

# HEALTH ACT 2006

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 5

#### Appointments Commission

##### *Section 57: The Appointments Commission*

272. *Section 57* provides for the Appointments Commission to be established as a body corporate in accordance with the further provisions in Schedule 4, and provides for the NHS Appointments Commission (“the NHSAC”), which is a Special Health Authority, to be abolished on such day as the Secretary of State may by order appoint under section 83.

##### *Section 58: Commission to exercise Secretary of State’s appointment functions*

273. *Section 58* enables the Secretary of State to direct the Appointments Commission to exercise all or part of his power to appoint the following:

- Chairmen and non-executive members of Strategic Health Authorities, Primary Care Trusts, NHS trusts and Special Health Authorities;
- Trustees for NHS trusts or Primary Care Trusts;
- Special trustees to which section 95 of the NHS Act 1977 applies;
- Chairmen and non-executive members of the statutory bodies listed in Schedule 5 to the Act; and
- Chairmen and non-executive members of any other body specified in subsection (4) ie. a body which has functions in relation to health, social care or the regulation of professionals working within the health or social care field.

274. *Subsection (5)(a)* makes it clear that the functions of the bodies to which *subsection (4)* refers may include functions which relate to matters other than health, social care or the regulation of professions associated with health and social care and may be exercisable more widely than just in England.

275. This section reproduces with amendments most of section 187 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”).

##### *Section 59: Cases where appointment functions exercisable jointly etc*

276. *Section 59* contains provisions which relate to the appointment functions of the Secretary of State referred to in section 58 which are exercisable by the Secretary of State jointly or concurrently with a devolved authority or any other person who is not a Minister of the Crown. The Secretary of State may direct the Appointments Commission to exercise his functions in accordance with section 58, but is required to first consult with the body or person with whom he exercises his functions jointly or

concurrently. Section 59 expressly excludes powers of appointment which are exercised jointly or concurrently with Scottish Ministers. This does not, however, prevent the Secretary of State from giving a direction to the Appointments Commission in relation to functions he has in relation to that body, but he cannot give directions in relation to the powers of the Scottish Ministers.

277. *Subsection (3)* provides that when the Secretary of State delegates to the Appointments Commission appointment functions that are exercisable by him jointly or concurrently with a devolved authority or any other person who is not a Minister of the Crown, those functions are exercisable by the Appointments Commission acting alone.
278. This section replaces the provisions of section 188 of the 2003 Act.

### ***Section 60: Commission to exercise Privy Council's appointment functions***

279. *Subsection (1)* provides for the Appointments Commission to exercise the functions of the Privy Council to appoint members to the health regulatory bodies listed in Schedule 6 to the Act to the extent directed by the Privy Council.
280. *Subsection (2)* provides for the Appointments Commission to exercise any function of the Privy Council relating to the appointment of members of the Council of the Royal Pharmaceutical Society of Great Britain, to the extent directed by the Privy Council.
281. There are various minor consequential amendments to the legislation relating to these regulatory bodies in Schedules 8 and 9 to the Act.

### ***Section 61: Commission to exercise Assembly's appointment functions***

282. *Section 61* enables the National Assembly for Wales to direct the Appointments Commission to exercise its appointment functions relating to the appointment of members to the Healthcare Commission and the Health Protection Agency. There are consequential amendments to Schedule 6 to the 2003 Act and Schedule 1 to the Health Protection Agency Act 2004 in Schedule 8, and repeals in Schedule 9, to the Act.

### ***Section 62: Exercise of appointments functions***

283. *Section 62* provides that where directions are issued to the Appointments Commission by the Secretary of State, the Privy Council or the National Assembly for Wales in relation to their appointment functions referred to in sections 58, 60 and 61, the Appointments Commission may exercise the functions it is directed to perform in such manner as it thinks fit subject to the provisions in any enactments which relate to the making of the appointments and anything contained in the directions relating to the manner in which the function is to be exercised. This includes those matters specified in *subsection (5)*, and there is also a requirement to have regard to any guidance published by the Commissioner for Public Appointments or any government department, which is intended to ensure the Appointments Commission complies with best practice in relation to public appointments.

### ***Section 63: Commission to assist other bodies with appointments***

284. *Subsections (1) and (2)* enable the Appointments Commission to enter into an arrangement with the board of governors of an NHS foundation trust to assist it with its functions relating to the appointment of chairmen and non-executive members of the board under paragraphs 17 and 19 of Schedule 1 to the 2003 Act to such extent as may be agreed. This provision does not enable arrangements to be made so that the Appointments Commission actually makes the appointment itself. That function is exercised by the board of the foundation trust.
285. *Subsections (3) and (4)* enable the Appointments Commission to enter into arrangements to assist any Minister exercising functions in relation to England or any official acting on behalf of such a Minister, in connection with the exercise of powers

relating to the appointment of the chairmen and non-executive members of any body specified in the arrangements The Minister or official would retain the power to make the appointments.

286. *Subsection (5)* provides that any body to which the powers in subsections (3) and (4) relate may be a body with functions that are exercisable more widely than only in England.
287. *Subsection (6)* limits the arrangements that a Minister may make with the Appointments Commission to assist with his appointment powers under subsection (4) to those powers that he may exercise alone and excludes any such powers that he may exercise jointly, concurrently or after consultation with a devolved administration or any other person who is not a Minister.
288. *Subsection (7)* provides that the arrangements may be contractual or otherwise but cannot include arrangements to make appointments.

#### ***Section 64: Functions connected with appointments to bodies to which section 58 or 60 applies***

289. *Section 64* allows the Appointments Commission to provide a range of additional services connected with appointments when it is directed to exercise appointment functions under section 58 or 60 or when it makes arrangements under section 63. These services include the giving of general advice, mentoring and other assistance and the provision of training to specified people.

#### ***Section 65: Prescribed functions***

290. *Section 65* provides that the Secretary of State may make regulations to confer additional functions on the Appointments Commission relating to appointments to bodies to which appointments may be made under section 58, 60 or 61 or to those to which assistance may be given as provided in section 63.
291. *Subsection (2)* includes some of the functions envisaged such as administering schemes in relation to the payment of remuneration and allowances to chairmen and non-executive members of certain bodies.

#### ***Section 66: Exercise of functions***

292. This section outlines the standards the Appointments Commission must maintain in the exercise of its functions and contains provisions about other things the Appointments Commission may do in connection with the exercise of its functions.
293. *Subsection (2)* permits the Appointments Commission to engage in research, obtain and analyse data, make available materials and facilities and provide information, advice and guidance, both generally and more specifically as provided in *subsection (3)* in relation to bodies to which appointments may be made under sections 58, 60 or 61 or to those in relation to which assistance may be given as provided in section 63.
294. *Subsection (5)(d)* enables the Appointments Commission to make material available for sale (otherwise than for profit) for use in connection with appointments to those bodies it may be directed to make appointments to or provide assistance to in connection with appointments. The Appointments Commission will be covered by the Data Protection Act 1998, and all powers exercisable under this section must be exercised subject to the restrictions of that Act.

#### ***Section 67: Annual reports***

295. *Section 67* requires the Appointments Commission to prepare an Annual Report at the end of each financial year and sets out specific requirements which must be met.

***Section 68: Other reports and information***

296. **Section 68** requires the Appointments Commission to provide the Secretary of State, the Privy Council, the Commissioner for Public Appointments or any government department with such information or reports in connection with its functions as they may request.
297. **Subsection (2)** requires the Appointments Commission to provide information to the National Assembly for Wales in connection with appointments to the bodies specified in section 61 as it may request.
298. **Subsections (3) and (4)** require the Appointments Commission to provide information to any of the bodies for which it has been directed to exercise appointments functions under sections 58, 60 or 61, or to whom it is providing assistance with appointments functions under section 63.

***Section 69: Transfer of staff and property etc***

299. **Section 69** refers to Schedule 7 to the Act, in which provision is made for the transfer of the staff, property, rights, and liabilities of the NHSAC to the Appointments Commission on the date to be appointed by the Secretary of State for the abolition of the NHSAC.

***Section 70: Directions***

300. **Subsection (1)** provides that any direction given by the Secretary of State, the Privy Council or the National Assembly for Wales is to be given in writing and may be varied or revoked by another direction.
301. **Subsection (2)** provides that where the Secretary of State, the Privy Council or the National Assembly for Wales has directed the Appointments Commission to exercise their appointments functions this does not preclude them from exercising those powers themselves.

***Section 71: Interpretation***

302. This section defines the terms used within Part 5.
303. The definition of “appointment” includes removal or suspension from office and includes any process involving an appointment and nominations for posts; and a “devolved authority” means the Scottish Ministers, the National Assembly for Wales and any Northern Ireland department.