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## SCHEDULES

### SCHEDULE 2

Section 4

#### TRANSITIONAL AND SAVING PROVISION

##### PART 1

##### GENERAL PROVISIONS

##### *Continuity of the law*

- 1 (1) The repeal and re-enactment of provisions by the consolidating Acts does not affect the continuity of the law.
- (2) Any subordinate legislation made or other thing done, or having effect as if made or done, under or for the purposes of any provision repealed and re-enacted by the consolidating Acts, if in force or effective immediately before the commencement of the corresponding provision of the consolidating Acts, has effect thereafter as if made or done under or for the purposes of that corresponding provision.
- (3) Any reference (express or implied) in the consolidating Acts or any other enactment or in any instrument or document—
- (a) to any provision of the consolidating Acts, or
  - (b) to things done or falling to be done under or for the purposes of any provision of the consolidating Acts,
- must (to the extent that the context allows) be construed as including, in relation to times, circumstances or purposes in relation to which the corresponding provision repealed by the consolidating Acts had effect, a reference to that corresponding provision or to things done or falling to be done under or for the purposes of that corresponding provision.
- (4) Any reference (express or implied) in any enactment or in any instrument or document—
- (a) to any provision repealed and re-enacted by the consolidating Acts, or
  - (b) to things done or falling to be done under or for the purposes of any such provision,
- must (to the extent that the context allows) be construed as including, in relation to times, circumstances or purposes in relation to which the corresponding provision of the consolidating Acts has effect, a reference to that corresponding provision or to things done or falling to be done under or for the purposes of that corresponding provision.
- (5) Where a power conferred by an Act is expressed to be exercisable in relation to enactments contained in Acts passed before or in the same Session as the Act conferring the power, the power is also exercisable in relation to provisions of the consolidating Acts which reproduce such enactments.

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- (6) The powers (which relate to the making of supplementary and consequential provision) in—
- (a) section 41(13) of the National Health Service (Primary Care) Act 1997 (c. 46)
  - (b) section 63 of the Health Act 1999 (c. 8) (including the power in that section as particularised by section 13(4) of that Act),
  - (c) section 65 of the Health and Social Care Act 2001 (c. 15),
  - (d) section 39 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),
  - (e) section 201 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), and
  - (f) section 80 of the Health Act 2006 (c. 28),
- are, so far as they were exercisable in relation to any provision repealed and re-enacted by the consolidating Acts, exercisable in relation to the corresponding provision of the consolidating Acts.
- (7) Sub-paragraphs (5) and (6) do not affect the generality of sub-paragraph (4).
- (8) Sub-paragraphs (1) to (6) have effect instead of section 17(2) of the Interpretation Act 1978 (c. 30) (but that does not affect any other provision of that Act).
- (9) Sub-paragraph (2) does not apply to any subordinate legislation in so far as it is reproduced in this Act.

*Effect of old transitional provisions and savings*

- 2 The repeals made by this Act do not affect the operation of any transitional provision or saving relating to the coming into force of a provision reproduced in the consolidating Acts in so far as the transitional provision or saving is not specifically reproduced in the consolidating Acts but remains capable of having effect in relation to the corresponding provision of the consolidating Acts or otherwise.
- 3 (1) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.
- (2) The repeal by this Act of a saving on the previous repeal of an enactment does not affect the saving so far as it is not specifically reproduced in the consolidating Acts but remains capable of having effect.

*Use of existing forms etc*

- 4 Any reference to an enactment repealed by this Act which is contained in a document made, served or issued after the commencement of that repeal must be construed, except so far as a contrary intention appears, as a reference or (as the context requires) including a reference to the corresponding provision of the consolidating Acts.

*Pre-commencement offences*

- 5 Nothing in the consolidating Acts affects the provisions repealed by this Act in their operation in relation to offences committed before the commencement of the consolidating Acts.

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### *Interpretation*

- 6 In this Schedule “repeal” includes (so far as the context permits) revoke or revocation.

## **PART 2**

### **PARTICULAR SAVINGS**

#### *Section 6(6) of the Health Authorities Act 1995 (c. 17)*

- 7 Notwithstanding the repeal by this Act of section 126 of the National Health Service Act 1977 (c. 49), subsections (4) and (5) of that section continue to have effect for the purpose of the reference to those subsections in section 6(6) of the Health Authorities Act 1995.

#### *Article 2(c) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)*

- 8 (1) This paragraph applies to any function conferred by or under any provision re-enacted by the consolidating Acts which, immediately before the commencement of the corresponding provision of the consolidating Acts, was a function to which Article 2(c) of the National Assembly for Wales (Transfer of Functions) Order 1999 applied (concurrent exercise of functions in relation to a cross-border body).
- (2) Article 2(c) of the Order continues to have effect in relation to the function conferred by or under the corresponding provision of the consolidating Acts.

### *Definitions*

- 9 In section 126(9) of the National Health Service Act 2006 (c. 41) and section 80(9) of the National Health Service (Wales) Act 2006 (c. 42), the meaning of “colony” is subject to paragraph 4(3) of Schedule 2 to the Interpretation Act 1978 (c. 30).
- 10 In sections 80, 211 and 217 of the National Health Service Act 2006, and sections 38, 159 and 165 of the National Health Service (Wales) Act 2006, the meaning of “land” is subject to paragraph 5(b) of Schedule 2 to the Interpretation Act 1978.
- 11 (1) The definition of “local authority” in section 275 of the National Health Service Act 2006 and section 206 of the National Health Service (Wales) Act 2006 includes—
- (a) any joint board constituted under the Public Health Act 1936 (c. 49) or under the Public Health (London) Act 1936 (c. 50) or any enactment repealed by either of those Acts, and
  - (b) any port health authority constituted under either of those Acts or under an Act passed before those Acts.
- (2) Sub-paragraph (1) does not apply to—
- (a) sections 24, 75, 77, 78, 237, 245 and 247 of the National Health Service Act 2006, or
  - (b) sections 17, 33, 35, 36, 40 and 185 of the National Health Service (Wales) Act 2006.

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*Powers to make regulations exercisable jointly with the Treasury*

- 12 (1) Any power to make regulations conferred by a provision of the National Health Service Act 2006 which is a provision corresponding to a provision of the National Health Service Act 1977 (c. 49) or of Part 1 of the National Health Service and Community Care Act 1990 (c. 19) is, if the Treasury so directs, exercisable by the Treasury and the Secretary of State acting jointly.
- (2) Sub-paragraph (1) does not apply to a power to make regulations conferred by section 172(1)(a) or 179(3) or (5) of the National Health Service Act 2006.

*Article 4 of the National Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407)*

- 13 Notwithstanding the revocation of Article 4 of the National Health Service (Pre-consolidation Amendments) Order 2006, the saving provided for by that Article (determinations in relation to remuneration in respect of services under Part 2 of the National Health Service Act 1977) continues to have effect.

*Former functions of Health Authorities ceasing to be exercisable by Local Health Boards*

- 14 Paragraph 15 applies if the functions of Health Authorities which—
- (a) were transferred to the National Assembly for Wales by the Health Authorities (Transfer of Functions, Staff, Property, Rights and Liabilities and Abolition) (Wales) Order 2003 (S.I. 2003/813 (W.98)), and
  - (b) are exercisable by Local Health Boards by virtue of directions under section 16BB of the National Health Service Act 1977 (c. 49) or section 12 of the National Health Service (Wales) Act 2006 (c. 42),
- cease to be so exercisable.
- 15 If this paragraph applies—
- (a) section 50 of the National Health Service (Wales) Act 2006 has effect as if after subsection (7) there were inserted—
 

“(8) This Act has effect, in relation to primary medical services provided under an agreement, as if those services were provided as a result of the delegation by the Welsh Ministers of their functions (by directions given under section 12 or 24).”
  - (b) section 64 of that Act has effect as if after subsection (5) there were inserted—
 

“(8) This Act has effect, in relation to primary dental services provided under an agreement, as if those services were provided as a result of the delegation by the Welsh Ministers of their functions (by directions given under section 12 or 24).”
  - (c) that Act has effect as if for section 85 there were substituted—

**“85 Power to charge**

- (1) The Welsh Ministers may charge a fee to persons who make an application to them referred to in section 83(2)(c)(i) or (ii).

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- (2) The Welsh Ministers may determine the amount of the fee as they think fit, and may in particular charge a flat fee or charge different fees in different cases or descriptions of case.
  - (3) Before determining the amount of the fee, the Welsh Ministers must consult such organisations as they think fit that appear to them to represent persons providing pharmaceutical services.
  - (4) The Welsh Ministers must publish in such manner as they think fit any fee they determine and any directions they give under this section.”, and
- (d) that Act has effect as if for section 99 there were substituted—

#### “99 Application of this Act

This Act has effect in relation to piloted services—

- (a) subject to any provision of, or made under, this Chapter, section 103 (application of enactments) or section 127 (charges for local pharmaceutical services), but
- (b) otherwise as if those services were provided as a result of the delegation by the Welsh Ministers of their functions (by directions given under section 12).”.

#### *Provision made by virtue of the Local Health Boards (Functions) (Wales) Regulations 2003 (S.I. 2003/150 (W.20))*

16 Nothing in any provision made in the consolidating Acts by virtue of the Local Health Boards (Functions) (Wales) Regulations 2003 (“the Functions Regulations”) affects—

- (a) the power of the Welsh Ministers to exercise the functions exercisable under the Functions Regulations,
- (b) the application to the Functions Regulations of section 31 of the National Health Service (Wales) Act 2006 (c. 42),
- (c) the application to Local Health Boards of regulation 3(1) of the Functions Regulations (exercise of functions to be subject to any prohibitions or restrictions in an LHB order),
- (d) the application to Local Health Boards of the Schedule to the Functions Regulations (excepted functions),
- (e) any power to amend, revoke or remake the Functions Regulations, or
- (f) any power to make further regulations under section 12 of the National Health Service (Wales) Act 2006 (including regulations which amend or repeal provisions of the consolidating Acts made by virtue of the Functions Regulations).

#### *“Relevant Assembly functions” under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32)*

17 If, apart from provision made by the consolidating Acts, a function under those Acts would be a relevant Assembly function for the purposes of paragraph 30 of Schedule 11 to the Government of Wales Act 2006, that function is a relevant

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Assembly function for that purpose, notwithstanding any provision made by the consolidating Acts.

*References to the National Assembly for Wales  
in the National Health Service (Wales) Act 2006*

- 18 References in the National Health Service (Wales) Act 2006 to the National Assembly for Wales are, apart from the reference in section 160(1)(b), references to that Assembly as constituted by the Government of Wales Act 2006.

*Section 13(3), (4) and (10) of the Health Act 1999 (c. 8)*

- 19 Notwithstanding the repeal by this Act of section 13(3), (4) and (10) of the Health Act 1999—
- (a) any order under section 5(1) of the National Health Service and Community Care Act 1990 (c. 19)—
    - (i) must be treated as always having had effect with the omission of any obligation for the NHS trust to which the order relates to own land specified in the order, and
    - (ii) so far as any functions specified in it could have been specified under that provision as amended by the Health Act 1999, must be treated as having been made under that provision as so amended,
  - (b) any restriction preventing the acquisition of any land by any NHS trust (including an NHS trust dissolved before the commencement of section 13 of the Health Act 1999) merely because the land did not comprise a hospital or other establishment or facility previously managed or provided by a Health Authority, a Special Health Authority, a Regional Health Authority or a District Health Authority, must be treated as never having had effect, and
  - (c) the National Health Service and Community Care Act 1990 (c. 19) must be treated as always having had effect subject to the amendments made by section 13 of the Health Act 1999 (c. 8).

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