provided, in any place, by a local authority in Wales, or by another person pursuant to arrangements made by a local authority in Wales, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and
    - (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions;
- “Welsh NHS body” means—
- (a) a Local Health Board;
  - (b) an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales;
  - (c) a Special Health Authority performing functions only or mainly in respect of Wales.

#### **149 References to the provision of health care**

- (1) For the purposes of this Part, a person provides health care for another person if he provides it—
  - (a) at the direction of the other person;
  - (b) in accordance with, or by virtue of, an agreement or arrangements made by the other person (whether or not with the person providing the health care); or
  - (c) otherwise on behalf of the other person.
- (2) References in this section to the provision of health care include references to its provision jointly with another person.

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

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### PART 3

#### RECOVERY OF NHS CHARGES

##### *NHS charges*

#### **150 Liability to pay NHS charges**

- (1) This section applies if—
- (a) a person makes a compensation payment to or in respect of any other person (the “injured person”) in consequence of any injury, whether physical or psychological, suffered by the injured person, and
  - (b) the injured person has—
    - (i) received NHS treatment at a health service hospital as a result of the injury,
    - (ii) been provided with NHS ambulance services as a result of the injury for the purpose of taking him to a health service hospital for NHS treatment (unless he was dead on arrival at that hospital), or
    - (iii) received treatment as mentioned in sub-paragraph (i) and been provided with ambulance services as mentioned in sub-paragraph (ii).
- (2) The person making the compensation payment is liable to pay the relevant NHS charges—
- (a) in respect of—
    - (i) the treatment, in so far as received at a hospital in England or Wales,
    - (ii) the ambulance services, in so far as provided to take the injured person to such a hospital,
 to the Secretary of State,
  - (b) in respect of—
    - (i) the treatment, in so far as received at a hospital in Scotland,
    - (ii) the ambulance services, in so far as provided to take the injured person to such a hospital,
 to the Scottish Ministers.
- (3) “Compensation payment” means a payment, including a payment in money’s worth, made—
- (a) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the injury, or
  - (b) in pursuance of a compensation scheme for motor accidents,
- but does not include a payment mentioned in Schedule 10.
- (4) Subsection (1)(a) applies—
- (a) to a payment made—
    - (i) voluntarily, or in pursuance of a court order or an agreement, or otherwise, and
    - (ii) in the United Kingdom or elsewhere, and
  - (b) if more than one payment is made, to each payment.
- (5) “Injury” does not include any disease.

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

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- (6) Nothing in subsection (5) prevents this Part from applying to—
- (a) treatment received as a result of any disease suffered by the injured person, or
  - (b) ambulance services provided as a result of any disease suffered by him,
- if the disease in question is attributable to the injury suffered by the injured person (and accordingly that treatment is received or those services are provided as a result of the injury).
- (7) “NHS treatment” means any treatment (including any examination of the injured person) other than—
- (a) treatment provided by virtue of section 18A(4) or 65 of the 1977 Act, section 57 of, or paragraph 14 of Schedule 7A to, the 1978 Act or paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990 (c. 19) (accommodation and services for private patients),
  - (b) other treatment provided by an NHS foundation trust in pursuance of an undertaking to pay in respect of the treatment given by or on behalf of the injured person,
  - (c) treatment provided at a health service hospital by virtue of section 72 of the 1977 Act or section 64 of the 1978 Act (permission for use of national health service accommodation or facilities in private practice), or
  - (d) treatment provided by virtue of—
    - (i) section 16CA, 16CC, 28C, 28K or 28Q of the 1977 Act (primary medical and dental services), or
    - (ii) section 17C, 19 or 25 of the 1978 Act (personal or general medical or dental services).
- (8) In relation to any time before sections 170 and 172 come into force, the references in subsection (7)(d)(i) to sections 16CA and 28K of the 1977 Act are to be taken as a reference to section 35 of that Act (arrangements for general dental services).
- (9) In relation to any time before sections 174 and 175 come into force, the references in subsection (7)(d)(i) to sections 16CC and 28Q of the 1977 Act are to be taken as a reference to section 29 of that Act (arrangements for general medical services).
- (10) “Relevant NHS charges” means the amount (or amounts) specified in a certificate of NHS charges—
- (a) issued under this Part, in respect of the injured person, to the person making the compensation payment, and
  - (b) in force.
- (11) “Compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons.
- (12) Regulations may amend Schedule 10 by omitting or modifying any payment for the time being specified in that Schedule.
- (13) This section applies in relation to any injury which occurs after the date on which this section comes into force.
- (14) For the purposes of this Part, it is irrelevant whether a compensation payment is made with or without an admission of liability.

*Certificates of NHS charges***151 Applications for certificates of NHS charges**

- (1) Before a person makes a compensation payment in consequence of any injury suffered by an injured person, he may apply for a certificate to the Secretary of State, the Scottish Ministers or both, according to whether he believes the relevant NHS charges payable by him (if any) would be due to the Secretary of State, the Scottish Ministers or both.
- (2) If the Secretary of State receives or the Scottish Ministers receive an application under subsection (1), he or they must arrange for a certificate to be issued as soon as is reasonably practicable (subject to section 152).
- (3) A certificate may provide that it is to remain in force—
  - (a) until a specified date,
  - (b) until the occurrence of a specified event, or
  - (c) indefinitely.
- (4) A person may apply under subsection (1) for a fresh certificate from time to time.
- (5) Subsection (2) does not require the Secretary of State or the Scottish Ministers to arrange for a fresh certificate to be issued to a person applying under subsection (4) if, when the application is received, a certificate issued to the applicant in respect of the injured person is still in force; but the Secretary of State or the Scottish Ministers (as the case may be) may arrange for a fresh certificate to be issued so as to have effect on the expiry of the current certificate.
- (6) If a certificate expires, the Secretary of State or the Scottish Ministers (as the case may be) may arrange for a fresh certificate to be issued without an application having to be made.
- (7) In the circumstances mentioned in subsection (8), a person who has made a compensation payment in consequence of an injury suffered by an injured person must apply for a certificate to the Secretary of State, the Scottish Ministers or both, according to whether he believes the relevant NHS charges payable by him (if any) would be due to the Secretary of State, the Scottish Ministers or both.
- (8) The circumstances are that—
  - (a) at the time the payment is made by the person—
    - (i) no certificate has been issued to him in respect of the injured person, or
    - (ii) if such a certificate has been issued to him, it is no longer in force, and
  - (b) no application for a certificate has been made by him during the prescribed period ending immediately before the day on which the compensation payment is made.
- (9) An application for a certificate must be made in the prescribed manner and, in the case of an application under subsection (7), within the prescribed period.
- (10) On receiving an application under subsection (7), the Secretary of State or the Scottish Ministers must arrange for a certificate to be issued as soon as is reasonably practicable (subject to section 152).

- (11) In this section and section 152, “relevant NHS charges” has the meaning given in section 150(10).

## **152 Section 151: supplementary**

- (1) Subsection (2) applies if—
- (a) an application is made under subsection (1) or (7) of section 151 to the Secretary of State or the Scottish Ministers, and
  - (b) it appears to the Secretary of State or the Scottish Ministers that the relevant NHS charges payable by the applicant (if any) would be due to the Scottish Ministers or the Secretary of State (respectively) instead.
- (2) The Secretary of State or the Scottish Ministers (as the case may be) must refer the application to the Scottish Ministers or the Secretary of State (respectively), and the application is to be treated, for the purposes of this Part, as having been made to the Scottish Ministers or the Secretary of State (as the case may be).
- (3) Subsection (4) applies if—
- (a) an application is made under subsection (1) or (7) of section 151 to the Secretary of State or the Scottish Ministers, and
  - (b) it appears to the Secretary of State or the Scottish Ministers that the relevant NHS charges payable by the applicant (if any) would be due in part to him or them and in part to the Scottish Ministers or the Secretary of State (respectively).
- (4) The Secretary of State or the Scottish Ministers (as the case may be) must refer the application to the Scottish Ministers or the Secretary of State (respectively) in so far as the application relates to relevant NHS charges due to them or him, and the application is to be treated, for the purposes of this Part, as having been made to the Secretary of State in so far as it relates to relevant NHS charges due to him under subsection (2) of section 150 and to the Scottish Ministers in so far as it relates to relevant NHS charges due to them under that subsection.
- (5) A certificate may be issued under section 151 jointly by the Secretary of State and the Scottish Ministers specifying—
- (a) an amount (or amounts) for which a person is liable under subsection (2) of section 150 to the Secretary of State, and
  - (b) an amount (or amounts) for which that person is liable under that subsection to the Scottish Ministers,
- in respect of the same injured person in consequence of the same injury.
- (6) In the case of a certificate issued under section 151 specifying an amount (or amounts) as mentioned in paragraphs (a) and (b) of subsection (5), references in the following provisions of this Part to a certificate are to be taken as being to the certificate in so far as it relates to the liability to the Secretary of State or in so far as it relates to the liability to the Scottish Ministers (as the case may require).

## **153 Information contained in certificates**

- (1) A certificate must specify the amount (or amounts) for which the person to whom it is issued is liable under section 150(2).

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- (2) The amount (or amounts) to be specified is (or are) to be that (or those) set out in, or determined in accordance with, regulations, reduced if applicable in accordance with subsection (3) or regulations under subsection (10).
- (3) If a certificate relates to a claim made by or on behalf of an injured person—
- (a) in respect of which a court in England and Wales or Scotland has ordered a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),
  - (b) in respect of which a court in Northern Ireland has ordered a reduction of damages in accordance with section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23),
  - (c) in respect of which a court in a country other than England and Wales, Scotland or Northern Ireland has ordered a reduction of damages under any provision of the law of that country which appears to the Secretary of State or the Scottish Ministers (as the case may be) to correspond to section 1 of the Law Reform (Contributory Negligence) Act 1945,
  - (d) in respect of which an officer of a court in England and Wales or Northern Ireland has entered or sealed an agreed judgement or order which specifies—
    - (i) that the damages are to be reduced to reflect the injured person's share in the responsibility for the injury in question, and
    - (ii) the amount or proportion by which they are to be so reduced,
  - (e) in the case of which the parties to any resulting action before a court in Scotland have executed a joint minute which specifies—
    - (i) that the action has been settled extra-judicially, and
    - (ii) the matters mentioned in paragraph (d)(i) and (ii),
  - (f) in respect of which a document has been made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland—
    - (i) which appears to the Secretary of State to correspond to an agreed judgement or order entered or sealed by an officer of a court in England and Wales, and
    - (ii) which specifies the matters mentioned in paragraph (d)(i) and (ii), or
  - (g) in the case of which a document has been made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland—
    - (i) which appears to the Scottish Ministers to correspond to a joint minute executed by the parties to a resulting action before a court in Scotland specifying that the action has been settled extra-judicially, and
    - (ii) which specifies the matters mentioned in paragraph (d)(i) and (ii),
- the amount (or amounts) specified in the certificate is (or are) to be that (or those) which would be so specified apart from this subsection, reduced by the same proportion as the reduction of damages.
- (4) If a certificate relates to an injured person who has not received NHS treatment at a health service hospital or been provided with NHS ambulance services as a result of the injury, it must indicate that no amount is payable to the Secretary of State or the Scottish Ministers (as the case may be) by reference to that certificate.
- (5) Regulations under subsection (2) may, in particular, provide—
- (a) that the amount, or the aggregate amount, specified in a certificate is not to exceed a prescribed sum,



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- (b) for different amounts to be specified in respect of different circumstances or areas,
- (c) for cases in which an injured person receives treatment at two or more health service hospitals,
- (d) for cases in which an injured person receives treatment at one or more health service hospitals and is provided with NHS ambulance services,
- (e) for cases in which liability under section 150(2) is to be apportioned between two or more persons making compensation payments to or in respect of the same injured person in consequence of the same injury,
- (f) for cases in which a fresh certificate is issued or a certificate is revoked as a result of a review under or by virtue of section 156 or an appeal under section 157 or 159,
- (g) for the amount specified in a certificate issued by the Secretary of State or the Scottish Ministers to be adjusted to take into account any amount for which the person to whom the certificate is issued is liable under section 150(2), in respect of the same injured person in consequence of the same injury, in accordance with a certificate issued by the Scottish Ministers or the Secretary of State (respectively),
- (h) for any matter requiring determination under or in consequence of the regulations to be determined by the Secretary of State or the Scottish Ministers (as the case may require),

and in the case of paragraph (e) may make such provision by modifying this Part.

- (6) Any reference in subsection (5)(a) or (b) to any amount (or amounts) specified in a certificate is to the amount (or amounts) which would be so specified apart from subsection (3) or regulations under subsection (10).
- (7) Regulations under subsection (2) which provide for cases mentioned in subsection (5) (e) may (among other things) provide in the case of each compensator for—
  - (a) determining, or re-determining, the amount for which he is liable under section 150(2),
  - (b) giving credit for amounts already paid, and
  - (c) the payment by any person of any balance or the recovery from any person of any excess.
- (8) Regulations under subsection (2) which provide for cases mentioned in subsection (5) (f) may (among other things) provide in the case of any compensator for the matters mentioned in paragraphs (b) and (c) of subsection (7).
- (9) For the purposes of subsection (10), a claim made by or on behalf of an injured person is a qualifying claim if—
  - (a) it is settled by mediation of a prescribed description, and
  - (b) the damages payable under the settlement are to be reduced to reflect the injured person's share in the responsibility for the injury in question.
- (10) Regulations may make provision as to the circumstances in which the amount (or amounts) specified in a certificate relating to a qualifying claim is (or are) to be that (or those) which would be so specified apart from the regulations, reduced by the same proportion as the reduction of damages.
- (11) A person to whom a certificate is issued is entitled to such particulars of the manner in which any amount (or amounts) specified in the certificate has (or have) been

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determined as may be prescribed, if he applies to the Secretary of State or the Scottish Ministers (as the case may require) for those particulars.

- (12) Regulations under subsection (2) may be made so as to apply to any certificate issued after the time the regulations come into force, other than one relating to a compensation payment made before that time.

### *Recovery of NHS charges*

#### **154 Payment of NHS charges**

- (1) If the certificate by reference to which an amount payable under section 150(2) is determined is issued before the settlement date, that amount must be paid before the end of the period of 14 days beginning with the settlement date.
- (2) If the certificate by reference to which an amount payable under section 150(2) is determined is issued on or after the settlement date, that amount must be paid before the end of the period of 14 days beginning with the day on which the certificate is issued.
- (3) “Settlement date” means the date on which the compensation payment is made.
- (4) This section is subject to section 155(2).

#### **155 Recovery of NHS charges**

- (1) This section applies if a person has made a compensation payment and either—
  - (a) subsection (7) of section 151 applies but he has not applied for a certificate as required by that subsection, or
  - (b) he has not made payment, in full, of any amount due under section 150(2) by the end of the period allowed under section 154.
- (2) The Secretary of State, the Scottish Ministers or both, according to the circumstances of the case, may—
  - (a) in a case within subsection (1)(a), issue the person who made the compensation payment with a certificate, and
  - (b) in a case within subsection (1)(b), issue him with a copy of the certificate or (if more than one has been issued) the most recent one,
 and, in either case, issue him with a demand that payment of any amount due under section 150(2) be made immediately.
- (3) Subsections (5) and (6) of section 152 apply to certificates issued under subsection (2) above as they apply to certificates issued under section 151.
- (4) A demand issued under subsection (2) may be issued jointly by the Secretary of State and the Scottish Ministers specifying—
  - (a) an amount due under subsection (2) of section 150 to the Secretary of State, and
  - (b) an amount due under that subsection to the Scottish Ministers,
 in respect of the same injured person in consequence of the same injury.

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- (5) In the case of a demand specifying amounts as mentioned in subsection (4)(a) and (b), references in the following provisions of this section to a demand are to be taken as being (as the case may require) to—
  - (a) the demand in so far as it relates to any amount due to the Secretary of State, or
  - (b) the demand in so far as it relates to any amount due to the Scottish Ministers, and related expressions are to be read accordingly.
- (6) The Secretary of State or the Scottish Ministers may recover the amount for which a demand for payment is made under subsection (2) from the person who made the compensation payment.
- (7) If the person who made the compensation payment resides or carries on business in England or Wales and a county court so orders, the amount demanded is recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.
- (8) If the person who made the compensation payment resides or carries on business in Scotland, the demand may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (9) A document which states that it is a record of the amount recoverable under subsection (6) is conclusive evidence that the amount is so recoverable if it is signed by a person authorised to do so by the Secretary of State or the Scottish Ministers (as the case may be).
- (10) For the purposes of subsection (9), a document purporting to be signed by a person authorised to do so by the Secretary of State or the Scottish Ministers (as the case may be) is to be treated as so signed unless the contrary is proved.

### *Review and appeal*

#### **156 Review of certificates**

- (1) The Secretary of State or the Scottish Ministers must review a certificate issued by him or them if the certificate relates to a claim made by or on behalf of an injured person—
  - (a) in respect of which, after the certificate is issued, a court in England and Wales or Scotland orders a reduction of damages in accordance with section 1 of the Law Reform (Contributory Negligence) Act 1945 (c. 28),
  - (b) in respect of which, after the certificate is issued, a court in Northern Ireland orders a reduction of damages in accordance with section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23),
  - (c) in respect of which, after the certificate is issued, a court in a country other than England and Wales, Scotland or Northern Ireland orders a reduction of damages under any provision of the law of that country which appears to the Secretary of State or the Scottish Ministers (as the case may be) to correspond to section 1 of the Law Reform (Contributory Negligence) Act 1945,
  - (d) in respect of which, after the certificate is issued, an officer of a court in England and Wales or Northern Ireland enters or seals an agreed judgement or order which specifies—
    - (i) that the damages are to be reduced to reflect the injured person's share in the responsibility for the injury in question, and

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- (ii) the amount or proportion by which they are to be so reduced,
  - (e) in the case of which, after the certificate is issued, the parties to any resulting action before a court in Scotland execute a joint minute which specifies—
    - (i) that the action has been settled extra-judicially, and
    - (ii) the matters mentioned in paragraph (d)(i) and (ii),
  - (f) in respect of which, after the certificate is issued, a document is made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland—
    - (i) which appears to the Secretary of State to correspond to an agreed judgement or order entered or sealed by an officer of a court in England and Wales, and
    - (ii) which specifies the matters mentioned in paragraph (d)(i) and (ii), or
  - (g) in the case of which, after the certificate is issued, a document is made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland—
    - (i) which appears to the Scottish Ministers to correspond to a joint minute executed by the parties to a resulting action before a court in Scotland specifying that the action has been settled extra-judicially, and
    - (ii) which specifies the matters mentioned in paragraph (d)(i) and (ii),
 and notification of the order, judgement, minute or document has been given to the Secretary of State or the Scottish Ministers (as the case may be) in the prescribed manner.
- (2) Regulations may make provision as to the circumstances in which the Secretary of State or the Scottish Ministers must review a certificate relating to a claim which, after the certificate is issued, becomes a qualifying claim (as defined in section 153(9)).
- (3) If—
- (a) the Secretary of State and the Scottish Ministers have issued certificates to a person specifying an amount (or amounts) for which that person is liable under section 150(2) in respect of the same injured person in consequence of the same injury, and
  - (b) either the Secretary of State or the Scottish Ministers subsequently adjusts or adjust the amount (or amounts) specified in the certificate issued by him or them on a review of, or an appeal against, that certificate,
- the other must review the certificate issued by him or them (as the case may be) if he is or they are satisfied that it is necessary or expedient to make consequential adjustments to that certificate.
- (4) The Secretary of State or the Scottish Ministers may review a certificate issued by him or them—
- (a) either within the prescribed period or in prescribed cases or circumstances, and
  - (b) either on application made for the purpose or on his or their initiative.
- (5) On a review under or by virtue of this section, the Secretary of State or the Scottish Ministers may—
- (a) confirm the certificate,
  - (b) issue a fresh certificate containing such variations as he considers or they consider appropriate, or
  - (c) revoke the certificate.

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- (6) But the Secretary of State or the Scottish Ministers may not vary a certificate so as to increase the amount, or the aggregate amount, specified unless it appears to him or them that the variation is required as a result of his or their having been supplied with incorrect or insufficient information by the person to whom the certificate is issued.
- (7) Subsections (5) and (6) of section 152 apply to certificates issued under subsection (5) (b) above as they apply to certificates issued under section 151.

## **157 Appeal against a certificate or a waiver decision**

- (1) An appeal against a certificate may be made by the person to whom the certificate was issued on one or more of the following grounds—
  - (a) that an amount (or amounts) specified in the certificate is (or are) incorrect,
  - (b) that an amount (or amounts) so specified takes (or take) into account—
    - (i) treatment which is not NHS treatment received by the injured person, as a result of his injury, at a health service hospital,
    - (ii) ambulance services which are not NHS ambulance services provided to the injured person as a result of his injury, or
    - (iii) treatment as mentioned in sub-paragraph (i) and ambulance services as mentioned in sub-paragraph (ii),
  - (c) that the payment on the basis of which the certificate was issued is not a compensation payment.
- (2) No appeal may be made until—
  - (a) the claim against the person to whom the certificate was issued, which gives rise to the compensation payment, has been finally disposed of, and
  - (b) payment of the amount (or amounts) specified in the certificate has been made to the Secretary of State or the Scottish Ministers (as the case may be), subject to subsection (4) and sections 158(6) and 159(5).
- (3) For the purposes of subsection (2)(a), if an award of damages in respect of a claim has been made under or by virtue of—
  - (a) section 32A(2)(a) of the Supreme Court Act 1981 (c. 54),
  - (b) section 12(2)(a) of, or paragraph 10(2)(a) of Schedule 6 to, the Administration of Justice Act 1982 (c. 53), or
  - (c) section 51(2)(a) of the County Courts Act 1984 (c. 28),(orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.
- (4) The Secretary of State or the Scottish Ministers may, on an application by the person to whom the certificate was issued, waive the requirement in subsection (2)(b) that payment of the amount (or amounts) specified in the certificate be made before making an appeal.
- (5) The Secretary of State or the Scottish Ministers may only grant a waiver if it appears to him or them that payment of the amount (or amounts) specified in the certificate would cause exceptional financial hardship.
- (6) An appeal against a decision of the Secretary of State or the Scottish Ministers on an application under subsection (4) (referred to in this section and sections 158 and 159 as a “waiver decision”) may be made by the person to whom the certificate was issued.

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- (7) Regulations may make provision—
- (a) as to the manner in which, and the time within which, an appeal against a certificate or waiver decision may be made,
  - (b) as to the procedure to be followed if an appeal against a certificate or waiver decision is made,
  - (c) as to the circumstances in which appeals may be consolidated (including the consolidation of an appeal against a certificate issued by the Secretary of State with an appeal against a certificate issued by the the Scottish Ministers), and
  - (d) for the purpose of enabling an appeal against a certificate to be treated as an application for a review under section 156.

### **158 Appeal tribunals**

- (1) The Secretary of State or the Scottish Ministers must refer to an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 (c. 14) an appeal against—
  - (a) a certificate, or
  - (b) a waiver decision.
- (2) In determining an appeal against a certificate, the tribunal must take into account any decision of a court relating to the same, or any similar, issue arising in connection with the injury in question.
- (3) On an appeal against a certificate, the tribunal may—
  - (a) confirm the amount or amounts specified in the certificate,
  - (b) specify any variations which are to be made on the issue of a fresh certificate under subsection (4), or
  - (c) declare that the certificate is to be revoked.
- (4) When the Secretary of State or the Scottish Ministers (as the case may be) has or have received the decision of the tribunal on an appeal against a certificate, he or they must in accordance with that decision—
  - (a) confirm the certificate,
  - (b) issue a fresh certificate, or
  - (c) revoke the certificate.
- (5) Subsections (5) and (6) of section 152 apply to certificates issued under subsection (4) (b) above as they apply to certificates issued under section 151.
- (6) On an appeal against a waiver decision, the tribunal may—
  - (a) confirm the decision, or
  - (b) waive the requirement in question.
- (7) Regulations under section 157 may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under subsection (1).

### **159 Appeal to Social Security Commissioner**

- (1) An appeal may be made to a Commissioner against any decision of an appeal tribunal under section 158 on the ground that the decision was erroneous in point of law.

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- (2) An appeal under this section may be made by—
  - (a) the Secretary of State or the Scottish Ministers (as the case may be), or
  - (b) the person to whom the certificate was issued.
- (3) If an appeal is made under this section, subsections (7) to (12) of section 14 of the 1998 Act apply to the appeal as they apply to an appeal under that section (reading references to a tribunal as references to an appeal tribunal constituted as mentioned in section 158(1)).
- (4) In a case in which subsection (7) or (8)(b) of section 14 of the 1998 Act applies by virtue of subsection (3) above to an appeal against a decision of an appeal tribunal under subsection (3) of section 158, subsections (2) to (4) of that section apply as they apply to an appeal determined on a reference under subsection (1)(a) of that section.
- (5) In a case in which subsection (7) or (8)(b) of section 14 of the 1998 Act applies by virtue of subsection (3) above to an appeal against a decision of an appeal tribunal under subsection (6) of section 158, the appeal tribunal may—
  - (a) confirm the waiver decision, or
  - (b) waive the requirement in question.
- (6) In a case in which subsection (8)(a) of section 14 of the 1998 Act applies by virtue of subsection (3) above to an appeal against a decision of an appeal tribunal under subsection (3) of section 158, subsection (4) of that section applies as if the references to the decision of the tribunal on an appeal against a certificate were references to the decision of the Commissioner on an appeal under this section.
- (7) In this section—

“Commissioner” has the same meaning as in Chapter 2 of Part 1 of the 1998 Act, and

“the 1998 Act” means the Social Security Act 1998 (c. 14).

### *Information*

#### **160 Provision of information**

- (1) If compensation is sought in consequence of any injury suffered by an injured person, such information with respect to the circumstances of the case as may be prescribed must be given by the following persons to the Secretary of State or the Scottish Ministers (as the case may require)—
  - (a) the person against whom the claim is made and anyone acting on behalf of that person, whether or not proceedings have been commenced,
  - (b) the injured person or, if the injured person has died, his personal representative,
  - (c) anyone not within paragraph (a) who is, or is alleged to be, liable to any extent in respect of the injury,
  - (d) if the claim is not made by the injured person, the person by whom it is made,
  - (e) anyone acting on behalf of the person within any of paragraphs (b) to (d),
  - (f) the responsible body of each health service hospital at which the injured person has received NHS treatment as a result of his injury,
  - (g) any ambulance trust which provided NHS ambulance services as a result of his injury.

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- (2) A person who is required to give information under this section must do so—
- (a) in the prescribed manner, and
  - (b) within the prescribed period.
- (3) Regulations under this section may, in particular, require the provision of information about any NHS treatment which an injured person has received at a health service hospital and any NHS ambulance services provided to the injured person.
- (4) In this section—
- “ambulance trust”—
- (a) in relation to England or Wales, means—
    - (i) a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19), or
    - (ii) an NHS foundation trust,
  - (b) in relation to Scotland, means a Special Health Board established under section 2(1)(b) of the 1978 Act;
- “responsible body”, in relation to a health service hospital, means—
- (a) in the case of a hospital vested in—
    - (i) a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19) or section 12A of the 1978 Act, or
    - (ii) a Primary Care Trust,
 the trust, and
  - (b) in any other case, the body responsible for the management of the hospital.

## **161 Use of information held by the Secretary of State or the Scottish Ministers etc.**

- (1) Subsection (2) applies to information which is held—
- (a) by the Secretary of State, or
  - (b) by a person providing services to the Secretary of State in connection with the provision of those services,
- for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) Act 1997 (c. 27).
- (2) The information may—
- (a) be used for the purposes of, or for any purpose connected with, the exercise of functions under this Part, and
  - (b) be supplied to a qualifying person for use for those purposes.
- (3) In subsection (2), “qualifying person” means—
- (a) in the case of information held by the Secretary of State—
    - (i) a person providing services to the Secretary of State, or
    - (ii) the Scottish Ministers or a person providing services to the Scottish Ministers, or
  - (b) in the case of information held by a person providing services to the Secretary of State—



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- (i) the Secretary of State or another person providing services to the Secretary of State, or
  - (ii) the Scottish Ministers or a person providing services to the Scottish Ministers.
- (4) Subsection (5) applies to information which is held—
  - (a) by the Secretary of State or the Scottish Ministers, or
  - (b) by a person providing services to the Secretary of State or the Scottish Ministers in connection with provision of those services,for the purposes of, or for any purpose connected with, the exercise of functions under this Part.
- (5) The information may—
  - (a) be used for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) Act 1997, and
  - (b) be supplied to a qualifying person for use for those purposes.
- (6) In subsection (5), “qualifying person” means—
  - (a) in the case of information held by the Secretary of State, a person providing services to the Secretary of State,
  - (b) in the case of information held by the Scottish Ministers, the Secretary of State or a person providing services to the Secretary of State,
  - (c) in the case of information held by a person providing services to the Secretary of State, the Secretary of State or another person providing services to the Secretary of State,
  - (d) in the case of information held by a person providing services to the Scottish Ministers, the Secretary of State or a person providing services to the Secretary of State.

#### *Payments to hospitals or ambulance trusts*

### **162 Payment of NHS charges to hospitals or ambulance trusts**

- (1) If the Secretary of State receives or the Scottish Ministers receive a payment of relevant NHS charges under section 150(2)—
  - (a) if the payment relates only to NHS treatment received at a health service hospital, he or they must pay the amount received to the responsible body of the health service hospital,
  - (b) if the payment relates only to the provision of NHS ambulance services, he or they must pay the amount received to the relevant ambulance trust,
  - (c) if the payment relates to NHS treatment received at more than one health service hospital, he or they must divide the amount received among the responsible bodies of the hospitals concerned in such manner as he considers or they consider appropriate,
  - (d) if the payment relates to NHS treatment received at one or more health service hospitals and the provision of NHS ambulance services, he or they must divide the amount received among the responsible body or bodies of the hospital or hospitals and any relevant ambulance trusts concerned in such manner as he considers or they consider appropriate.

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- (2) Subsection (1) does not apply to any amount received by the Secretary of State or the Scottish Ministers under section 150(2) which he is or they are required to repay in accordance with regulations under section 153(2).
- (3) Regulations under this section may—
- (a) make provision for the manner in which and intervals at which any payments due under this section are to be made,
  - (b) make provision for cases where the responsible body of the health service hospital or relevant ambulance trust concerned has ceased to exist (including provision modifying this Part).
- (4) Any amounts received under this section by the responsible bodies of the health service hospitals concerned must be used for the purposes of providing goods and services for the benefit of patients receiving NHS treatment at those hospitals.
- (5) Any amounts received under this section by the relevant ambulance trusts concerned must be used for the purposes of NHS ambulance services.
- (6) In this section—
- “relevant ambulance trust”—
- (a) in relation to England or Wales, means—
    - (i) the National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19), or
    - (ii) the NHS foundation trust,
 

which is designated by the Secretary of State for the purposes of this section in relation to the health service hospital to which the injured person was taken for treatment,
  - (b) in relation to Scotland, means the Special Health Board, established under section 2(1)(b) of the 1978 Act, which is designated by the Scottish Ministers for the purposes of this section in relation to the health service hospital to which the injured person was taken for treatment;
- “responsible body” has the meaning given in section 160(4).

*Miscellaneous and general*

**163 Regulations governing lump sums, periodical payments etc**

- (1) Regulations may make provision (including provision modifying this Part)—
- (a) for cases to which section 150(2) applies in which two or more compensation payments in the form of lump sums are made by the same person in respect of the same injury,
  - (b) for cases to which section 150(2) applies in which an agreement is entered into for the making of—
    - (i) periodical compensation payments (whether of an income or capital nature), or
    - (ii) periodical compensation payments and lump sum compensation payments,
  - (c) for cases in which the compensation payment to which section 150(2) applies is an interim payment of damages which a court orders to be repaid.

- (2) Regulations made by virtue of subsection (1)(a) may (among other things) provide—
  - (a) for giving credit for amounts already paid, and
  - (b) for the payment by any person of any balance or the recovery from any person of any excess.
- (3) Regulations may make provision modifying the application of this Part in relation to cases in which a payment into court is made and, in particular, may provide—
  - (a) for the making of a payment into court to be treated in prescribed circumstances as the making of a compensation payment,
  - (b) for application for, and issue of, certificates.

#### **164 Liability of insurers**

- (1) If a compensation payment is made in a case where—
  - (a) a person is liable to any extent in respect of the injury, and
  - (b) the liability is covered to any extent by a policy of insurance,the policy is also to be treated as covering any liability of that person under section 150(2).
- (2) Liability imposed on the insurer by subsection (1) cannot be excluded or restricted.
- (3) For that purpose excluding or restricting liability includes—
  - (a) making the liability or its enforcement subject to restrictive or onerous conditions,
  - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
  - (c) excluding or restricting rules of evidence or procedure.
- (4) Regulations may in prescribed cases limit the amount of the liability imposed on the insurer by subsection (1).
- (5) This section applies in relation to policies of insurance issued before (as well as those issued after) the date on which it comes into force.
- (6) References in this section to policies of insurance and their issue include references to contracts of insurance and their making.

#### **165 Power to apply Part 3 to treatment at non-health service hospitals**

- (1) Regulations may make provision for this Part to apply, with such modifications as may be prescribed, if—
  - (a) a person makes a compensation payment as mentioned in section 150(1)(a), but
  - (b) the person to or in respect of whom the payment is made has—
    - (i) received treatment as a result of the injury at a qualifying hospital under an NHS arrangement,
    - (ii) been provided with NHS ambulance services as a result of the injury for the purpose of taking him to a qualifying hospital for treatment under an NHS arrangement (unless he was dead on arrival at that hospital), or

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- (iii) received treatment as mentioned in sub-paragraph (i) and been provided with NHS ambulance services as mentioned in sub-paragraph (ii),  
(subject to subsection (2)).
- (2) Subsection (1)(b) does not apply where the person to or in respect of whom the payment is made receives, or is taken to a hospital for, treatment which would be provided as mentioned in paragraph (a), (b) or (d) of section 150(7) if it were provided at a health service hospital.
- (3) In subsection (1), “NHS arrangement” means an arrangement or agreement between—
  - (a) the hospital in question or a body responsible for it, and
  - (b) any of the following—
    - (i) a Primary Care Trust,
    - (ii) a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19) or section 12A of the 1978 Act,
    - (iii) a Local Health Board,
    - (iv) a Health Board or Special Health Board established under section 2 of the 1978 Act, or
    - (v) an NHS foundation trust.
- (4) Regulations under subsection (1) may include provision excluding the application of sections 157 to 159 of the Road Traffic Act 1988 (c. 52) in such description of case as may be prescribed.
- (5) In this section “qualifying hospital” means a hospital (within the meaning of section 128(1) of the 1977 Act or section 108(1) of the 1978 Act) which is not a health service hospital.

## **166 The Crown**

This Part binds the Crown.

## **167 Regulations**

- (1) Any power to make regulations conferred by this Part is exercisable—
  - (a) in relation to England and Wales, by the Secretary of State; and
  - (b) in relation to Scotland, by the Scottish Ministers.
- (2) Regulations under section 157(7) may only be made by the Scottish Ministers with the consent of the Secretary of State.

## **168 Interpretation of Part 3**

In this Part—

“the 1978 Act” means the National Health Service (Scotland) Act 1978 (c. 29);

“compensation payment” has the meaning given in section 150;

“health service hospital” means a health service hospital within the meaning of the 1977 Act or the 1978 Act;

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“injured person” has the meaning given in section 150(1);  
“NHS ambulance services” means ambulance services provided under section 3(1)(c) of the 1977 Act or section 45 of the 1978 Act;  
“NHS treatment” has the meaning given in section 150(7);  
“prescribed” means prescribed by regulations.

## **169 Consequential and minor repeals**

- (1) The Road Traffic (NHS Charges) Act 1999 (c. 3) shall cease to have effect.
- (2) In the Road Traffic Act 1988, in section 161(1), in the definition of “hospital”, paragraph (b) is omitted.

## **PART 4**

### DENTAL AND MEDICAL SERVICES

#### *Primary dental services*

## **170 Provision of primary dental services**

In the 1977 Act, after section 16C insert—

### *“Functions of Primary Care Trusts and Local Health Boards*

#### **16CA Primary dental services**

- (1) Each Primary Care Trust and Local Health Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary dental services within its area, or secure their provision within its area.
- (2) A Primary Care Trust or Local Health Board may (in addition to any other power conferred on it) provide primary dental services itself (whether within or outside its area).
- (3) Each Primary Care Trust and Local Health Board must publish information about such matters as may be prescribed in relation to the primary dental services for which it makes provision under this Part.
- (4) A body on which functions are conferred under this section must co-operate with any other such body in the discharge of their respective functions relating to the provision of primary dental services under this Part.
- (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary dental services for the purposes of this Part.
- (6) Regulations under subsection (5) may in particular describe services by reference to the manner or circumstances in which they are provided.”

**171 Dental public health**

(1) In the 1977 Act, after section 16CA (as inserted by section 170 above) insert—

**“16CB Dental public health**

- (1) A Primary Care Trust shall have such functions in relation to dental public health in England as may be prescribed.
- (2) A Local Health Board shall have such functions in relation to dental public health in Wales as may be prescribed.
- (3) The National Assembly for Wales shall have such functions in relation to dental public health in Wales as may be prescribed.
- (4) The functions of a Primary Care Trust under this section may be discharged—
  - (a) by the Trust itself;
  - (b) by the Trust and one or more other Primary Care Trusts acting jointly; or
  - (c) by any other person or body in accordance with arrangements made by the Trust.
- (5) The functions of a Local Health Board under this section may be discharged—
  - (a) by the Board itself;
  - (b) by the Board and one or more other Local Health Boards acting jointly; or
  - (c) by any other person or body in accordance with arrangements made by the Board.”

(2) Section 5(1A) of the 1977 Act shall cease to have effect.

**172 General dental services contracts**

(1) In the 1977 Act, after section 28J insert—

*“General dental services contracts***28K General dental services contracts: introductory**

- (1) A Primary Care Trust or Local Health Board may enter into a contract under which primary dental services are provided in accordance with the following provisions of this Part.
- (2) A contract under this section is called in this Act a “general dental services contract”.
- (3) Subject to any provision made by or under this Part, a general dental services contract may make such provision as may be agreed between the Primary Care Trust or Local Health Board and the contractor in relation to—
  - (a) the services to be provided under the contract (which may include services which are not primary dental services),
  - (b) remuneration under the contract, and
  - (c) any other matters.

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- (4) In this Part, “contractor”, in relation to a general dental services contract, means any person entering into the contract with the Primary Care Trust or Local Health Board.

### **28L Requirement to provide certain primary dental services**

- (1) A general dental services contract must require the contractor or contractors to provide, for his or their patients, primary dental services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

### **28M Persons eligible to enter into GDS contracts**

- (1) A Primary Care Trust or Local Health Board may, subject to such conditions as may be prescribed, enter into a general dental services contract with—
- (a) a dental practitioner;
  - (b) a dental corporation;
  - (c) two or more individuals practising in partnership where the conditions in subsection (2) are satisfied.
- (2) The conditions referred to in subsection (1)(c) in relation to a partnership are that—
- (a) at least one partner is a dental practitioner, and
  - (b) any partner who is not a dental practitioner is either—
    - (i) an NHS employee,
    - (ii) a section 28C employee, section 17C employee or Article 15B employee,
    - (iii) a health care professional who is engaged in the provision of services under this Act, or
    - (iv) an individual falling within section 28D(1)(bc) above.
- (3) Regulations may make provision as to the effect, in relation to a general dental services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

- (4) In this section—

“dental corporation” means a body corporate which, in accordance with the provisions of Part 4 of the Dentists Act 1984, is entitled to carry on the business of dentistry;

“health care professional” means a person who is a member of a profession regulated by a body mentioned (at the time the contract in question is entered into) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002; and

“NHS employee”, “section 28C employee”, “section 17C employee” and “Article 15B employee” have the same meanings as in section 28D above.

**28N GDS contracts: payments**

- (1) The appropriate authority may give directions as to payments to be made under general dental services contracts.
- (2) A general dental services contract must require payments to be made under the contract in accordance with directions for the time being in force under this section.
- (3) Without prejudice to the generality of the power under subsection (1), a direction under that subsection may—
  - (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction, or
    - (ii) a determination made by any person in accordance with factors specified in the direction;
  - (c) provide for the making of payments in respect of individual practitioners;
  - (d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Primary Care Trust or Local Health Board only if it is satisfied as to certain conditions);
  - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the appropriate authority—
  - (a) must consult any body appearing to the authority to be representative of persons to whose remuneration the direction would relate, and
  - (b) may consult such other persons as the authority thinks appropriate.
- (5) Section 18(1) and (3)(b) above apply in relation to directions under this section.
- (6) References in this section to payments include fees, allowances, reimbursements, loans and repayments.
- (7) In this section “appropriate authority” means—
  - (a) the Secretary of State, in relation to a contract made by a Primary Care Trust;
  - (b) the National Assembly for Wales, in relation to a contract made by a Local Health Board.

**28O GDS contracts: other required terms**

- (1) A general dental services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).
- (2) Regulations under subsection (1) may in particular make provision as to—



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- (a) the manner in which, and standards to which, services are to be provided;
  - (b) the persons who perform services;
  - (c) the persons to whom services are to be provided;
  - (d) the variation of contract terms (other than terms required by or under this Part);
  - (e) rights of entry and inspection (including inspection of clinical records and other documents);
  - (f) the circumstances in which, and the manner in which, the contract may be terminated;
  - (g) enforcement;
  - (h) the adjudication of disputes.
- (3) Regulations under subsection (2)(d) may make provision as to the circumstances in which a Primary Care Trust or Local Health Board may impose a variation of contract terms.
- (4) Regulations under subsection (1) must make provision as to the right of patients to choose the persons from whom they are to receive services.

#### **28P GDS contracts: disputes and enforcement**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general dental services contract.
- (2) Regulations under subsection (1) may make provision—
- (a) for the referral of the terms of the proposed contract to the Secretary of State or National Assembly for Wales; and
  - (b) for the Secretary of State or Assembly, or a person appointed by him or it, to determine the terms on which the contract may be entered into.
- (3) Regulations may make provision for a person or persons entering into a general dental services contract to be regarded as a health service body for any purposes of section 4 of the National Health Service and Community Care Act 1990, in circumstances where he or they so elect.
- (4) Regulations under subsection (3) may include provision as to the application of section 4 of that Act in cases where—
- (a) persons practising in partnership elect to become a health service body; and
  - (b) there is a change in the membership of the partnership.
- (5) Where—
- (a) by virtue of regulations under subsection (3), subsection (7) of section 4 of that Act applies in relation to a general dental services contract, and
  - (b) a direction as to payments is made under that provision in relation to the contract,
- the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.”

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- (2) Sections 35 and 36 of the 1977 Act (arrangements for general dental services) shall cease to have effect.

### **173 General dental services: transitional**

- (1) The appropriate authority shall by order make transitional provision in respect of persons who, immediately before the coming into force of section 172, are providing services under section 35 of the 1977 Act (general dental services).
- (2) An order under this section may provide that, in such circumstances as the order may prescribe, a Primary Care Trust or Local Health Board must, if any such person so wishes, enter into a general dental services contract with him; and the order may make provision as to the terms of any such contract.
- (3) An order under this section may provide that, in such circumstances as the order may prescribe, a Primary Care Trust or Local Health Board must, if any such person so wishes, enter into a contract with him, containing such terms as the order may specify, for the provision of dental services.
- (4) An order under this section may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under subsection (2) or (3), including provision for the determination of disputes by the appropriate authority or a person appointed by the authority.
- (5) An order under this section may make provision in respect of a period beginning before the coming into force of the provision (or of section 172), provided that the provision is not as a whole detrimental to the remuneration of the persons to whom it relates.
- (6) In this section—
- “appropriate authority” means—
- (a) the Secretary of State, in relation to England; and
- (b) the Assembly, in relation to Wales;
- “general dental services contract” means a contract under section 28K of the 1977 Act (as inserted by section 172(1)).

### *Primary medical services*

### **174 Provision of primary medical services**

In the 1977 Act, after section 16CB (as inserted by section 171 above) insert—

#### **“16CC Primary medical services**

- (1) Each Primary Care Trust and Local Health Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary medical services within its area, or secure their provision within its area.
- (2) A Primary Care Trust or Local Health Board may (in addition to any other power conferred on it)—
- (a) provide primary medical services itself (whether within or outside its area);

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- (b) make such arrangements for their provision (whether within or outside its area) as it thinks fit, and may in particular make contractual arrangements with any person.
- (3) Each Primary Care Trust and Local Health Board must publish information about such matters as may be prescribed in relation to the primary medical services provided under this Part.
- (4) A body on which functions are conferred under this section must co-operate with any other such body in the discharge of their respective functions relating to the provision of primary medical services under this Part.
- (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Part.
- (6) Regulations under this section may in particular describe services by reference to the manner or circumstances in which they are provided.”

## **175 General medical services contracts**

- (1) In the 1977 Act, after section 28P (as inserted by section 172 above) insert—

*“General medical services contracts*

### **28Q General medical services contracts: introductory**

- (1) A Primary Care Trust or Local Health Board may enter into a contract under which primary medical services are provided in accordance with the following provisions of this Part.
- (2) A contract under this section is called in this Act a “general medical services contract”.
- (3) Subject to any provision made by or under this Part, a general medical services contract may make such provision as may be agreed between the Primary Care Trust or Local Health Board and the contractor or contractors in relation to—
  - (a) the services to be provided under the contract,
  - (b) remuneration under the contract, and
  - (c) any other matters.
- (4) The services to be provided under a general medical services contract may include—
  - (a) services which are not primary medical services;
  - (b) services to be provided outside the area of the Primary Care Trust or Local Health Board.
- (5) In this Part, “contractor”, in relation to a general medical services contract, means any person entering into the contract with the Primary Care Trust or Local Health Board.

### **28R Requirement to provide certain primary medical services**

- (1) A general medical services contract must require the contractor or contractors to provide, for his or their patients, primary medical services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe services by reference to the manner or circumstances in which they are provided.

### **28S Persons eligible to enter into GMS contracts**

- (1) A Primary Care Trust or Local Health Board may, subject to such conditions as may be prescribed, enter into a general medical services contract with—
  - (a) a medical practitioner;
  - (b) two or more individuals practising in partnership where the conditions in subsection (2) are satisfied; or
  - (c) a company limited by shares where the conditions in subsection (3) are satisfied.
- (2) The conditions referred to in subsection (1)(b) in relation to a partnership are that—
  - (a) at least one partner is a medical practitioner; and
  - (b) any partner who is not a medical practitioner is either—
    - (i) an NHS employee;
    - (ii) a section 28C employee, section 17C employee or Article 15B employee;
    - (iii) a health care professional who is engaged in the provision of services under this Act; or
    - (iv) an individual falling within section 28D(1)(bc) above.
- (3) The conditions referred to in subsection (1)(c) in relation to a company are that—
  - (a) at least one share in the company is legally and beneficially owned by a medical practitioner; and
  - (b) any share which is not so owned is legally and beneficially owned by a person referred to in subsection (2)(b)(i) to (iv).
- (4) Regulations may make provision as to the effect, in relation to a general medical services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.
- (5) In this section—

“health care professional” has the same meaning as in section 28M above;

“NHS employee”, “section 28C employee”, “section 17C employee” and “Article 15B employee” have the same meanings as in section 28D above.

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### **28T GMS contracts: payments**

- (1) The appropriate authority may give directions as to payments to be made under general medical services contracts.
- (2) A general medical services contract must require payments to be made under the contract in accordance with directions for the time being in force under this section.
- (3) Without prejudice to the generality of the power under subsection (1), directions under that subsection may—
  - (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction; or
    - (ii) a determination made by any person in accordance with factors specified in the direction;
  - (c) provide for the making of payments in respect of individual practitioners;
  - (d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Primary Care Trust or Local Health Board only if it is satisfied as to certain conditions);
  - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the appropriate authority—
  - (a) must consult any body appearing to the authority to be representative of persons to whose remuneration the direction would relate, and
  - (b) may consult such other persons as the authority thinks appropriate.
- (5) Section 18(1) and (3)(b) apply in relation to directions under this section.
- (6) References in this section to payments include fees, allowances, reimbursements, loans and repayments.
- (7) In this section “appropriate authority” means—
  - (a) the Secretary of State, in relation to a contract made by a Primary Care Trust;
  - (b) the National Assembly for Wales, in relation to a contract made by a Local Health Board.

### **28U GMS contracts: prescription of drugs etc**

- (1) A general medical services contract must contain provision requiring the contractor or contractors to comply with any directions given by the appropriate authority for the purposes of this section as to the drugs, medicines or other substances which may or may not be ordered for patients in the provision of medical services under the contract.

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- (2) A direction under this section must, subject to subsection (3), be given by regulations.
- (3) A direction under this section may be given by an instrument in writing where it gives effect to a request made in writing to the authority making the direction by a person who is a holder of a Community marketing authorization or United Kingdom marketing authorisation in respect of the drug, medicine or other substance to which the request relates.
- (4) A direction under this section given by an instrument in writing may be varied or revoked by a further direction under this section (whether given by an instrument in writing or by regulations).
- (5) In this section—  
     “appropriate authority” has the same meaning as in section 28T above;  
     “Community marketing authorization” and “United Kingdom marketing authorisation” have the meanings given by regulation 1 of the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994 ([S.I. 1994/3144](#)).

#### **28V GMS contracts: other required terms**

- (1) A general medical services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).
- (2) Regulations under subsection (1) may in particular make provision as to—
- (a) the manner in which, and standards to which, services are to be provided;
  - (b) the persons who perform services;
  - (c) the persons to whom services are to be provided;
  - (d) the variation of contract terms (other than terms required by or under this Part);
  - (e) rights of entry and inspection (including inspection of clinical records and other documents);
  - (f) the circumstances in which, and the manner in which, the contract may be terminated;
  - (g) enforcement;
  - (h) the adjudication of disputes.
- (3) Regulations making provision under subsection (2)(c) must make provision as to the circumstances in which a contractor or contractors—
- (a) must or may accept a person as a patient to whom services are provided under the contract; or
  - (b) may decline to accept a person as such a patient; or
  - (c) may terminate his or their responsibility for a patient.
- (4) Regulations under subsection (2)(d) may—
- (a) make provision as to the circumstances in which a Primary Care Trust or Local Health Board may impose a variation of contract terms;

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- (b) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description.
- (5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (6) Regulations under subsection (1) must make provision as to the right of patients to choose the persons from whom they are to receive services.

### **28W GMS contracts: disputes and enforcement**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract.
- (2) Regulations under subsection (1) may make provision—
  - (a) for the referral of the terms of the proposed contract to the Secretary of State or National Assembly for Wales; and
  - (b) for the Secretary of State or Assembly, or a person appointed by him or it, to determine the terms on which the contract may be entered into.
- (3) Regulations may make provision for a person or persons entering into a general medical services contract to be regarded as a health service body for any purposes of section 4 of the National Health Service and Community Care Act 1990, in circumstances where he or they so elect.
- (4) Regulations under subsection (3) may include provision as to the application of section 4 of that Act in cases where—
  - (a) persons practising in partnership elect to become a health service body; and
  - (b) there is a change in the membership of the partnership.
- (5) Where—
  - (a) by virtue of regulations under subsection (3), subsection (7) of section 4 of that Act applies in relation to a general medical services contract, and
  - (b) a direction as to payments is made under that subsection in relation to the contract,the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.”
- (2) Sections 29 to 34A of the 1977 Act (arrangements for general medical services) shall cease to have effect.

### **176 General medical services: transitional**

- (1) The appropriate authority shall by order make transitional provision in respect of persons who, immediately before the coming into force of section 175, are providing services under section 29 of the 1977 Act (general medical services).
- (2) An order under this section may provide that, in such circumstances as the order may prescribe, a Primary Care Trust or Local Health Board must, if any such person so wishes, enter into a general medical services contract with him; and the order may make provision as to the terms of any such contract.

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- (3) An order under this section may provide that, in such circumstances as the order may prescribe, a Primary Care Trust or Local Health Board must, if any such person so wishes, enter into a contract with him, containing such terms as the order may specify, for the provision of medical services.
- (4) An order under this section may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under subsection (2) or (3), including provision for the determination of disputes by the appropriate authority or a person appointed by the authority.
- (5) An order under this section may make provision in respect of a period beginning before the coming into force of the provision (or of section 175), provided that the provision is not as a whole detrimental to the remuneration of the persons to whom it relates.
- (6) In this section—
- “appropriate authority” means—
- (a) the Secretary of State, in relation to England; and
  - (b) the Assembly, in relation to Wales;
- “general medical services contract” means a contract under section 28Q of the 1977 Act (as inserted by section 175).

*Primary dental and medical services: supplementary*

**177 Arrangements under section 28C of the 1977 Act**

- (1) Section 28D of the 1977 Act (persons with whom arrangements under section 28C of that Act may be made) is amended as follows.
- (2) In subsection (1), for paragraphs (b) and (c) substitute—
- (b) a medical practitioner who meets the prescribed conditions;
  - (ba) a dental practitioner who meets the prescribed conditions;
  - (bb) a health care professional who meets the prescribed conditions;
  - (bc) an individual who is providing services—
    - (i) under a general medical services contract or general dental services contract;
    - (ii) in accordance with section 28C arrangements, section 17C arrangements or Article 15B arrangements; or
    - (iii) under section 19 or 25 of the 1978 Act or Article 56 or 61 of the Health and Personal Social Services (Northern Ireland) Order 1972 (1972 No. 1256 (N.I. 14));
 or has so provided them within such period as may be prescribed;”.
- (3) After subsection (1) insert—
- “(1A) The power under subsection (1) to make an agreement with a person falling within paragraph (bc) or (d) of that subsection is subject to such conditions as may be prescribed.”
- (4) In subsection (2), after the definition of “the 1978 Act” insert—
- ““health care professional” means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in question is



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

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made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;”.

(5) In that subsection, for the definition of “NHS employee” substitute—

““NHS employee” means an individual who, in connection with the provision of services in the health service in England and Wales, Scotland or Northern Ireland, is employed by—

- (a) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust;
- (b) a Primary Care Trust or Local Health Board;
- (c) a person who is providing services under a general medical services contract or a general dental services contract;
- (d) an individual who is providing services as specified in subsection (1)(bc)(iii) above;”.

(6) In the definitions of “section 17C employee” and “section 28C employee”, for “an individual providing” substitute “a person providing or performing”.

(7) In section 28E of the 1977 Act (regulations), in subsection (3), after paragraph (c) insert—

“(ca) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing services in accordance with section 28C arrangements;”.

(8) In that section, after subsection (3) insert—

“(3A) The regulations may also require payments to be made under the arrangements in accordance with directions given for the purpose by the Secretary of State; and section 18(1) and (3)(b) apply in relation to any such directions.

(3B) A direction under subsection (3A) may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.”

(9) In that section, after subsection (3B) (as inserted by subsection (8) above), insert—

“(3C) The regulations may also include provision requiring a Primary Care Trust or Local Health Board, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract or general dental services contract on prescribed terms with any person providing services under section 28C arrangements who so requests.”

(10) In that section, after subsection (3C) (as inserted by subsection (9) above) insert—

“(3D) The regulations may also include provision for the resolution of disputes as to the terms of any proposed section 28C arrangements, and in particular may make provision—

- (a) for the referral of the terms of the proposed arrangements to the Secretary of State or National Assembly for Wales; and
- (b) for the Secretary of State, or Assembly, or a person appointed by him or it, to determine the terms on which the arrangements may be entered into.”

(11) In that section, after subsection (3D) (as inserted by subsection (10) above) insert—

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

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“(3E) The regulations must provide for the circumstances in which a person providing primary medical services under section 28C arrangements—

- (a) must or may accept a person as a patient to whom such services are so provided;
- (b) may decline to accept a person as such a patient;
- (c) may terminate his responsibility for a patient.

(3F) The regulations must make provision as to the right of patients to choose the persons from whom they are to receive services under section 28C arrangements.”

(12) In that Act, sections 28F (choice of medical practitioner), 28G (choice of dental practitioner) and 28H (immunisation) shall cease to have effect.

### **178 Abolition of pilot schemes**

(1) Part 1 of the National Health Service (Primary Care) Act 1997 (c. 46) (power to make pilot schemes for the provision of personal medical and dental services) shall cease to have effect.

(2) This section extends to England and Wales only.

### **179 Persons performing primary medical and dental services**

(1) In the 1977 Act, after section 28W (as inserted by section 175 above) insert—

#### **“28X Persons performing primary medical and dental services**

(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical service for which a Primary Care Trust or Local Health Board is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust or Local Health Board.

(2) Regulations may provide that a health care professional of a prescribed description may not perform any primary dental service for which a Primary Care Trust or Local Health Board is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust or Local Health Board.

(3) For the purposes of this section—

- (a) “health care professional” means a person who is a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;
- (b) a Primary Care Trust or Local Health Board is responsible for a medical or dental service if it provides the service, or secures its provision, by or under any enactment.

(4) Regulations under this section may make provision in relation to lists under this section and in particular as to—

- (a) the preparation, maintenance and publication of a list;

- (b) eligibility for inclusion in a list;
- (c) applications for inclusion (including provision as to the Primary Care Trust or Local Health Board to which an application must be made, and for the procedure for applications and the documents to be supplied on application);
- (d) the grounds on which an application for inclusion may or must be granted or refused;
- (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits);
- (f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal);
- (g) circumstances in which a person included in a list may not withdraw from it;
- (h) payments to be made in respect of a person suspended from the list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or National Assembly for Wales, or a person appointed by him or it);
- (i) the criteria to be applied in making decisions under the regulations;
- (j) appeals against decisions made by a Primary Care Trust or Local Health Board under the regulations; and
- (k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals;

and may make any provision corresponding to anything in sections 49F to 49N below.

- (5) Regulations under this section may, in particular, also provide for—
  - (a) a person’s inclusion in a list to be subject to conditions determined by a Primary Care Trust or Local Health Board;
  - (b) a Trust or Board to vary the conditions or impose different ones;
  - (c) the consequences of failing to comply with a condition (including removal from the list);
  - (d) the review by a Trust or Board of decisions made by it by virtue of the regulations.
- (6) The imposition of such conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services to which the list relates, or
  - (b) preventing fraud.
- (7) Regulations making provision as to the matters referred to in subsection (4) (k) may in particular authorise the disclosure of information—
  - (a) by a Primary Care Trust or Local Health Board to the Secretary of State or the National Assembly for Wales; and
  - (b) by the Secretary of State or the National Assembly for Wales to a Primary Care Trust or Local Health Board.”

- (2) In section 49M(7) of that Act, at the end there is inserted “; and regulations under this subsection may include provision of the kind referred to in section 49I(10)”.

**180 Assistance and support**

In the 1977 Act, after section 28X (as inserted by section 179 above) insert—

**“28Y Assistance and support**

- (1) A Primary Care Trust or Local Health Board may provide assistance or support to—
  - (a) any person providing, or proposing to provide primary medical services or primary dental services under a general medical services contract or a general dental services contract;
  - (b) any person providing, or proposing to provide, such services in accordance with section 28C arrangements.
- (2) Assistance or support provided by a Primary Care Trust or Local Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Trust or Board thinks fit.
- (3) In this section “assistance” includes financial assistance.”

*Dental services: miscellaneous***181 Abolition of Dental Practice Board**

The Dental Practice Board is abolished.

**182 Special Health Authorities**

- (1) In section 16B of the 1977 Act (exercise of functions by Primary Care Trusts), at the end insert—
  - “(4) The Secretary of State may by order make provision for the transfer to a Special Health Authority of the rights and liabilities of a Primary Care Trust under a general dental services contract in a case where the Authority exercises functions of the Trust in relation to the contract by virtue of subsection (2)(b) above (and for their transfer back to the Trust where the Authority ceases to exercise those functions).”.
- (2) In section 16BC of that Act (exercise of functions by Local Health Boards), at the end insert—
  - “(4) The Assembly may by order make provision for the transfer to a Special Health Authority of the rights and liabilities of a Local Health Board under a general dental services contract in a case where the Authority exercises functions of the Board in relation to the contract by virtue of subsection (2)(b) above (and for their transfer back to the Board where the Authority ceases to exercise those functions).”.

**183 Charges for dental services**

- (1) In the 1977 Act, for sections 78A to 79A substitute—

### **“79 Dental charging**

- (1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for relevant dental services.
  - (2) Regulations under subsection (1) may in particular include provision—
    - (a) specifying the amount, or maximum amount, of any charge (or aggregate charge in respect of the provision for two or more relevant dental services);
    - (b) for calculating the amount of any charge;
    - (c) for the variation of the amount, or maximum amount, of any charge in cases of a prescribed description;
    - (d) for any charge not to be payable in cases of a prescribed description;
    - (e) for power to direct that a charge is not payable in any particular case;
    - (f) for the repayment of any charge (including provision as to the persons by whom, and manner in which, repayments are to be made).
  - (3) Regulations under subsection (1) may provide for sums which would otherwise be payable by a Primary Care Trust, Local Health Board or Special Health Authority to persons providing relevant dental services to be reduced by the amount of the charges authorised by the regulations.
  - (4) This section is subject to Schedule 12ZA.
  - (5) In this section and Schedule 12ZA “relevant dental services” means—
    - (a) dental treatment provided—
      - (i) under section 16CA(2) above (dental services provided by a Primary Care Trust or Local Health Board);
      - (ii) under a general dental services contract;
      - (iii) in accordance with section 28C arrangements; and
    - (b) the supply of dentures and other dental appliances under this Act.
  - (6) Any reference in this section or Schedule 12ZA to the supply of an appliance includes a reference to its repair, adjustment, refitting or replacement and, in the case of dentures, to their being relined or having additions made to them.”
- (2) After Schedule 12 to that Act insert—

### “SCHEDULE 12ZA

#### DENTAL CHARGING: EXEMPTIONS

#### **General exemptions**

- 1 (1) No charge is to be made under regulations under section 79(1) in respect of a relevant dental service provided for any person who at the prescribed time—
  - (a) was under 18;
  - (b) was under 19 and receiving qualifying full-time education;
  - (c) was pregnant; or

- (d) had given birth to a child within the previous 12 months.
- (2) In sub-paragraph (1)(b), “qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the person or body making the regulations.
- (3) For the purposes of sub-paragraph (2)—
  - (a) “recognised educational establishment” means an establishment recognised by the person or body making the regulations as being, or as comparable to, a school, college or university; and
  - (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.
- (4) In sub-paragraph (1)(d), “child” includes a still-born child (within the meaning of the Births and Deaths Registration Act 1953).
- (5) This paragraph is subject to paragraph 3.

**Repair and replacement**

- 2 (1) No charge is to be made under regulations under section 79(1) in respect of the repair or replacement of any appliance.
- (2) This paragraph is subject to paragraph 3.

**Exceptions to paragraphs 1 and 2**

- 3 Paragraphs 1 and 2 do not apply in relation to—
  - (a) the repair or replacement of any appliance of a prescribed description; or
  - (b) the repair or replacement of any appliance where it is determined in the prescribed manner—
    - (i) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied; or
    - (ii) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.

**Hospital patients**

- 4 No charge is to be made under regulations under section 79(1) in respect of any appliance supplied to a patient for the time being resident in a hospital.
- 5 Paragraph 4 does not apply where an appliance is supplied—
  - (a) under section 16CA(2) above;
  - (b) under a general dental services contract; or
  - (c) in accordance with section 28C arrangements.

**Arrest of bleeding**

- 6 No charge is to be made under regulations under section 79(1) in respect of the arrest of bleeding.

**Declarations and evidence**

- 7 Regulations may provide, with respect to any exemption under this Schedule, that it is to be a condition of the exemption that—
- (a) a declaration of the prescribed kind is made in the prescribed form and manner; or
  - (b) a certificate or other evidence of the prescribed kind is supplied in the prescribed form and manner.”
- (3) In section 126 of that Act—
- (a) in subsection (1), after “PCT order” insert “or an instrument to which subsection (1A) applies”;
  - (b) after subsection (1) insert—
 

“(1A) The Secretary of State may not make a statutory instrument containing the first regulations made under section 79(1) above (as substituted by the Health and Social Care (Community Health and Standards) Act 2003) unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.”
- (4) In respect of any period after the coming into force of this section but before the coming into force of section 178, section 79(5)(b) of the 1977 Act (as inserted by subsection (1) above) shall have effect as if it included a reference to the supply of dentures and other dental appliances in accordance with a pilot scheme under Part 1 of the National Health Service (Primary Care) Act 1997 (c. 46).

*General***184 Minor and consequential amendments**

Schedule 11 (which contains minor and consequential amendments relating to this Part) has effect.

**PART 5**

## MISCELLANEOUS

*Welfare Food Schemes***185 Replacement of the Welfare Food Schemes: Great Britain**

- (1) In the Social Security Act 1988 (c. 7), for section 13 (schemes for the distribution etc of welfare foods), substitute—

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

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**“13 Benefits under schemes for improving nutrition: pregnant women, mothers and children**

- (1) Regulations may establish one or more schemes to provide benefits for prescribed descriptions of—
  - (a) pregnant women,
  - (b) mothers, and
  - (c) children,with a view to helping and encouraging them to have access to, and to incorporate in their diets, food of a prescribed description.
- (2) Before establishing, or varying, a scheme the Secretary of State must consult the Scottish Ministers and the National Assembly for Wales (“the Assembly”).
- (3) A scheme may, in particular, specify requirements that must be satisfied—
  - (a) before a person may become entitled to a benefit;
  - (b) for a beneficiary to remain entitled to a continuing benefit.
- (4) A scheme may also include provision—
  - (a) for a benefit to consist of food of a prescribed description being provided by—
    - (i) a person who supplies, or arranges for the supply of, food of that description for beneficiaries under the scheme;
    - (ii) a person providing a service (such as day care) for the recipient of the benefit; or
    - (iii) a health service body;
  - (b) for the use of vouchers, or similar arrangements, in connection with the provision of benefits;
  - (c) that a person taking part in the scheme, otherwise than as a beneficiary, must be registered under the scheme;
  - (d) for the payment by the Secretary of State of sums to persons registered in accordance with a provision of a kind mentioned in paragraph (c), in respect of things provided or done by them in accordance with the scheme;
  - (e) for the making of payments to such persons entitled to receive benefits as may be determined by or under the scheme;
  - (f) for the delegation, in accordance with provisions of the scheme, of prescribed functions under the scheme;
  - (g) for the scheme, or prescribed provisions of the scheme, to be administered on behalf of the Secretary of State by such health service body, or other description of body, as may be prescribed;
  - (h) requiring prescribed categories of persons to take reasonable steps to provide—
    - (i) to a person authorised for the purpose in accordance with the scheme,
    - (ii) on production, if required, of evidence of his authority,such information or evidence as may be reasonably needed in connection with administering the scheme.



- (5) Provision of a kind mentioned in subsection (4)(h) may, in particular—
- (a) require information or evidence to be provided in a legible form;
  - (b) authorise the taking of copies or making of extracts;
  - (c) require an explanation by the information provider of anything which he has provided;
  - (d) require an information provider to state, to the best of his knowledge and belief, where information or evidence that he has failed to provide is held.
- (6) The power to prescribe descriptions of food (conferred by subsection (1)) is to be exercised, in relation to the operation of a scheme in Wales, by regulations made by the Assembly.
- (7) The Secretary of State may give such directions—
- (a) to a body administering a scheme (or part of a scheme),
  - (b) in relation to matters relating to the operation of the scheme (or that part of the scheme),
- as he considers appropriate.
- (8) The Assembly may, with the agreement of the Secretary of State, give such directions—
- (a) to a body administering a scheme (or part of a scheme),
  - (b) in relation to matters relating to the operation of the scheme (or that part of the scheme) in Wales,
- as it considers appropriate.
- (9) A scheme may direct that prescribed enactments relating to the administration of benefit under the Social Security Administration Act 1992 (c. 5) (including enactments relating to offences and criminal proceedings) are to have effect for the purpose of administering the scheme subject to such modifications (if any) as may be prescribed.
- (10) The Secretary of State may not make a statutory instrument containing the first set of regulations made under subsection (1) unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (11) In this section—
- “benefit”, in relation to a scheme, means a benefit under the scheme;
  - “children” has such meaning as may be prescribed;
  - “enactment” includes an Act of the Scottish Parliament and a provision made under an enactment;
  - “food” includes vitamins, minerals and other dietary supplements;
  - “health service body” has such meaning as may be prescribed;
  - “information provider” means the person who is required to provide information or, where that person is a body corporate, any person who is, or at any time has been, an officer or employee of the body corporate;
  - “pregnant” includes recently pregnant;
  - “prescribed” means prescribed by regulations;

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

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“regulations”, except in subsection (6), means regulations made by the Secretary of State;

“scheme” means a scheme made under this section;

“women” includes persons under the age of 18.”

(2) In section 15A of that Act—

- (a) in subsection (2), after the first “instrument” insert “made by the Secretary of State”; and
- (b) omit subsection (3).

## **186 Replacement of the Welfare Food Schemes: Northern Ireland**

An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of section 185 above—

- (a) is not subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) is subject to annulment in pursuance of a resolution of either House of Parliament.

### *Appointments and employment*

## **187 Appointments to certain health and social care bodies**

- (1) This section applies to a body (however established) which has functions relating to—
  - (a) health;
  - (b) social care;
  - (c) the regulation of professions associated with health or social care.
- (2) The Secretary of State may direct a Special Health Authority to exercise so much of the appointments function relating to a body to which this section applies as is specified in the direction.
- (3) If the Secretary of State gives a direction under subsection (2) the 1977 Act has effect as if—
  - (a) the direction is a direction of the Secretary of State under section 16D of that Act;
  - (b) the function is exercisable by the Special Health Authority under section 16D.
- (4) If the Secretary of State gives a direction under subsection (2) in respect of a body which exercises functions in relation to any part of the United Kingdom other than England and Wales subsection (5) applies—
  - (a) at the time the direction is given;
  - (b) for the purposes of anything done by a Special Health Authority in pursuance of the direction.
- (5) Sections 11 and 16D of and (so far as relating to a Special Health Authority) Schedule 5 to the 1977 Act and any other provision of that Act which relates to the exercise of the function in pursuance of the direction must be taken to extend to any part of the United Kingdom in relation to which the body exercises functions.

- (6) The appointments function is any function exercisable by the Secretary of State in relation to—
- (a) the appointment of persons to be members of a body to which this section applies;
  - (b) the removal (whether permanently or otherwise) of such persons from the membership of the body,
- and includes any function relating to the appointment to or removal from (whether permanently or otherwise) any particular office in the membership of the body.
- (7) For the purposes of this section it is immaterial that a body has functions relating to matters other than those specified in subsection (1).
- (8) Schedule 12 amends certain enactments which provide for appointments to be made to certain bodies by or on the advice of the Privy Council.
- (9) If in the exercise of a power conferred by virtue of that Schedule the Privy Council gives a direction corresponding to a direction given by the Secretary of State under subsection (2) above, subsections (3) to (5) above apply for the purposes of the Privy Council's direction as they apply for the purposes of a direction given by the Secretary of State.
- (10) Nothing in this section applies in relation to the Commission for Healthcare Audit and Inspection or the Commission for Social Care Inspection.

### **188 Appointments to certain health and social care bodies: joint functions**

- (1) This section applies if (apart from section 187) the appointments function in relation to a body is exercisable jointly or concurrently with a person who is not a Minister of the Crown.
- (2) A requirement to exercise the function jointly or concurrently does not prevent the Secretary of State from making a direction in relation to the body but he must not do so unless he first consults the other person.
- (3) If a direction is given as mentioned in subsection (2) so much of the functions of the Secretary of State and of the other person as are specified in the direction is exercisable by the Special Health Authority acting alone.
- (4) Subsections (2) and (3) do not apply if the other person is the Scottish Ministers but that does not prevent the Secretary of State from giving a direction under section 187 in relation to the exercise of any function he has.
- (5) Appointments function has the same meaning as in section 187.

### **189 Validity of clearance for employment in certain NHS posts**

- (1) In section 7 of the Protection of Children Act 1999 (c. 14) (effect of inclusion of person on lists relating to suitability for child care positions) after subsection (3) there are inserted the following subsections—
  - “(3A) This section does not apply in relation to an offer of relevant NHS employment if each of the following paragraphs applies in respect of the individual to whom the offer is made—
    - (a) at the time the offer is made he is employed by an NHS body;

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

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- (b) that NHS body has ascertained that he is not included in the list kept under section 1 above or (during the period that he is employed by that body) another NHS body or an employment agency or employment business has ascertained that he is not included in the list;
  - (c) subsection (1A) (inserted by paragraph 26(2) of Schedule 4 to the Care Standards Act 2000) does not apply to him;
  - (d) he accepts the offer and for so long as he is employed in the employment to which the offer relates paragraph (c) applies.
- (3B) Relevant NHS employment is employment in a child care position with an NHS body.
- (3C) Each of the following is an NHS body—
- (a) a National Health Service trust;
  - (b) a Strategic Health Authority;
  - (c) an NHS foundation trust;
  - (d) a Health Authority;
  - (e) a Local Health Board;
  - (f) a Special Health Authority;
  - (g) a Primary Care Trust.”
- (2) In section 89 of the Care Standards Act 2000 (c. 14) (effect of inclusion of person on lists relating to suitability for care positions) after subsection (4) there are inserted the following subsections—
- “(4A) This section does not apply in relation to an offer of relevant NHS employment if each of the following paragraphs applies in respect of the individual to whom the offer is made—
- (a) at the time the offer is made he is employed by an NHS body;
  - (b) that NHS body has ascertained that he is not included in the list kept under section 81 above or (during the period that he is employed by that body) another NHS body or an employment agency or employment business has ascertained that he is not included in the list;
  - (c) subsection (2) does not apply to him;
  - (d) he accepts the offer and for so long as he is employed in the employment to which the offer relates paragraph (c) applies.
- (4B) Relevant NHS employment is employment in a care position with an NHS body.
- (4C) Each of the following is an NHS body—
- (a) a National Health Service trust;
  - (b) a Strategic Health Authority;
  - (c) an NHS foundation trust;
  - (d) a Health Authority;
  - (e) a Local Health Board;
  - (f) a Special Health Authority;
  - (g) a Primary Care Trust.”
- (3) Section 7(3A)(b) of the Protection of Children Act 1999 (c. 14) has effect until the coming into force of paragraph 121 of Schedule 21 to the Education Act 2002 (c. 32)

as if for “the list kept under section 1 above” there is substituted “any of the lists mentioned in subsection (1)(a)”.

- (4) The effect of subsections (1) to (3) is to be disregarded in determining for the purposes of section 1 of the Regulatory Reform Act 2001 (c. 6) (power by order to make provision reforming law which imposes burdens) whether any provision of either of the following Acts falls within subsection (4)(a) of that section (provision amended by an Act within previous two years)—
- (a) the Protection of Children Act 1999 (c. 14);
  - (b) the Care Standards Act 2000 (c. 14).

### *Public Health Laboratory Service Board*

#### **190 Abolition of Public Health Laboratory Service Board**

- (1) The Public Health Laboratory Service Board is abolished.
- (2) Schedule 13 has effect.
- (3) On the day this section is commenced by order under section 199 the property, rights and liabilities of the Board vest in the Secretary of State.

### *Other provisions*

#### **191 Loans by Secretary of State to NHS trusts**

- (1) Paragraph 1 of Schedule 3 to the National Health Service and Community Care Act 1990 (c. 19) (borrowings of NHS trusts) is amended as follows.
- (2) In sub-paragraph (6), the words “, with the consent of the Treasury,” are omitted.

#### **192 Amendment of provision relating to reform of Welsh health authorities**

In section 27 of the Government of Wales Act 1998 (c. 38) (reform of Welsh health authorities), in subsection (7), for “(5)(b)” substitute “(7)(b)”.

## **PART 6**

### **FINAL PROVISIONS**

#### **193 Financial provisions**

There shall be paid out of money provided by Parliament—

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

#### **194 Interpretation**

In this Act—

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

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

## 195 Orders and regulations

- (1) Any order or regulations under this Act—
  - (a) may make different provision for different purposes; and
  - (b) may make incidental, supplementary, consequential, transitory or transitional or saving provision.
- (2) Any power to make regulations conferred by this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.
- (3) Before making any regulations under Part 3 the Secretary of State must consult the Assembly.
- (4) Any power to make an order or regulations under this Act is exercisable by statutory instrument.
- (5) The Secretary of State may not make a statutory instrument containing—
  - (a) regulations under section 150(12),
  - (b) the first regulations made under section 26, 35 or 153(2), or
  - (c) an order or regulations under this Act making, by virtue of subsection (1)(b) or section 200 or 201, provision which amends or repeals any part of the text of an Act (including an Act of the Scottish Parliament),
 unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (6) A statutory instrument containing any other order or regulations under this Act made by the Secretary of State (apart from an order under section 22, 25(3), 28 or 199) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The Scottish Ministers may not make a statutory instrument containing—
  - (a) regulations under section 150(12),
  - (b) the first regulations made under section 153(2), or
  - (c) an order or regulations under this Act making, by virtue of subsection (1)(b) or section 200 or 201, provision which amends or repeals any part of the text of an Act (including an Act of the Scottish Parliament),
 unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (8) A statutory instrument containing any other order or regulations under this Act made by the Scottish Ministers (apart from an order under section 199) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

## 196 Repeals and revocations

The enactments mentioned in Schedule 14 (which include provisions of Acts of the Scottish Parliament) are repealed or revoked to the extent specified.

## 197 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 shall (as from the time when the Act is so amended) be treated as referring to that Act as amended by this Act.
- (2) Subsection (1) does not affect the power to make further Orders varying or omitting any reference to an Act which is amended by this Act.

## 198 Isles of Scilly

The Secretary of State may by order provide that this Act, in its application to the Isles of Scilly, is to have effect with such modifications as may be specified in the order.

## 199 Commencement

- (1) Subject to this section—
  - (a) the provisions of Part 1 (except section 1 and Schedule 1) and Parts 2 to 5, and
  - (b) section 196 and Schedule 14,shall come into force on such day as the appropriate authority may by order appoint.
- (2) The appropriate authority is—
  - (a) in relation to Part 1, and section 196 and Schedule 14 so far as relating to that Part, the Secretary of State;
  - (b) in relation to Part 2—
    - (i) for section 42 and Schedule 7, sections 57 and 61, Chapter 5, sections 102 to 105, 110, 112, 116(1), 124, 125, 127, 129, 131, 133, 135, 139 and 141, section 147 and Schedule 9 so far as relating to the Commission for Social Care Inspection, and section 196 and Schedule 14 so far as relating to those provisions, the Secretary of State;
    - (ii) for sections 47 and 63, Chapters 4 and 6, sections 109, 116(2), 142 to 145 and section 196 and Schedule 14 so far as relating to those provisions, the Assembly;
    - (iii) for sections 106 to 108, 111, 113, 114, 115, 116(3), 117, section 147 and paragraph 4 of Schedule 9 and section 196 and Schedule 14 so far as relating to those provisions, the Secretary of State, in relation to England, and the Assembly, in relation to Wales; and
    - (iv) for the other provisions of the Part, and section 196 and Schedule 14 so far as relating to those provisions, the Secretary of State after consulting the Assembly;
  - (c) in relation to Part 3, and section 196 and Schedule 14 so far as relating to that Part—
    - (i) in relation to England and Wales, the Secretary of State after consulting the Assembly; and
    - (ii) in relation to Scotland, the Scottish Ministers with the consent of the Secretary of State;
  - (d) in relation to section 181, and section 196 and Schedule 14 so far as relating to section 181, the Secretary of State;

- (e) in relation to the other provisions of Part 4, and section 196 and Schedule 14 so far as relating to those provisions—
    - (i) in relation to England, the Secretary of State; and
    - (ii) in relation to Wales, the Assembly;
  - (f) in relation to Part 5, and section 196 and Schedule 14 so far as relating to that Part, the Secretary of State.
- (3) Different days may be appointed for different purposes.
- (4) Subsection (1) does not apply in relation to any provision of this Act so far as it confers power to make an order or regulations, or to section 167, 186 or 192.

## **200 Transitional or transitory provision and savings**

- (1) The appropriate authority may by order make such transitional or transitory provisions and savings as the authority considers appropriate in connection with the coming into force of any provision of this Act.
- (2) For the purposes of this section “appropriate authority”, in relation to any provision of this Act, means the authority which is the appropriate authority in relation to that provision for the purposes of section 199.
- (3) An order under this section may modify any Act (including an Act of the Scottish Parliament) or subordinate legislation.
- (4) Nothing in any transitional or transitory provisions and savings contained in this Act restricts the power under this section to make other transitional provisions and savings.

## **201 Supplementary and consequential provision**

- (1) The appropriate authority may by order make such supplementary, incidental or consequential provision as he or it thinks appropriate for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) For the purposes of this section “appropriate authority”, in relation to any provision of this Act, means the authority which is the appropriate authority in relation to that provision for the purposes of section 199.
- (3) An order under this section may modify any Act (including an Act of the Scottish Parliament) or subordinate legislation.
- (4) The power under this section is not restricted by any other provision of this Act.

## **202 Extent**

- (1) The amendment or repeal of any provision by this Act has the same extent as the provision being amended or repealed (subject to any express limitation contained in this Act).
- (2) Subject to that and except as provided below this Act extends to England and Wales only.
- (3) The following provisions also extend to Scotland—
  - (a) sections 124 and 125;
  - (b) Part 3, except for section 163(3);



- (c) sections 185, 187 and 188 and Schedule 12;
  - (d) this Part.
- (4) The following provisions also extend to Northern Ireland—
- (a) sections 124 and 125;
  - (b) section 186;
  - (c) sections 187, 188 and Schedule 12;
  - (d) this Part.

**203 Short title**

This Act may be cited as the Health and Social Care (Community Health and Standards) Act 2003.