

# HEALTH AND SOCIAL CARE ACT 2008

---

## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Northern Ireland*

#### **Part 5 – Miscellaneous**

#### **Amendments relating to National Health Service**

##### *Section 139: Duty of Primary Care Trusts*

474. *Section 139* amends the NHS Act 2006 by inserting a new section 23A which imposes a duty on PCTs to make arrangements to secure continuous improvement in the quality of health care provided by or for them. This duty replaces the current duty (on PCTs and other English NHS bodies) to improve quality in section 45 of the Health and Social Care (Community Health and Standards) Act 2003, requiring on-going improvement activity, and is aligned more closely with the duty imposed on English local authorities by section 3 of the Local Government Act 1999.
475. Subsection (2) of the new section 23A provides that in discharging this duty PCTs should have regard to standards set out in statements published by the Secretary of State under section 45.

##### *Section 140 and Schedule 12: Pharmaceutical services*

476. In England the funding arrangement for pharmaceutical services is governed by sections 228 to 231 of, and Schedule 14 to, the NHS Act 2006 and in Wales by sections 174 to 177 of, and Schedule 8 to, the NHS (Wales) Act 2006. Section 140 provides for changes to these provisions in order to move the Global Sum to baseline allocations.
477. *Section 140* introduces Schedule 12, which in turn makes amendments to sections 228 to 230 of, and Schedule 14 to, the NHS Act 2006 to change the classification of pharmaceutical services expenditure and bring it within PCT baseline allocations. Schedule 12 also makes the changes that are needed to the NHS (Wales) Act 2006 to change the classification of pharmaceutical services, which will transfer the Global Sum to the baseline allocations of Local Health Boards in Wales.
478. *Paragraph 2* of Schedule 12 revises the definition of a PCT's "expenditure" within section 228 of the NHS Act 2006 to include expenditure on pharmaceutical services. *Paragraphs 3* and *4* make consequential changes.
479. *Paragraph 5(1)* and *(2)* make further consequential amendments. *Paragraph 5(3)* inserts a new provision to make it possible to charge the dispensing fees, and other fees payable for the provision of pharmaceutical services, back to the PCT where a prescription was issued. This corresponds to similar provisions for the cost of medicines which are already charged to the PCT in which the prescription was issued.
480. *Paragraph 5(4)* makes consequential changes.

481. *Paragraph 5(5)* ensures that remuneration paid by PCTs for pharmaceutical services which is met by an NHS Trust or NHS Foundation Trust under section 234(4) of the NHS Act 2006 can be charged back to the PCT in which the prescription was issued.
482. *Part 2, paragraphs 6 to 10*, of Schedule 12 makes corresponding provision for Wales.

***Section 141: Remuneration for persons providing pharmaceutical services: appointment of determining authorities***

483. **Section 141** amends section 164 of the NHS Act 2006 and section 88 of the NHS (Wales) Act 2006. These sections make provision relating to the making or varying of determinations on the remuneration of those providing NHS pharmaceutical services. Under section 164, remuneration may be determined by the Secretary of State or by persons appointed by him referred to in the legislation as “determining authorities”. Where the Secretary of State devolves this function to determining authorities, he is required to do so via an “instrument of appointment”. Previously, the legislation provided that this “instrument of appointment” may be, but was not required to be, set out in regulations. Similar powers are conferred on the Welsh Ministers under section 88 of the NHS (Wales) Act 2006. Section 141 amends section 164 of the NHS Act 2006 to remove this discretion in the case of services that are provided pursuant to the power in section 126 of that Act. It also makes a similar amendment to section 88 of the NHS (Wales) Act 2006 in relation to services provided pursuant to section 80 of that Act. The new provisions require the Secretary of State and the Welsh Ministers respectively to set out an instrument of appointment in respect of these services in regulations.

***Section 142: Indemnity schemes in connection with provision of health services***

484. *Subsections (2) and (3)* of section 142 expand membership eligibility of indemnity schemes to the Secretary of State, who may secure health services directly. They also expand membership to non-NHS bodies who provide services or secure the provision of services on behalf of one or more of Strategic Health Authorities, PCTs, NHS trusts, Special Health Authorities, NHS Foundation Trusts, CHAI (or, in future, the Commission), the Health Protection Agency or the Secretary of State.
485. *Subsection (4)* (which inserts new subsection (2A) into section 71 of the NHS Act 2006) limits the losses and liabilities that an indemnity scheme may cover in respect of the Secretary of State or non-NHS bodies to functions in respect of the National Health Service. This is because both the Secretary of State and some of the eligible non-NHS bodies may have functions not related to care provided through the NHS, and these functions should not be covered by these schemes.
486. Currently, membership of the existing schemes is voluntary, although the Secretary of State may direct a body that is eligible to be a member to become a member of any of the schemes established under section 71 of the NHS Act 2006. However, *subsection (6)* (which substitutes subsection (5) of section 71) provides that the Secretary of State may not direct a non-NHS body to become a member of a scheme. NHS Foundations Trusts are already excluded, and continue to be excluded, from this power of direction. This provision essentially reserves the right of the Secretary of State to direct certain eligible members to become members of an established or future scheme.